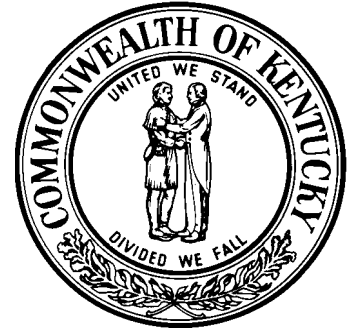


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 38, NUMBER 2
MONDAY, AUGUST 1, 2011

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MEETING NOTICE: ARRS

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet August 15, 2011 at 1:30 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 201-204 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2010 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

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**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.

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

STATEMENT OF EMERGENCY
32 KAR 1:050E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 under House Bill 228, passed by the 2011 Kentucky General Assembly during regular session and signed by the Governor on March 16, 2011. House Bill 228 was effective June 8, 2011. The Kentucky Registry of Election Finance ("Registry") is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under KRS 121.120(1)(g) and to prescribe official forms for the making of required reports under KRS 121.120(4)(a). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety or welfare of Kentucky. An ordinary administrative regulation would not be sufficient because the current political committee registration form is not consistent with the changes enacted in 2011 House Bill 228. The revised political committee registration form must be made available as soon as possible following the effective date of the legislation to ensure that persons and entities who wish to register political committees during the current election cycle comply with the law. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

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

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Emergency Amendment)

32 KAR 1:050E. Political[and inaugural] committee registration.

RELATES TO: KRS 121.015(3), 121.170

STATUTORY AUTHORITY: KRS 121.120(1)(g), (4), 121.170(1)

EFFECTIVE: July 1, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry[grants the registry the power] to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121.[This administrative regulation specifies the forms to be used by political committees and inaugural committees and incorporates those forms by reference.] KRS 121.120(4) requires the registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. This administrative regulation specifies the form to be used for registration by political committees and incorporates the form by reference.

Section 1. Political Committee Registration. The "Political Committee Registration" form, KREF 010, revised 06/2011[05/2005], shall be the official form to be used for the registration of campaign committees, caucus campaign committees, political issues committees, [and] permanent committees, and inaugural committees. [Section 2. Inaugural Committee Registration. The "Inaugural Committee Registration" form, KREF 010/I, revised 05/2005, shall be the official form to be used for the registration of inaugural committees.]

Section 2.[Section 3.] Incorporation by Reference. (1) [The following material is incorporated by reference:

(a)] "Political Committee Registration" form, KREF 010, revised 06/2011, is incorporated by reference.[05/2005; and] (b) "Inaugural Committee Registration" form, KREF 010/I, revised 05/2005.]

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

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: June 22, 2011

FILED WITH LRC: July 1, 2011 at 1 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends an existing form incorporated in 32 KAR 1:050 for the registration of political committees in Kentucky, including campaign committees (which may be candidate authorized or unauthorized), caucus campaign committees, political issues committees, permanent committees, and inaugural committees. This administrative regulation amends 32 KAR 1:050 to bring the political committee registration form into compliance with KRS 121.170(4), as amended by 2011 House Bill 228, by providing a space for committees to designate an official contact person. A present form for registration of inaugural committees will be deleted as obsolete.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) requires the Registry to promulgate administrative regulations to carry out the provisions of KRS Chapter 121. Changes to the existing form for registration of political committees were necessitated by the passage of 2011 House Bill 228, effective June 8, 2011. Changes in the political committee registration form also will provide those persons who register a campaign committee with a clear means to designate, at registration, whether the campaign committee is authorized by a candidate or unauthorized, per KRS 121.210(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of Chapter 121, and KRS 121.120(4), as it prescribes a form for political committee registration.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the registration requirements under KRS 121.170 and specifically complies with the provisions of 2011 House Bill 228.

(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 updates the latest version of the political committee registration form to comply with 2011 House Bill 228 and includes inaugural committee as an option for registration. The amendment clarifies that a campaign committee may either be candidate authorized or not authorized by any candidate. This distinction is recognized under existing law, per KRS 121.015(3)(a) and KRS 121.210(4), but is not clear on the existing form. The amendment deletes a form for registration of an inaugural committee as this form is rendered obsolete by changes in the political committee registration form.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, to develop prescribed forms for the making of required reports. 2011 House Bill 228 requires any committee, upon registration, to designate an official contact person. For permanent committees, the official contact person shall not be a legislative agent or an executive agency lobbyist. Amendment to the administrative regulation is necessary to bring the Registry's political committee registration form into compliance with 2011 House Bill 228.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and KRS 121.120(4) by prescribing a form for registration of a political com-

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mittee.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the political committee registration form to be filed by regulated entities and persons into compliance with changes in KRS 121.170 due to the passage of 2011 House Bill 228 and will further provide a means for a campaign committee to clearly designate whether a candidate has authorized formation of the committee pursuant to KRS 121.210(4). The amendment also deletes a duplicative form for registering inaugural committees, which will now register using the political committee registration form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All newly registered political committees will be affected by this administrative regulation. 2011 House Bill 228 created the requirement that committees designate an official contact person, necessitating this form change. To the extent the public, media, and other interest groups depend on the Registry's disclosure function, they will be positively affected by this administrative regulation, as the change requires additional disclosure at the time of registration.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required of current regulated entities. The Registry will provide the new forms, both in hard copy format and electronically, to new registrants. The change, necessitated by 2011 House Bill 228, requires all political committees, at the time of registration, to identify an official contact person.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be incurred by regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes to the political committee registration form will simplify the process of registration by providing one form for registration of political committees, including inaugural committees. A campaign committee will also have means to clearly designate status as candidate authorized or unauthorized. As required by 2011 House Bill 228, a space will be provided for designation of an official contact person.

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

(a) Initially: Initial costs to administer the program are estimated to be less than \$5,000.

(b) On a continuing basis: Ordinary printing costs for forms are anticipated in the Registry's budget, as well as ordinary programming costs for resulting database changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget funding will be used for implementation and enforcement.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Commonwealth of Kentucky - General Government – Registry of Election Finance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.015(3), KRS 121.120(1)(g), KRS 121.120(4), KRS 121.170 (as amended by 2011 House Bill 228), and KRS 121.210(4).

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

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

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

(c) How much will it cost to administer this program for the first year? Initial costs to administer this program are estimated to be less than \$5,000.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years, as these costs constitute ongoing administrative costs consistent with the agency's function.

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

Revenues (+/-): None.

Expenditures (+/-): + less than \$5,000 in year one

Other Explanation: N/A

STATEMENT OF EMERGENCY 32 KAR 1:070E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 under House Bill 228, passed by the 2011 Kentucky General Assembly during regular session and signed by the Governor on March 16, 2011. House Bill No. 228 is effective June 8, 2011. The Kentucky Registry of Election Finance ("Registry") is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under KRS 121.120(1)(g) and to prescribe official forms for the making of required reports under KRS 121.120(4)(a). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety or welfare of Kentucky. An ordinary administrative regulation would not be sufficient because the current political committee registration form incorporated by reference in this regulation is not consistent with the changes enacted in 2011 House Bill 228. The revised political committee registration form must be made available as soon as possible following the effective date of the legislation to ensure that persons and entities who wish to register political committees in Kentucky comply with the law. This administrative regulation, which incorporates by reference the obsolete version of the form, must also be amended to ensure uniformity in the Registry's administrative regulations. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor

CRAIG C. DILGER, Chairman

DEPARTMENT OF STATE Kentucky Registry of Election Finance (Emergency Amendment)

32 KAR 1:070E. Waiver from filing candidate election

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finance statement[candidate's report].

RELATES TO: KRS 121.180(9)

STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)

EFFECTIVE: July 1, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) ~~authorizes the Registry[grants the registry the power] to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121.[This administrative regulation specifies the form for requesting a waiver from filing a report of receipts and expenditures for a candidate incorporates this form by reference.]~~ KRS 121.120(4) requires the registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. This administrative regulation specifies the form to be used by a candidate to request a waiver from filing election finance statements and incorporates the waiver form by reference.

Section 1. ~~[The "Political Committee Registration" form, KREF 010, revised 05/2005, shall be the official form to request a waiver from filing a report of receipts and expenditures for a candidate.]~~ Candidates shall use the "Political Committee Registration" form, incorporated by reference in 32 KAR 1:050, to request a "Waiver from Filing Candidate Election Finance Statement". Upon filing a "Waiver from Filing Candidate Election Finance Statement", a candidate shall be relieved of the duty personally to file election finance statements and keep records of receipts and expenditures, so long as the candidate meets the conditions set forth in KRS 121.180(9).

Section 2. Incorporation by Reference. (1) "Waiver from Filing Candidate Election Finance Statement", KREF 011, revised 05/2005, is incorporated by reference.

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

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: June 22, 2011

FILED WITH LRC: July 1, 2011 at 1 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment to 32 KAR 1:070 deletes reference to an obsolete version of a form also incorporated by reference in 32 KAR 1:050 for registering political committees in Kentucky. Amendments to the political committee registration form were necessary to comply with KRS 121.170(4), as amended by 2011 House Bill 228.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) requires the Registry to promulgate administrative regulations to carry out the provisions of KRS Chapter 121. Changes to the existing form for registration of political committees were necessitated by the passage of 2011 House Bill 228, effective June 8, 2011. To the extent the obsolete form is incorporated by reference in this regulation, amendments to this regulation were also necessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of Chapter 121, and KRS 121.120(4) and 121.180(9), as it prescribes the form for candidates to request a waiver from filing election finance statements and also incorporates the waiver form by reference.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of campaign committee reporting requirements by providing candidates with a

means to file a Waiver from Filing Candidate Election Finance Statement, where the candidate has authorized registration of a campaign committee, as provided by KRS 121.180(9).

(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 updates the existing regulation due to changes in the political committee registration form, necessitated by the passage of 2011 House Bill 228. The amendment deletes language incorporating the political committee registration form by reference, as the same form is incorporated by reference in another Registry regulation, specifically 32 KAR 1:050.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, to develop prescribed forms for the making of required reports. 2011 House Bill 228 requires any committee, upon registration, to designate an official contact person. To the extent the existing regulation incorporates the political committee registration form by reference, it is necessary to amend the regulation to delete reference to a prior version of the form.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing a form for candidates to waive filing of election finance statements under 121.180(9), where the candidate has authorized a campaign committee to act on his or her behalf.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will delete a duplicative provision incorporating by reference the political committee registration form. Due to this form having been incorporated by reference in two (2) regulations, amendments to both regulations simultaneously have been required, but will no longer be required in the future due to this amendment referencing the companion regulation instead of the form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment does not create new requirements for the regulated community, which includes candidates and candidate authorized campaign committees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required of candidates and candidate authorized campaign committees as a result of the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be incurred by candidates and candidate authorized campaign committees as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Because the form for political committee registration will only be incorporated in 32 KAR 1:050 and will no longer be incorporated by reference in 32 KAR 1:070, there will be less potential for confusion by candidates and candidate authorized campaign committees.

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

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

(b) On a continuing basis: Ordinary printing costs for forms are anticipated in the Registry's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget funding will be used for implementation and enforcement.

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

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(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all candidate authorized campaign committees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Commonwealth of Kentucky - General Government - Registry of Election Finance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(1)(g), KRS 121.120(4), KRS 121.180(9), and KRS 121.170 (as amended by 2011 House Bill 228).

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

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

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

(c) How much will it cost to administer this program for the first year? No costs to administer the program are anticipated in year one, as this amendment is a reference change only.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years, as these costs constitute ongoing administrative costs consistent with the agency's function.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A

STATEMENT OF EMERGENCY 201 KAR 30:310E

This emergency administrative regulation establishes the fees for registration as an appraisal management company by the Kentucky Real Estate Appraisers Board. This emergency administrative regulation must be placed into effect immediately in order to ensure that the public is protected through the registration of Appraisal Management Companies by the board. No registrations can be issued until the administrative regulation is promulgated. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
HAROLD BRANTLEY, Chair

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (New Emergency Administrative Regulation)

201 KAR 30:310E. Fees for registration of appraisal management companies.

RELATES TO: KRS 324A.152(4)(b), (7), 324A.154(1)

STATUTORY AUTHORITY: KRS 324A.152(8), 324A.154(1)

EFFECTIVE: July 15, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.154(1) requires the board to establish by administrative regulation the fees for registration of appraisal management companies. This administrative regulation establishes the fees for registration of appraisal management companies and renewal of the registration.

Section 1. Fee schedule. (1) The initial application fee shall be \$3,500.

(2) An annual renewal fee shall be \$3,500.

(3) A reinstatement fee shall be \$3,500 in addition to the penalty provided for in KRS 324A.152(7).

(4) Any dishonored or returned check shall incur the cost of collection plus twenty-five (25) dollars.

(5) An Appraisal Subcommittee annual fee of twenty-five (25) dollars each year for each Kentucky licensed and certified appraiser listed on the company register.

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: July 15, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry Disney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for application for registration as an appraisal management company.

(b) The necessity of this administrative regulation: This administrative is necessary to set the fees for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321A.154(1) requires the board to promulgate administrative regulations establishing reasonable fees for the registration of appraisal management companies. This administrative regulation establishes those fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the fees required for registration with the board.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board does not know the number of person who will seek registration from the board at this time. Generally, states with similar characteristics to Kentucky have fifty to seventy-five applicants.

(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 administrative regulation requires applicants to pay the fee for registration by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees are set forth in the regulation.

(c) As a result of compliance, what benefits will accrue to the

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entities identified in question (3): Applicants for licensure will have their applications reviewed by the board.

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

(a) Initially: The 2011 General Assembly passed HB 288 which provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(b) On a continuing basis: The 2011 General Assembly passed HB 288 which provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does directly establish fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.154(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 30:320E

This emergency administrative regulation establishes the Surety Board for registration as an Appraisal Management Company by the Kentucky Real Estate Appraisers Board. This emergency administrative regulation must be placed into effect immediately in order to ensure that the public is protected through the registration of Appraisal Management Companies by the board. No registrations can be issued until the administrative regulation is promulgated. This emergency administrative regulation can be issued until the regulation is promulgated. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

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

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (New Emergency Administrative Regulation)

201 KAR 30:320. Surety bond.

RELATES TO: KRS 324A.152(4)(c), 324A.154

STATUTORY AUTHORITY: KRS 324A.152(8), 324A.154(2)(a)

EFFECTIVE DATE: July 15, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.154(2) requires the board to establish by administrative regulation the terms required for a surety bond to be provided by an appraisal management company. This administrative regulation establishes the terms of the surety bond for registration of an appraisal management company.

Section 1. (1) The surety bond required by KRS 324A.154(2) shall be filed on the AMC Surety Bond Form.

(2) A registrant shall maintain a valid surety bond, as specified in KRS 324A.154, in the amount of \$500,000.

(3) (a) The surety bond shall indemnify the Kentucky Real Estate Appraisers Board, its roster of approved appraisers, and public claimants.

(b) The bond is subject to claims by the board for failure to pay any amount required pursuant to the statutes and rules governing appraisal management companies and by any person who is damaged by the failure of the registrant to provide appraisal management services, in accordance with KRS Chapter 324A and 201 KAR Chapter 30.

(4) The surety bond shall be maintained for at least one (1) year after an Appraisal Management Company's registration is terminated, revoked or otherwise loses its authority to operate.

(5)(a) Upon receipt by the board of notice of intent to cancel a surety bond by a corporate surety, the board shall immediately notify the principal of the bond of the effective date of the cancellation and that the principal shall furnish a like bond before the cancellation date or within thirty (30) days after the date of mailing the notice by the board.

(b) Failure to furnish the new surety bond in accordance with this administrative regulation shall cause the registration to be terminated until the new surety bond is furnished.

Section 2. Incorporation by Reference. (1) "AMC Surety Bond Form, 6/11 edition", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: July 15, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry Disney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the surety bond required for registration as an appraisal management company.

(b) The necessity of this administrative regulation: This administrative is necessary to establish the surety bond for registration as an appraisal management company.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.152(8) authorizes the board to promulgate administrative regulations to implement the provi-

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sions of the Kentucky Appraisal Management Company Registration Act. KRS 324A.154(2) requires the board to establish by administrative regulation the amount of the surety bond. This administrative regulation establishes the amount of the surety bond.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the amount of the surety bond required for registration by the board.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board does not know the number of person who will seek registration from the board at this time. Other states with demographics similar to Kentucky's have fifty to seventy-five registrants.

(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 administrative regulation requires applicants to obtain a surety bond in the amount of \$500,000 in order to be registered by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of obtaining the surety bond will vary by applicant and cannot be predicted by the board. However, bonds of this nature are not uncommon in the industry.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for registration will know the amount of the surety bond required for registration.

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

(a) Initially: The 2011 General Assembly passed HB 288 which provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(b) On a continuing basis: The 2011 General Assembly passed HB 288 which provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the registrants and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does directly establish fees.

(9) TIERING: Is tiering applied? No, this administrative regulation does not utilize tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Es-

tate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.152(8), KRS 324A.154(2).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 30:330E

This emergency administrative regulation establishes the application process for registration as an Appraisal Management Company by the Kentucky Real Estate Appraisers Board. This emergency administrative regulation must be placed into effect immediately in order to ensure that the public is protected through the registration of Appraisal Management Companies by the Board. No registrations can be issued until the administrative regulation is promulgated. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. This emergency administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
HAROLD BRANTLEY, Chair

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (New Emergency Administrative Regulation)

201 KAR 30:330E. Application for registration.

RELATES TO: KRS 324A.152(2), (3), (4), 324A.154

STATUTORY AUTHORITY: KRS 324A.152(8)

EFFECTIVE: July 15, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.152(2) requires the board to establish by administrative regulation the application process for appraisal management companies. This administrative regulation establishes the application process for registration of appraisal management companies.

Section 1. (1) A person required to be registered under KRS 324A.152 shall apply by submitting AMC Registration KREAB Form to the board along with the certifications required by KRS 324A.152(2)(e) and (f).

(2) A registration application shall include the following:

(a) A business email address for the applicant and for any managing principal, controlling person, and for any person who owns ten (10) percent or more of the appraisal management company;

(b) Proof of valid and sufficient surety bond required by 201 KAR 30:020; and

(c) All required fees.

(3) When information required or requested by the board,

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through application or otherwise, becomes inaccurate the registrant shall file with the board an amendment correcting that information within ten (10) business days.

Section 2. Incorporation by Reference. (1) "AMC Registration KREAB Form APP 6/11", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: July 15, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry Disney, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for application for registration by an appraisal management company.

(b) The necessity of this administrative regulation: This administrative is necessary to set the process for registration as an appraisal management company by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.152 requires persons seeking registration as an appraisal management company to make a written application to the board. This administrative regulation establishes the requirements for application for registration as an appraisal management company.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the requirements and the process involved in obtaining registration from the board.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board does not know the number of person who will seek registration from the board at this time. Other states with demographics similar to Kentucky's have fifty to seventy-five registrants.

(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 administrative regulation requires applicants to file the completed application setting forth how the individual meets the qualifications for registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees for applying will be established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for registration will have their applications reviewed by the board.

(5) Provide an estimate of how much it will cost the administra-

tive body to implement this administrative regulation:

(a) Initially: Exact figures are difficult to estimate until the number of applicants is ascertained. However, the board anticipates that additional costs could be substantial in the implementation of the administrative regulations. Initial estimates exceed \$200,000 per year.

(b) On a continuing basis: The board estimates that the costs identified in (5)(a) will continue enforces and administers the requirements of KRS 324A.150 et seq.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the registrants and applicants.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation does not utilize tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.152; KRS 324A.154.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 815 KAR 4:010E

This emergency administrative regulation amends 815 KAR 4:010, sets forth the fee schedule for the annual inspection of all elevators to be inspected statewide in accordance with KRS 198B.470 as amended during the 2010 Regular Session of the General Assembly. This emergency administrative regulation is necessary to comply with the legislative mandate amending requirements for annual elevator inspections statewide to include freight elevators. The mandate for fore the additional elevator inspections and for establishing the Elevator Advisory Committee is effective July 1, 2011. Pursuant to KRS 198B.0030(8)(1), promulgation of elevator administrative regulations shall not be promulgated without comments from the affected Elevator Advisory

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Committee. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JERRY LUNSFORD, Commissioner
ROBERT D. VANCE, Secretary

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (Emergency Amendment)

815 KAR 4:010E. Annual inspection of [passenger] elevators.

RELATES TO: KRS 198B.400, 198B.470, 198B.480, 198B.500, 198B.510, 198B.540

STATUTORY AUTHORITY: KRS 198B.060(18), 198B.490

EFFECTIVE: July 8, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.490 requires the commissioner of the Department of Housing, Buildings and Construction [executive director] to promulgate administrative regulations [an administrative regulation] governing the safety and inspection of [passenger] elevators as defined by KRS 198B.400(1) [and (2)]. This administrative regulation establishes the annual inspection requirements and fees for [safety standards governing the annual inspection of passenger] elevators within the Commonwealth.

Section 1. Annual Inspection of [Passenger] Elevators [and Escalators]. (1) Except as provided in subsection (2) of this section, an annual inspection of an elevator [a passenger elevator or escalator] shall be conducted in accordance with the standards as adopted and incorporated by reference in 815 KAR 7:120 Kentucky Building Code, [following standards:

- (a) "Safety Code for Elevators and Escalators", ASME A17.1-2004 sections 5.10, 8.7, 8.10, and 8.11 in their entirety with the exception of rules 2.2.4.3, 2.19.2, 2.19.3.2(A)(3), 2.26.2.33, 2.27.3.2.6, 2.27.3.3.7, 3.17.3, 3.26.10, 6.1.3.3.9, and 8.6.5.8 for existing elevators and escalators, or the edition of A17.1 Safety Code in its entirety that the elevator was originally permitted under;
- (b) "Inspectors' Manual for Hydraulic Elevators", ASME A17.2-2-1997;
- (c) "Inspectors' Manual for Escalators and Moving Walks", ASME A17.2.3-1998;
- (d) "Safety Code for Existing Elevators and Escalators", ASME A17.3-2002;
- (e) "Guide for Emergency Personnel", ASME A17.4-1999;
- (f) "Elevator and Escalator Electrical Equipment", ASME A17.5-1996;
- (g) "Safety Standard for Conveyors and Related Equipment", ASME B20.1-1996; and
- (h) "Safety Standard for Platform Lifts and Stairway Chairlifts", ASME A18.1-2003 in its entirety with the exception of rules 5.7.1 and 10.1.2.1;
- (i) "Automated People Mover Standards-Part 1", ANSI/ASCE/T&D1 21-05;
- (j) "Automated People Mover Standards-Part 2", ASE 21-98; and
- (k) "Automated People Mover Standards-Part 3", ASCE 21-00.]

(2) Compliance with a later edition of the standards required by subsection (1) of this section shall be deemed equivalent and may be used by the owner or contractor in lieu of the edition specified. If installed in compliance with a later edition, the elevator shall be inspected for compliance with the installation standards utilized.

(3) For annual inspections of freight elevators, the owner or operator shall provide elevator maintenance or contractor personnel present to conduct testing procedures necessary for inspection.

Section 2. Inspection Fees. (1) The annual inspection fees for the issuance of a certificate of operation shall be as follows: [estab-

lished in this subsection.]

Elevators	Inspection Fee
Wheelchair and Stair Chair Lift	\$75
Dumbwaiter	\$85
Limited Use, Limited Access (Lula)	\$100
Moving Sidewalk	\$100
Passenger	\$100
Hydraulic	\$100
Special Purpose (private residential or vertical reciprocating conveyor)	\$100
Escalator	\$120
Freight	\$200
Traction	\$100 for initial ten (10) stories; plus \$10 for each additional ten (10) stories or portion thereof

(a) The wheelchair and stair chair lift inspection fee shall be seventy-five (75) dollars.

(b) The dumbwaiter inspection fee, if under contract to inspect, shall be eighty-five (85) dollars.

(c) The limited use limited access (Lula) elevator inspection fee shall be \$100.

(d) The escalator and moving walk inspection fee shall be \$120.

(e) The hydraulic elevator inspection fee shall be \$100.

(f) Inspection of traction elevators. The fee for:

1. The first ten (10) floors shall be \$100; and

2. Each additional ten (10) floors, or portion thereof, shall be an additional ten (10) dollars.

(2) The fee for an inspection conducted at the request of the owner or user of a unit, other than an inspection made pursuant to a construction, installation or alteration permit, or annual inspection, shall be subject to [be based on] the same fee schedule as an annual inspection in subsections [subsection] (1) and (2) of this section.

Section 3. Certificate of Approval. Upon demonstration during final inspection of compliance with applicable codes and standards for the elevator, a certificate of approval shall be issued by the department. [Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Safety Code for Elevators and Escalators", ASME A17.1-2004 Sections 5.10, 8.7, 8.10, and 8.11;
- (b) Inspector's Manual for Hydraulic Elevators, ASME A17.2-2-1997;
- (c) "Inspectors' Manual for Escalators and Moving Walks", ASME A17.2.3-1998;
- (d) "Safety Code for Existing Elevators and Escalators", ASME A17.3-2002;
- (e) "Guide for Emergency Personnel", ASME A17.4-1999;
- (f) "Elevator and Escalator Electrical Equipment", ASME A17.5-1996;
- (g) "Safety Standard for Conveyors and Related Equipment", ASME B20.1-1996; and
- (h) "Safety Standard for Platform Lifts and Stairway Chairlifts", ASME A18.1-2003.
- (i) "Automated People Mover Standards-Part 1", ANSI/ASCE/T&D1 21-05, 2006;
- (j) "Automated People Mover Standards-Part 2", ASE 21-98, 1999; and
- (k) "Automated People Mover Standards-Part 3", ASCE 21-00, 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the 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.

(3) This material may also be obtained from the American Society of Mechanical Engineers, 1901 Alexander Bell Drive, Reston, Virginia 20191-4400.]

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JERRY T. LUNSFORD, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502)573-0365 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 annual inspection requirements and fees for elevators.

(b) The necessity of this administrative regulation: This amendment is necessary to establish the fees for newly mandated annual inspections of freight elevators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.490 requires the commissioner of the Department of Housing, Buildings and Construction to promulgate administrative regulations governing the safety and inspection of elevators and to establish fees for inspections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the fee structure for annual elevator inspections.

(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 establishes the fees for annual inspections of freight elevators pursuant to legislation passed during the 2010 Regular Session of the General Assembly.

(b) The necessity of the amendment to this administrative regulation: This amendment establishes the fees for annual inspections of freight elevators which have previously not required annual inspections.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.490 requires the commissioner of the Department of Housing, Buildings and Construction to promulgate administrative regulations governing the safety and inspection of elevators and to establish fees for inspections.

(d) How the amendment will assist in the effective administration of the statutes: Providing a standardized fee structure for elevator inspections ensures uniformity and meets statutory mandates.

(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 Building Codes Enforcement, Elevator Section, elevator contractors, elevator mechanics and owners of elevators.

(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 perform required annual inspections of elevators for the associated fees established by 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): Depending upon the type of elevator to be inspected, the fee assessed is established to approximate and offset the expenditures to the Department for inspection services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Elevator owners will be compliant with annual inspection requirements and ensure safety to users of the elevators.

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

(a) Initially: At initial, minimal staffing levels, HBC anticipates

costs to be \$225,000.

(b) On a continuing basis: With the identification and inspections of all elevators within the Commonwealth, administrative costs are anticipated to increase proportionately.

(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 Building Codes Enforcement, Elevator Section.

(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 existing annual inspection fees for passenger elevators. However, spending authority will need to be increased to allow the Elevator Section to utilize newly established freight inspection fees to be used to offset additional costs for the freight elevator inspection duties.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation establishes new fees for the inspection of freight elevators as these elevators were not previously subject to mandatory annual inspections.

(9) TIERING: Is tiering applied? Tiering is applied to this administrative regulation to reflect the difference in time and manpower necessary for various elevator inspections.

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 Building Code Enforcement, and Elevator Section 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 198B.490.

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. Although exact numbers cannot be established, based upon the information the Department has from elevator manufacturers and local jurisdiction inspection programs, there are approximately 2500 freight elevators currently operational within the Commonwealth. The Department estimates that the first year of freight elevator inspections will be of approximately 1000 (due to the need for identifying and locating the remaining inventory of freight elevators statewide). Taking the estimated 1000 to be inspected in year one of the program and multiplying by the \$200 inspection fee, the revenues are estimated to be \$200,000.

(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. Assuming that the number of freight elevators statewide are consistent with the figure of 2500 freight elevators believed to be currently operational within the Commonwealth then multiplying the estimated number of freight elevators times the \$200 inspection fee, the revenues are estimated to ultimately reach \$500,000 annually.

(c) How much will it cost to administer this program for the first year? The agency estimates the expanded elevator inspection program's expenditures to approximate the increase in revenues.

(d) How much will it cost to administer this program for subsequent years? The costs of administering the elevator inspection program is anticipated to remain consistent once all elevators subject to annual inspection are identified and located in the Commonwealth.

Note: If specific dollar estimates cannot be determined, provide

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a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Increase due to new freight elevator inspection program.

Expenditures (+/-): Increase to carry out new freight elevator inspection program.

Other Explanation:

STATEMENT OF EMERGENCY 815 KAR 4:025E

This emergency administrative regulation amends 815 KAR 10:025, setting forth the fee schedule for the construction, installation and alteration of passenger and freight elevators. This emergency administrative regulation is necessary to comply with the legislative mandate expanding the elevator and inspection program in accordance with HB 220 of the 2010 Regular Session of the General Assembly and is effective July 1, 2011, as is the mandate for establishing the Elevator Advisory Committee. Pursuant to KRS 198B.0030(8)(1), promulgation of elevator administrative regulations shall not be promulgated without comments from the affected Elevator Advisory Committee. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JERRY LUNSFORD, Commissioner
ROBERT D. VANCE, Secretary

PUBLIC PROTECTION CABINET Department Of Housing, Buildings And Construction Division Of Building Codes Enforcement (Emergency Amendment)

815 KAR 4:025E. Permit fees for new and altered elevators.

RELATES TO: KRS 198B.050, 198B.400-198B.540

STATUTORY AUTHORITY: KRS 198B.060, 198B.4009, 198B.490, 198B.520

EFFECTIVE: July 8, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.490 authorizes the Commissioner [Executive Director] of the Department of Housing, Buildings and Construction to make inspections and prescribe the associated fees to be charged for each elevator constructed, installed, or altered within the Commonwealth. This administrative regulation establishes the permitting and inspection fees for passenger and freight elevators. [the installation and alteration of each elevator as defined by KRS 198B.400(1). This administrative regulation includes the substance of 815 KAR 4:021, which has been repealed.]

Section 1. Definitions. (1) "Alteration" means a [any] change to an elevator, elevator equipment, or elevator devices. Maintenance, repair, or replacement of parts in kind does not constitute "alteration". [; however, maintenance, repair or replacement of parts in kind shall not be included in this definition.]

(2) "Elevator" is defined by [as defined in] KRS 198B.400(1).

Section 2. Issuance of Permits. (1) Permits to construct, install, or alter an elevator shall only be issued to a Kentucky licensed contractor.

(2) A Kentucky licensed elevator mechanic shall not construct, install, or alter an elevator unless the work is performed under the supervision of a Kentucky licensed elevator contractor or exempt from supervision under the provisions of KRS 198B.4009(2). [Permit Fees for Inspection of Elevator Construction and Alteration. (4) Construction permits shall be obtained from the Office of Housing, Buildings and Construction for the installation or alteration of an elevator, except for those alterations made pursuant to the report of an inspector, and inspection fees shall be required.

(2) Fees for the inspections made incident to the permit shall be as follows:

(a) Zero to five (5) horsepower, per unit – seventy-five (75) dollars;

(b) Six (6) to ten (10) horsepower, per unit – eighty-five (85) dollars;

(c) Eleven (11) horsepower and over, per unit – eighty-five (85) dollars, plus ten (10) dollars for each horsepower over ten (10).]

Section 3. Permit Required. (1) An application shall be made for a permit prior to construction, installation, or alteration of an elevator on one (1) of the following:

(a) Form EV-1, Elevator Construction and Installation Permit Application; or

(b) Form EV-2, Elevator Alteration Permit Application.

(2) An application shall be submitted to the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator section before commencing elevator work requiring permit.

Section 4. Passenger Elevator Construction, Installation, and Alteration Permit Fees. Permit and inspection fees for passenger elevators shall be as follows:

Horsepower (per unit)	Permit Fee
Zero (0) to five (5)	\$85
Six (6) to ten (10)	\$100
More than ten (10)	\$100 plus \$10 for each additional horsepower exceeding ten (10)

Section 5. Freight Elevator Construction, Installation and Alteration Permit Fees. Permit and inspection fees for freight elevators shall be as follows:

Horsepower (per unit)	Permit Fee
Zero (0) to five (5)	\$85
Six (6) to ten (10)	\$100
More than ten (10)	\$100 plus \$10 for each additional horsepower exceeding ten (10)

Section 6. Inspection Fees. (1)(a) Each passenger elevator permit shall include two (2) inspections (one (1) final and one (1) supplemental, if necessary) at no additional cost.

(b) All passenger elevator inspections in excess of two (2) provided with purchase of permit shall be performed at the rate of the original permit fee per inspection.

(2)(a) Each freight elevator permit shall include two (2) inspections (one (1) final and one (1) supplemental) at no additional cost.

(b) All freight elevator inspections in excess of two (2) provided with purchase of permit shall be performed at the rate of the original permit fee per inspection.

(3) Payment for all necessary permits and inspections shall be received by the elevator section prior to final approval of an elevator construction, installation, or alteration being granted.

Section 7. Certificate of Approval. Upon the satisfactory completion of final inspection of the constructed, installed, or altered elevator, a certificate of approval shall be issued by the department.

Section 8. Expiration of Permits. An elevator permits issued pursuant to this administrative regulation shall be subject to revocation, expiration, or extension pursuant to the provisions of KRS 198B.520.

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

(a) Elevator Construction and Installation Permit Application, Form EV-1, July 2011; and

(b) Elevator Alteration Permit Application, Form EV-2, July 2011.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings, and Construction; 101 Sea Hero Road, Suite 100; Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to

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4:30 p.m.

JERRY T. LUNSFORD, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365 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 fees and charges for passenger and freight elevator installation permits in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: KRS 198B.490 authorizes the Department of Housing, Buildings and Construction make inspections and prescribe the fees to be charged for the construction, installation, and alterations of elevators within the Commonwealth. KRS 198B.4009 additionally authorizes the Department to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.400 to 198B.540.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the schedule of fees and charges for elevator installation permits for the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the elevator installation permit fee schedule as required by KRS 198B.490.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the permitting and inspection fee schedule for passenger elevators and establishes the permitting and inspection fee schedule for freight elevators in accordance with HB 220 (2010 Regular Session of the General Assembly).

(b) The necessity of the amendment to this administrative regulation: This amendment establishes fees for permitting and inspection of freight elevators which previously did not require permit or inspection in the Commonwealth. The amendment also updates the fees for passenger elevators which have not been amended in a decade.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment meets the mandate of KRS 198B.490 which authorizes the Department to make inspections and prescribe the fees to be charged for such.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes fees to offset costs to the agency to provide statutorily mandated elevator inspections statewide. The elevator program is a self-sustaining program which operates exclusively on restricted funds. These fees are established to approximate and offset expenditures incurred by the elevator section for providing inspections statewide.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Housing, Buildings and Construction; Division of Building Codes Enforcement; Elevator Section; Elevator licensees installing systems; and property owners.

(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: 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 installation permit is required for all elevator construction, installations, and alterations. The inspections incidental thereto are in place to ensure compliance with the Kentucky Building Code. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administrative regulation establishes

the fee schedule for elevator construction, installations and alterations. The cost the inspection program (both new installations and annual inspections) is estimated at \$225,000 initially. As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include verification that the subject elevator has been constructed, installed, or altered according to the provisions of the Kentucky Building Code.

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

(a) Initially: New costs associated with the implementation of this administrative regulation are the result of the new legislative mandate to permit and inspect freight elevators within the Commonwealth.

(b) On a continuing basis: The costs associated with implementation of this administrative regulation on a continuing basis will be determined by the number of elevators constructed, installed and altered within the Commonwealth.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing elevator funds and fees collected for the issuance of elevator installation permits will be utilized for the administration of the permitting and installation program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Implementation of this administrative regulation necessitates the establishment of fees for freight elevators (previously not permitted nor inspected by the Department of Housing, Buildings and Construction). The administrative regulation establishes the fees for permits pursuant to the authorization and directive of KRS 198B.6673.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes the fee schedule mandated by KRS 198B.490 for the statewide permitting and installation program of all elevators in the Commonwealth.

(9) TIERING: Is tiering applied? Tiering is applied to this administrative regulation. The permit fee for a project is determined by the horsepower per unit of the elevator being constructed, installed, or altered.

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 Building Codes Enforcement, and the Elevator Section 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 regulation is authorized by KRS 198B.060, 198B.4009, 198B.490 and 198B.520.

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 new elevator permitting and inspection fees for elevators which are anticipated to offset the costs of administering the program.

(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. Without having established actual inventory of currently installed freight elevators statewide, it is difficult to apply annual installation trend estimates. If freight construction, installation and alteration permits are estimated to be 50 for the initial year, at average fee of \$500, the estimated new revenue to the elevator section is \$25,000.

(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 agency anticipates estimates for the initial year to remain consis-

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tent for subsequent years; therefore revenues are anticipated to remain consistent.

(c) How much will it cost to administer this program for the first year? The agency estimates the expanded elevator inspection program's expenditures to approximate the increase in revenues.

(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 (+/-): Increased, due to addition of freight elevator permitting.

Expenditures (+/-): Increased, due to addition of freight elevator inspection.

Other Explanation:

STATEMENT OF EMERGENCY 815 KAR 4:030E

This new emergency administrative regulation establishes 815 KAR 4:030, establishing the licensure requirements for elevator contractors in accordance with KRS 198B.4011 as legislated during the 2010 Regular Session of the General Assembly. This emergency administrative regulation is necessary to comply with the legislative mandate that no person shall work in the Commonwealth as an elevator contractor unless licensed by the Department of Housing, Buildings and Construction. The mandate for elevator contractor licensure and for establishing the Elevator Advisory Committee is effective July 1, 2011. Pursuant to KRS 198B.0030(8)(1), promulgation of elevator administrative regulations shall not be promulgated without comments from the affected Elevator Advisory Committee. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JERRY LUNSFORD, Commissioner
ROBERT D. VANCE, Secretary

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Code Enforcement (New Emergency Administrative Regulation)

815 KAR 4:030E. Elevator contractor licensing requirem.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4011, 198B.4023, 198B.4025, 198B.4027

STATUTORY AUTHORITY: KRS 198B.4011, 198B.4009

EFFECTIVE: July 8, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement the provisions of KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator contractors to be licensed and KRS 198B.4011 provides the eligibility requirements to be met for issuance of an elevator contractor's license. KRS 198B.4023 authorizes the Department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education requirements for elevator licensee renewals. KRS 198B.4027 provides the minimum insurance requirements for elevator contractor licensees. This administrative regulation establishes the licensure requirements for elevator contractors.

Section 1. General Requirements. (1) Supervision. The elevator contractor shall supervise generally, and be primarily responsible for, all elevator work performed by the mechanics, employees and subcontractors of the license.

(2) Company license. A licensee who is an employee of a

company and whose license represents the company shall notify the Department, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on that license and paying the change of information fee listed in Section 6(5) of this administrative regulation.

Section 2. Initial Application Requirements. (1) Filing the application.

(a) An applicant seeking an elevator contractor license shall submit to the department:

1. A completed Elevator Contractor License Application on Form EV-3;

2. An initial license application fee of \$240 for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;

3. Proof of applicant's experience as required by KRS 198B.4011 and this administrative regulation;

4. A recent passport-sized color photograph of the applicant; and

5. Proof of insurance as required by KRS 198B.4027.

(b) If the applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted.

(b) At the end of one (1) year, the application shall be void.

Section 3. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform elevator contracting work while the license is inactive.

(2) An elevator contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.4027 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) A certified elevator inspector may be licensed as an elevator contractor, but shall place the license in inactive status while having an active elevator inspector certification.

(4) Performing elevator contracting work while holding an inactive license shall be grounds for revocation or suspension of all elevator licenses and certifications held by the licensee.

Section 4. Experience Requirements. An applicant for licensure shall meet the experience requirements of this section.

(1) Minimum experience. An applicant shall have the experience required by KRS 198B.4011.

(2) Records of experience. An applicant's experience shall be listed on the application form or included with submission of application form to the department.

(a) Proof of listed experience shall be provided by W-2s.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient, falsified or nonexistent.

Section 5. Renewal and Reactivation Requirements and Procedures. (1) Filing for renewal. Licenses shall be renewed each year. To renew a license, an elevator contractor shall submit to the department:

(a) A completed renewal application;

(b) A renewal fee of \$240 made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing provider evaluation forms for each continuing education class attended.

(2) Except for a license placed in inactive status in accordance with subsection (6) of this section, application for license renewal

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shall be filed by each licensee no later than the last day of the licensee's birth month.

(3) Renewal applications filed late, but no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section 7(1) of this administrative regulation, shall be added to the annual renewal fee.

(4) Failure to renew within sixty (60) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 2 of this administrative regulation for reinstatement. A reinstatement fee, in accordance with Section 7(2) of this administrative regulation, shall be added to the annual renewal fee.

(5) Inactive elevator contractor status and renewal requirements.

(a) To place the elevator contractor's license in inactive status, an elevator contractor shall pay annually an inactive status fee of \$120.

(b) An inactive elevator contractor shall not secure an elevator permit, advertise, or represent himself as a qualified elevator contractor.

(c) To reactivate an elevator contractor license, the inactive elevator contractor shall pay the annual renewal fee, an additional \$120, and comply with the continuing education requirements established in 815 KAR 4:050.

(6) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(7) Continuing education requirements shall not be required for renewal provided the initial license was issued within twelve (12) months of renewal.

(8) The application for renewal or reactivation of a licensed elevator contractor shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal, reactivation, and restoration, if applicable;

(b) Comply with elevator contractor continuing education requirements; or

(c) Provide the current insurance certificates required by KRS 198B.4027.

Section 6. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be one hundred (100) dollars.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be \$120.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

(5) Change of information fee. The fee for the change of information required by Section 1(2) of this administrative regulation shall be fifteen (15) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 7. Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the department for any of the reasons stated in KRS 198B.4033.

Section 8. Incorporation by Reference. (1) Form EV-3, Elevator Contractor License Application, July 2011 is herein incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section, 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: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, De-

partment 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 licensure requirements and fees for elevator contractors.

(b) The necessity of this administrative regulation: This amendment is necessary to implement the elevator licensure program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4009 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540 governing the safety and inspection of elevators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures, fees and requirements for application and maintenance of an elevator contractor license.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Codes Enforcement, Elevator Section, and elevator contractors.

(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, Division and Section will implement the elevator licensure program and ensure compliance with licensure requirements while carrying out inspection duties.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees established approximate and are anticipated to offset the expenditures to the Department, Division and Section for ensuring compliance with licensure laws.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By implementing the elevator licensure program, citizens in the state will be assured that those performing elevator work have met experience standards and requirements necessary for licensure. As a result, elevator safety within the Commonwealth will be heightened.

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

(a) Initially: For implementation and enforcement the initial year, the agency anticipates revenues of an estimated \$9,600 to be offset by administration costs of the program.

(b) On a continuing basis: The agency anticipates that this program's revenues and expenditures will remain relatively consistent annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds for the Division of Building Codes Enforcement, Elevator Section.

(7) Provide an assessment of whether an increase in fees or

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funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The spending authority currently granted to the elevator section will necessarily need to be increased so that funds received for contractor licenses can be used to offset the administrative and compliance costs with implementation of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation establishes fees for the newly legislated program requiring all elevator contractors working within the Commonwealth to be licensed by the Department of Housing, Buildings and Construction.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevator contractors are treated equally under the provisions of 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 Building Code Enforcement, and Elevator Section 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 198B.4009 and 198B.4011.

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 revenues for contractor licensing which are estimated to offset expenditures for implementing and enforcement of the contractor licensing program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. Based upon the estimation that the Department will license 40 elevator contractors in the first year of the program, the estimated revenues for this program are \$9,600.

(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 Department anticipates that renewals and new applications will approximately mirror the first year of implementation of the elevator contractor licensing applications, therefore revenues will remain relatively constant for subsequent years.

(c) How much will it cost to administer this program for the first year? The agency estimates the newly created elevator contractor licensing program's expenditures to approximate the revenues annually.

(d) How much will it cost to administer this program for subsequent years? The costs of administering the elevator contractor licensing program are anticipated to remain relatively constant after the first year of implementation.

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

Revenues (+/-): Increase due to new program implementation.

Expenditures (+/-): Increase to administer and enforce new licensure program.

Other Explanation:

STATEMENT OF EMERGENCY 815 KAR 4:040E

This new emergency administrative regulation establishes 815 KAR 4:040, establishing the licensure requirements for elevator mechanics in accordance with KRS 198B.4013 as legislated during

the 2010 Regular Session of the General Assembly. This emergency administrative regulation is necessary to comply with the legislative mandate that no person shall work in the Commonwealth as an elevator mechanic unless licensed by the Department of Housing, Buildings and Construction. The mandate for elevator mechanic licensure and for establishing the Elevator Advisory Committee is effective July 1, 2011. Pursuant to KRS 198B.0030(8)(1), promulgation of elevator administrative regulations shall not be promulgated without comments from the affected Elevator Advisory Committee.

This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JERRY LUNSFORD, Commissioner
ROBERT D. VANCE, Secretary

PUBLIC PROTECTION CABINET Department Of Housing, Buildings And Construction Division Of Building Codes Enforcement (New Emergency Administrative Regulation)

815 KAR 4:040E. Elevator mechanic licensing requirements.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4013, 198B.4023, 198B.4025

STATUTORY AUTHORITY: KRS 198B.4013, 198B.4009

EFFECTIVE: July 8, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement the provisions of KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator mechanics to be licensed and KRS 198B.4013 provides the eligibility requirements to be met for issuance of an elevator mechanic's license. KRS 198B.4023 authorizes the Department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education requirements for elevator licensee renewals. This administrative regulation establishes the licensure requirements for elevator mechanics.

Section 1. Initial Application Requirements. (1) Filing the application.

(a) An applicant seeking an elevator mechanic license shall submit to the department:

1. A completed Elevator Mechanic License Application on Form EV-4;

2. An initial license application fee of ninety-six (96) dollars for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;

3. Proof of the applicant's experience as required by KRS 198B.4013 and this administrative regulation; and

4. A recent passport-sized color photograph of the applicant.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted.

(b) At the end of one (1) year, the application shall be void.

Section 2. Examination Requirements. If an applicant applies for licensure under the provisions of KRS 198B.4013(2)(a), the applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's basic knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of elevators and elevator

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systems.

(2) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

(3) Except as provided by subsection (7) of this section, an applicant shall successfully complete with a passing score of at least seventy (70) percent the examination known as the "Kentucky Elevator Mechanic Examination", which is developed, administered, and scored by the department or its designee.

(4)(a) A request to sit for the examination shall be made directly to the testing facilities approved by the department.

(b) A list of facilities and contact information shall be provided to applicants following receipt of the examination application.

(5) The cost shall not exceed \$100 for the Kentucky Elevator Mechanic Examination.

(6) A passing score on the examination shall be valid for a period of two (2) years.

(7) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the board if the person or group submitting the examination demonstrates that the examinations cover the same material and require the same level of knowledge as the department's examinations.

Section 3. Experience Requirements. An applicant for licensure shall meet the experience requirements of this section.

(1) Minimum experience. An applicant shall have the experience required by KRS 198B.4013(2).

(2) Records of experience.

(a) Proof of listed experience shall be provided by W-2s or an affidavit from a licensed elevator contractor or the equivalent.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

Section 4. Renewal Requirements and Procedures. (1) Filing for renewal. Licenses shall be renewed each year. To renew a license, an elevator mechanic shall submit to the department:

(a) A completed renewal application;

(b) A renewal fee of ninety-six (96) dollars made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing provider evaluation forms for each continuing education class attended.

(2) Except for a license placed in inactive status in accordance with subsection (6) of this section, application for license renewal shall be filed by each licensee no later than the last day of the licensee's birth month.

(3) A renewal fee of ninety-six (96) dollars shall be paid prior to renewal. The department shall send a renewal application to each licensee each year to be returned with the required fee.

(4) Renewal applications filed late, but no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section 5(1) of this administrative regulation, shall be added to the annual renewal fee.

(5) Failure to renew sixty-one (61) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 1 of this administrative regulation for reinstatement and a reinstatement fee, in accordance with Section 5(1) of this administrative regulation, shall be added to the annual renewal fee.

(6) Inactive elevator mechanic renewal.

(a) To place the elevator mechanic's license in inactive status, an elevator mechanic shall pay annually an inactive fee of forty-eight (48) dollars.

(b) An inactive elevator mechanic shall not perform work within the Commonwealth requiring a mechanic's license.

(c) To reactivate an elevator mechanic license, the inactive elevator mechanic shall pay the annual renewal fee, an additional forty-eight (48) dollars, and comply with the continuing education requirements established in 815 KAR 4:050.

(7) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(8) Continuing education requirements shall not be required for renewal provided the initial license was issued within twelve (12) months of renewal.

(9) The application for renewal or reactivation of a licensed elevator mechanic shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal and restoration, if applicable; or

(b) Comply with elevator mechanic continuing education requirements.

Section 5. Special Services and Fees. In addition to the other fees required by this administrative regulation, the following special fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be twenty-five (25) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be twenty-five (25) dollars.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be forty-eight (48) dollars.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

Section 6. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.4033.

Section 7. Incorporation by Reference. (1) Form EV-4, Elevator Mechanic License Application, July 2011 is herein incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator Section, 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: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502)573-0365 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 licensure requirements and fees for elevator mechanics.

(b) The necessity of this administrative regulation: This amendment is necessary to implement the elevator licensure program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4009 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540 governing the safety and inspection of elevators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures, fees and requirements for application and maintenance of an elevator mechanic license.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A This is a new administrative regulation.

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(c) How the amendment conforms to the content of the authorizing statutes: N/A This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Codes Enforcement, Elevator Section, and elevator mechanics.

(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, Division and Section will implement the elevator licensure program and ensure compliance with licensure requirements while carrying out inspection duties.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees established approximate and are anticipated to offset the expenditures to the Department, Division and Section for ensuring compliance with licensure laws.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By implementing the elevator licensure program, citizens in the state will be assured that those performing elevator work have met experience standards and requirements necessary for licensure. As a result, elevator safety within the Commonwealth will be heightened.

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

(a) Initially: For implementation and enforcement the initial year, the agency anticipates revenues of an estimated \$28,800 to be offset by administration costs of the program.

(b) On a continuing basis: The agency anticipates that this program's revenues and expenditures will remain relatively consistent annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds for the Division of Building Codes Enforcement, Elevator Section.

(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 spending authority currently granted to the elevator section will necessarily need to be increased so that funds received for mechanics licenses can be used to offset the administrative and compliance costs with implementation of the program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes fees for the newly legislated program requiring all elevator mechanics working within the Commonwealth to be licensed by the Department of Housing, Buildings and Construction.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevator mechanics are treated equally under the provisions of 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 Building Code Enforcement, and Elevator Section 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

198B.4009 and 198B.4013.

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 revenues for elevator mechanic licensing which are estimated to offset expenditures for implementing and enforcement of the contractor licensing program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. Based upon the estimation that the Department will license 300 elevator mechanics in the first year of the program, the estimated revenues for this program are \$28,800.

(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 Department anticipates that renewals and new applications will approximately mirror the first year of implementation of the elevator mechanic licensing applications, therefore revenues will remain relatively constant for subsequent years.

(c) How much will it cost to administer this program for the first year? The agency estimates the newly created elevator mechanic licensing program's expenditures to approximate the revenues annually.

(d) How much will it cost to administer this program for subsequent years? The costs of administering the elevator mechanic licensing program are anticipated to remain relatively constant after the first year of implementation.

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

Revenues (+/-): Increase due to new program implementation.

Expenditures (+/-): Increase to administer and enforce new licensure program.

Other Explanation:

STATEMENT OF EMERGENCY 815 KAR 4:050E

This new emergency administrative regulation establishes 815 KAR 4:050, establishing the continuing education requirements for elevator licensees in accordance with KRS 198B.4023 and 198B.4025, as legislated during the 2010 Regular Session of the General Assembly. This emergency administrative regulation is necessary to comply with the legislative mandate that an elevator licensee shall complete eight (8) hours of continuing education annually prior to renewal of license. The mandate for licensure of elevator personnel and for establishing the Elevator Advisory Committee is effective July 1, 2011. Pursuant to KRS 198B.0030(8)(1), promulgation of elevator administrative regulations shall not be promulgated without comments from the affected Elevator Advisory Committee. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JERRY LUNSFORD, Commissioner
ROBERT D. VANCE, Secretary

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (New Emergency Administrative Regulation)

815 KAR 4:050E. Continuing education requirements for elevator contractors and elevator mechanics.

RELATES TO: KRS 198B.030, 198B.4009, 198B.4011, 198B.4013, 198B.4023, 198B.4025

VOLUME 38, NUMBER 2 – AUGUST 1, 2011

STATUTORY AUTHORITY: KRS 198B.4009(3), 198B.4023(7), 198B.4025

EFFECTIVE: July 8, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4023 and 198B.4025 authorize the Department of Housing, Buildings and Construction to promulgate administrative regulations, after review by the Elevator Advisory Committee, establishing continuing education requirements for elevator contractor and elevator mechanic licensees. This administrative regulation establishes requirements for continuing education for elevator contractor and mechanic licensees.

Section 1. Elevator Contractors. (1) Each elevator contractor shall provide proof of completion of eight (8) hours of continuing education prior to annual license renewal. The required continuing education shall be attended and completed within twelve (12) months prior to renewal except as provided in subsection (3) of this section.

(2) Continuing education courses shall relate to one (1) or more of the following:

- (a) Business;
- (b) Job safety;
- (c) Kentucky adopted codes related to elevators; or
- (d) Items directly related to the elevator trade.

(3) A licensed elevator contractor who accumulates more than the eight (8) hours of continuing education required annually, may carry forward the excess credit hours into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those two (2) years.

(a) Carry forward credits shall be limited to a total of twelve (12) hours.

(b) All excess credits above the total of twelve (12) hours shall remain on the licensed elevator contractor's records but shall not be carried forward.

(4) A licensed elevator contractor teaching or participating as a panel member in an approved continuing education course for elevators shall be granted one (1) credit hour for each fifty (50) minutes of actual instruction time. If the elevator contractor teaches the same class on multiple occasions, credit shall only be granted for one presentation of the class.

(5) Elevator contractor licensees that are a partnership, domestic corporation, or corporation other than a domestic corporation, shall designate an authorized agent to complete the licensee's annual continuing education requirements for purposes of license renewal. Written confirmation and designation of the licensee's authorized agent shall be provided to the Department with application renewal.

Section 2. Elevator Mechanics. (1) Each elevator mechanic shall provide proof of completion of eight (8) hours of continuing education prior to license renewal. The required continuing education shall be attended and completed within twelve (12) months prior to renewal except as provided in subsection (3) of this section.

(2) Continuing education courses shall consist of a minimum of two (2) hours on job safety. The other six (6) hours shall consist of:

- (a) Kentucky adopted codes related to elevators;
- (b) Job safety; or
- (c) Items directly related to the elevator trade.

(3) A licensed elevator mechanic who accumulates more than the eight (8) hours of continuing education required annually, may carry forward the excess credit hours into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those two (2) years.

(a) Carry forward credits shall be limited to a total of twelve (12) hours.

(b) All excess credits above the total of twelve (12) hours shall remain on the licensed elevator mechanic's records but shall not be carried forward.

(4) A licensed elevator mechanic teaching or participating as a panel member in an approved continuing education course for elevators shall be granted one (1) credit hour for each fifty (50) minutes of actual instruction time. If the elevator mechanic teaches the same class on multiple occasions, credit shall only be granted

for one presentation of the class.

Section 3. Combined Elevator Contractor and Elevator Mechanic Licenses. An individual who is a holder of both an elevator contractor and elevator mechanic license shall meet the continuing education requirements of Section 1 of this administrative regulation.

Section 4. Inactive Licenses. (1) An inactive elevator contractor or elevator mechanic shall not be required to complete continuing education to maintain inactive status.

(2) If the inactive licensed elevator contractor or elevator mechanic wishes to activate his or her license to the status of an active licensee, he or she shall meet the requirements of Section 1 of this administrative regulation.

(3) Excess continuing education credit hours that an elevator contractor or elevator mechanic licensee may be carrying forward shall not count towards continuing education requirements for reactivation of an inactive license.

Section 5. Terminated Licenses. (1) Except as provided in subsection (2) of this section prior to reinstatement, an individual whose contractor or mechanic license is terminated for three (3) years or less shall complete the total number of continuing education hours per year that the license has been terminated.

(2) The number of continuing education hours necessary for reinstatement shall not exceed twenty-four (24) hours.

Section 6. Continuing Education Courses. (1) All continuing education shall be completed in one (1) or more courses provided by the National Elevator Industry Educational Program, the National Association of Elevator Contractors, or approved by the department and the Elevator Advisory Committee for elevator contractors and elevator mechanics pursuant to 815 KAR 4:060.

(2) Continuing education courses shall be offered only by the National Elevator Industry Educational Program, the National Association of Elevator Contractors, or providers approved by the department and the Elevator Advisory Committee pursuant to 815 KAR 4:060.

JERRY T. LUNSFORD, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365 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 continuing education requirements for renewal, reinstatement, and reactivation of elevator licenses.

(b) The necessity of this administrative regulation: This amendment is necessary to implement the elevator licensure program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4023 and 198B.4025 authorize the Department of Housing, Buildings and Construction to promulgate administrative regulations governing continuing education requirements for elevator licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the continuing education requirements for renewal, reinstatement, and reactivation of elevator licenses.

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

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

(b) The necessity of the amendment to this administrative

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regulation: N/A This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Codes Enforcement, Elevator Section, and elevator licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department, Division and Section will administer the elevator licensing program, confirming statutory continuing education requirements for licensees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administration costs to confirm compliance with continuing education requirements will be minimal and included within normal operational costs of the section.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By implementing the elevator licensure program, citizens in the state will be assured that those performing elevator work have met experience standards and continue to be educated about elevator codes, elevator safety, elevator related issues. As a result, elevator safety within the Commonwealth will be heightened.

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

(a) Initially: Administrative costs will be negligible.

(b) On a continuing basis: Administrative costs are anticipated to remain stable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds for the Division of Building Codes Enforcement, Elevator Section.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees associated with the continuing education requirements for elevator licensees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation establishes no fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all licensees are treated equally in accordance with statutory mandate.

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 Building Code Enforcement, and Elevator Section 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 198B.4009, 198B.4023 and 198B.4025.

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 result in no revenues.

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

(c) How much will it cost to administer this program for the first year? The administration costs to confirm compliance with continuing education requirements will be minimal and included within normal operational costs of the section.

(d) How much will it cost to administer this program for subsequent years? The costs of administering the elevator contractor licensing program are anticipated to remain relatively constant after the first year of implementation.

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

Revenues (+/-): N/A

Expenditures (+/-): Minimal and included within the administration costs of the elevator licensure program.

Other Explanation:

STATEMENT OF EMERGENCY 815 KAR 4:060E

This new emergency administrative regulation establishes 815 KAR 4:060, providing the requirements for approval of continuing education courses and providers in accordance with KRS 198B.4025, as legislated during the 2010 Regular Session of the General Assembly. This emergency administrative regulation is necessary to establish standardized criteria for approval of continuing education courses and providers by the Department of Housing, Buildings and Construction. The mandate for licensure of elevator personnel and establishing the Elevator Advisory Committee is effective July 1, 2011. Pursuant to KRS 198B.0030(8)(1), promulgation of elevator administrative regulations shall not be promulgated without comments from the affected Elevator Advisory Committee. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JERRY LUNSFORD, Commissioner
ROBERT D. VANCE, Secretary

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (New Emergency Administrative Regulation)

815 KAR 4:060E. Requirements for approval of continuing education courses and providers.

RELATES TO: KRS 198B.030, 198B.4009, 198B.4011, 198B.4013, 198B.4023, 198B.4025

STATUTORY AUTHORITY: 198B.030, 198B.4009, 198B.4025
EFFECTIVE: July 8, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement the provisions of KRS 198B.400 to 198B.540. KRS 198B.4025 authorizes the Department to promulgate an administrative regulation to establish requirements for approval of continuing education programs. This administrative regulation establishes the requirements for approval of continuing education programs in addition to those approved statutorily.

Section 1. Requirements for Continuing Educational Provider Approval. (1) For a Continuing Education Provider to be approved by the Department, the applicant shall either be a:

(a) Trade Association with affiliation to the Elevator Trade;

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- (b) Trade school;
 - (c) College;
 - (d) Technical school;
 - (e) Business dedicated solely to providing continuing education and that provides at least one (1) course in each of the congressional districts quarterly;
 - (f) Elevator Company that employs full-time training personnel to conduct continuing education programs providing continuing education for elevator mechanics only; or
 - (g) Elevator manufacturer or distributor that employs a full time training personnel to conduct continuing education programs providing continuing education for elevator mechanics only.
- (2)(a) Each continuing education course provider shall register with the department as required by subsection (3) of this section before submitting course materials for department approval.
- (b) Registration shall be valid for two (2) years from the date of issuance.
- (3) Course providers shall register on Form EV-5, Application for Approval as a Continuing Education Course Provider for Elevator Licensure and shall include the following:
- (a) Company name;
 - (b) Contact person;
 - (c) Mailing address;
 - (d) Email address;
 - (e) Telephone number; and
 - (f) Fax number.
- (4) The department shall maintain a list of approved continuing education course providers.
- (5) Each course provider shall report to the department any change to the information submitted in the initial application within thirty (30) days after the change takes effect.
- (6) For each course approved, the provider shall distribute a questionnaire in the format provided by the department to each applicant in attendance for the purpose of rating the course.

Section 2. Continuing Education Course Approval. (1) A separate application for approval shall be submitted to the department on Form EV-6, Application for Continuing Education Course for Elevator Licensure, for each course offered by the course provider.

- (2)(a) An Application for Approval as a Continuing Education Course Provider for Elevator Licensure shall be submitted only by an approved provider registered with the department.
- (b) An application shall be submitted at least sixty (60) days prior to the course's offering.
- (3) A continuing education course shall provide instruction in at least one (1) of the subject areas specified in 815 KAR 4:050, Section 1(2)(a) through (d) and Section 2(2)(a) through (c).
- (4) The course application shall include the following:
- (a) Name of the course;
 - (b) Name and registration number of the provider;
 - (c) A course syllabus;
 - (d) Name of the instructor or presenter along with his or her qualifications;
 - (e) The amount of actual time needed to present the course;
 - (f) The objectives of the course; and
 - (g) A statement of the practicality of the course to the elevator trade.
- (5) Content changes made to the course shall require a subsequent submission to the department for review and approval.
- (6) Course approval shall be valid for two (2) years from the date of department approval.
- (7)(a) The department shall issue a course number for each approved course.
- (b) The course number and the provider's number shall appear on all advertisements and certificates for the course.
- (8) A provider shall submit to the department a quarterly schedule including dates and locations of courses by January 1, April 1, July 1, and October 1 annually.
- (9) The department shall receive notification of scheduling changes at least ten (10) working days prior to the originally scheduled course date by fax or e-mail to the Elevator Section.
- (10) Cancellations.
- (a) The provider shall give notice of cancellation no less than five (5) working days prior to scheduled classes unless the gover-

nor declares a state of emergency or other conditions exist that would preclude a five (5) day notification of cancellation.

(b) If a scheduled class is cancelled, the registrant shall have the option to attend a rescheduled class or receive a full refund for the cancelled class from the provider.

(c) A registrant who notifies a provider of registration cancellation prior to five (5) working days of a scheduled course may choose either a full refund or to attend a subsequent course.

(d) A provider shall not cancel a course with ten (10) or more registrants, unless it is the result of an emergency.

Section 3. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain for three (3) years the following records for each approved course:

- (a) Certificates of completion as provided in subsection (2) of this section;
- (b) An attendance sign-in and sign-out sheet; and
- (c) A course syllabus.
- (2) Certificates of completion.
- (a) Each registered course provider shall issue a certificate of completion for each participant who enrolled and completed an approved continuing education course.
- (b) A certificate of completion shall contain the following information about the individual participant:
- 1. Name;
 - 2. Address;
 - 3. License number;
 - 4. Date of attendance; and
 - 5. Course completed.
- (c) One (1) copy of the certificate of completion shall be:
- 1. Sent to the department electronically;
 - 2. Retained on file by the provider in compliance with subsection (1) of this section of this section; and
 - 3. Given to the participant upon completion of the course.

Section 4. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) days of the requesting date.

(2) Representatives of the department shall not be prohibited from attending an approved continuing education course to ensure that:

- (a) The course meets the stated objectives; and
- (b) Applicable requirements are being met.

Section 5. Disciplinary Action. Provider approval shall be revoked if the provider:

- (1) Obtains, or attempts to obtain, registration or course approval through fraud, false statements, or misrepresentation;
- (2) Does not provide complete and accurate information in either the initial registration or in notification of changes to the information;
- (3) Advertises a course as being approved by the department prior to receiving approval; or
- (4) Fails to comply with the requirements of this administrative regulation.

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

- (a) Form EV-5, Application for Approval as a Continuing Education Course Provider for Elevator Licensure, July 2011; and
 - (b) Form EV-6, Application for Continuing Education Course for Elevator Licensure, July 2011.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section, 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: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero

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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 licensure requirements for elevator continuing education programs.

(b) The necessity of this administrative regulation: This amendment is necessary to implement the elevator licensure program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4025 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish the requirements for approval of elevator continuing education programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements and procedures for becoming an approved elevator continuing education provider and course for elevator licensees.

(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 This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Codes Enforcement, Elevator Section, and elevator continuing education providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department will utilize the criteria established in approving elevator continuing education providers and classes. The Division and Section will confirm that continuing education classes taken by licensees are approved programs in compliance with statutory mandate of KRS 198B.4025.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are minimal administrative costs associated with the implementation of continuing education program approvals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By having established criteria for approval as an elevator continuing education provider, elevator licensees should receive continuing education that educates on applicable codes, safety and the elevator trade.

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

(a) Initially: Administrative costs are anticipated to be negligible.

(b) On a continuing basis: Administrative costs are anticipated to remain stable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds for the Division of Building Codes Enforcement, Elevator Section.

(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 elevator section anticipates no need for an increase in fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation establishes no fees nor increases any existing fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevators continuing education providers and courses are treated equally under the provisions of 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 Building Code Enforcement, and Elevator Section 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 198B.030, 198B.4009 and 198B.4025.

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 generate no revenues.

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

(c) How much will it cost to administer this program for the first year? The administration costs to approve continuing education programs will be minimal and included within normal operational costs of the section.

(d) How much will it cost to administer this program for subsequent years? The administration costs to approve continuing education programs will be minimal and included within normal operational costs of the section.

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 (+/-): Minimal and included within the administration costs of the elevator licensure program.

Other Explanation:

STATEMENT OF EMERGENCY 815 KAR 4:070E

This new emergency administrative regulation establishes 815 KAR 4:070 for the procedural requirements pertaining to fee payments and refunds relating to the Elevator Safety Act (KRS 198B.400 to 198B.540). The mandate for additional elevator inspections statewide, licensure of elevator personnel, and establishing the Elevator Advisory Committee is effective July 1, 2011. Pursuant to KRS 198B.0030(8)(1), promulgation of elevator administrative regulations shall not be promulgated without comments from the affected Elevator Advisory Committee. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JERRY LUNSFORD, Commissioner

VOLUME 38, NUMBER 2 – AUGUST 1, 2011

ROBERT D. VANCE, Secretary

**PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(New Emergency Administrative Regulation)**

815 KAR 4:070E. Fees and refunds.

RELATES TO: KRS 198B.4005(6), 198B.4009(3), 198B.4011, 198B.4013, 198B.4017, 198B.4019, 198B.4021, 198B.4023, 198B.480, 198B.520.

STATUTORY AUTHORITY: KRS 198B.4009(3)

EFFECTIVE: July 8, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400-198B.540, the Kentucky Elevator Safety Act. This administrative regulation establishes procedures pertaining to fee payments and refunds.

Section 1. A fee submitted to the Division of Building Codes Enforcement, Elevator Section, shall be made payable to the Kentucky State Treasurer.

Section 2. (1) If a fee is returned to the Elevator Section for nonpayment or insufficient funds, the payor shall pay thirty-five (35) dollars, unless proof of financial institution error is provided.

(2) If a company or individual submits a check returned to the division for insufficient funds, the payor shall not, for a period of at least six (6) months, make a payment to the Elevator Section by personal check.

Section 3. A refund for an installation permit shall be given if:

(1) The refund request is made within six (6) months of purchase; and

(2) Work has not begun on the project for which the permit was issued.

JERRY T. LUNSFORD, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502)573-0365 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 manner in which fees are paid to the department. The regulation also establishes the charge for non-payment of fees, as well as the requirements to receive a refund for elevator installation/alteration permits.

(b) The necessity of this administrative regulation: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction, after review and comments by the Elevator Advisory Committee, to promulgate administrative regulations necessary to implement the Kentucky Elevator Safety Act (KRS 198B.400-198B.540).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the method of acceptable payments of fees, provides a mechanism for refund of installation permit fees and allows the department to recoup expenses incurred for returned fee and permit payments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the accepted methods of payment for Elevator licenses and permits, as well as the procedure for receiving refund for unused installation permits.

(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: The Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section; elevator contractor licensees; elevator journeyman licensees; inactive elevator licensees; elevator owners; and installation permit holders.

(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: 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: Licensing and permitting fees are to be submitted in the accepted forms of payment specified in this regulation. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulation results in no additional or new costs unless payment is returned to the division for insufficient funds. If payment is returned, the submitting party is subject to a thirty-five (35) dollars return charge. As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include clarification as to the approved methods of payment for license applications, license renewals and installation permits.

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

(a) Initially: There are no additional or new costs associated with the implementation of this administrative regulation.

(b) On a continuing basis: There are no additional or new costs associated with implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing elevator funds will be utilized for the administration of receiving and processing licensing and installation fees, as well as refunds.

(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. Implementation of this administrative regulation will not necessitate an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a thirty-five dollar (\$35) fee for payments returned to the division due to insufficient funds.

(9) TIERING: Is tiering applied?. Tiering is not applied to this administrative regulation. All parties are treated equally under the provisions of 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 Building Codes Enforcement, Elevator Section 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 198B.4009 which grants the Department of Housing, Buildings and Construction the ability to promulgate administrative regulations necessary for the implementation of the Kentucky Elevator Safety Act (KRS 198B.400-198B.540).

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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 created no new expenditures and establishes a fee for returned payments.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. This regulatory amendment will result in negligible revenues from returned payments and creates no new expenditures.

(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? Negligible.

(c) How much will it cost to administer this program for the first year? N/A

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: There is no fiscal impact from this administrative regulation to state or local government.

STATEMENT OF EMERGENCY 902 KAR 15:020E

This emergency administrative regulation is being promulgated as an amendment to the existing administrative regulation to allow local health department jurisdictions to grant variances from the regulation for recreational vehicle communities, particularly with large special events. The World Equestrian Games of 2010 and the upcoming Sprint Cup Quaker 400 race at Kentucky Speedway are events of limited duration which have drawn large numbers of RVs being used by event patrons for housing. This has created a need for consideration of a variance from existing regulations that speak to the temporary nature of the event. This variance language allows local jurisdictions to approve alternative methods for meeting the intent of the administrative regulation when the RV community is operated for a temporary period of time as part of a specific special event. Variance language is included in many public health regulations as a way of affording the local community some flexibility to best meet the needs and resources of that community, while still protecting public health. This administrative regulation also brings the administrative regulation in conformance with KRS 219.410 which now exempts recreational vehicle parks owned and operated by local governments from the provision of KRS 219.310 to 219.410. This action must be taken on an emergency basis in accordance with KRS13A.190(1)(a)(4) to protect human health and the environment. This emergency administrative regulation amendment is necessary in order for the new language and exemptions to be in place by the upcoming Speedway event, July 9, 2011. This race is drawing visitors from across the country and will provide substantial economic benefit to the local communities surrounding the track and to the Commonwealth as well. All local and state efforts are being maximized to accommodate the large crowd of spectators while meeting basic life and safety provisions. This emergency administrative regulation and the ordinary administrative regulation which will replace it allows local jurisdictions the ability to work with event organizers to best serve the health needs of the public while reaping the economic benefits such events generate. This emergency administrative regulation amendment will be followed with an ordinary administrative regulation amendment because the amendment language is applicable to many existing recreational vehicle communities and will be in place as the anticipated growth in temporary RV communities supporting special events will continue to grow in the Commonwealth. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

DEPARTMENT FOR PUBLIC HEALTH Division of Public Health Protection and Safety (Emergency Amendment)

902 KAR 15:020E. Recreational vehicles.

RELATES TO: KRS Chapter 13B, 211.180(1)(c), 219.310-219.410, 219.991(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3)

EFFECTIVE: July 30, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.090 requires the Secretary of the Cabinet for Health and Family Services to regulate and control matters set forth in KRS 211.180. KRS 211.180(1)(c) designates public and semipublic recreational areas as areas for which the secretary has responsibility to provide a safe and sanitary environment. The secretary is thus required to enforce the Kentucky Manufactured Home, Mobile Home, and Recreational Vehicle Community Act of 2002, KRS 219.310 to 219.410. This administrative regulation establishes standards for community construction and layout, sanitary standards for operation, and other matters necessary to insure a safe and sanitary recreational vehicle community operation.

Section 1. Definitions. (1) "Community street" means the paved portion of a roadway between curbs or, if not paved, the surfaced area separating sites.

(2) "Exempt recreational vehicle community" means any recreational vehicle community operated in accordance with KRS 219.410.

(3) [(2)] "Floodplain" means the area in a watershed that is subject to flooding at least one (1) time every 100 years.

(4) [(3)] "Recreational vehicle parking area" means that portion of the space used to park the recreational vehicle and towing vehicle, if any.

(5) [(4)] "Self-contained recreational vehicle community" means a community in which all recreational vehicle spaces are designed with water and sewer riser pipe connections that permit the parking of only self-contained recreational vehicles.

(6) [(5)] "Sewer riser pipe" means that portion of the sewer lateral which extends vertically to the ground elevation and terminates at each recreational vehicle space.

(7) "Seasonal" means a consecutive period of time not to exceed ninety (90) days within a calendar year.

(8) "Special Event" is a nonroutine activity within a community not to exceed fourteen (14) consecutive days in a calendar year.

(9) "Special Event Camping" is any camping that is in conjunction with a special event.

(10) "Temporary" means a period of time not to exceed fourteen (14) days within a calendar year.

Section 2. Submission of Construction Plan. (1) In accordance with KRS 219.350, each application for a permit to construct or alter a recreational vehicle community shall be submitted to the local health department.

(2) Each application shall be accompanied by a complete plan, drawn to scale, submitted in triplicate, of the proposed community or alteration.

(3) If the community is located within a floodplain, the plan shall be submitted in quadruplicate.

(4) The plans shall show all existing and proposed facilities including:

(a) [(4)] The size of the area and general dimensions of the tract of land being developed;

(b) [(2)] The number, location, and size of all recreational vehicle spaces;

(c) [(3)] The area within the space planned for location of the recreational vehicle including setback distances where applicable;

(d) [(4)] The location and width of roadways, driveways, and walkways;

(e) [(5)] The number, location, and size of all off-street automobile parking spaces;

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~~(f) [(6)]~~ The location of the exterior area lights and the exterior electrical distribution system;

~~(g) [(7)]~~ Detailed drawings of water supply if source is other than public;

~~(h) [(8)]~~ Detailed drawings of sanitary station and watering station;

~~(i) [(9)]~~ Detailed drawings of sewage disposal facilities, including written specifications;

~~(j) [(10)]~~ Detailed drawings of refuse storage facilities;

~~(k) [(11)]~~ The location and size of water and sewer lines and riser pipes;

~~(l) [(12)]~~ Size and location of any playground area within the community, if provided; and

~~(m) [(13)]~~ A separate floor plan of all service buildings and other improvements constructed or to be constructed within the recreational vehicle community, including a plumbing riser diagram.

(5) The cabinet shall provide written response to the application within thirty (30) business days.

(a) If the construction plans are not approved, the cabinet shall give the reason in writing to the person submitting the construction plans

(b) Plans may be revised in response to written cabinet deficiencies and resubmitted for another review following steps outlined in Section 2 of this regulation.

Section 3. Location and General Layout Standards. (1) The recreational vehicle community shall be located on a well drained area, not in a floodplain. Each site shall be graded to prevent the accumulation of storm or other waters.

(2) If the location is in an area at high risk for flooding, the applicant shall:

(a) Submit an engineering study to the cabinet; and

(b) Maintain flood insurance for the site.

(3) The area of the recreational vehicle community shall be large enough to accommodate the designated number of recreational vehicle spaces, necessary streets and roadways, and parking areas for motor vehicles.

(4) Each recreational vehicle space shall be numbered and displayed in some systematic order.

(5) Each recreational vehicle space shall contain a minimum of 1,500 square feet and adequate square footage to accommodate the maximum size recreational vehicle. A space measuring thirty (30) feet by fifty (50) feet is recommended.

(6) Recreational vehicles shall be separated from each other and from other structures by at least fifteen (15) feet.

(7) A recreational vehicle shall be located at least twenty-five (25) feet from a public street or highway right-of-way and at least ten (10) feet from other community property boundary lines.

(8) Each parking area shall be provided with safe and convenient vehicular access from abutting public or community streets or roads to each recreational vehicle space. Alignment and gradient shall be properly adapted to topography.

(9) Access to recreational vehicle parking areas shall be designed to minimize congestion and hazards at their entrance or exit and allow free movement of traffic on adjacent streets. All traffic into or out of the parking areas shall be through these entrances and exits.

(10) Each space shall abut upon a community street.

(a) For a two (2) way community street, the minimum width shall be eighteen (18) feet; and

(b) For ~~for~~ a one (1) way community street, the minimum width shall be twelve (12) feet.

(11) Community streets, driveways, and recreational vehicle parking areas shall be of all-weather construction, maintained in good condition, have natural drainage, be relatively free of dust, and be maintained free of holes.

(12) Each parking area shall provide sufficient parking and maneuvering space so that the parking, loading or maneuvering of recreational vehicles incidental to parking shall not necessitate the use of a public street, sidewalk or right-of-way, or private ground not part of the parking area.

(13) If a community provides a playground area, the area shall be easily accessible to all community residents and shall be fenced or otherwise rendered free of traffic hazards.

Section 4. Lighting within the Community. A minimum equivalent to a 175 watt mercury vapor type light shall be provided at community entrances, intersections, service buildings, sanitary stations, and other areas within the community deemed necessary by the cabinet.

Section 5. Community Water Supply. (1) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district, if available. If a public water supply of a municipality or a water district is not available, the supply for the community shall be developed and approved pursuant to applicable requirements of the Energy and Environment Cabinet [~~Natural Resources and Environmental Protection Cabinet~~]; except if a public water supply of a municipality or water district subsequently becomes available, connections shall be made to it and the community supply shall be discontinued.

(2) The water supply shall be capable of supplying a minimum of fifty (50) gallons per day per recreational vehicle space.

(3) Except as provided in subsection (4) of this section, each recreational vehicle community shall have at least one (1) easily accessible watering station for filling recreational vehicle water storage tanks.

(a) There shall be one (1) watering station for each fifty (50) recreational vehicle spaces or fraction thereof.

(b) Each watering station shall be protected against backflow, back-siphonage, and other means of contamination.

(c) A watering station shall be separated from a sanitary station by at least fifty (50) feet.

(4) In lieu of a watering station, individual water connections may be provided at each recreational vehicle space. Riser pipes provided for individual water-service connections shall be located and constructed to prevent damage by the parking of recreational vehicles.

(5) Water distribution lines and connections in the service buildings, sanitary stations, water stations, and at recreational vehicle spaces shall comply with KRS Chapter 318, Plumbers and Plumbing [the state plumbing code].

Section 6. Community Sewage and Waste Disposal. (1) All sewage and waste matter shall be disposed of into a public sewer system, if available. If a public sewer system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of the cabinet or the Energy and Environment Cabinet [~~Natural Resources and Environmental Protection Cabinet~~]; except if a public sewer system subsequently becomes available, connections shall be made to it and the community sewer system shall be discontinued.

(2) Except for self-contained recreational vehicle communities, each community shall provide at least one (1) sanitary station.

(a) If more than seventy-five (75) recreational vehicle spaces without sewer riser pipes are provided, additional sanitary stations shall be required at the ratio of one (1) station for each seventy-five (75) recreational vehicle spaces without sewer riser pipes or fraction thereof.

(b) Sanitary stations shall consist of at least a trapped four (4) inch sewer riser pipe connected to the community sanitary sewer system and and be surrounded at the inlet end by a concrete apron sloped to the drain. [.]

(c) The riser provided with a suitable hinged cover and the area around the station shall be sloped to drain the surface water away.

(d) A water outlet shall be included to permit sanitary maintenance of the station and be marked: "This Water for Flushing and Cleaning Purposes Only."

(e) The water outlet hose shall be reel or tower mounted to insure sanitary storage when not in use.

(f) A vacuum breaker shall be installed at the highest point on the reel or tower mounting.

(3) If facilities for individual sewer riser pipes are provided, the following requirements shall apply:

(a) The sewer riser pipe shall have at least a four (4) inch diameter and shall be located on the recreational vehicle space so that the sewer riser pipe to the recreational vehicle drain outlet will approximate a vertical position; and [.]

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(b) Provision shall be made for capping the sewer riser pipe when a recreational vehicle does not occupy the space. Surface drainage shall be diverted away from the riser.

(4) Sewer systems connections in recreational vehicle communities shall comply with KRS Chapter 318, Plumbers and Plumbing [the state plumbing code].

Section 7. Storage, Collection, and Disposal of Community Refuse. (1) The storage, collection, and disposal of refuse in the community area shall be conducted to not create a health, safety, or fire hazard; ~~rodent harborage;~~ insect breeding area; or cause air pollution.

(2) Refuse shall be stored in flytight, watertight, rodent proof common containers. Common containers shall be provided at the ratio of one (1) container per two (2) recreational vehicle spaces and in additional numbers as may be necessary to properly store refuse.

(3) Refuse collection stands shall be provided for refuse containers with less than thirty-five (35) gallons capacity. Stands shall be designed to prevent containers from being tipped, to minimize spillage and container deterioration, and to facilitate cleaning around them.

(4) Refuse containing garbage shall be collected at least once a week or more often if necessary.

(a) If suitable collection service is not available from a municipal or private agency, the owner or operator of the community shall provide this service.

(b) Refuse shall be collected and transported in covered, leak-proof containers or vehicles.

(5) Refuse and waste collected at a community shall be disposed in a safe and sanitary manner approved by the Energy and Environment Cabinet [Natural Resources and Environmental Protection Cabinet] in accordance with 401 KAR Chapter 47.

Section 8. Community Service Buildings. (1) Except for self-contained recreational vehicle communities, each community shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures specified by the Plumber's and Plumbing KRS Chapter 318 [State Plumbing Code].

(2) A service building shall be conveniently located within a radius of approximately 500 feet of the spaces to be served, ~~except that~~ A variance may be granted by the cabinet due to topography and other geographical conditions.

(3)~~[(2)]~~ A service building shall be constructed and maintained pursuant to the requirements of the State Building Code.

(4)~~[(3)]~~ A room containing sanitary or laundry facilities shall have:

(a) Every opening to the outer air effectively screened and each door provided with a spring or other self-closing device;

(b) Illumination levels maintained as follows:

1. General visual tasks - ten (10) foot-candles;
2. Laundry room work area - forty (40) foot-candles; and
3. Toilet room, in front of mirrors - forty (40) foot-candles;

(c) Hot and cold water furnished to every lavatory, sink, shower, and laundry fixture, and cold water furnished to every water closet and urinal;

(d) Walls, floors, ceilings, ~~and~~ attached or freestanding fixtures, and equipment maintained in good repair and sanitary. Surfaces shall not consist of carpeting or any material that is not smooth and easily cleanable.

(e) Refuse stored in easily cleanable containers;

(f) Sanitary towels or a mechanical hand drying device located adjacent to the lavatories; and

(g) A covered waste receptacle for each toilet room stall used by women.

Section 9. Insect, Rodent, Pest, and Pet Control within the Community. (1) Grounds, buildings, and structures shall be maintained free of insect and rodent harborage and infestation. Approved extermination methods and other measures to control insects and rodents shall be used.

(2) Communities shall be maintained free of accumulations of debris which may provide rodent harborage or breeding places for flies, mosquitoes, and other pests.

(3) Storage areas shall be maintained to prevent rodent harborage. Lumber, pipe, and other building materials shall be stored at least one (1) foot above the ground.

(4) If the potential for insect and rodent infestation exists, all exterior openings in or beneath any structure shall be appropriately screened with wire mesh or other suitable materials.

(5) The growth of brush, weeds, and grass shall be controlled to prevent harborage of ticks, chiggers, and noxious insects within the area used for the parking of recreational vehicles.

(6) Communities shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac, and other noxious weeds considered detrimental to health. Open areas shall be maintained free of heavy undergrowth of any description.

(7)~~[(6)]~~ An owner or person in charge of a dog, cat or other pet animal shall not permit the animal to run at large or to create a nuisance within the limits of the community.

Section 10. Community Electrical Distribution Systems. Every community shall contain an electrical system consisting of wiring, fixtures, equipment and appurtenances installed and maintained pursuant to the requirements of the Energy and Environment Cabinet [Natural Resources and Environmental Protection Cabinet].

Section 11. Community Fire Protection. Each community shall comply with applicable rules and administrative regulations of the State Fire Marshal and applicable local fire codes pertaining to fire safety, fuel supply storage, and fuel connections.

Section 12. Community Maintenance and Registration of Occupants and Vehicles. (1) The permit holder shall maintain the community, its facilities and equipment in good repair and in a clean and sanitary condition.

(2) Every permittee shall maintain a register showing the following:

(a) The names and permanent addresses of all recreational vehicle occupants;

(b) The make, model, and license number of the recreational vehicle or the tow vehicle; and

(c) The dates of arrival and departure of the recreational vehicle or its occupants.

(3) The register shall be available to an authorized person inspecting the recreational vehicle parking area.

(4) An owner or operator of a self-contained recreational vehicle community shall not permit the parking of a dependent recreational vehicle within the self-contained recreational vehicle community.

(5) An owner or operator of a recreational vehicle community shall not construct, install or attach, or permit the construction, installation, or attachment of a lean-to, deck, addition, or other permanent or semipermanent structure upon a recreational vehicle or recreational vehicle space, except that a collapsible awning or screened enclosure mounted upon or transported with the recreational vehicle may be permitted.

Section 13. Communities Constructed prior to June 16, 1973. A recreational vehicle community in existence on June 16, 1973, the effective date of former Regulation MRP-2, may be eligible for a permit to operate notwithstanding that the community does not fully meet the design and construction requirements of this administrative regulation, if:

(1) The cabinet determines that the community can be operated in a safe and sanitary manner pursuant to the operational requirements of this administrative regulation; and

(2) The community has a service building, sanitary station, safe water supply, adequate sewage, and solid waste disposal, and does not create a nuisance.

Section 14. Special Event Camping. A recreational community shall notify the local health department of their intention to operate at least twenty (20) days prior to each special event.

Section 15. ~~[44]~~ Inspection of Communities. (1) At least once every twelve (12) months, the cabinet shall inspect each community and shall make as many additional inspections and reinspec-

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tions as are necessary for the enforcement of this administrative regulation.

(2) Special event camping communities shall be inspected and reinspected daily or with sufficient frequency to ensure enforcement of this administrative regulation and to protect public health.

(3) [(2)] An inspector shall record inspection findings on an official Cabinet report form, DFS 318, and shall provide the permit holder or operator with a copy. The inspection report shall:

- (a) Set forth the specific violations if found;
- (b) Establish a specific and reasonable period of time for the correction of the violations found; and
- (c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the permit.

Section 16. [45] Suspension of Permits. (1) In addition to penalties established in KRS 219.991(2), the cabinet may suspend or revoke a permit [;] in accordance with KRS 219.380(2).

(2) [(4)] The cabinet shall, upon notice to the permit holder, immediately suspend the permit if:

- (a) There is reason to believe that an imminent public health hazard exists; or
- (b) The holder or an employee has interfered with the cabinet in the performance of its duties.

(3) [(2)] In all other instances of violation of the provisions of this administrative regulation, the cabinet shall:

- (a) Serve on the permit holder or his designee a written notice specifying the violation; and
- (b) Afford the holder a reasonable opportunity for correction.

(4) [(3)] The cabinet shall notify, in writing, the permit holder or operator who fails to comply with a written notice issued under the provisions of this section, that the permit shall be suspended at the end of ten (10) days following service of the notice.

Section 17 [46]. Reinstatement of Suspended Permits. (1) A person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit.

(2) Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection.

(3) If the applicant is found to be in compliance with the requirements of this administrative regulation, the permit shall be reinstated.

Section 18 [47]. Revocation of Permits. (1) A permit shall be permanently revoked for:

- (a) Serious [serious] or repeated violations of a requirement of this administrative regulation; or
- (b) Interference with an agent of the cabinet in the performance of his duties.[or her].

(2) Prior to the action, the cabinet shall notify the permit holder or his designee, in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice.

Section 19 [48]. Permit Renewal. (1) A permit to operate a recreational vehicle community shall be renewed annually, in the month of July. A permit fee shall be assessed pursuant to 902 KAR 45:120, Section 2(2).

(2) Exempt recreational vehicle communities shall register with the cabinet or its agents. Required information for registration shall be the:

- (a) Name of community;
- (b) Name of owner; and
- (c) Dates the recreational community will be operation.

(3) [(2)] If the cabinet or its agent is on notice that a recreational vehicle community is in violation of another agency's lawful requirement, the permit shall not be renewed until the permit holder or his designee demonstrates to the cabinet or its agent that the violation has been corrected.

Section 20. [49] Appeals. (1) A permit holder, his designee, or an applicant aggrieved by a decision of the cabinet may request a conference or administrative hearing. The request shall be submitted within ten (10) days of receipt of a written notice of:

- (a) A violation;
- (b) Suspension or revocation of a permit;
- (c) Denial to renew a permit; or
- (2) Conference hearings.

(a) A conference hearing shall be conducted in accordance with 902 KAR 1:400, Administrative hearings, with the following exceptions:

1. The conference hearing shall be less formal than an administrative hearing;

2. The matter at issue shall be discussed before a representative of the Department for Public Health; and

3. Participants in the discussion shall be:

- a. An agent of the cabinet; and
 - b. The permit holder, his designee, or the applicant.
- (b) A request for a conference hearing shall be:

1. In writing; and

2. Submitted or addressed to the cabinet's agent at the local health department that issued or gave notice of the violation, suspension, or revocation.

(c) A permit holder, his designee, or an applicant who does not agree with the conference report issued after the conference hearing may appeal by requesting an administrative hearing.

(3) Administrative hearing.

(a) A request for an administrative hearing shall waive the right to request a conference hearing.

(b) The administrative hearing shall be conducted in accordance with 902 KAR 1:400, Administrative hearings.

(c) A request for an administrative hearing shall be:

1. In writing;

2. Submitted or addressed to the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621; and

3. Accompanied by a copy of the notice of violation, notice to suspend or revoke, letter denying an application, or the conference hearing report.

Section 21. Exceptions. Exempt recreational vehicle communities as defined in KRS 219.410 are not subject to the regulations outlined in Sections two (2) through twenty (20) unless indicated otherwise within this regulation.

Section 22. Variance. The owner of a site where special event camping or campground is proposed to be installed may request, in writing, from the local board of health or its designated agent, a variance to the requirements included within this administrative regulation.

(1) A written request for variance shall include:

(a) Pertinent information about the site including a detailed site plan;

(b) The specific portion of the administrative regulation requested for waiver;

(c) The specific reasons for the request; and

(d) Documents, drawings, specifications and other evidence of compliance with the intent of this regulation through alternative means that support the granting of the variance.

(2) A request for variance shall be acted upon by the local board of health, or its designated agent within ten (10) business days of receipt of the request. A written decision on the request shall be presented to the applicant within five (5) business days of the decision. The variance may be granted with stipulations and, if so, are to be included in the decision notice.

(3) An applicant for a variance may appear before the local board of health or its agent for the purpose of presenting the request or to appeal a decision.

(4) If a hearing on the variance request or decision is requested, the local board of health or its agent shall:

(a) Set a time and date for the hearing within ten (10) business days of the request; and

(b) Notify the applicant, in writing, within five (5) business days of receipt of the request and at least two (2) days prior to the date

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of hearing, of the time and date for the hearing.

(5) A decision regarding a variance shall be based upon evidence presented by:

(a) The applicant; and

(b) The local health department representative; or

(c) expert professional witnesses.

(6) A decision regarding a variance shall be considered by:

(a) The requirements of 902 KAR 15:020, KRS 219.310 to 219.410 and related laws; and

(b) The presence or absence of reasonable assurance, derived from evidence presented, that the granting of the variance shall not result in the creation of:

1. A public health hazard; or

2. A public health nuisance.

Section 22. [(20)] Incorporation by Reference. (1) The following material is incorporated by reference: "DFS-317, Application for a Permit"; "DFS-318, Mobile Home and Recreational Vehicle Park Inspection Report".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621[40602], Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, M.D., FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: June 28, 2011

FILED WITH LRC: June 30, 2011 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ken Spach

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for community construction and layout, sanitary standards for operation, and other matters necessary to insure a safe and sanitary recreational vehicle community operation.

(b) The necessity of this administrative regulation: The Secretary of the Cabinet for Health and Family Services is required to regulate and control matters set forth in KRS 211.180. KRS 211.180(1)

(c) designates public and semipublic recreational areas as areas for which the secretary has responsibility to provide a safe and sanitary environment. The secretary is thus required to enforce the Kentucky Manufactured Home, Mobile Home, and Recreational Vehicle Community Act of 2002, KRS 219.310 to 219.410.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation carries out the intent and provisions of the authorizing statutes by establishing the guidelines for the layout, construction and sanitary standards for recreational vehicle communities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for sanitation requirements and the inspection process for recreational vehicle communities in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment exempts all city, county, charter county, urban-county, or consolidated local government or its agencies owned Recreational Vehicle (RV) communities that operate on a seasonal or temporary basis from the same requirements of those RV communities that are permanent. It also includes provisions for the granting of variances for recreational vehicle parks operated in conjunction with special events.

(b) The necessity of the amendment to this administrative regulation: HB 94 passed by the 2006 General Assembly exempted all city, county, charter county, urban-county, or consolidated local government owned RV communities that operate on a

seasonal or temporary basis from the same requirements of permanent communities. This amendment carries out that intent. Amendments will also allow local health departments to grant variances for special event camp communities.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment carries out the intent and provision of the authorizing statutes and the legislation which changed them.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets forth minimum sanitary standards for recreational vehicle communities in the Commonwealth. It also defines temporary or seasonal; special event camp usage and updates information required for permit renewal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any city, county, charter county, urban-county, or consolidated local government or its agencies owned recreational vehicle communities that are operated on a seasonal or temporary basis. Any entity that wishes to operate a recreational vehicle community during a special event in the community.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Government owned RV Communities: There will be no change for permanent communities. RV communities will continue to register with the local health department. Those communities that are owned by a city, county, charter county, urban-county or consolidated local government and operate no more than ninety (90) days per calendar year will be exempt. Special Event RV Communities: They will pay a permit fee, and adhere to the regulations or the variance issued by the local health department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be incurred by the government owned RV communities regulated entities as they will now be exempt from compliance with this regulation. The special event RV communities will pay a permit fee to submit plans for their facilities. They will also be responsible for any temporary RV site costs required to comply with this regulation and their proposed variance from it.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A city, county, charter county, urban-county, or consolidated local government or its agencies owned recreational vehicle communities used for seasonal or temporary basis will not have to abide by this administrative regulation. It will aid those permanent communities by having clear guidelines on sanitary stations, the types of structures that can be placed, how to register and the appeals process. Special Event Camping Communities or Special Event RV Communities: It will allow these communities some flexibility to operate using alternative methods which meet the intent of the regulation through a variance granted by the local health agency evaluates the local resources and needs.

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

(a) Initially: No additional cost will be incurred to implement this regulation.

(b) On a continuing basis: No additional cost will be incurred to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The inspection and permit fees collected by the local health departments will be used to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees will not be necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering was appropriate in this

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administrative regulation because the administrative regulation treated different RV communities in a different manner, specifically, Government owned RV communities are exempt from the provisions of this regulation, and: Special Event Camping/RV Communities will be required to comply with the provision of this regulation or their approved variance and pay fees for both the application and inspection.

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? Any city, county, charter county, urban-county, or consolidated local government or its agencies that own a recreational vehicle community that operates on a temporary or seasonal basis and its county health department or any entity that wishes to develop a RV Community that operates only during special events in the community.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 219.310 -219.410 (Kentucky Manufactured Home, Mobile Home, and Recreational Vehicle Community Act of 2002) and 902 KAR 45:120.

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

There will be no cost to the government owned entities which choose to operate recreational vehicle parks. Local Health jurisdictions may have some decrease in revenue due to this exemption, but will this will be offset by no longer having to regulate these entities. Revenues and expenditures will be neutral. The RV Communities that wish to operate only during special events in the community will continue to pay permit fees and will be inspected for compliance. Revenues and expenditures will be 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? RV Communities that wish to be developed and operated during special events will generate permit fees as revenue for the local government that are dependent on the number of spaces they wish to develop.

(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? Expected temporary RV Communities that wish to be developed and operated during special events will generate minimal revenue depending on the size of the event; however, subsequent costs for monitoring will make all revenues and expenses neutral.

(c) How much will it cost to administer this program for the first year? No additional cost will be required to administer this program for the first year.

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

STATEMENT OF EMERGENCY 921 KAR 3:090E

This emergency administrative regulation is necessary to adjust the monthly benefit amounts for the Simplified Assistance for the Elderly Program (SAFE). SAFE is a demonstration project approved by the United States Department of Agriculture, Food and Nutrition Service (FNS) designed to improve access and deli-

very of benefits and increase participation of elderly Supplemental Security Income (SSI) recipients in the Supplemental Nutrition Assistance Program (SNAP). SAFE must be cost neutral in relation to the regular SNAP, the food benefit program for low-income households. During the most recent evaluation of the project, SAFE was found to no longer be cost neutral. Adjustments in the monthly benefits amounts are necessary to comply with federal mandates governing the demonstration project, avoid detrimental financial consequences for the state administering agency or federal discontinuation of SAFE, and continue to meet health and welfare needs of the elderly and disabled served through SAFE. An ordinary administrative regulation would not allow the agency to meet the federally required implementation date of July 1, 2011. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation.

STEVEN L. BESHEAR, Governor

JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Emergency Amendment)

921 KAR 3:090E. Simplified assistance for the elderly program or "SAFE".

RELATES TO: 7 C.F.R. 273.1, 273.2, 273.9, 273.10, 273.12, 273.14

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4

EFFECTIVE: June 30, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 delegates the administration of the Supplemental Nutrition Assistance Program (SNAP) [Food Stamp Program] to the state agency. This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program, a demonstration project administered by the cabinet to improve access to SNAP [the Food Stamp Program] for elderly and disabled individuals.

Section 1. Definitions. (1) "Regular SNAP [Food Stamp Program] benefits" means SNAP [food stamp] benefits received in accordance with the procedures specified in:

- (a) 921 KAR 3:020, Financial Requirements;
- (b) 921 KAR 3:025, Technical Requirements;
- (c) 921 KAR 3:030, Application Process; and
- (d) 921 KAR 3:035, Certification Process.

(2) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.

(3) "Simplified Assistance for the Elderly" or "SAFE" means an optional SNAP [food stamp] program for SSI participants who are age sixty (60) or older.

(4) "State Data Exchange" or "SDX" means files administered by the Social Security Administration that provide states with eligibility and demographic data relating to SSI applicants and participants.

Section 2. SAFE Program Procedures. Unless a different procedure or process for a SNAP [food stamp program] requirement is specified in this administrative regulation, all SNAP [food stamp program] requirements specified in 921 KAR Chapter 3 shall apply to SAFE, including the process for:

- (1) A fair hearing;
- (2) An administrative disqualification hearing;
- (3) An appeal;
- (4) A disqualification;
- (5) A claim and collection of a claim; and
- (6) EBT issuance.

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Section 3. Eligibility for SAFE. (1) An individual may qualify for SAFE benefits if the individual:

- (a) Is a Kentucky resident;
 - (b) Is:
 1. A current SSI recipient; or
 2. SSI eligible, but SSI benefits are currently in suspense;
 - (c) Is age sixty (60) or older;
 - (d) Is not institutionalized;
 - (e) Is:
 1. Single, widowed, divorced, or separated; or
 2. Married and living with a spouse who meets the criteria specified in (a) through (f) of this subsection; and
 - (f) Purchases and prepares food separately from another individual who shares the same residence, but is not a member of the applicant's household as defined in 921 KAR 3:010.
- (2) The cabinet shall use SDX to verify an applicant's marital and institutional status.
- (3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:
- (a) Shall not be eligible for SAFE; and
 - (b) May apply for regular SNAP [Food Stamp Program] benefits in accordance in 921 KAR 3:030.
- (4) An individual who meets the criteria of subsection (1) of this section may apply for regular SNAP [Food Stamp Program] benefits instead of SAFE benefits.
- (5) An individual shall not receive SAFE benefits and regular SNAP [Food Stamp Program] benefits at the same time.

Section 4. SAFE Application Process. (1) Through use of the SDX files, the cabinet shall:

- (a) Identify SSI participants who are potentially eligible for SAFE; and
 - (b) Mail each identified SSI household a SF-1, Simplified Assistance for the Elderly (SAFE) Application, and a return envelope.
- (2) A SAFE application shall be considered filed if the SF-1 is:
- (a) Signed; and
 - (b) Received at the Department for Community Based Services, Division of Family Support.
- (3) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) days of the date the application is filed.

Section 5. SAFE Certification Process. (1) The cabinet shall process a SAFE application without requiring an interview.

- (2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the information provided by the applicant on the SF-1 or the SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form.
- (3) The cabinet shall certify an eligible household for SAFE benefits for up to thirty-six (36) months.
- (4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.
- (5) The cabinet shall send a SF-2 to a SAFE household in the month preceding the last month of the household's certification period.

Section 6. SAFE Benefits. (1) The cabinet shall provide a SAFE household a standard monthly benefit amount approved by the U.S. Department of Agriculture's Food and Nutrition Service.

- (2) The standard SAFE benefit amounts shall be based on:
 - (a) Shelter costs;
 - (b) Household size; and
 - (c) The average benefits received by a similar household in the regular SNAP [Food Stamp Program].

Section 7. Changes in Household Circumstances. (1) A household receiving SAFE benefits shall not be required to report any changes during the certification period.

- (2) The cabinet shall process changes in household circumstances based on information received from SDX.
- (3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member's:
 - (a) Name;

(b) Date of birth; or

(c) Address.

(4) Unless a change in household circumstance results in a change in benefits, the cabinet shall not provide a SAFE household with notification of a change being made in household circumstances.

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

- (a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", edition 07/11 [4/4/09]; and
 - (b) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", edition 07/11 [4/4/09].
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: June 28, 2011

FILED WITH LRC: June 30, 2011 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the requirements for the Simplified Assistance for the Elderly Program (SAFE), a demonstration project administered by the Cabinet, to improve access to the Supplemental Nutrition Assistance Program (SNAP) for elderly and disabled individuals.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for SAFE.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under 7 C.F.R. 271.4 to administer the SNAP program which includes the SAFE demonstration project.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for SAFE.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will change the monthly allotments received by recipients which are contained on the forms, SF-1 Simplified Assistance for the Elderly (SAFE) Application and SF-2 Simplified Assistance for the Elderly (SAFE) Recertification. The forms are incorporated by reference and used in the application and recertification process. Also, each reference to the Food Stamp Program will be changed to meet the current title of SNAP.
 - (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will change the monthly allotment received by recipients and the forms used in administering the SAFE program. The changes are being made to comply with federal requirements to maintain cost neutrality within the demonstration project.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by implementing the application requirements of 7 C.F.R. 273.2.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by adjusting the monthly benefit amounts to meet the federal requirements of cost neutrality within the demonstration project.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

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tive regulation: This administrative regulation will affect the 13,251 households that are currently participating in SAFE. All SAFE recipients and potential applicants are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions on the part of SAFE program applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to the administrative regulation will not create a cost to SAFE participants or applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will increase the monthly allotment for households which contain two (2) household members and will reduce the monthly allotment for households which contain one (1) household member. The changes in the monthly allotment are required by the United States Department of Agriculture, Food and Nutrition Service to maintain cost neutrality and to continue operating the demonstration project which simplifies the application and recertification process for elderly recipients that receive Supplemental Security Income.

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

(a) Initially: No additional funding is required.

(b) On a continuing basis: No additional funding is required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.2

2. State compliance standards. KRS 194.050(1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.2

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.2.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, July 12, 2011)

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 314.011(8), 314.042, 314.091, 314.161, 314.470

STATUTORY AUTHORITY: KRS 314.042(7), 314.131(1), 314.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, programs, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1) Complete an "Application for Licensure as an Advanced Practice Registered Nurse" as required by 201 KAR 20:370, Section 1(1);

(2) Provide a copy of a current active Registered Nurse license or validation of Registered Nurse licensure if the state of licensure does not issue licensure cards;

(3) Submit the fee required by 201 KAR 20:240, Section 1(2)(k); and

(4) Comply with the requirements established in KRS 314.042 and Sections 2 and 4 through 10 of this administrative regulation.

(5) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also provide:

(a) A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) A letter of explanation that addresses each conviction, if applicable.

(6) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted under subsection (5)(a) of this section and any conviction is addressed by the board.

Section 2. Postbasic Program of Study and Clinical Experience. (1) An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board. The program shall:

(a) Be an established, ongoing, and organized program offered on a routine basis to an enrollee;

(b) 1. Be accredited or approved for the education of nurses by a recognized accreditation or approval body; or

2. Be sponsored by a sponsoring organization, which shall hold the accreditation or approval for the education of nurses by a recognized accreditation or approval body;

(c) Have a program design which prepares an enrollee to function in a role consistent with the advanced practice registered nursing designation;

(d) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students;

dents;

(e) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students;

(f) Include didactic components that prepare the student to perform the additional acts delineated by the board pursuant to KRS 314.011(8) and include at least pharmacology, advanced physical assessment, advanced pathophysiology, and medical management of disease and differential diagnosis;

(g) Include a supervised clinical experience that includes application of all the didactic components; and

(h) Upon successful completion, award a diploma or certificate.

(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study after January 1, 2005, the applicant shall hold a master's degree, or doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board by sufficiently preparing a student for advanced practice registered nursing.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in specialty areas of clinical practice consistent with the population focus required by and defined by KRS 314.011;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American College of Nurse-Midwives;

(c) American Midwifery Certification Board [ACNM-Certification Council];

(d) Council on Certification/Recertification of Nurse Anesthetists;

(e) Pediatric Nursing Certification Board;

(f) National Certification Corporation;

(g) American Academy of Nurse Practitioners; and

(h) American Association of Critical-Care Nurses Certification Corporation.

(3) The following certification examinations for nurse practitioners (NP) and clinical nurse specialists (CNS) offered by the national certifying organizations identified in subsection 2 of this section shall be deemed to meet the definition of population focus of KRS 314.011(21):

(a) Acute Care NP;

(b) Adult NP;

(c) Adult Psychiatric and Mental Health NP;

(d) Family NP;

(e) Family Psychiatric and Mental Health NP;

(f) Gerontological NP;

(g) Neonatal NP;

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- (h) Pediatric NP;
- (i) Pediatric/Primary Care NP;
- (j) Pediatric/Acute Care NP;
- (k) Women's Health NP;
- (l) Adult Health CNS;
- (m) Adult Psychiatric and Mental Health CNS;
- (n) Child and Adolescent Psychiatric and Mental Health CNS;
- (o) Gerontological CNS;
- (p) Pediatric CNS;
- (q) Adult Acute Care CNS;
- (r) Pediatric Acute Care CNS; and
- (s) Neonatal Acute Care CNS.

(4) The board recognizes the following national certifying organizations only for those individuals who received certification prior to the effective date of this administrative regulation and who have continually renewed their Kentucky advanced practice registered nurse license since that date: Oncology Nursing Certification Corporation.

Section 4. Practice Pending Licensure. (1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App.".

Section 5. License Renewal. (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

- (a) Renew the registered nurse license or privilege on an active status;
- (b) Submit a completed "ARPN License Renewal Application" form as required by 201 KAR 20:370, Section 1(1);
- (c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(l); and
- (d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

- (a) A current active license has been issued by the board or a privilege is recognized by the board; and
- (b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

- (a) Submit a completed "Application for Licensure as an Advanced Practice Registered Nurse" form as required by 201 KAR 20:370, Section 1(1);
- (b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(m); and
- (c) Maintain current certification by a recognized national certifying organization.

(3) If the applicant is applying for reinstatement of a license as

an advanced practice registered nurse, the applicant shall also provide a:

- (a) Completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;
- (b) Report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;
- (c) Certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
- (d) Letter of explanation that addresses each conviction, if applicable.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.

(b) The board shall conduct an audit to verify that an advanced practice registered nurse has met the requirements of subsection (1)(a) of this section.

(2) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse until the requirements of Sections 1 through 8 of this administrative regulation have been met.

(3) An advanced practice registered nurse who is decertified by the appropriate national organization shall:

- (a) Notify the board of that fact; and
- (b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of Sections 1 through 11 of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

- (1) A postbasic educational program for preparation for advanced practice registered nursing; or
- (2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself out as a clinical specialist or is known as a clinical specialist shall be required to be licensed as an advanced practice registered nurse if his practice includes the performance of advanced practice registered nursing procedures.

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the specialty to which he has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures set in KRS 314.091.

CAROL A. KOMARA, RN, MSN, President

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: May 6, 2011 at 8 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, July 12, 2011)

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

RELATES TO: KRS 314.035, 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs and for credentialing dialysis technicians.

Section 1. Definitions. (1) "Approved dialysis technician training program" means a program to train dialysis technicians that is approved by the board.

(2) "Central venous catheter" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava.

(3) "Dialysis technician applicant" means an individual who has applied for a dialysis technician credential.

(4) "Dialysis technician trainee" means an individual who is enrolled in an approved dialysis technician training program.

(5) "Supervision" means initial and ongoing direction, procedural guidance, observation, and evaluation by a registered nurse or physician, and when a patient is being dialyzed the registered nurse or physician is in the immediate clinical area.

Section 2. Requirements for Dialysis Technician Credential. (1)(a) An individual who applies to be credentialed as a dialysis technician in order to engage in dialysis care shall:

1. File with the board the "Application for Dialysis Technician Credential";

2. Have completed an approved dialysis technician training program or an out-of-state dialysis training program pursuant to subsection (1)(b) of this section;

3. Pay the fee established in Section ~~11[42]~~ of this administrative regulation;

4. Provide a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application;

5. Provide a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

6. Provide to the board a certified copy of the court record of any misdemeanor or felony conviction from any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years; and

7. Provide to the board a letter of explanation that addresses each conviction.

(b)1. If the dialysis technician applicant has completed an out-of-state dialysis technician training program, the applicant shall submit the training program curriculum and evidence of completion to the board. The board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as stated in Section 7 of this administrative regulation.

2. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of Section 7 of this administrative regulation.

3. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall be required to complete that portion of a board-approved dialysis technician training program related to specific portions of the legal and ethical aspects of practice as set forth in the "Dialysis Technician Training Program Guide". An applicant shall submit evidence to the board of successful completion of the following sections:

- State and federal regulations governing dialysis;
- The principles and legal aspects of documentation, communication and patient rights;
- The roles of the dialysis technician and other multidisciplinary

nary team members; and

d. Principles related to patient safety.

4. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit the "Checklist for Dialysis Technician Competency Validation" signed by the applicant's immediate supervisor in Kentucky. The "Checklist for Dialysis Technician Competency Validation" shall be filed after the submission of the "Application for Dialysis Credential".

5. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit evidence of:

a. Successful completion of a comprehensive, written final examination from a board-approved dialysis technician training program; or

b. Dialysis technician certification issued within the past two (2) years by the Nephrology Nursing Certification Commission, the Board of Nephrology Examiners Nursing and Technology, or the National Nephrology Certification Organization.

(2) An individual shall be exempt from the credentialing requirement while enrolled in an approved dialysis technician training program. The individual shall use the title dialysis technician trainee.

(3) Upon approval of the application, the board shall initially issue the dialysis technician credential for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(4)(a) An applicant for a dialysis technician credential may engage in dialysis care as a dialysis technician applicant upon:

1. Receipt by the board of the "Application for Dialysis Technician Credential"; and

2. Meeting the requirements of subsection (6) of this section. as an applicant until:

1. The credential is issued; or

2. The application is denied by the board.

(5) An "Application for Dialysis Technician Credential" submitted for initial credentialing shall be valid for six (6) months from the date of receipt by the board.

(6) A felony or misdemeanor conviction shall be reviewed to determine whether:

(a) The application shall be processed with no further action; or
(b) The application shall be processed only after:

1. The applicant has entered into an agreed order with the board with terms and conditions as agreed by the parties; or

2. If the parties are unable to agree on terms and conditions, a hearing is held pursuant to KRS 314.091 and 201 KAR 20:162, and a final decision is entered by the board.

(7) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(a)5 of this section and any conviction is addressed by the board.

Section 3. Renewal. (1) To be eligible for renewal of the credential, the dialysis technician shall submit, no later than one (1) month prior to the expiration date of the credential:

(a) The "Application for Renewal of the Dialysis Technician Credential"; and

(b) The fee established in Section ~~11[42]~~ of this administrative regulation.

(2) Upon approval of the application, the credential shall be renewed for twenty-four (24) months. The credential shall lapse on the last day of the credentialing period.

(3) A dialysis technician shall report to the board at the time of renewal the name of the national certification program that has issued the technician's certification and provide a copy of the certification certificate to the board.

Section 4. Reinstatement. (1) Before beginning practice as a dialysis technician or a dialysis technician applicant, the individual shall meet the requirements of this section. If the dialysis technician credential has lapsed for a period of less than one (1) credentialing period, the individual may reinstate the credential by:

(a) Submitting the "Application for Dialysis Technician Credential";

(b) Paying the fee established in Section ~~11[42]~~ of this administrative regulation; and

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(c) Providing a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application.

(2) If the dialysis technician credential has lapsed for more than one (1) credentialing period, the dialysis technician may reinstate the credential by:

(a) Completing a board-approved dialysis technician training program before submitting the "Application for Dialysis Technician Credential". While enrolled in a training program, the individual shall be referred to as a dialysis technician trainee;

(b) Submitting the "Application for Dialysis Technician Credential";

(c) Paying the fee established in Section ~~11~~[42] of this administrative regulation;

(d) Submitting the "Checklist for Dialysis Technician Competency Validation" signed by the individual's immediate supervisor;

(e) Providing a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of application; and

(f) Providing a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is dated within six (6) months of the date of the application.

(3) An "Application for Dialysis Technician Credential" submitted for reinstatement shall be valid for six (6) months from the date of receipt by the board.

(4) Upon approval of the application, the credential shall be reinstated for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(5) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (2)(f) of this section and any conviction is addressed by the board.

Section 5. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse or a physician:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

(b) Initiating, delivering or discontinuing dialysis care;

(c) Administration of the following medications only:

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician.

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse;

(d) Assistance to the registered nurse in data collection;

(e) Obtaining a blood specimen via a dialysis line or a peripheral access site;

(f) Responding to complications that arise in conjunction with dialysis care; and

(g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is determined by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

(b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters; and

(c) The administration of blood and blood products.

Section 6. Discipline of a Dialysis Technician. (1) A dialysis technician, an employer of dialysis technicians, or any person having knowledge of facts shall report to the board a dialysis technician who may have violated any provision of this administrative regulation.

(2) The board shall have the authority to discipline a dialysis technician for:

(a) Failure to safely and competently perform the duties of a

dialysis technician as stated in Section 5 of this administrative regulation;

(b) Practicing beyond the scope of practice as stated in Section 5 of this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence. A "conviction" shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Misuse or misappropriation of any drug placed in the custody of the dialysis technician for administration, or for use of others;

(g) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(h) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(i) Practicing without filing an "Application for Dialysis Technician Credential" or without holding a dialysis technician credential;

(j) Abuse of a patient;

(k) Theft of facility or patient property;

(l) Having disciplinary action on a professional or business license;

(m) Violating any lawful order or directive previously entered by the board;

(n) Violating any administrative regulation promulgated by the board; ~~or~~

(o) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; or

(p) Having violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

(3) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure set out in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the application for a credential.

(4) The board shall follow the procedures set out in and have the authority set forth

in KRS 314.091, 201 KAR 20:161, and 20:162 for management and resolution of complaints filed against a dialysis technician.

(5) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to \$10,000.

Section 7. Dialysis Technician Training Program Standards. (1) Program administrator. A registered nurse, holding a current Kentucky license, temporary work permit, or multistate privilege, with at least one (1) year of experience in dialysis care, shall be administratively responsible for planning, development, implementation, and evaluation of the dialysis technician training program. The name, title, and credentials identifying the educational and professional qualifications of the program administrator shall be provided to the board. A change in the program administrator shall be reported to the board within thirty (30) days of the change.

(2) Faculty qualifications. The dialysis technician training program shall be taught by multidisciplinary faculty with expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications of each didactic and clinical instructor shall be provided to the board.

(3) The dialysis technician training program shall be based upon the "Dialysis Technician Training Program Guide".

(4) The dialysis technician training program syllabus shall in-

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clude:

- (a) Prerequisites for admission to the program;
 - (b) Program outcomes. The outcomes shall provide statements of measurable competencies to be demonstrated by the learner; supportive content identified;
 - (d) Content. The content shall be described in outline format with corresponding time frame and testing schedules;
 - (e) Teaching methods. The activities of both instructor and learner shall be specified. These activities shall be congruent with stated objectives and content, and reflect application of adult learning principles;
 - (f) Instructional or reference materials. All required instructional reference materials shall be identified; and
 - (g) Evaluation. There shall be clearly defined criteria for evaluating the learner's achievement of program outcomes. There shall also be a process for annual program evaluation by trainees, program administrator, faculty, and employers.
- (5) Any proposed substantive changes to the dialysis technician training program syllabus after initial submission shall be submitted to the board in writing and shall not be implemented without approval from the board.
- (6) Trainee clinical practice requirements. The dialysis technician trainee enrolled in a dialysis technician training program shall practice dialysis care incidental to the training program only under the supervision of a faculty member, or his designee.
- (7) The dialysis technician training program shall be at least 400 hours in length. A minimum of 200 hours shall be didactic.
- (8) Completion requirements. Requirements for successful completion of the dialysis technician training program shall be clearly specified. The requirements shall include demonstration of clinical competency and successful completion of a comprehensive, written final examination. The final examination shall be administered only during the final forty (40) hours of the training program. There shall be a statement of policy regarding a trainee who fails to successfully complete the training program.
- (9) The program shall establish a written records retention plan describing the location and length of time records are maintained. At a minimum, the following records shall be maintained by the program:
- (a) Provider name, dates of program offerings, and sites of the training program;
 - (b) The program code number issued by the board; and
 - (c) Trainee roster, with a minimum of name, date of birth, Social Security number, and program completion date.
- (10) An individual who successfully completes the training program shall receive a certificate of completion that documents the following:
- (a) Name of individual;
 - (b) Title of training program, date of completion, and location;
 - (c) Provider's name;
 - (d) The program code number issued by the board; and
 - (e) Name and signature of program administrator.
- (11) The program shall submit the "List of Dialysis Technician Training Program Graduates" within three (3) working days of the program completion date.
- (12) The program shall notify the board in writing within thirty (30) days of a training program closure. The notification shall include the date of closing, a copy of the program trainee roster from the date of the last renewal to the date of closing, the location of the program's records as defined in subsection (9) of this section, and the name and address of the custodian of the records.
- (13) A dialysis technician training program that conducts either the didactic portion or the clinical portion in this state shall be required to be approved by the board and the program shall meet the requirements of this section.

Section 8. Dialysis Technician Training Program Initial Approval. (1) To receive initial approval, a dialysis technician training program shall:

- (a) File an "Application for Dialysis Technician Training Program Approval"; and
 - (b) Pay the fee established in Section 11[42] of this administrative regulation.
- (2) Board approval for a dialysis technician training program

that meets the requirements of this administrative regulation shall be granted for a two (2) year period from the date of approval.

(3) Upon approval, the board shall issue a program code number.

(a) File an "Application for Dialysis Technician Training Program Approval";

(b) Submit an annual program evaluation summary report and any actions taken as a result of the evaluation as required by Section 7(4)(g) and (5) of this administrative regulation;

(c) Submit a list of current faculty including the name, title, and credential identifying the educational and professional qualifications of each instructor;

(d) Submit a copy of the program trainee roster for the past two (2) years as required by Section 7(9)(c) of this administrative regulation; and

(2) The application shall be submitted at least two (2) months prior to the end of the current approval period.

(3) Continued approval shall be based on compliance with the standards set out in Section 7 of this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to maintain continued approval, the approval shall lapse.

Section 9[40-] Reinstatement of Dialysis Technician Training Programs. A program whose approval has lapsed and that seeks to reinstate that approval shall:

(1) File an "Application for Dialysis Technician Training Program Approval"; and

(2) Pay the fee established in Section 11[42] of this administrative regulation.

Section 10[44-] Board Actions on Dialysis Technician Training Programs. (1) A representative of the board may make a site visit to a dialysis technician training program to determine if the program is complying with regulatory standards.

(2) The board shall prepare a report of the site visit, identifying deficiencies for the training program, and shall include recommendations and requirements to be met in order to maintain compliance with standards.

(3) The program administrator shall submit to the board a response to the site visit report.

(4) Based on the report of deficiencies, the training program's response, and any other relevant evidence, the board may grant approval, continue approval, continue approval with stipulations as determined by the board, or propose to deny or withdraw approval of the program.

(5) A dialysis technician training program administrator may request a review of a board decision concerning approval using the following procedure:

(a) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the dialysis technician training program administrator contests.

(b) The board, or its designee, shall conduct a review. The dialysis technician training program administrator may appear in person to present reasons why the board's decision should be set aside or modified.

(c) The dialysis technician training program administrator shall be notified of the board's decision.

(6) The board shall deny or withdraw approval of a program after an administrative hearing conducted pursuant to KRS Chapter 13B,

Section 11[42-] Fees. (1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be seventy (70) dollars.

(3) The credential reinstatement fee shall be \$100.

(4) The dialysis technician training program initial approval fee shall be \$950.

(5) The dialysis technician training program continued approval fee shall be \$800.

(6) The dialysis technician training program reinstatement fee shall be \$950.

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(7) An additional fee of twenty-five (25) dollars shall be charged for an application for renewal of the credential that is filed after the deadline for filing.

(8) An additional fee of \$150 shall be charged for an application for continued dialysis technician training program approval that is filed after the deadline for filing.

(9) A fee of thirty-five (35) dollars shall be charged for issuing a duplicate of the credential.

(10) A check submitted to the board for payment of a fee which is returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.

(11) A fee of ten (10) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(12) A fee of twenty-five (25) dollars shall be charged for a duplicate application form which is issued due to the failure to maintain a current mailing address as required by Section ~~12~~**[13]** of this administrative regulation.

(13) A fee of thirty five (35) dollars shall be charged for a name change and the issuance of a new credential.

(14) All fees shall be nonrefundable.

Section ~~12~~**[13]** Miscellaneous Requirements. (1) Any person credentialed by the board as a dialysis technician shall maintain a current mailing address with the board and immediately notify the board in writing of a change of mailing address.

(2) As a condition of holding a credential from the board, a dialysis technician shall be deemed to have consented to service of notices or orders of the board at the mailing address on file with the board. Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3) Any dialysis technician credentialed by the board shall, within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction. A conviction shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime. Upon learning of any failure to notify the board under this provision, the board may initiate an action for immediate temporary suspension until the person submits the required notification.

(4) Any dialysis technician credentialed by the board shall immediately notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction is surrendered or terminated under threat of disciplinary action or is refused, limited, suspended, or revoked, or if renewal of continuance is denied.

(5) If the board has reasonable cause to believe that any dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it may require the person to submit to a chemical dependency evaluation or a mental or physical examination by a practitioner it designates. Upon failure of the person to submit to a chemical dependency evaluation or a mental or physical examination, unless due to circumstances beyond the person's control, the board may initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(6) Every dialysis technician shall be deemed to have given consent to submit to a chemical dependency evaluation of a mental or physical examination when so directed in writing by the board. The direction to submit to an evaluation or an examination shall contain the basis of the board's reasonable cause to believe that the person is unable to practice with reasonable skill and safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining practitioner's testimony or examination reports on the ground of privileged communication.

(7) The dialysis technician shall bear the cost of any chemical dependency evaluation or mental or physical examination ordered by the board.

Section ~~13~~**[14]** Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval", Kentucky Board of Nursing, 6/06;

(b) "Application for Dialysis Technician Credential", Kentucky Board of Nursing, 12/09;

(c) "Application for Renewal of Dialysis Technician Credential", Kentucky Board of Nursing, 9/07;

(d) "Checklist for Dialysis Technician Competency Validation", Kentucky Board of Nursing, 9/07;

(e) "Dialysis Technician Training Program Guide", August 14, 2001, Kentucky Board of Nursing; and

(f) "List of Dialysis Technician Training Program Graduates", Kentucky Board of Nursing, 9/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL A. KOMARA, RN, MSN, President

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: May 6, 2011 at 8 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, [email: nathan.goldman@ky.gov](mailto:nathan.goldman@ky.gov).

JUSTICE AND PUBLIC SAFETY CABINET

Office of the Secretary

(As Amended at ARRS, July 12, 2011)

500 KAR 8:010. Certification of Breath Alcohol Analysis Instrument operators.

RELATES TO: KRS 15A.070, 189A.103(3), (6)

STATUTORY AUTHORITY: KRS 15A.160, **189A.103(3)(b)**

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 15A.160**

authorizes the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations for the administration of all laws and functions which are vested in the cabinet. KRS 189A.103(3)(b) directs the secretary to issue certification for operation of breath alcohol analysis instruments to Kentucky peace officers. This administrative regulation establishes the certification of breath analysis operators as required by KRS **189A.103(3)(b)**~~[189A.103(3) and (6)]~~.

Section 1. Training Program. (1) To become certified to operate a breath alcohol analysis instrument, the person shall successfully complete the Basic Breath Test Operator Certification training program of the Department of Criminal Justice Training.

(2) Successful completion shall mean receiving a passing score on a standardized written examination as provided by the department and the satisfactory completion of a standardized practical proficiency examination administered by a certified instructor.

(3) The examinations shall be included in a minimum of forty (40) hours of instruction which shall also include the demonstration of physiological effects of alcohol in the human body, general instrumentation theory, and operation of approved instruments which measure alcohol concentration.

Section 2. Certification Period. (1) Operator certification shall be valid for a period of two (2) years from the date of issuance.

(2) Certification shall expire~~be terminated~~ if it is not renewed within the~~a~~ two (2) year period~~or the operator ceases to be employed by a criminal justice agency.~~

(3) An operator whose certification has expired~~been revoked pursuant to this section~~ shall be eligible for recertification pursuant to Section ~~3~~**[4]** of this administrative regulation for a period of six (6) months following expiration~~revocation~~.

(4) An operator whose certification expires during his or her service on active duty with the Kentucky National Guard or the United States Armed Forces shall be eligible for recertification pursuant to Section 3 of this administrative regulation for a period of six (6) months following his or her return to employment as a peace officer.

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~~Section 3. The employer of a certified operator shall notify the Department of Criminal Justice Training in writing within two (2) weeks of the change in the event of change of employment to a different criminal justice agency or termination of employment with a criminal justice agency.~~

~~Section 4.] Recertification. (1) To obtain recertification under Section 2(3) or 2(4) of this administrative regulation, a certified operator shall review standards and procedures for a minimum of four (4) hours of recertification instruction by the Department of Criminal Justice Training.~~

~~(2) An operator whose certification expires and fails to obtain recertification under Section 2(3) or 2(4) of this administrative regulation shall repeat the forty (40) hour Breath Test Operator Certification training program.~~

~~Section 4.5.] Revocation of Certification. (1) The following are grounds for revocation of certification to operate a breath analysis instrument:~~

~~(a) Misuse of the instrument by the operator in violation of law;~~
~~(b) Refusal or failure to perform procedures in an acceptable manner; and~~

~~(c) Failure to testify at any judicial proceeding under KRS Chapter 189A without just cause. [cause; and~~

~~(d) Dismissal of an operator from his employment with a criminal justice agency.]~~

~~(2) Any revocation of an operator's Breath Test Operator Certification shall be [Revocation will be held only following a hearing] conducted by the Commissioner of the Department of Criminal Justice Training, or his designee, following written notice to the certified operator of the basis for revocation and an administrative hearing conducted pursuant to KRS Chapter 13B.~~

~~Section 5. (1)[6.] A person who has received training from the Department of Criminal Justice Training, the Department of State Police, or the Lexington-Fayette Urban County Government Division of Police in breath analysis instrument operation before January 1, 1991, shall be exempt from the requirements of Section 1 of this administrative regulation.~~

~~(2) Each person who has not received this training more recently than January 1, 1989, shall comply with Section 3[4] of this administrative regulation.~~

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: May 10, 2011

FILED WITH LRC: May 13, 2011 at 11 a.m.

CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

**Department of Workforce Investment
Office of Employment and Training
(As Amended at ARRS, July 12, 2011)**

787 KAR 1:210. Employer contribution rates.

RELATES TO: KRS 341.270, 341.272

STATUTORY AUTHORITY: KRS 151B.020, 341.115, 341.270(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative ~~regulations~~[regulation] necessary to administer KRS Chapter 341. KRS 341.270(3) requires the Secretary of the Education and Workforce Development Cabinet to determine the rate schedule for ~~employer~~[employers] contributions. This administrative regulation establishes the method by which the secretary shall publish the rate schedule in effect each year.

Section 1. Annual Employer Rate Notice. (1) On or before December 15 [Within the first calendar quarter] of each year, the Division of Unemployment Insurance, on behalf of the secretary,

shall issue to each active employer liable to pay unemployment contributions for the next calendar [that] year a "Notice of Contribution Rate".

(2) The notice shall:

(a) Set forth the rate schedule determined by the secretary pursuant to KRS 341.270(3) to be in effect for the next calendar [that] year;

(b) Inform each employer of:

1. The rate applicable to the employer's account for the next calendar [that] year;

2. The tax, wage and benefit charge information regarding the employer's account; and

3. The statutory provisions used to calculate and assign the rate in accordance with KRS 341.270 and 341.272; and

(c) Be issued in either paper or electronic format.

Section 2. Incorporation by Reference. (1) The "Notice of Contribution Rate", **UI-29, June 2011**, [(UI-29, Rev. 5/2011)[2/02]] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Division of Unemployment Insurance, 275 E. Main Street, 2E, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM MONTEROSSO, Executive Director

APPROVED BY AGENCY: May 13, 2011

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

CONTACT PERSON: William Monterosso, Executive Director; Office of Employment and Training, 275 East Main 2C, Frankfort, Kentucky 40602, phone (502) 564-5331, fax (502) 564-7452.

PUBLIC PROTECTION CABINET Department of Housing, Buildings And Construction Division of Fire Prevention (As Amended at ARRS, July 12, 2011)

815 KAR 10:070. Consumer fireworks retailer registration and fees.

RELATES TO: ~~[HB 333 Section 4.]~~ 227.700, 227.702, 227.704, 227.708, 227.710, **227.715**, 227.750, **227.752** ~~[227.782.]~~
STATUTORY AUTHORITY: KRS 227.715[.]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.715 requires the department to promulgate administrative regulations establishing [establish] registration requirements and fees for any person, firm, co-partnership, non-profit, or business intended to sell consumer fireworks in the Commonwealth. This administrative regulation establishes the registration forms, submission process and fees for consumer firework retailers.

Section 1. Filing of Annual Registration by Consumer Fireworks Retailers. (1) **A retailer shall not** ~~[No retailer shall]~~ offer for sale, sell at retail, or keep with intent to sell consumer fireworks without annually registering with the Kentucky State Fire Marshal.

(2) All retailers of consumer fireworks required by KRS 227.715 to annually register with the State Fire Marshal shall submit to the Division of Fire Prevention:

(a) A completed Fireworks Registration Application (Form FM 32-03); ~~[and]~~

(b) A nonrefundable annual fee as established in Section 2 of this administrative regulation; and

(c) Evidence that a current sales and use tax permit has been obtained from the Department of Revenue.

(3) Registration shall not be complete until a Fireworks Registration Application, payment of appropriate fireworks retailer fee, and evidence of current sales and use tax permit are received and processed by the Division of Fire Prevention, State Fire Marshal.

Section 2. Fee Schedule for Registration of Consumer Fireworks Retailers. (1) The annual consumer fireworks retailer application and renewal fees for each retail site shall be:

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(a) Twenty-five (25) dollars for registration of retailers intending to sell consumer fireworks described in KRS 227.702(1);

(b) \$250 for registration of seasonal retailers intending to sell consumer fireworks described in KRS 227.702(2) and (3) between June 10th and July 7th, or December 26th and January 4th; and

(c) \$500 for registration of permanent retailers whose primary source of business is the sale of consumer fireworks as defined in KRS 227.702(2) and (3).

(2) If registration is received less than fifteen (15) days prior to offering fireworks for sale at the site for which registration is submitted, an additional \$100 shall be added to the initial fee, in accordance with KRS 227.715(5).

(3) Application, renewal and late registration fees shall be [are] nonrefundable.

Section 3. Payment of Fees. (1) A fee submitted to the Division of Fire Prevention, State Fire Marshal shall be made payable to the Kentucky State Treasurer.

(2) If a fee is returned to the Division of Fire Prevention for nonpayment or insufficient funds, the Fire Marshal may revoke registration of the site in accordance with KRS 227.715(10), unless proof of financial institution error is provided.

~~[(1) If a fee is returned to the Division of Fire Prevention for nonpayment or insufficient funds, the payor shall pay thirty-five (35) dollars, unless proof of financial institution error is provided.~~

~~(2) If a submitted check is returned to the division for insufficient funds, the payor shall not, for a period of at least six (6) months, make a payment to the Division of Fire Prevention by personal check.]~~

Section 4. Incorporation by Reference. (1) Form FM 32-03, "Fireworks Registration Application", May 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Fire Prevention, 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: May 6, 2011

FILED WITH LRC: May 10, 2011 at 9 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, ext 144, fax (502) 573-1057.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Code Enforcement (As Amended at ARRS, July 12, 2011)

815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.

RELATES TO: KRS Chapter 13B, 164.772(3), 227A.010, 227A.060, 227A.100, **339.230, 29 C.F.R. 570** [EO-2009-535]
STATUTORY AUTHORITY: KRS 227A.040(1), (8), 227A.060, 227A.100(9) [227A.100(9), EO-2009-535]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.040 and 227A.060 authorize the Office of Housing, Buildings and Construction to promulgate administrative regulations to establish a process for the licensing of electrical contractors, electricians, and master electricians. KRS 227A.100(9) authorizes the department to promulgate administrative regulations governing an inactive license. [EO-2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department.] This administrative regulation establishes the eligibility requirements and application procedures for the li-

censing of electrical contractors, electricians, and master electricians.

Section 1. Application Procedure. An applicant for licensure pursuant to KRS 227A.060 shall:

(1) Complete an application as required by Section 2 of this administrative regulation;

(2) Pay the application fee required by Section 3 of this administrative regulation;

(3) Provide verifiable evidence of experience and training as specified in Section 4 of this administrative regulation; and

(4) Provide evidence of passage of the examination required by Section 5 of this administrative regulation.

Section 2. Application Requirements. (1) The applicant shall complete an application form, either Electrical Contractor's License Application, Form BCE-EL-2, or Electrical License Application Form, ~~[Form]~~ BCE-EL-3, which shall include the following information:

(a) The applicant's name;

(b) The applicant's home address;

(c) The applicant's business address;

(d) The applicant's home and business telephone numbers;

(e) The applicant's date of birth;

(f) The applicant's Social Security number or employer identification number;

(g) The applicant's email address;

(h) The licenses applied for;

(i) For master electrician or electrician, a narrative listing of the applicant's experience in the electrical industry, including:

1. Business name and address;

2. Job title; and

3. Supervisor's name;

(j) For master electrician or electrician, a listing of all approved training or apprenticeship programs the applicant has completed;

(k) A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);

(l) A passport-sized color photograph of the applicant;

(m) For electrical contractor licenses, the name and license number of the master electrician who will be affiliated with the applicant; and

(n) For electrical contractor licenses, the name of the insurer providing the applicant's liability and workers' compensation coverage and the policy number of each coverage.

(2) An applicant for reciprocity shall:

(a) Comply with the requirements set forth in the reciprocity agreement between Kentucky and the state in which the applicant is licensed; and

(b) Submit a completed Reciprocity Electrical License Application, Form BCE-EL-4, which shall include:

1. A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);

2. A passport-sized color photograph of the applicant;

3. For electrical contractor licenses, proof of compliance with the insurance and workers' compensation requirements established in Section 7 of this administrative regulation; and

4. A copy of the applicant's license from the participating state.

Section 3. Application, Renewal, Reinstatement, and Late Fees. (1) The application and renewal fees shall be:

(a) \$200 for an electrical contractor's license;

(b) \$100 for a master electrician's license; or

(c) Fifty (50) dollars for an electrician's license.

(2) Application, renewal, reinstatement, and late fees shall not be refundable.

(3) The reinstatement fee for any lapsed license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee and shall be paid in addition to the license renewal fee.

(4) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely and a late fee shall not be assessed.

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(5) Renewal fees for inactive licenses shall be one-half (1/2) the fee for an active license.

(6) The fee to return a license to an active status from an inactive status shall be the remaining one-half (1/2) renewal fee for that year.

Section 4. Verification of Experience. (1) An applicant shall submit verification of experience for licensure as a master electrician or electrician.

(2) Verification shall be submitted in the form of:

(a) Tax returns or other official tax documents that indicate the applicant's occupation or the nature of the applicant's business activities, including Federal Schedule C, Form W-2, Form 1099, or local occupational tax returns;

(b) A copy of a business license issued by a county or municipal government that did not issue electrical contractors, master electrician's, or electrician's licenses prior to June 24, 2003, if the business license indicates the applicant operated as an electrical contractor or worker;

(c) A sworn affidavit, on the affiant's letterhead, certifying that the affiant has personal knowledge that the applicant has worked as a master electrician or an electrician for at least one (1) of the following:

1. An electrical workers union;
2. A certified electrical inspector; or
3. An employer that employed the applicant as an electrician or a master electrician; or

(d) 1. Records of a branch of the United States Armed Forces that indicate the applicant performed a function that primarily involved electrical work.

2. Experience gained while in the military shall be deemed to have been earned in Kentucky.

Section 5. Examinations. (1) An applicant for an electrical contractor's license, master electrician's license, or electrician's license shall pass an examination administered by an approved examination provider. A passing score shall be valid for a period of three (3) years.

(2) For an electrical contractor's license, an applicant that is a business entity shall designate a person to take the examination on behalf of the applicant. The designee shall be:

- (a) An owner of the applicant;
- (b) An officer of the applicant;
- (c) A director of the applicant; or
- (d) A full-time employee of the applicant.

(3)(a) If a person designated by an entity as provided in subsection (2) of this section leaves the employment or no longer maintains an interest in that entity, the entity shall designate another person who either:

1. Has passed the examination; or
 2. Successfully passes the examination within thirty (30) days.
- (b) Failure to have a designee that has passed the examination shall render the licensee no longer qualified to be licensed.

(4) Upon application by a testing agency, a national code group, or by an applicant for certification, the department may recognize another examination as equivalent to an examination administered by an approved examination provider. The person or group submitting the examination shall demonstrate that the examination covers the same material and requires the same level of knowledge as the approved examinations.

Section 6. Appeal Procedure. (1) An applicant denied a license may appeal the decision to the Commissioner of the Department of Housing, Buildings and Construction. The applicant shall submit written notice of the appeal to the Department of Housing, Buildings, and Construction within ten (10) business days of receiving notice that the license application has been denied.

(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the Commissioner of the Department of Housing, Buildings, and Construction.

Section 7. Proof of Insurance. (1) An applicant for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate show-

ing general liability insurance coverage of at least \$500,000 issued by an insurer authorized to do business in Kentucky and naming the Department of Housing, Buildings, and Construction, Electrical Licensing, as the certificate holder.

(2) The applicant shall provide proof of workers' compensation insurance by providing:

(a) An insurance certificate from an approved insurance provider with the Kentucky Department of Insurance; or

(b) A notarized statement that the applicant is not required to obtain workers' compensation coverage and the reason why the coverage is not required.

(3) Electrical contractors shall require their liability and workers' compensation insurers to provide notice to the Department of Housing, Buildings, and Construction if:

- (a) A policy is cancelled, terminated, or not renewed; or
- (b) The policy limits are lowered.

(4) Electrical contractors shall advise the Department of Housing, Buildings, and Construction of a:

- (a) Change in their insurance coverage, including cancellation or termination of any policy;
- (b) Change in the insurer providing the coverage; or
- (c) Changed circumstances that require the contractor to obtain coverage.

Section 8. Renewal Requirements. (1) A license shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships, or business entities without a birth month, the renewal month shall be the month the license was issued.

(2)[(a)] The Department of Housing, Buildings, and Construction shall issue an initial license to an applicant for a period of up to twenty-three (23) months and shall charge a pro rata initial license fee to reflect the actual term of the initial license. An initial license shall not ~~[No initial license will]~~ be issued for less than a twelve (12) month period.

(3) A licensee shall apply for license renewal on Electrical License Renewal Application, Form BCE-EL-5. ~~[BCE-EL-5: (b) An initial license shall not.]~~

Section 9. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform electrical work requiring a license if the license is inactive.

(2) An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the Department of Housing, Buildings, and Construction of compliance with workers' compensation laws.

(3) A certified electrical inspector may be licensed as an electrical contractor, master electrician, or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.

(4) Performing electrical work that requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form BCE-EL-2, "Electrical Contractor's License Application", March, 2007 edition;

(b) Form BCE-EL-3, "Electrical License Application", May 2011 ~~[August 2009]~~ edition;

(c) Form BCE-EL-4, "Reciprocity Electrical License Application", August 2009 edition; and

(d) Form BCE-EL-5, "Electrical License Renewal Application", August 2009 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, Electrical Licensing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY T. LUNS福德, Commissioner

VOLUME 38, NUMBER 2 – AUGUST 1, 2011

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: May 9, 2011

FILED WITH LRC: May 10, 2011 at 9 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365 ext. 144, fax (502) 573-1057.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (As Amended at ARRS, July 12, 2011)

815 KAR 35:100. Electrical continuing education procedure.

RELATES TO: KRS Chapter 13B, 227A.100(7), (9)

STATUTORY AUTHORITY: KRS 227A.040(8), 227A.100(7)

NECESSITY, FUNCTION AND CONFORMITY: KRS 227A.040(8) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures to govern the licensure of electricians and electrical contractors. KRS 227A.100(7) requires the department to promulgate an administrative regulation to establish requirements relating to continuing education, including program content and qualifications of providers. This administrative regulation establishes the continuing education procedures for master electricians, electricians, and electrical contractors.

Section 1. Proof of Continuing Education Requirements. (1) Prior to license renewal, each licensee shall present proof on Form BCE-EL-1, Electrical License Renewal Proof of Continuing Education, or its electronic equivalent, of completion of at least six (6) hours of continuing education for each license held during the immediately preceding twelve (12) months.

(2) The proof shall be signed by the licensee and certified by the provider of the continuing education course.

Section 2. Continuing Education Course Requirements. (1) Continuing education for master electrician and electrician licenses shall relate to the electrical code incorporated by reference into 815 KAR 7:120, Kentucky Building Code; 815 KAR 7:125, Kentucky Residential Code; and 815 KAR 10:060, Standards of Safety; or to safety practices and procedures.

(2) Continuing education for electrical contractors shall relate to business and employment law, business practices, and safety practices and procedures.

(3) A maximum of two (2) of the six (6) hours of continuing education required for electricians, master electricians, and electrical contractors may be safety practices and procedures.

Section 3. Continuing Education Providers. (1) Continuing education shall be provided by:

(a) One (1) of the organizations listed in KRS 227A.100(7); or

(b) An individual or organization recommended by the Electrical Advisory Committee and approved by the Department of Housing, Buildings and Construction pursuant to subsection (7) of this section.

(2) Each continuing education course provider shall register with the department. Registration shall be valid for two (2) years from the date of issuance.

(3) To register, an applicant shall complete and submit Form BCE-EL-8, Electrical License Continuing Education Provider Registration.

(4) The department shall maintain a list of approved continuing education providers.

(5) A course provider shall report to the department any change in registration information within thirty (30) days of the change taking effect.

(6) In addition to the provider registration requirements, an applicant for certification as a continuing education provider shall submit the following information to the Department of Housing, Buildings and Construction:

(a) Syllabus of courses to be offered;

(b) Times and dates that courses will be offered;

(c) Location where courses will be offered;

(d) Availability of courses to the general public;

(e) Fees to be charged for the courses;

(f) Identity and qualifications of teachers; and

(g) Attendance verification procedures.

(7) The Department of Housing, Buildings and Construction shall certify the applicant if:

(a) The applicant can reliably provide continuing education;

(b) The applicant has verified that an accurate certification of attendance at all courses offered shall be provided to the department.[]

1. If provided by e-mail or fax, certification shall be received by the department within five (5) business days of completion of the class; or[]

2. If submitted by first class mail, certification shall be post-marked within five (5) business days of completion of the class; and

(c) All courses offered by the applicant shall be taught by a person with sufficient technical knowledge of the subject matter.

(8) Certification shall be denied, suspended, or revoked if the Department of Housing, Buildings and Construction determines, after an opportunity to be heard pursuant to KRS Chapter 13B, that the individual or organization no longer meets the requirements of this section.

(9) A continuing education provider shall notify the Department of Housing, Buildings and Construction of all courses to be offered at least thirty (30) days prior to the courses' scheduled dates.

(a) The notice shall include the date, time, location, and topic of the course and the fee to be charged, if any.

(b) The Department of Housing, Buildings and Construction shall maintain a list of all courses to be offered and shall make the list available to the public.

(10) For classes open to the public, continuing education providers shall not establish a minimum number of attendees required to hold a class.

(11)(a) Except as provided in paragraph (b) of this subsection, a provider shall notify the Department of Housing, Buildings and Construction, as well as those who have registered to attend, a minimum of one (1) week prior to the cancellation of any class.

(b) A class may be cancelled within one (1) week of the scheduled class date if necessary due to a natural disaster or inclement weather. Reasonable steps shall be taken to inform the registered attendees and the department of the cancellation and reason for the cancellation.

(12) Upon written request by a licensee, the Department of Housing, Buildings and Construction shall recognize continuing education credit, courses attended in another state if the material covered complies with Section 2 of this administrative regulation.

Section 4. Continuing Education Provider Revocation. The department shall revoke continuing educator provider approval if the department determines that a provider:

(1) Obtains, or attempts to obtain, registration or course approval through fraud, false statements, or misrepresentation;

(2) Does not provide complete and accurate information in either the initial registration or in notification of changes to information;

(3) Does not offer one or more classes annually;

(4) Advertises a continuing education course as being approved by the department prior to receiving approval;

(5) Fails to maintain continuing education provider qualifications; or

(6) Fails to comply with the requirements of Section 3 of this administrative regulation.

Section 5. Certified Electrical Inspectors. A certified electrical inspector holding an inactive master electrician or electrician license may apply six (6) hours of the continuing education required by 815 KAR 35:015, Section 8(1), to the required six (6) hours for a master electrician or electrician's license if the hours are not used to satisfy the continuing education requirement for electrical contractors.

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Section 6. ~~[Section 5.]~~ Inactive License. As a condition of reactivation of an inactive license, a licensee shall present proof of completion of at least six (6) hours of continuing education from the prior twelve (12) months. Prior to activating an inactive license, the license holder shall provide proof that the license holder has completed six (6) hours of continuing education for each year the license has been inactive.

Section 7. ~~[Section 6.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Electrical License Renewal Proof of Continuing Education", Form BCE-EL-1, December 2010; and

(b) "Electrical License Continuing Education Provider Registration", Form BCE-EL-8, December 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort [Frankfort], Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY T. LUNSFORD, COMMISSIONER

ROBERT D VANCE, SECRETARY

APPROVED BY AGENCY: May 9, 2011

FILED WITH LRC: May 11, 2011 at 8 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365 ext. 144, fax (502) 573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Administration and Financial Management (As Amended at ARRS, July 12, 2011)

902 KAR 8:160. Local health department operations requirements.

RELATES TO: KRS 211.1751(1), 211.170, 211.180, 212.230, 212.240, 212.245, 212.890

STATUTORY AUTHORITY: KRS 194A.050, 211.170, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; or to comply with federal law. KRS 211.170(1) and (3) require the Cabinet for Health Services to establish policies and standards of operation for the local health departments of Kentucky. This administrative regulation establishes minimum administrative and operational requirements for Kentucky's local [public] health departments.

Section 1. Definitions. (1) "Agency" is defined by[at] KRS 211.1751(1).

(2) "Board" means the statutorily mandated governing body for local health departments in Kentucky.

(3) "Public health department director" ["Agency director"] means the administrative officer of the agency. [(3) "Board" means the statutorily mandated governing body for local health departments in Kentucky.]

Section 2. Policies and Procedures. Internal policies and procedures for operations established by an agency shall comply with procedures and policies developed by the cabinet, in accordance with KRS 211.170(1), (2), (3), (4), and (6).

Section 3. Conflict of Interests. (1) An agency employee shall avoid situations that are or appear to be a conflict of interest.

(2) An agency employee shall not:

(a) Sell, recommend, or promote a specific brand of product or equipment which is subject to inspection or evaluation by an agen-

cy or its employees;

(b) Recommend or express to the public a preference for health-related professional services or products of an individual or firm;

(c) Be engaged in a business or have financial interests which affect the employee's professional relationship with the agency or cabinet or impair the effectiveness of the employee;

(d) Enter into a contract with or hold an additional full-time or part-time position in another agency unless approved by the cabinet in writing;

(e) Be an owner or part owner of a business that contracts with or is regulated by the agency without prior review [unless approved] by the cabinet; or

(f) Accept appointment or be employed as a dog warden.

(3) An agency employee shall not conduct the following services for the employee [himself], the employee's [his] spouse, parent, child, brother or sister or the spouse of either of them, grandparent, grandchild, mother or father-in-law, daughter or son-in-law:

(a) Determine eligibility for an agency service;

(b) Issue women, infants, and children food instruments or prescribe food packages; or

(c) Conduct an inspection or monitor compliance with the agency's medical or environmental standards and administrative regulations.

(4) An employee or former employee shall not receive severance pay in cash, benefits, goods, or services.

Section 4. Employee Tuition Assistance. (1) A public health department director [An agency director] may approve payment of tuition for a regular full-time or designated part-time 100-hour employee to attend a course of study provided by a college or university, correspondence school, vocational school, or other training institution, if the coursework is related to:

(a) The work of the agency; and

(b) The employee's current position; or

(c) An agency position to which the employee can reasonably aspire.

(2) The public health department director [agency director] may approve tuition assistance from the agency budget for a nonrelated course if:

(a) The course is a requirement for a degree or certification program; and

(b) The degree is determined to be necessary to the function and purpose of the agency.

(3) The board may approve a tuition assistance request to be used by a public health department director [an agency director] for the director's [his or her] course of study.

(4) Restricted funds used for payment of tuition assistance shall receive prior written approval from the funding authority.

(5) An employee approved to receive tuition assistance shall repay to the agency the tuition paid on the employee's [his] behalf if the employee [he]:

(a) Fails to provide the agency, or board, evidence of satisfactory completion of the training within thirty (30) working days after scheduled completion; or

(b) Receives a grade of:

1. Less than "C" in an undergraduate course;

2. Less than "B" in a graduate course;

3. "F" in a pass/fail course;

4. "U" in a satisfactory/unsatisfactory course;

5. "I" for incomplete; or

6. Fails to complete the training, regardless of cause, without prior approval of the public health department director [agency director] or board.

(6) The employee shall maintain paid full-time [full-time] or 100-hour work status for the agency while taking courses.

(7) An employee shall continue employment with the agency for a period of at least one (1) month employment for each semester hour or equivalent of tuition paid by the agency, unless directed by the agency to undertake the course work.

(8) The employee [in his/her] [his or her] [discretion] may use accumulated annual leave or compensatory time as necessary to attend classes if requested by the employee.

(9) The maximum allowable course hours an employee may

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take in a semester shall be determined by the public health department director as provided in their internal control manual [are:

- (a) Six (6) graduate hours;
- (b) Nine (9) undergraduate hours;
- (c) Nine (9) classroom hours per week for vocational school training; or]
- (d) Three (3) hours for a summer session, intersession, or minisemester.]
- (10) If approved, tuition assistance shall be granted for:
 - (a) Tuition and routine registration fees;
 - (b) Laboratory and examination fees; and
 - (c) Required textbooks.
- (11) Tuition assistance shall not be granted for:
 - (a) Late registration;
 - (b) Graduation fees;
 - (c) Parking or transportation;
 - (d) Records or transcripts;
 - (e) Supplies;
 - (f) Assessments; or
 - (g) Courses taken prior to approval by the agency.
- (12) Tuition and fees shall be paid directly to the college or training institution or reimbursed to the employee.
- (13) An agency shall maintain records, subject to audit, to ensure the proper administration of the employee tuition assistance program.

Section 5. Educational Leave Program. (1) The public health department director [agency director] may approve educational leave for a regular full-time or designated part-time 100-hour employee.

(2) Educational leave may be approved on a full-time or part-time basis with or without pay for periods not to exceed two (2) years (fifty-two (52) continuous pay periods).

(3) Educational leave shall be for the purpose of coursework or training related to the current or[and/or] future duties and responsibilities of the employee.

(4) Payment for educational leave shall come from the agency budget.

(5) Restricted funds used for payment of educational leave shall receive prior written approval from the funding authority.

(6) Educational leave payment shall not be granted for:

- (a) Late registration fees;
- (b) Graduation fees;
- (c) Parking or transportation;
- (d) Records or transcripts;
- (e) Supplies;
- (f) Assessments; or
- (g) Courses taken prior to approval by the agency.

(7) To participate in educational leave with pay, the employee shall:

- (a) Be a regular full-time or designated part-time 100 hours employee;
- (b) Enroll in an area of study with a clear and direct relationship to the work of the agency;
- (c) Be formally accepted by the educational institution; and
- (d) Be approved for educational leave by the agency.

(8) An agency approving an employee for educational leave with pay shall:

(a) Place the employee on full- or part-time educational leave at the employee's regular rate of pay; and

(b) Restore the employee to the position the employee [he] formerly held, to a position of like status and pay, or promote the employee to a higher position upon the employee's successful completion of educational leave; or

(c) Cancel the employee's educational leave and restore the employee to the same or like position if the academic standing of the employee falls below the requirement of Section 4(5) of this administrative regulation.

(9) An employee on full-time leave with pay shall be a full-time student as defined by the institution in which the employee is enrolled.

(10) After satisfactorily completing the educational leave the employee shall:

(a) Continue employment with the agency:

- 1. At least one (1) day for each full day of leave used if tuition and other fees are not paid by the agency; or

2. At least one and one-half (1 1/2) days for each full day of leave used if tuition and other fees are paid by the agency; or

(b) If the employee [he] terminates employment with the agency, repay the agency at the rate of 100 percent of the employee's [his] daily pay or an average of the employee's [his] daily pay during leave, multiplied by the number of obligated days remaining; and

(c) Forfeit all leave rights if the employee [he] accepts public or institutional financial assistance other than that provided by the agency, unless the agency has granted prior approval.

(11) An agency directing an employee to be placed on full-time or part-time educational leave shall:

(a) Pay the following:

- 1. The employee's regular rate of pay;
- 2. Tuition and routine registration fees;
- 3. Required textbooks and course supplies;
- 4. Laboratory and examination fees;
- 5. Dormitory or housing costs; and
- 6. Transportation costs to and from the school once per semester;

(b) Restore the employee to the position the employee [he] formerly held, to a position of like status and pay, or promote the employee to a higher position, if qualified, following completion of educational leave; and

(c) Cancel the employee's educational leave and restore the employee to the same or like position if the academic standing of the employee falls below the requirement of Section 4(5) of this administrative regulation.

(12) An employee approved for educational leave without pay shall not incur any service obligation to the agency.

(13) An agency shall maintain an educational leave file on each employee requesting or receiving educational leave.

Section 6. Employment of Relatives. (1) Except as provided in subsections (3) and (4) of this section, an agency shall not employ an individual that is immediately related to the public health department director [agency director] or to an immediate supervisor.

(2) An individual immediately related to the public health department director [agency director] or immediate supervisor shall include:

- (a) Spouse;
- (b) Parent;
- (c) Child;
- (d) Brother or sister or the spouse of either of them;
- (e) Grandparent;
- (f) Grandchild;
- (g) Mother- or father-in-law; or
- (h) Daughter- or son-in-law.

(3) If a current employee is in a supervisory relationship with an immediate relative, the employee shall be transferred to another site within the agency with the same job duties, or assigned a different supervisor.

(4) The cabinet may approve the employment of an immediate relative in a case determined to be in the public interest and approved by the board.

Section 7. Agency Facility Ownership. (1) An agency shall not pay rent to the fiscal court if the facility is owned by the fiscal court and was constructed with state funds, agency funds, or local public health tax appropriations.

(2) The agency shall be permitted to remain in the facility owned by the fiscal court rent-free for a minimum of twenty (20) years or for the useful life of the facility, whichever is longer.

Section 8. Capital Construction Requirements. (1) An agency requesting state capital construction funds from the cabinet for new construction, building expansion or renovation shall:

(a) Submit a letter of request for the[such] project to the cabinet and if requested, submit one (1) copy of the plans and specifications for the project to the cabinet for review and approval;

(b) Submit one (1) copy of the plans and specifications, if ap-

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appropriate, to the Department of Housing, Buildings, and Construction to assure compliance with building and safety codes;

(c) Provide written assurance to the cabinet that the facility will be constructed in accordance with approved plans and specifications;

(d) Provide written assurance to the cabinet that a cost overrun or financial commitment above the state grant will be paid by the agency;

(e) Submit architectural and contractor agreements or contracts to the cabinet for review prior to implementation;

(f) Provide written assurance to the cabinet that the agency will be allowed to use the facility for a minimum of twenty (20) years rent free or for the useful life of the facility, whichever is longer;

(g) Provide written documentation to the cabinet that the board has approved the awarding of the architectural and contractor agreements;

(h) Provide quarterly progress reports to the cabinet on the status of the project;

(i) Submit a closing report upon completion or close-out of the project; and

(j) Maintain a comprehensive construction file for the useful life of the building which includes:

1. Documents and correspondence relative to the project;
2. Written contracts or agreements; and
3. Progress reports, and financial transactions.

(2) An agency's facilities, whether owned or leased by the agency, shall comply with applicable state and local building, fire and safety codes, and ordinances.

(3) Prior to construction or modification of an x-ray room, the plans and specifications for the construction or modification shall be evaluated by a qualified expert. The Radiation Health and Toxic Agents Branch of the department shall be contacted regarding compliance requirements. ~~[(4) The cabinet shall not provide more than fifty (50) percent of the total amount of funds necessary for the agency's construction project.]~~

Section 9. Agency Insurance Requirements. (1) An agency shall maintain current replacement value insurance on:

- (a) A building owned by the agency or board; and
- (b) On the contents of both owned and leased facilities.

(2) An agency shall maintain:

- (a) Public officials' liability insurance for board members;
- (b) General liability insurance for agency staff; and

(c) Fiduciary bonding on staff and board members who handle public funds.

(3) Contracted providers shall attest to current liability coverage under the terms of their contract with the agency.

(4) Contractors of capital construction projects shall:

- (a) Post bid and performance bonds; and
- (b) Carry appropriate liability insurance at levels approved by the board, to cover their contracted responsibilities.

Section 10. Quality Assurance. (1) An agency shall establish a process approved by the cabinet to assure/improve the quality of services provided.

(2) The quality assurance/improvement process shall include:

(a) An assessment of public health services provided by the agency;

(b) A review of agency [medical] records;

(c) Needs assessment data (satisfaction surveys, community assessment tools etc...) ~~[Community satisfaction surveys]~~ which address the community, patient, and provider perspectives; and

(d) A review of administrative data and outcomes based on a cabinet approved community plan.

(3) The findings, interventions implemented, and recommendations to assure continued improvement shall be provided to the board and cabinet.

Section 11. Days and Hours of Operation. (1) An agency shall post the hours of operation near the main entrance to the agency. The posting shall be plainly visible from the outside.

(2) Except in an emergency situation, an agency shall publicize in advance if the agency is to be closed during regular working hours. The notice shall:

(a) Be prominently displayed at the main entrance to the agency;

(b) Indicate where and how staff may be reached; and

(c) Indicate when offices are expected to reopen.

Section 12. Grievance Policies. (1) An agency shall establish an internal grievance procedure to assure the timely and equitable resolution of a complaint alleging discrimination, unfair, or inappropriate treatment of a member of the public ~~[or a patient]~~.

(2) An agency grievance procedure shall:

(a) Protect the rights of the complainant;

(b) Meet due process requirements;

(c) Assure compliance with applicable federal laws and **administrative** regulations governing equal opportunity;

(d) Designate an employee to coordinate the grievance process; and

(e) Provide for methods of accepting written, verbal, or anonymous complaints.

(3) A complaint shall be filed within sixty (60) days of the alleged incident.

(4) An agency shall conduct an investigation of the complaint to afford interested or affected parties an opportunity to submit evidence or testimony relevant to the complaint.

(5) A written description of the investigation and a description of the resolution shall be issued and a copy forwarded to the complainant and the agency director no later than forty-five (45) calendar days after receipt of the complaint.

(6) An agency shall maintain files and records relating to complaints filed.

(7) The complainant dissatisfied with the resolution may request reconsideration, within thirty (30) calendar days, by the **public health department director [agency director]** or the board.

(8) The complaint shall continue through the agency's grievance process even if the complainant is pursuing other state or federal remedies, unless otherwise advised by legal **counsel[council]**.

WILLIAM D. HACKER, M.D., FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: May 11, 2011

FILED WITH LRC: May 12, 2011 at 3 p.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Administration and Financial Management

(As Amended at ARRS, July 12, 2011)

902 KAR 8:165. Local health department accounting/auditing requirements.

RELATES TO: 211.180, 212.230, 212.240, 212.245, 212.890

STATUTORY AUTHORITY: KRS 194A.050, 211.170, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: **KRS**

194A.050 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; or to comply with federal law. KRS 211.170(1) and (3) require the Department for Public Health to establish policies and standards of operation for Kentucky's local ~~[public]~~ health departments. This administrative regulation establishes minimum accounting and auditing requirements for Kentucky's local ~~[public]~~ health departments.

Section 1. Definitions. (1) "GAAP" means generally-accepted accounting principles.

(2) "OMB" means the U.S. Office of Management and Budget.

Section 2. Accounting and Auditing Requirements. (1)(a) All

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recording by local health departments in the books of account and all financial reporting shall be performed in accordance with:

1. This administrative regulation;
2. Cash or modified accrual accounting procedures as approved by the Department for Public Health;
3. 2 C.F.R., PART 225~~OMB Circular A-87~~~~[- incorporated by reference]; and~~
4. GAAP.

(b) If GAAP conflicts with policies established in this administrative regulation, the local health department shall follow policies established in this administrative regulation.

(2) Each local health department shall be audited by a certified public accountant after the close of every fiscal year. The nature of audit services required is as follows:

(a) The objectives of the audit are to assure that receipts and expenditures have been properly authorized, recorded, and reported.

(b) The following items shall be audited:

1. Federal, state, and local funds and fees received and expended; and
2. Books, accounts, and other financial documentation, by cost center.

(c) An OMB Circular A-133, incorporated by reference, audit shall be performed to determine whether the financial statements present fairly the financial position and results of operations in accordance with the appropriate basis of accounting and in compliance with federal and state laws and administrative regulations.

(d) An audit shall be conducted in accordance with:

1. GAAP;
2. "Government Auditing Standards" and the provisions of OMB Circular A-133; and
3. A-133 Compliance Supplement.

(e) The following reports, if applicable, shall be provided to the local health department and the Department for Public Health:

1. Auditor's opinion on the financial statements and on the schedule of expenditures of federal awards;
2. Statement of assets, liabilities, and fund balance;
3. Statement of revenues and expenditures by cost center;
4. Statement of changes in fund balance;
5. Comparative schedule of budgeted to actual operating revenues and expenditures by cost center;
6. Audit adjustments, or a statement that an adjustment is not required;
7. Schedule of expenditures of federal awards, as required by OMB Circular A-133;
8. Report on compliance and on internal control over financial reporting based on an audit of financial statements performed in accordance with "Government Auditing Standards";
9. Single audit report on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133;
10. Schedule of findings and questioned costs, in accordance with OMB Circular A-133, including the status of an uncorrected finding from a prior audit;
11. A summary of the auditor's results, in accordance with OMB Circular A-133;
12. Management's corrective action plan; and
13. Management letter:
 - a. Describing an internal control or compliance deficiency not a significant deficiency~~reportable condition~~; and
 - b. Referenced in the auditor's report on internal control and compliance.

(3) The reports described in subsection (2)(e) of this section shall be presented as prescribed by the American Institute of Certified Public Accountants Audit Guide "Government Auditing Standards and Circular A-133 Audits"~~[American Institute of Certified Public Accountants Statement of Position 98-3, Audits of States, Local Governments, and Not-for-Profit Organizations Receiving Federal Awards, and subsequent amendments]~~, except that a written management letter shall be~~is~~ required when internal control and compliance deficiencies are determined not to be reportable conditions.

(4)(a) A report shall contain all significant deficiencies~~reportable conditions~~ with those significant deficiencies

~~that reportable conditions which~~ are considered material weaknesses being appropriately segregated and identified.

(b) Any other matters conveyed to management shall be in writing in the management letter, and shall be discussed during the exit conference.

(c) Significant deficiencies~~Reportable conditions~~ presented as part of the reports shall be well developed and shall consist of the following components, to the extent practicable:

- 1.~~(a)~~ A statement of deficiency~~condition~~;
- 2.~~(b)~~ The criteria for the significant deficiencies~~reportable condition~~;

3.~~(c)~~ The cause of the deficiency~~condition~~;

4.~~(d)~~ The effect of the deficiency~~condition~~;

5.~~(e)~~ A recommendation for correction; and

6.~~(f)~~ Management's response and corrective action plan.

(5) If applicable, the audit firm shall report on:

- (a) Uncorrected comments reported in the preceding audit;
- (b) The status of prior-year questioned costs, whether resolved with the federal grantor or unresolved; and

(c) Questioned costs from the preceding audit and any unresolved questioned costs from prior years.

(6) The audit firm shall report immediately, in writing, to the Commissioner of the Department for Public Health, any fraud, irregularity, illegal act, or indication of an illegal act that comes to its attention during the term of the contract.

(7) A vendor selected to conduct a local health department audit shall meet criteria provided in "Auditor Selection Guidance" instructions~~of the Department for Public Health~~.

Section 3. Internal Control Procedures. (1) A local health department shall have written internal control procedures that shall be followed by the local health department. The public health department director~~chief executive officer~~, or other staff shall notify the Department for Public Health immediately, if evidence of possible fraud or mismanagement is discovered.

(2) A local health department shall use an automated financial accounting system approved by the Department for Public Health.

(3) Local health departments shall submit all financial reports to the Department for Public Health in accordance with the accounting instructions and time frames distributed to all local health departments.

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

(a) "Government Auditing Standards and Circular A-133 Audits", April 26, 2010;~~[2 C.F.R., PART 225] OMB Circular A-87 [Cost Principles for State, Local and Indian Tribes Government, edition 2011; and]~~

(b) "OMB Circular A-133 - Audits of States, Local Governments and Nonprofit Organizations," edition 2007;

(c) "OMB Circular A-133 Compliance Supplement", June 2010; and

(d) "Auditor Selection Guidance", May 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Administration and Financial~~Resource~~, Management, Budget Branch, Local Health Budget Section, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, M.D., FAAP, CPE, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: May 11, 2011

FILED WITH LRC: May 12, 2011 at 3 p.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(As Amended at ARRS, July 12, 2011)

902 KAR 8:170. Local health department financial management requirements.

RELATES TO: KRS 41.240, 211.170, 211.180(1), 212.230, 212.240, 212.245, 212.890, 424.110-424.150

STATUTORY AUTHORITY: KRS 194A.050(1), 211.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; or to comply with federal law. KRS 211.170(1) and (3) require the Department for Public Health to establish policies and standards of operation for Kentucky's local [public] health departments. This administrative regulation establishes minimum fiscal and financial management requirements for Kentucky's county and district local [public] health departments and for all other classes of local health departments, except if a specific Kentucky revised statute requires a more stringent minimum requirement.

Section 1. Definitions. (1) ~~["Public health department director"]~~ [Chief administrative officer"] means:

(a) ~~The administrative or health officer of a county or district health department;~~

(b) ~~The administrative assistant of a county health department that does not have a health officer;~~

(c) ~~The director of a district health department that does not have a health officer;~~

(d) ~~The district director of health of an independent district department of health; or~~

(e) ~~The commissioner of an urban-county department of health or of a health department serving a county with a city of the first class;~~

(2) "Fee-for-service program" means a program in which service fees, excluding program administration fees, are greater than fifty (50) percent of funding.

(2)(3) "Local support" means local health department financial support:

(a) Including:

1. Unrestricted receipts from a local government agency or special district;

2. Receipts from the public health taxing district;

3. Nonfederal receipts from a contract with a board of education; and

4. An unrestricted donation from another source; and

(b) Excluding funds from the Undesignated and Restricted fund balances.

(3)(4) "OMB" means the federal Office of [Budget and] Management and Budget.

(4) "Public health department director" means:

(a) The administrative or health officer of a county or district health department;

(b) The administrative assistant of a county health department that does not have a health officer;

(c) The director of a district health department that does not have a health officer;

(d) The district director of health of an independent district department of health; or

(e) The commissioner of an urban-county department of health or of a health department serving a county with a city of the first class.

(5) "Restricted fund balance" means the portion of a local health department's total fund balance that is restricted by the Department for Public Health for use for a specific program's expenses or other items of expense.

(6) "Undesignated fund balance" means the portion of a local health department's total fund balance that is not restricted by the Department for Public Health for a specific program's expenses or

other items of expense.

Section 2. Budgeting Requirements. (1) Each local health department shall prepare a fiscal year budget in accordance with annual budgeting instructions developed and distributed by the Department for Public Health.

(2) Each local health department shall have a balanced budget in which receipts at least equal expenditures. Each local health department shall operate within its approved budgets.

(3) Each local health department annual budget shall be approved by both the governing local board of health and the Department for Public Health.

(4)(a) Each local health department shall be responsible for making budget changes necessitated by:

1. Changes in financial status;

2. Changes in project status; or

3. The addition or deletion of a new project.

(b) Changes shall:

1. Be subject to review and approval by the Department for Public Health; and

2. Require a corresponding change in plans if required by the Department for Public Health.

(5) Actual capital expenditures of local health departments for furniture and equipment, data processing equipment, and vehicles shall not exceed the approved budgeted amount without prior [notification and] approval by the governing board of health [Department for Public Health].

(6) Actual use of a local health department's undesignated fund balance in excess of the amount included in the approved budget shall be approved by the governing board of health [and the Department for Public Health] and shall be used solely for the operation and maintenance of [the] local health departments [department].

(7) An actual deficit in a local health department's financial operations for the fiscal year wherein cash expenditures and payroll related liabilities exceed available cash receipts, including approved use of the unrestricted fund balance, shall not be allowable.

(8)(a) If the Department for Public Health determines that a local health department is receiving fewer receipts than are budgeted or is making expenditures in excess of the approved budget or, if through any other circumstances a deficit condition is probable at the end of the fiscal year, the Department for Public Health shall notify the local health department in writing of the determination.

(b) Within fifteen (15) working days of receipt of the notification, the local health department shall inform the Department for Public Health in writing of the reasons that the determination may be in error.

(c) If the reasons and corrective actions listed by the local health department are not sufficient in the department's opinion to prevent a deficit condition from occurring at the end of the fiscal year, the Department for Public Health shall direct the local health department to institute a hiring freeze on employees, a freeze on meritorious, promotional, or other salary increments, a reduction in contractual and other expenditure categories, or other action necessary to correct the deficit situation.

Section 3. Use of Receipts. A local health department may, with the approval of the Department for Public Health, transfer funds from a restricted to an unrestricted account.

(1) Receipts from any source shall be used in accordance with laws, policies, administrative regulations, and contracts governing the use of the receipts. Receipts shall be used only for the operation and maintenance of the health department for necessary, reasonable, and proper purposes that protect and improve the health of the people of the Commonwealth.

(2) The minimum acceptable level of local support shall be determined annually by the Commissioner of the Department for Public Health.

(3) The state allotment to a local health department shall be adjusted in the following circumstances:

(a) The local health department decreases its budgeted amount of local support below the minimum acceptable level. The state allotment shall be decreased by the same percentage in the

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year of the decrease.

(b) The local health department receives less local financial support than the required level. The state allotment shall be decreased by a percentage equal to the percentage that the actual local support was less than the required local support. The decrease shall apply to the fiscal year following the shortage.

(c) The local health department accumulates an unrestricted fund balance, as of June 30 of a fiscal year, in excess of thirty (30) percent of that year's expenditures for non fee programs plus forty (40) percent of that year's expenditures for fee for service programs, or \$100,000 [\$80,000], whichever is greater. The local health department shall submit, to the Department of Public Health, a written plan of use for the amount of the excess. If approved, the funds shall be placed into a local restricted fund to be used solely for the purpose(s) approved.

(4) Fees.

(a)1. A request from a local health department to change patient fees to either a sliding or nominal fee basis[;] shall be sent to the Department for Public Health for approval.

2. A request shall include documentation of the proposed full amount of the fee, the estimated annual cost of the service and the estimated net fee income for the service.

3. Charges for medical supplies and equipment may be requested as a percentage of the acquisition cost of the supply or equipment item or may be requested as charges for individual items[;]

(b) Patient fees charged to self-pay patients, if approved by the Department for Public Health, may be charged on a sliding fee basis, in accordance with the following formula: Fees for self-pay patients with a household income up to 250 percent of the most recent poverty guidelines, published annually by the Department of Health and Human Services, shall be based on a schedule of discounts from 101 to 250 percent of poverty, with full charge assessed for individuals above 250 percent of poverty and no charge for individuals below 101 percent of poverty; except:

1. A nominal fee up to five (5) dollars shall be charged for communicable disease services specified by the Department for Public Health; and

2. A charge shall not be made to school age children at a school-based clinic if requested by the local health department and authorized by the Department for Public Health.

a. Inability to pay the assessed fee shall not be a barrier to services.

b. A policy of a local health department that may result in referral of services due to nonpayment of fees shall be approved by the Department for Public Health.

c. A local health department shall bill third-party payors for covered services provided to individuals.

(c) If a third-party governmental payor is billed for services rendered to an eligible patient, the regulations of the third-party payor shall be followed for the part of the fee charged directly to the patient[;]

(d) A Medicaid "spend down" patient shall be billed at 100 percent of charges[;]

(e) A patient who has health insurance coverage shall be billed at 100 percent of charges. A balance not covered by health insurance shall be charged to the patient, except that the amount charged shall not exceed the amount that a patient without health insurance coverage would be charged, using standard discounts as applied to total charges for services rendered[; and]

(f) A fee, regardless of the source of the fee or the funding of the project, shall be applied to the project that generates the fee, in accordance with income procedures of the OMB Circular A-102. A third-party cost reimbursement payment and an interim payment shall be recorded in the same project where the costs were recorded, in proportion to the expenditures of each project that were reimbursed by the third party.

(5) A matching requirement for any source of receipts shall be the sole responsibility of each local health department. [(a) A copy of proposed grants, program administration contracts or other requests for project restricted funding applied for by each local health department from agencies other than the Department for Public Health shall be sent to the Department for Public Health when submitted to the grantor agency.

~~(b) The Department for Public Health may determine the correct receipt account for the recording of funds in all cases.]~~

(6) The following policies shall be applied in closing receipt accounts for the local health department fiscal year, July 1 to June 30:

(a) Receipts earned and received during a fiscal year shall be recorded as a receipt of that fiscal year; and

(b) Receipts earned in one (1) fiscal year and received after June 30 of that fiscal year shall be recorded as new fiscal year receipts.

Section 4. Expenditure Policies. Policies and procedures required by the OMB Circular A-87 shall be followed by local health departments for expenditures in projects, regardless of the source of funds for the project. The following policies concerning allowable expenditures and their proper documentation shall be followed by local health departments:

(1) Salaries, wages, benefits, and personnel payments.

(a) Salaries and wages for only those positions specified in administrative regulations for local health departments, 902 KAR 8:040 and 902 KAR 8:060 through 902 KAR 8:140, shall be allowable. The positions and related expenditures shall be included in the approved budget or approved budget revisions of the local health department. Other salary, wage, or bonus payments shall not be allowable, unless specifically approved by the Department for Public Health. Uniform pay dates shall be determined annually by the Department for Public Health.

(b) Expenditures shall be authorized for payment of employer paid fringe benefits required or allowed by policies of the Department for Public Health.

1. Required benefits shall be payments of the single-coverage amount for health insurance and life insurance that are part of the state-negotiated plans.

2. ~~Additional allowed~~[Allowed] benefits shall be ~~determined by the public health department director and approved by the governing board of health.~~ [;

a. ~~The single-coverage amount for a dental insurance plan selected by the local health department; and~~

b. ~~A flexible spending account program with similar provisions as the plan available to state employees.]~~

3. A part-time employee or a personal services contract employee working less than 100 hours per month [~~or a personal services contract employee~~] shall not be eligible for employer-paid fringe benefits.

4. A payment to or on behalf of an employee for another direct or fringe benefit or other reason shall not be made unless:

a. Specifically allowed by this administrative regulation;

b. Approved by the Department for Public Health; and [;

c. [(e)] A disbursement for services of a contract employee or independent contractor shall be made in accordance with the terms of the written contract. A contract payment shall not be made without proper written documentation demonstrating that services have been rendered.

(2) Capital expenditures.

(a) Capital expenditures are allowable for necessary capital equipment, land, and buildings.

1. The equipment in this category shall cost more than \$5,000 and have an expected useful life of one (1) year or more.

2. The same purchasing policies apply to capital items as apply to noncapital purchases.

3. Before purchasing land or buildings or contracting for the construction or remodeling of a building, the local health department shall contact the Department for Public Health for approval [~~specific instructions on the requirements that apply to land and building purchases and construction.~~

~~(b) Proposed leases for land or buildings shall be submitted to the Department for Public Health for review before they are entered into by the local health department.~~

~~1. A local health department shall not enter into a lease until written notice of the completion of the review is received by the local health department;~~

~~2. A lease shall not exceed a one (1) year period and shall end on June 30. A lease shall not renew automatically, but may contain a renewal clause requiring written notification for a period not to~~

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exceed one (1) year.]

(b)(c) A local health department shall pay a vendor within thirty (30) working days of the receipt of the service or goods, or within thirty (30) working days of the receipt of the invoice or bill from the vendor, whichever is later, unless the health department and the vendor have agreed in writing to a longer period of time.

(c)(d) A local health department shall not donate anything of value to any individual or entity.

Section 5. Travel Policies. The public health department director ~~local health department's chief executive officer~~ shall insure that travel expenses are economical.

(1) A person who travels on official local health department business shall state on the expense voucher the purpose of each trip and shall maintain records to support claims.

(a) A local health department may provide an employee with a credit card to cover travel expenses.

(b) Due care shall be taken to assure that use of a local health department credit card is not abused.

(c) A local health department shall not provide an employee with cash to pay travel expenses. The public health department director ~~chief executive officer~~ responsible for insuring that travel reimbursement conforms to this policy shall disallow, reduce, or strike from an expense voucher any claim contrary to this administrative regulation, and may require written justification for an amount claimed.

(2) With the exceptions cited in this policy, reimbursement shall not be claimed for expenses of a person other than an employee, or other person in the official service of the local health department. Only necessary expenses of official travel shall be reimbursed.

(3) ~~The Department for Public Health shall interpret travel policy.~~

(4) Each day's vicinity travel shall be listed on a separate line on the expense voucher. The employee's supervisor or the public health department director ~~chief executive officer~~ shall monitor vicinity mileage claimed by an employee on travel status.

(4)(5) A travel voucher shall be signed and dated by the employee submitting the claim and by an employee designated in accordance with the local health department's internal control procedures. The public health department director's ~~chief executive officer's~~ travel voucher shall be signed by one (1) or more board of health members designated at a board of health meeting to perform the function.

(5)(6) The official work station of an employee shall be:

(a) The street address of the health department facility;

(b) For a health department with more than one (1) facility, the facility in which the employee most often works;

(c) Established not for an employee's purposes, but in the best interest of the health department; and

(d) Designated for a valid purpose.

(6) ~~not for allowing additional mileage reimbursement for an employee.~~

(7) A standard travel expense voucher or another voucher approved by the Department for Public Health shall be used to claim reimbursement for travel expenses.

(a) Each travel expense voucher shall show the claimant's identifying number, name, address and official workstation. The travel voucher may be typed, prepared by computer, or legibly prepared in ink.

(b) Receipts shall be stapled to the travel voucher.

(c) If leave interrupts official travel, the travel voucher shall show the dates of leave.

(7)(8) A travel expense shall not be reimbursed unless the travel was authorized in advance as follows:

(a) Travel in Kentucky and within the other forty-nine (49) states and the District of Columbia may be approved by the public health department director ~~chief executive officer~~ or designee; and

(b) Budgeted out-of-state travel funds shall be available in the amounts required for the out-of-state travel; and

(c) Attendance by employees, board of health members, or other persons in the official service of the health department at the same out-of-state meeting shall be limited to two (2) persons, unless:

1. The meeting is within the local commuting area where an overnight stay is not required; or

2. Prior approval for additional attendees has been obtained from the Department for Public Health.]

(8)(9) A health department employee traveling on health department business shall use the most economical, standard transportation available and the most direct and usually traveled routes. Expenses added by use of other transportation or routes shall be assumed by the employee.

(9)(10) Health department-owned vehicles and gasoline credit cards shall be used for health department business travel if/when available and feasible.

(a) Mileage payment shall not be claimed by an individual when health department vehicles are used.

(b) Routine personal use of a health department vehicle, including commuting use, shall not be an allowable public expenditure.

(c) An assignment of a vehicle to an employee who takes the vehicle home shall be minimal and limited to direct service personnel providing:

1. On-call direct services, or a majority of services in the field; or

2. Substantial direct services on the way to or from the employee's workstation.

(d) If a vehicle is assigned under paragraph (c) of this subsection, some personal commuting mileage may be unavoidable. A local health department shall develop a written policy to address the unavoidable personal mileage. The policy shall conform to current federal and state tax requirements for income and travel and shall be forwarded to the Department for Public Health for review and approval.

(10)(11) Mileage claims for use of privately-owned vehicles shall be disallowed if a health department vehicle was available and feasible.

(11)(12) An employee on official travel status whose private or agency automobile breaks down ~~more than forty (40) miles from the employee's official work station or home~~ may continue in travel status as approved by ~~for one (1) day if approval is obtained from~~ the public health department director ~~chief executive officer~~.

(12)(13) An employee on official travel status may be granted annual leave during which time and travel expenses shall not be reimbursed.

(a) An employee on official travel status may be continued on travel status, as approved by the public health department director, ~~for a period of seven (7) calendar days~~ if the employee becomes incapacitated due to illness or injury that qualifies as official sick leave.

(b) Medical expenses shall not be allowable travel costs.

(13)(14) On nonworking days, an employee on official travel status shall forfeit official travel status if:

(a) the employee returns to his official work station or domicile; or

(b) The nonworking day is immediately preceded by or followed by a period of annual leave.]

(14)(15) Reimbursement shall not be paid for travel between the employee's residence and official workstation, unless requested to report to work while off duty.

(15)(16) ~~For city travel, employees are encouraged to use buses and subways. Taxi fare shall be allowed when more economical transportation is not feasible.~~

(17) Commercial airline travel shall be coach or tourist class ~~[and on United States airlines]~~. Additional expense for first-class travel shall not be reimbursed.

(16)(18) Mileage for each in-state trip shall be based on the Department of Transportation's official mileage map or on the Finance and Administration Cabinet's mileage chart if available. Out-of-state mileage shall be based on ~~[Rand McNally]~~ mileage maps. If point of origin is the claimant's residence, mileage, and time shall be

paid between the residence and travel destination, or between the work station and travel destination, whichever is shorter.

(17)(19) The cost of renting ~~hiring~~ a car or other special conveyance in lieu of ordinary transportation shall be allowed only with acceptable written justification to the public health department

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~~director~~~~chief executive officer~~. Privately-owned aircraft may be used only when it is to the advantage of the health department as evidenced by a reduction in both travel costs and travel time.

~~(18)~~~~(20)~~ Lodging costs shall be the most economical available.

(a) Facilities providing special government rates or commercial rates shall be used where feasible.

(b) State-owned facilities or local health departments shall be used for meeting rooms and lodging ~~if~~~~where~~ available, practical, and economical.

~~(19)~~~~(21)~~ A claimant who attaches the hotel's or motel's pre-printed, receipted bill shall be reimbursed for the claimant's actual cost of lodging, subject to the following provisions:

(a) ~~[Except at a Kentucky state park, reimbursement in excess of the state's approved standard lodging rate per day plus taxes shall have individual written justification and prior approval from the chief executive officer. The written justification and approval shall be attached to the travel voucher.]~~

~~(b)~~ Reimbursement at a Kentucky state park shall be at the park's actual rate.

~~(b)~~~~(e)~~ The local health department shall not pay for lodging located within forty (40) miles of a claimant's residence or work station without approval of the public health department director.

~~(c)~~~~(d)~~ Lodging accommodations shared with another person or persons, not a local health department employee, shall be reimbursed at the rate for a single room. Lodging accommodations shared with other local health department employees shall be reimbursed on a pro rata basis.

~~(20)~~~~(22)~~ Mileage reimbursement for official use of privately-owned vehicles shall be at the mileage reimbursement rate determined ~~annually~~ by the Department for Public Health, ~~during the month of February. For out-of-state travel, mileage reimbursement for privately-owned vehicles shall not exceed airplane coach fare and ground transportation.]~~

~~(21)~~~~(23)~~ With receipts, actual commercial transportation costs shall be reimbursed.

~~(22)~~~~(24)~~ Reimbursement for use of privately-owned aircraft shall not exceed the cost of air coach fare or the privately-owned vehicle rate, whichever is less.

~~(23)~~~~(25)~~ A claimant using camping vehicles for lodging shall ~~[not] be reimbursed for actual expense~~~~more than ten (10) dollars per night,~~ plus parking or camping charges. A receipt for parking or camping charges shall be submitted.

~~(24)~~~~(26)~~ Actual parking, bridge, and toll charges shall be reimbursable. Toll receipts shall not be required for in-state travel by a two (2) axle vehicle.

~~(25)~~~~(27)~~ Reasonable expenses shall be allowed for baggage handling, for delivery to or from a common carrier or lodging, and for storage. Charges for overweight baggage shall be allowed if the excess was for official business.

~~(26)~~~~(28)~~ Registration fees required for admittance to meetings shall be allowed. An employee shall not claim meal expenses for meals included in the registration fee. A notation shall be made on the travel voucher that the registration fee included the cost of meals. Reimbursement for registration fees and other job-related training may be claimed as "other expenses" on the travel voucher and charged to the appropriate expenditure accounts. Receipts for job-related fees shall be attached to the travel voucher.

~~(27)~~~~(29)~~ Telephone, fax, and telegraph costs for necessary official business shall be allowed. A call to agency central offices shall be made collect, or a telephone credit card or similar telephone card shall be used.

~~(28)~~~~(30)~~ If justified, other necessary miscellaneous expenses associated with official travel may be allowed by the public health department director ~~chief executive officer~~. Receipts shall be attached to the travel voucher.

~~(29)~~~~(31)~~ Receipts shall be required for travel expenses over ten (10) dollars except for subsistence expense items.

~~(30)~~~~(32)~~ Subsistence shall include amounts determined to have been spent for meals, taxes, and tips. To be eligible for subsistence for breakfast or lunch while traveling in Kentucky, a claimant's authorized work shall require overnight accommodations at a destination more than forty (40) miles from both work station and home and shall also require absence from the work station and

home during mealtime. The claimant shall attach to his travel voucher, either his lodging receipts or other credible documentation sufficient for audit.

~~(31)~~~~(33)~~ Health department employees assigned to attend a function of an organization not under their control may be reimbursed for actual meal costs charged or arranged for by the organization. Receipts for meals shall be attached to the travel voucher.

~~(32)~~~~(34)~~ The health department may pay for subsistence and related expenses at staff meetings not to exceed four (4) meals per year for an employee. The subsistence expense shall not exceed the department's standard meal reimbursement amount.

Travel status shall not be required for staff meeting meals.

~~(33)~~~~(35)~~ Other allowable travel expense reimbursements shall consist of the following:

(a) Expenditures for the actual and reasonable cost of meals provided for district and county board of health members for official board functions, and for meals of guests~~who have been~~ invited to participate in the official business conducted at these functions;

(b) Travel expenditures of board of health members attending official board of health functions, in accordance with travel policy provisions;

(c) Travel expenditures incurred by board members other than the chairperson if approved by the chairperson or the full board;

(d) Travel expenditures incurred by the chairperson if approved by the vice-chairperson or the full board;

(e) Expenditures for meals and transportation expenses of local health department advisory committee members attending official local health department functions; and

(f) Travel expenses of a person applying for a position that will designate the applicant as the public health director for the department, or as the medical director subject to the limits applicable to local health department employees, but no more than one (1) round trip for each applicant.

~~(34)~~~~(36)~~ Expenditures shall be authorized for employee morale and welfare items, as defined in OMB circular A87, in an amount not to exceed twenty-five (25) dollars per employee per fiscal year. Receipts shall be kept for all expenditures.

~~(35)~~~~(37)~~ Expenditures shall be allowed for other items necessary for the maintenance and operation of the local health department, if the expenditure is made in accordance with statutes and administrative policies.

(a) The Department for Public Health may require a local health department to provide adequate justification for any expenditure made by the local health department.

(b) If the justification is determined to be inadequate, appropriate corrective action shall be taken by the Department for Public Health.

Section 6. Purchasing Policies. (1) Each local health department shall develop and follow formal procedures for authorizing purchases made on behalf of the local health department.

(a) These procedures shall be outlined in the local health department's written internal control procedures.

(b) Written purchase orders (service authorizations for independent contractors) and receiving reports or service verifications shall be used except for utility bills and purchase orders not in conformance with standard business practice.

(2) A local health department shall use at least the following minimum procedures for purchasing and advertisement for bids:

(a) If an expenditure for a single type of good or service not covered by contract policies is more than \$40,000 ~~[\$20,000]~~ in a fiscal year, advertisements for bids shall be made in accordance with KRS 424.110-424.150. The Department for Public Health may be contacted for assistance in determining whether an expenditure is for a single type of good or service. The local health department shall:

1. Record, in writing, and maintain for department review:

a. Price quotations received; and

b. ~~Tabulation of prices offered; and~~

e] Reasons and basis for selecting and placing the order, if the lowest price was not selected; and

2. Select the lowest and best bid;:]

(b) If the expenditure for a single type of good or service is

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more than ~~\$10,000~~ ~~[\$5,000]~~ but not greater[less] than \$40,000 ~~[\$20,000]~~ in a fiscal year, the local health department shall:

1. Obtain three (3) or more price quotations from qualified sources of supply, if available, in the department's normal trade area; and

2. Record, in writing, and maintain for department review:

a. Price quotations received; and

b. ~~[Tabulation of prices offered; and~~

c) Reason[Reasons] and basis for selecting and placing.

(c) If a single type of good or service purchased is not greater ~~[for less]~~ than \$10,000 ~~[\$5,000]~~ annually, purchases may be made by local health departments from any available source of supply as long as the maximum value for each purchase is obtained.~~[;]~~

(d) The requirements for competitive bidding shall not apply to a purchase made under the provisions of a state price contract.~~[;]~~

(e) A physician who is the health officer for more than one (1) local health department may purchase supplies and services or technical services on a cooperative purchasing basis, in accordance with the purchasing administrative regulations for local health departments.~~[; and]~~

(f) A local health department shall not enter into a lease or purchase agreement for nonprofessional services with a local health department employee or a business entity in which a local health department employee owns or controls more than five (5) percent interest, except if determined to be in the best interest of the public and approved in writing by the Department for Public Health.

Section 7. Contracting for Services. (1) A local health department shall not contract with a provider who is disbarred or suspended by a federal funding agency or by a Kentucky licensure board.

(2) This policy applies to personal services contracts for services of a professional or technical nature not available through the local health department merit system.

(3) ~~Services of a professional or technical nature [including audit services, legal services, and computerized data processing services;]~~ shall be contracted for in writing in accordance with this policy except ~~[that]:~~

~~(a) [Medical laboratory testing services do not require a written contract unless specifically directed by a Department for Public Health program;~~

~~(b) Medical services for independent contractors that do not exceed \$5,000 in a fiscal year shall not require a written contract;~~

~~(c) Nonprofessional emergency repair services of skilled tradesmen shall not require written contracts. Nonemergency services of skilled tradesmen shall be procured in accordance with purchasing policies.[;]~~

~~(b)[or (d)] Administrative or management services, financial management services, data processing services or consulting services or studies shall not be contracted for if these services can be provided to the local health department by the Department for Public Health.~~

(4) Allowable services.

(a) The service desired to be contracted for shall be an essential service which is necessary for carrying out public health services.

(b) A health department shall not use a personal services contract to substitute for establishing a ~~[full-time]~~ position in the local health department.

(c) A health department shall not contract for personal services with an individual who works 1,200 hours or more in a year, except with Department for Public Health approval.

~~(5)[At least two (2) potential providers, if available, shall be contacted before a provider is selected. Selection shall be based on the lowest and best bid.~~

~~(6)] A provider shall not be paid more than the standard hourly rate determined by the Personnel Cabinet. In determining acceptable rates of reimbursement, consideration shall be given to:~~

~~(a) The type of service to be provided;~~

~~(b) The availability of providers;~~

~~(c) The duration of services to be performed;~~

~~(d) Rates being paid to regular employees for similar services;~~

and

(e) Comparable rates being paid in the area and other parts of the state for similar services.

~~(6)[(7)] A contract shall not be entered into with a provider when a conflict of interest, real or apparent, will occur.~~

(a) Conflicts of interest fall into the following categories:

1. Constitutional;

2. Statutory;

3. Common-law; and

4. Department for Public Health policies.

(b) A contract shall not be entered into with a local health department employee or local board of health member, unless authorized in writing by the Department for Public Health, and except for medical or professional~~[medical/professional]~~ services under \$10,000 ~~[\$2000]~~.

(c) A county board of health member who is not a member of the district board of health shall not incur a conflict of interest if the district health department contracts for the county board of health member's services.

(d) A contract exceeding \$5,000 in a fiscal year shall not be entered into with a professional service corporation that has employees or governing board members as constituents, unless authorized in writing by Department for Public Health.

~~(7)[(8)] In drafting a contract, a determination shall be made concerning whether the provider of the service is an "independent contractor".~~

(a) If it is determined that the individual is not an independent contractor, the local health department shall withhold applicable federal, state, and local taxes and Social Security (FICA), and shall use a standard local health department personal services contract.

(b) If it is determined that the provider is an independent contractor, a standard local health department independent contract shall be used.

~~(8)[(9)] A contract:~~

(a) Shall not exceed one (1) year in duration and shall not contain a clause which indicates the contract is automatically renewable at the end of the fiscal year;

(b) Shall expire on or before June 30 of each fiscal year unless approved by the Department for Public Health; and

(c) May be extended into the new fiscal year by filing a formal contract extension, approved by the Department for Public Health.

~~(9)[(10)] Either party shall have the right to terminate a contract at any time upon notice to the other party.~~

(a) A local health department may add a clause to a contract requiring up to a ninety (90) day notice prior to termination.

(b) Confirmation of termination shall be in writing and a copy of the notice of termination shall be provided to the Department for Public Health.

~~(10) All local health department contracts and amendments are subject to review by the Department for Public Health. [(11) For a contract exceeding \$10,000, contract payments shall not be made to a proposed contractor until the Department for Public Health has reviewed the contract and the contract has been returned to the local health department.]~~

(a) If the Department for Public Health questions the legality, propriety, necessity, rate of compensation, or description of services, in a contract, the department shall notify the local health department of its concerns.

(b) A contract for which clarification is requested by the Department for Public Health shall be put on hold until a review has been completed.

~~(11)[(12)] A contract may be modified at any time, and [;~~

~~(a)] a proposed change shall be accomplished by formal contract amendment. [(b) If the total value of a contract plus the proposed amendment exceeds \$10,000, the amendment shall be submitted to the Department for Public Health for review prior to implementation.~~

~~(13)(a) A local health department may enter into a contract with a public or private entity to provide needed health services. A standard contract form may be used for these types of contracts.~~

~~(b) For a contract exceeding \$10,000, services may not be provided until the Department for Public Health has reviewed the contract and returned it to the local health department.~~

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Section 8. Disposition of Assets, Surplus, or Excess Property.

(1) If one (1) or more counties withdraw from a district health department, the following policies shall apply to the disposition of surplus receipts, assets, and liabilities:

(a) ~~Program [Project]~~ restricted surplus receipts or supplies, inventories or equipment shall be retained by the district health department except in the case of complete dissolution of the district. If the district is dissolved, program [project] restricted surplus receipts and items shall be equitably distributed to the county or counties proportionate to their taxing district or fiscal court participation in the district;~~;~~

(b) Unrestricted receipts, supplies, and inventories shall be divided among district and withdrawing county boards of health proportionate to the ratio of local taxing district support provided by each county in the year preceding the withdrawal; ~~[Unrestricted surplus receipts shall be divided among the district and the withdrawing county boards of health according to the ratio of local support provided by each party in the year preceding the withdrawal;]~~

~~(c) [Unrestricted supplies and inventories shall be divided among the district and the withdrawing county boards of health according to the ratio of local support provided by each party in the year preceding the withdrawal. The Department for Public Health shall approve the disposition of supplies and inventories;~~

~~(d) [~~Deficits shall be charged to the district and withdrawing county boards of health according to the ratio of local taxing district or fiscal court support provided by each party in the year preceding the withdrawal;

~~(e) [~~Equipment purchased by withdrawing county boards of health prior to the organization of the district shall be returned to the board which originally purchased the equipment;

~~(f) [~~Equipment purchased during the operation of the district shall be divided among the district and the withdrawing boards of health according to the ratio of local taxing district or fiscal court support provided by the withdrawing county boards of health to the total local taxing district or fiscal court support of the district in the year preceding the withdrawal;

1. The net inventoried book value of the equipment shall be used in determining the distribution.

2. The Department for Public Health shall approve the final disposition of equipment.

~~(g) [~~Buildings owned by the district board of health shall remain the property of the district health department. If total dissolution of a district health department occurs, buildings owned by the district shall be sold according to the policies of the Department for Public Health and the proceeds shall be added to the surplus receipts of the district to be divided according to the procedures listed in this subsection; and

~~(h) [~~The Department for Public Health shall approve the disposition of assets and liabilities.

(2) A local health department may sell or dispose of any real or personal property including intangible property which is not needed or has become unsuitable for use.

(3) The funding source shall be contacted for the exact requirements. Property purchased with restricted funds may have disposal requirements in addition to or instead of the following requirements:

(a) A written determination as to need or suitability of any property of the local health department shall be made, and shall fully describe the property; its intended use at the time of acquisition, and the reasons why it is in the public interest to dispose of the item;

(b) Surplus or excess property may be transferred, with or without compensation, to another governmental agency; or it may be sold at public auction or by sealed bids. The highest bid shall be accepted. Other methods of disposition of surplus or excess property shall not be allowable;

(c) If a local health department receives no bids for surplus or excess property, either at public auction or by sealed bid, or reasonably determines that the aggregate value of the item is less than \$500, the property may be disposed of, consistent with the public interest, in any manner determined appropriate by the local health department. A written description of the property, the me-

thod of disposal, and the amount of compensation, if any, shall be made; and

(d) Any compensation resulting from the disposal of surplus or excess property shall be deposited in the local health department's bank account. If the property was purchased with restricted funds, appropriate accounting of the compensation received shall be made as required by OMB Circular A-87, incorporated by reference.

Section 9. Bank Accounts and Investments. (1) Fidelity bonding shall be obtained on local health department employees and board of health members who handle funds of the local health department.

(a) An individual who makes deposits or signs checks or other instruments on local health department checking or investment accounts or certificates shall be bonded.

(b) Employees or board members shall be bonded in an amount sufficient to cover the total amount of funds to which they have access at any one (1) time.

(2) Local health departments may invest and reinvest money subject to their control and jurisdiction in the following investments:

(a) Obligations of the United States and of its agencies and instrumentalities. These investments may be accomplished through repurchase agreements reached with national or state banks chartered in Kentucky; and bonds or certificates of indebtedness of the state of Kentucky and of its agencies and instrumentalities;

(b) A savings and loan association insured by an agency of the government of the United States up to the amount so insured; and

(c) Interest-bearing deposits, or other authorized insurance instruments, in national or state banks chartered in Kentucky and insured by an agency of the government of the United States up to the amount so insured, and in larger amounts if the bank shall pledge as security, obligations as permitted by KRS 41.240(4), having a current quoted market value at least equal to uninsured deposits.

(3) A local health department may hold funds in its local bank account in a federally-insured bank at the minimum level necessary for efficient operations.

(4) Local health department funds shall not be transferred to a public health taxing district account or to an account not reported in the local health department financial statements.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OMB-87 - Cost Principles for State, Local and Indian Tribes Government", edition 5/04; and

(b) "OMB-A-102 - Grants and Cooperative Agreement with State and Local Government".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Administration and [Resource Management] Financial Management~~[Branch]~~, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, M.D., FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: May 11, 2011

FILED WITH LRC: May 12, 2011 at 3 p.m.

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

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

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. 6991e]

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

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engineer licensed [registered] by the Kentucky State Board of Li-
censure [Registration] for Professional Engineers and Land Sur-
veyors with certification or licensing that includes education and
experience in corrosion control of buried or submerged metal pip-
ing systems and metal tanks.

(22) "Delivery prohibition" means prohibiting the delivery, de-
posit, or acceptance of a regulated substance to an underground
storage tank that has been determined to be ineligible by the cabi-
net for such delivery, deposit, or acceptance.

(23) "Dielectric material" means a material that does not con-
duct direct electrical current.

(24) "Dispenser" means a device that is used to transfer regu-
lated 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 re-
sulting in dermal or inhalation exposure.

(27) "Domestic-use spring" means a **perennial** spring **conti-
nuously utilized[actively accessed]** by humans for consumption
or other **potable** uses resulting in dermal or inhalation exposure.

(28) "Domestic-use well" means a well currently used or poten-
tially 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 pro-
tection 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 practi-
ces 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 dis-
charge to surface waters or wetland areas within a fifty (50) meter
radius of the excavation zone.

(37)[(30)] "EPA identification number" means the number as-
signed by the U.S. EPA or the cabinet to each hazardous waste
generator; transporter; and treatment, storage, or disposal facility.

(38)[(34)] "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 sys-
tem.

(39)[(32)] "Existing UST system" means a UST system used to
contain an accumulation of regulated substances or for which in-
stallation [has] commenced on or before December 22, 1988. In-
stallation 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 pro-
gram has begun at the UST facility; or

2. The owner or operator has entered into contractual obliga-
tions, 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 cor-
rective 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 intro-
duction 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, facili-
ties, 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 occur-
ring 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 petro-
leum 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 tech-
nical grades of fuel oil; other residual fuel oils (including Navy Spe-
cial 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 devic-
es.

(53)[(46)] "Hydrogeologically downgradient" means in the di-
rection 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 low-
er water table elevation exists, as defined by wells or piezometers.

(54)[(47)] "Hydrogeologically upgradient" means in the direc-
tion from a point of lower hydrostatic pressure to a point of higher
hydrostatic pressure, as defined by wells or piezometers con-
structed 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 educa-
tional institution with no organizational or financial conflict of inter-
est.

(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.

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(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:

(a) Closure, occurring prior to December 22, 1988, in accordance with the requirements of the Kentucky Fire Marshal, and applicable industry standards when closure occurred, and in a manner that prevents future use of the UST system; or

(b) After December 22, 1988, 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. 280.74 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).

[(79)] [(80)] [(70)] "Petroleum" is defined by KRS 224.60-115(15).

[(80)] [(81)] [(71)] "Petroleum storage tank" is defined by KRS 224.60-115(16) [224.60-115(16)];

[(81)] [(82)] [(72)] "Petroleum storage tank operator" is defined by KRS 224.60-115(17);

[(82)] [(83)] [(73)] "Petroleum storage tank owner" is defined by KRS 224.60-115(18).

[(83)] [(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.

[(84)] [(85)] [(75)] "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonferrous materials (for example, concrete, steel, plastic, or a combination of these types of materials).

[(85)] [(86)] [(76)] "Pipeline facilities" means new and existing pipe rights-of-way and any associated equipment, facilities, or buildings, including gathering lines.

[(86)] [(87)] [(77)] "Point of compliance" means the property boundaries of the property on which the UST facility is located.

[(87)] [(88)] "Product deliverer" means a person who delivers or deposits regulated substances into a UST system.

[(88)] [(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;

[(89)] [(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.

[(90)] [(91)] [(81)] "Regulated substance" is defined by KRS 224.60-100(2)

[(91)] [(92)] [(82)] "Release" is defined by KRS 224.60-115(20).

[(92)] [(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].

[(93)] [(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].

[(94)] [(95)] [(85)] "Residential tank" means a tank located on property used primarily for dwelling purposes.

[(95)] [(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.

[(96)] [(97)] [(87)] "Secretary" is defined by KRS 224.01-010(24).

[(97)] [(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.

[(98)] [(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 col-

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lected over a period of time to determine if a UST system is leaking.

(99)(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.

(100)(101) "Sump" means a subsurface area designed to provide access to underground UST system equipment.

(101)(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.

(102)(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.

(103)(104) "Suspected UST System Release" means the observation of an unusual operating condition or an unconfirmed UST system release.

(104)(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.

(105)(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.

(106)(107)(94) "Temporary closure" means taking a UST system out of operation pursuant to the requirements of 401 KAR 42:070.

(107)(108)(95) "Third party" is defined by KRS 224.60-115(22).

(108)(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.

(109)(110) "Under-dispenser containment" means a liquid-tight containment system underneath a dispenser.

(110)(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.

(111)(112)(97) "Underground utility conduits" means a [any] manmade underground conduit installed for utility purposes either on or off site.

(112)(113) "Underground storage tank" is defined by KRS 224.60-100(1).

(113)(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.

(114)(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.

(115)(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.

(116)(117)(101) "UST system release" means [any] spilling, leaking, emitting, discharging, escaping, leaching, or disposing

off[er] 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.

(117)(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.

(118)(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 one (1)[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.

(119)(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.

(120)(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: July 13, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

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.Job@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

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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 statute: 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 PSTAEF, 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 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 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 (Amended After Comments)

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. 6991e]

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

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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 **within thirty (30) days** 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 "[J]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 "[J]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. Issuance of a Certificate of Registration and Reimbursement Eligibility. Upon a determination by the cabinet that the "[J]UST Facility Registration Form", DEP 7112, [(August 2006);] is complete and accurate, the cabinet shall issue a "[C]ertificate 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) **An owner of a UST system registered, but not permanently closed, with the USTB prior to June 8, 2012 shall designate at least one (1) individual, who shall be trained in accordance with subsections (5) and (6) of this section by August 8, 2012, as the primary designated compliance manager (DCM) for the registered UST system.**

(2) An owner of a UST system registered, but not permanently closed, on or after June 8, 2012 shall designate at least one (1) individual who shall be trained in accordance with subsections (5) and (6) of this section within sixty (60) days of registration, as the primary designated compliance manager (DCM) for the registered UST system. [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[or, 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

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2. Owners~~for operators~~ may designate another individual as the primary DCM;

(b) Owners~~for operators~~ may designate multiple individuals as an associate DCM for a UST **system**~~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, overflow 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~~for operator~~ shall ensure that **the primary DCM**~~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 overflow 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, **or UST systems changing from storage of a non-regulated substance to storage of a regulated substance**, 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 **liquid-tight** 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, **liquid-tight** UDC shall be installed in accordance with this administrative regulation and the UST System Installation and Maintenance Outline.

(3) All sumps **containing product piping, installed in conjunction with a UST system** installed on or after April 1, 2012 shall meet the liquid-tight containment requirements in the UST System Installation and Maintenance Outline.

(4) **When replaced, a sump installed in accordance with subsection (3) of this section shall meet the liquid-tight containment requirements in the UST System Installation and Maintenance Outline.**~~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

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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 non-metallic 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", July[April] 2011;

(e) "Notice of Intent to Install Underground Storage Tank or Piping", DEP 8044, July[April] 2011;

(f) "Installation Verification and Compatibility Form", DEP 7115, July[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. [(e) "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: July 13, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

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, performance 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.

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(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 (Amended After Comments)

401 KAR 42:030. UST system general operating requirements.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Sub-

part 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. 6991e]

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, record-keeping, 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 **thirty-six (36)**[~~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) UDC and sumps installed in accordance with 401 KAR 42:020, Section 12[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.

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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) 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.

(b) A UST System Compatibility Form, DEP 6089 shall be submitted within thirty (30) days of the replacement of a UST system component associated with a UST system installed after April 1, 2012, when the UST system component is no longer covered by a previously submitted Installation Verification and Compatibility Form, DEP 7115 or a UST 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

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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: July 13, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

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 overflow 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

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(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 (Amended After Comments)

401 KAR 42:040. UST system release detection.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart D, [Part 284,] 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 284, 42 U.S.C. 6991e]

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

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~~(d) [Five (5)-year] Tank Tightness Test[; and
(d) Tri-annual Line Tightness Test for American Suction Pip-
ing].~~

~~(2)(a) Results of a test conducted in accordance with subsec-
tion (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 monitor-
ing 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 pro-
vided 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 sub-
section (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 re-
quirements:

(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; and

(c) Maintains training credentials as prescribed by the manu-
facturer 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 de-
tection 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 opera-
tors 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 moni-
toring 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 per-
formed 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 docu-
mented 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 accor-
dance with the equipment manufacturer's instructions **or a recog-
nized industry standard that is no less stringent than the
manufacturer's instructions** and be capable 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 sys-
tems 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 Sub-
mersible 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 addi-
tion, the test shall verify that the STP relay switch is not malfunc-
tioning 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 dead-
line.

(3) The cabinet may grant an extension if the cabinet deter-
mines 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 re-
quired 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 de-
termines that an extension would not have a detrimental impact on
human health or the environment.

Section 3.] Incorporation by Reference. (1) The following ma-
terial 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;

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(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: July 13, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

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 ques-

tion (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 require-

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ments, 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 (Amended After Comments)

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. 6991e]

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 9. 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", July[April] 2011;

(c) "Site Check Report Form", DEP 6082, April 2011;

(d) "Vapor Intrusion Building Assessment", DEP 0058, July[April] 2011;

(e) "Vapor Intrusion Assessment", DEP 0057, July[April] 2011;

(f) "Site Investigation Outline", July[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).]

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(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: July 13, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

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 cor-

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rective 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 (Amended After Comments)

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. 6991e]

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 determined[addressed] in accordance with 401 KAR 42:080, Section 1(2)[4(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 [(e)] 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, the owner or operator of the UST system shall:

(a) Complete permanent closure[42:020, then][the UST system shall be permanently closed] in accordance with the Closure Outline and this administrative regulation; or

(b) Request an extension of temporary closure status in accordance with Section 11 of this administrative regulation and perform an assessment in accordance with Section 5 of this administrative regulation.

(5) If a 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.

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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", July[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 2004)]; and

(f) "Test Methods for Evaluation Solid Wastes Physi-

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cal/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: July 13, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

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, PSTEF, 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-

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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 (Amended After Comments)

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 284,] 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 284, 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 required 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, required to classify a UST system in accordance with this administrative regulation, shall utilize the screening levels established in the Classification Outline, regardless of the date of permanent closure of the UST system. [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

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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: July 13, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

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 administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An 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 (Amended After Comments)

401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement procedures.

RELATES TO: KRS 224.01-400, 224.01-405, 224.60-120,

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224.60-130, 224.60-135, 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 administrative 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 **applicable screening[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

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(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 applicable screening[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, DEP 7114, with the cabinet to permanently close the petroleum storage tanks at 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 manufacturers 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

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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 **applicable screening**[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

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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 pre-approval 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 Work-

sheet, 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 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);

(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;

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(d) Transportation, disposal, or treatment at a permitted facility, and replacement of backfill material, excluding the tank volume, contaminated above **applicable screening**[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 than 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 **applicable screening**[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

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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 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) 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 unobli-

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gated 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, July[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, July[April] 2011;
- (k) "Underground Storage Tank Branch Written Directive Claim Request", DEP 6091, April 2011; and
- (l) "Contractor Cost Outline", July[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

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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

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submitted in accordance with 401 KAR 42:060 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;

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- (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);

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(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: July 13, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

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

tion of the statutes: The amendment will assist in the effective administration of the statutes by allowing a more efficient way to administer the PSTeAF.

(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: 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 in-

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creased. 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 (Amended After Comments)

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 (SOTRA), 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-level 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 impacted 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. The rates established for permanent closure costs in this section shall apply to a SOTRA Application for Assistance approved after October 6, 2011. (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

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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

~~off[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. **Eligible reimbursement for permanent closure costs associated with a SOTRA Application for Assistance approved prior to October 6, 2011 shall be made in accordance with the administrative regulations in effect at the time the SOTRA Application for Assistance was approved.**

(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

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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/ustf>[page located at www.waste.ky.gov].

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

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.

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

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amended After Comments)

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. **Applicability and Exemptions. (1) Except as provided in subsection (2) of this section, this administrative regulation shall apply to all applicants for a petroleum contaminated soil treatment facility.**

(2) Owners or operators of petroleum contaminated soil treatment facilities operating under a Class III landfarming permit, in effect prior to October 6, 2011, shall be exempt from the requirements of 401 KAR 48:205 and this administrative regulation unless:

(a) The facility is required to perform groundwater corrective action in accordance with 401 KAR 48:300, Section 8;

(b) A major modification application is filed with the cabinet to expand the waste boundary, in which case the new area shall meet the requirements of 401 KAR 48:205 and this administrative regulation; or

(c) A renewal application is not approved pursuant to 401 KAR 47:130, Sections 5 through 7 and 47:160, Section 5.

Section 4. 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 ap-

proved 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 47:030, Section 3 that:

(a) Does not increase the area monitored by the groundwater monitoring system as established in 401 KAR 48:030, 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 monitoring system as established in 401 KAR 48:030, 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 5[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 6[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,

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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 **7[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 **8[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 **9[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 **10[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 **11[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 Manage-

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ment, 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 statutes 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 statutes 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:

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PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JULY 15, 2011

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Amendment)

32 KAR 1:050. Political[and inaugural] committee registration.

RELATES TO: KRS 121.015(3), 121.170

STATUTORY AUTHORITY: KRS 121.120(1)(g), (4), 121.170(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry[grants the registry the power] to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121.[This administrative regulation specifies the forms to be used by political committees and inaugural committees and incorporates those forms by reference.] KRS 121.120(4) requires the registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. This administrative regulation specifies the form to be used for registration by political committees and incorporates the form by reference.

Section 1. Political Committee Registration. The "Political Committee Registration" form, KREF 010, revised 06/2011[05/2005], shall be the official form to be used for the registration of campaign committees, caucus campaign committees, political issues committees, [and] permanent committees, and inaugural committees. ~~[Section 2. Inaugural Committee Registration. The "Inaugural Committee Registration" form, KREF 010/I, revised 05/2005, shall be the official form to be used for the registration of inaugural committees.]~~

Section 2.~~[Section 3.]~~ Incorporation by Reference. (1) ~~[The following material is incorporated by reference:~~

(a) "Political Committee Registration" form, KREF 010, revised 06/2011, is incorporated by reference.[05/2005; and] [(b) "Inaugural Committee Registration" form, KREF 010/I, revised 05/2005.]

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

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: June 22, 2011

FILED WITH LRC: July 1, 2011 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2011 at 9 a.m. Eastern Time at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends an existing form incorporated in 32 KAR 1:050 for the registration of political committees in Kentucky, in-

cluding campaign committees (which may be candidate authorized or unauthorized), caucus campaign committees, political issues committees, permanent committees, and inaugural committees. This administrative regulation amends 32 KAR 1:050 to bring the political committee registration form into compliance with KRS 121.170(4), as amended by 2011 House Bill 228, by providing a space for committees to designate an official contact person. A present form for registration of inaugural committees will be deleted as obsolete.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) requires the Registry to promulgate administrative regulations to carry out the provisions of KRS Chapter 121. Changes to the existing form for registration of political committees were necessitated by the passage of 2011 House Bill 228, effective June 8, 2011. Changes in the political committee registration form also will provide those persons who register a campaign committee with a clear means to designate, at registration, whether the campaign committee is authorized by a candidate or unauthorized, per KRS 121.210(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of Chapter 121, and KRS 121.120(4), as it prescribes a form for political committee registration.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the registration requirements under KRS 121.170 and specifically complies with the provisions of 2011 House Bill 228.

(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 updates the latest version of the political committee registration form to comply with 2011 House Bill 228 and includes inaugural committee as an option for registration. The amendment clarifies that a campaign committee may either be candidate authorized or not authorized by any candidate. This distinction is recognized under existing law, per KRS 121.015(3)(a) and KRS 121.210(4), but is not clear on the existing form. The amendment deletes a form for registration of an inaugural committee as this form is rendered obsolete by changes in the political committee registration form.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, to develop prescribed forms for the making of required reports. 2011 House Bill 228 requires any committee, upon registration, to designate an official contact person. For permanent committees, the official contact person shall not be a legislative agent or an executive agency lobbyist. Amendment to the administrative regulation is necessary to bring the Registry's political committee registration form into compliance with 2011 House Bill 228.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and KRS 121.120(4) by prescribing a form for registration of a political committee.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the political committee registration form to be filed by regulated entities and persons into compliance with changes in KRS 121.170 due to the passage of 2011 House Bill 228 and will further provide a means for a campaign committee to clearly designate whether a candidate has authorized formation of the committee pursuant to KRS 121.210(4). The amendment also deletes a duplicative form for registering inaugural committees, which will now register using the political committee registration form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

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tive regulation: All newly registered political committees will be affected by this administrative regulation. 2011 House Bill 228 created the requirement that committees designate an official contact person, necessitating this form change. To the extent the public, media, and other interest groups depend on the Registry's disclosure function, they will be positively affected by this administrative regulation, as the change requires additional disclosure at the time of registration.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required of current regulated entities. The Registry will provide the new forms, both in hard copy format and electronically, to new registrants. The change, necessitated by 2011 House Bill 228, requires all political committees, at the time of registration, to identify an official contact person.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be incurred by regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes to the political committee registration form will simplify the process of registration by providing one form for registration of political committees, including inaugural committees. A campaign committee will also have means to clearly designate status as candidate authorized or unauthorized. As required by 2011 House Bill 228, a space will be provided for designation of an official contact person.

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

(a) Initially: Initial costs to administer the program are estimated to be less than \$5,000.

(b) On a continuing basis: Ordinary printing costs for forms are anticipated in the Registry's budget, as well as ordinary programming costs for resulting database changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget funding will be used for implementation and enforcement.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Commonwealth of Kentucky - General Government – Registry of Election Finance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.015(3), KRS 121.120(1)(g), KRS 121.120(4), KRS 121.170 (as amended by 2011 House Bill 228), and KRS 121.210(4).

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

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

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

(c) How much will it cost to administer this program for the first year? Initial costs to administer this program are estimated to be less than \$5,000.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years, as these costs constitute ongoing administrative costs consistent with the agency's function.

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

Revenues (+/-): None.

Expenditures (+/-): + less than \$5,000 in year one

Other Explanation: N/A

DEPARTMENT OF STATE Kentucky Registry of Election Finance (Amendment)

32 KAR 1:070. Waiver from filing candidate election finance statement[candidate's report].

RELATES TO: KRS 121.180(9)

STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry~~grants the registry the power~~ to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121.~~[This administrative regulation specifies the form for requesting a waiver from filing a report of receipts and expenditures for a candidate incorporates this form by reference.]~~ KRS 121.120(4) requires the registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. This administrative regulation specifies the form to be used by a candidate to request a waiver from filing election finance statements and incorporates the waiver form by reference.

Section 1. ~~[The "Political Committee Registration" form, KREF 010, revised 05/2005, shall be the official form to request a waiver from filing a report of receipts and expenditures for a candidate.]~~Candidates shall use the "Political Committee Registration" form, incorporated by reference in 32 KAR 1:050, to request a "Waiver from Filing Candidate Election Finance Statement". Upon filing a "Waiver from Filing Candidate Election Finance Statement", a candidate shall be relieved of the duty personally to file election finance statements and keep records of receipts and expenditures, so long as the candidate meets the conditions set forth in KRS 121.180(9).

Section 2. Incorporation by Reference. (1) "Waiver from Filing Candidate Election Finance Statement", KREF 011, revised 05/2005, is incorporated by reference.

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

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: June 22, 2011

FILED WITH LRC: July 1, 2011 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2011 at 9 a.m. Eastern Time at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this

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agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment to 32 KAR 1:070 deletes reference to an obsolete version of a form also incorporated by reference in 32 KAR 1:050 for registering political committees in Kentucky. Amendments to the political committee registration form were necessary to comply with KRS 121.170(4), as amended by 2011 House Bill 228.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) requires the Registry to promulgate administrative regulations to carry out the provisions of KRS Chapter 121. Changes to the existing form for registration of political committees were necessitated by the passage of 2011 House Bill 228, effective June 8, 2011. To the extent the obsolete form is incorporated by reference in this regulation, amendments to this regulation were also necessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of Chapter 121, and KRS 121.120(4) and 121.180(9), as it prescribes the form for candidates to request a waiver from filing election finance statements and also incorporates the waiver form by reference.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of campaign committee reporting requirements by providing candidates with a means to file a Waiver from Filing Candidate Election Finance Statement, where the candidate has authorized registration of a campaign committee, as provided by KRS 121.180(9).

(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 updates the existing regulation due to changes in the political committee registration form, necessitated by the passage of 2011 House Bill 228. The amendment deletes language incorporating the political committee registration form by reference, as the same form is incorporated by reference in another Registry regulation, specifically 32 KAR 1:050.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, to develop prescribed forms for the making of required reports. 2011 House Bill 228 requires any committee, upon registration, to designate an official contact person. To the extent the existing regulation incorporates the political committee registration form by reference, it is necessary to amend the regulation to delete reference to a prior version of the form.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and KRS 121.120(4) by prescribing a form for candidates to waive filing of election finance statements under KRS 121.180(9), where the candidate has authorized a campaign committee to act on his or her behalf.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will delete a duplicative provision incorporating by reference the political committee registration form. Due to this form having been incorporated by reference in two (2) regulations, amendments to both regulations simultaneously have been required, but will no longer be required in the future due to this amendment referencing the companion regulation instead of the form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment does not create new requirements for the regulated community, which includes candidates and candidate authorized campaign committees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required of candidates and candidate authorized campaign committees as a result of the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be incurred by candidates and candidate authorized campaign committees as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Because the form for political committee registration will only be incorporated in 32 KAR 1:050 and will no longer be incorporated by reference in 32 KAR 1:070, there will be less potential for confusion by candidates and candidate authorized campaign committees.

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

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

(b) On a continuing basis: Ordinary printing costs for forms are anticipated in the Registry's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget funding will be used for implementation and enforcement.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all candidate authorized campaign committees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Commonwealth of Kentucky - General Government - Registry of Election Finance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(1)(g), KRS 121.120(4), KRS 121.180(9), and KRS 121.170 (as amended by 2011 House Bill 228).

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,

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fire departments, or school districts) for the first year? No revenue will be generated as a result of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? No costs to administer the program are anticipated in year one, as this amendment is a reference change only.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years, as these costs constitute ongoing administrative costs consistent with the agency's function.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:161. Investigation and disposition of complaints.

RELATES TO: KRS Chapter 13B, 314.011(13), 314.031, 314.071(4), 314.091, 314.107, 314.470, 314.991(3)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to effect the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for the investigation and disposition of complaints received by the board.

Section 1. Receipt of Complaints. (1) The board shall receive and process each complaint made against a licensee, holder of a multistate licensure privilege pursuant to KRS 314.470, or applicant or unlicensed individual if the complaint alleges acts that may be in violation of the provisions of KRS Chapter 314.

(2)(a) A complaint shall be in writing and shall be dated and fully identify the individual by name.

(b) The president of the board or the executive director or designee shall file a complaint based upon information received by oral, telephone, or written communications if the facts of the complaint are determined to be accurate and indicate acts that may be in violation of the provisions of KRS Chapter 314.

(3) A certified copy of a court record for a misdemeanor or felony conviction or a certified copy of disciplinary action in another jurisdiction shall be considered a valid complaint.

(4) A complaint shall be investigated.

(a) If the complaint sets forth a potential violation or the conduct falls within the statutory instances which must be investigated, the board shall send a copy of the complaint to the licensee, holder of a multistate privilege, or applicant to the address of record.

(b) A written, legible, verified response shall be filed with the board within thirty (30) days of receipt by the individual against whom the complaint has been made.

(c) The staff may request an informal conference with the individual against whom the complaint has been made.

(5)(a) A complaint shall be evaluated to determine if a violation of the provisions of KRS Chapter 314 has been alleged.

(b) The credentials review panel or the executive director or designee shall make the determination as to the disposition of the complaint pursuant to Section 2 of this administrative regulation.

(6)(a) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public, except as provided by KRS 314.470. The board shall make available to the public the fact that an investigation is pending.

(b) If a board member has participated in the investigation or

has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the member, that member shall not participate in the adjudication of the complaint.

Section 2. Disposition of Complaints. (1) Disposition of complaints shall be as follows:

(a) If there is a determination by the executive director or designee that there is insufficient evidence of a violation or that a violation has not occurred, there shall not be further action unless warranted by future evidence;

(b)1. The complaint may be referred to the credentials review panel of the board by the executive director or designee for disposition pursuant to this section or for issuance of a letter of concern; or

2. It may be determined that there is probable cause that a violation of KRS 314.091 has occurred.

(c) In cases involving practice as a nurse on the privilege pursuant to KRS 314.470, the case may be referred to the home state.

(2) Upon determination that there is probable cause that a violation of KRS 314.091 has occurred, the complaint shall be handled as follows:

(a) An administrative hearing may be scheduled pursuant to subsection (3) of this section;

(b) An agreed order may be offered pursuant to subsection (4) of this section; or

(c) A consent decree may be offered, pursuant to subsection (5) of this section.

(3) Administrative hearings.

(a) Hearings shall be held pursuant to KRS 314.091, Chapter 13B, and 201 KAR 20:162.

(b) Notice of the hearing and charges shall be mailed by certified mail to the address of the licensee or applicant on file with the board pursuant to KRS 314.107.

(c) Notice of the hearing and charges shall be signed by the executive director or designee.

(4) Agreed order.

(a) The board may enter into an agreement with an individual for denial, revocation, voluntary surrender, suspension, probation, reinstatement, limitation of license or reprimand, and to impose a civil penalty, if the individual agrees to waive the right to a hearing. The terms of the agreement may include other conditions or requirements to be met by the individual, including those listed in Section 4 of this administrative regulation.

(b) The agreed order may contain terms that insure protection of public health and safety or that serve to educate or rehabilitate the individual.

(c) The agreed order, if approved by the board, shall terminate the investigation of a specific complaint.

(d) If the agreed order is not approved by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(5) Consent decree.

(a) If an individual agrees to waive the right to a hearing, the board may issue a consent decree in accordance with the provisions of KRS 314.991 to impose a civil penalty and other terms and conditions as listed in Section 4 of this administrative regulation against an individual who has:

1. Practiced as a nurse in the Commonwealth of Kentucky without a temporary work permit, multistate licensure privilege pursuant to KRS 314.470, or a current license or provisional license issued by the board;

2. Practiced as an advanced practice registered nurse in the Commonwealth of Kentucky without current licensure [registration] issued by the board prior to filing an application for licensure [registration];

3. Practiced as an advanced practice registered nurse after expiration of the current certification granted by the appropriate national organization or agency;

4. Cured [~~Qualified for a consent decree to cure~~] noncompliance with continuing education requirements, as set forth in 201 KAR 20:215, Section 3;

5. Executed an affidavit of reasonable cause concerning the AIDS education requirement and obtained the required education after the expiration of the six (6) months;

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6. Tested [~~Had a~~] positive on a drug screen for a nonprescribed drug or illicit substance and obtained a chemical dependency evaluation that does not indicate a [~~substance abuse~~] diagnosis of chemical dependency; [~~or~~]

7. Failed to report a criminal conviction or disciplinary action in another jurisdiction on an application; or

8. Committed a substandard nursing act where:

a. The continuing practice by the nurse does not pose a risk of harm to the client or another;

b. The potential risk of physical, emotional, or financial harm to the client due to the incident is minimal;

c. The nurse subsequently exhibits a conscientious approach to and accountability for his or her practice; and

d. The nurse subsequently has demonstrated the knowledge and skill to practice safely.

(b) The issuance [~~use~~] of a consent decree shall be restricted to only those individuals described in paragraph (a) of this subsection who have not previously been issued a consent decree for the same or substantially similar violation and who have not violated any other provision of KRS Chapter 314 or any other laws of the Commonwealth of Kentucky or of the United States.

(c) The license [~~or registration~~] may be issued by board staff after the individual meets all requirements for licensure [~~or registration~~] upon ratification of the consent decree by the board.

(d) Upon ratification by the board of the consent decree, the investigation of the specific complaint shall be terminated.

(e) If the consent decree is not ratified by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(f) Consent decrees that have been ratified by the board shall not be reported to other state boards of nursing, the national council of state boards of nursing, or other organizations, unless required by law.

Section 3. The executive director or designee shall notify the complainant and the person against whom the complaint was made of the final disposition of the case.

Section 4. The restrictions or conditions imposed by the board on a temporary work permit, holder of a multistate licensure privilege, or license or provisional license may include the following:

(1) Prohibiting the performance of specific nursing acts including access to, responsibility for, or the administration of controlled substances; administration of medication; supervisory functions; or any act that the individual is unable to safely perform.

(2) Requiring the individual have continuous, direct, on-site supervision by a licensed [~~registered~~] nurse, physician, or dentist.

(3) Specifying the individual's practice setting.

(4) Specifying the types of patients to whom the individual may give nursing care.

(5) Requiring the individual to notify the board in writing of a change in name, address, or employment.

(6) Requiring the individual to have his or her employer submit to the board written reports of performance or compliance with the requirements set by the board.

(7) Requiring the individual to submit to the board evidence of physical or chemical dependency, mental health evaluations, counseling, therapy, or drug screens.

(8) Meeting with representatives of the board.

(9) Issuing the license or temporary work permit for a specified period of time.

(10) Requiring the individual to notify the board in writing of criminal arrests, charges, or convictions.

(11) Requiring the individual to be employed as a nurse for a specified period of time.

(12) Requiring the individual to complete [~~a~~] continuing education [~~course~~] in a specific subject.

CAROL KOMARA, President

APPROVED BY AGENCY: June 16, 2011

FILED WITH LRC: July 14, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on August 24, 2011 at 10:00 a.m. (EST) in the office of the Kentucky

Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564 4251, email: nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It provides the process for the receipts of complaints against nurses and how the Board is to handle them.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out the appropriate procedures for investigation and disposition of complaints.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out the appropriate procedures.

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

(a) How the amendment will change this existing administrative regulation: The amendment primarily adds a new category for when a consent decree can be issued. This has to do with minor practice issues. The amendment also has several housekeeping items.

(b) The necessity of the amendment to this administrative regulation: The Board studied the issue and decided that consent decrees would be the appropriate disposition of these type of complaints.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set these procedures.

(d) How the amendment will assist in the effective administration of the statutes: By setting the appropriate procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses with certain types of complaints, number unknown.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply other than a possible civil penalty that may be imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agen-

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cy funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091

STATUTORY AUTHORITY: KRS 314.041, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. 314.041, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the appropriate completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination, endorsement, or reinstatement, "Application for Licensure";

(b) For RN or LPN Renewal, "Annual Licensure Renewal Application: RN or LPN";

(c) For licensure or reinstatement as an advanced practice registered nurse, "Application for Licensure as an Advanced Practice Registered Nurse";

(d) For renewal as an advanced practice registered nurse, "APRN Licensure Renewal Application";

(e) For renewal as an RN and an APRN, "Annual Licensure Renewal Application: RN and APRN";

(f) For licensure as an RN and as an APRN, "Application for RN and APRN Licensure";

(g) For retired licensure status, "Application for Retired Status"; or

(h) "Annual APRN Licensure Renewal Application for APRN with RN Compact License (not Kentucky)";

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure shall be postmarked or received by the board no later than the last day for renewal of license.

Section 3. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

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

(a) "Application for Licensure", 6/2011 [6/2010], Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 6/2010, Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 6/2011 [6/2010], Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 6/2010, Kentucky Board of Nursing;

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(e) "Application for RN and APRN Licensure", 6/2011 [6/2010], Kentucky Board of Nursing;

(f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing; and

(g) "Annual APRN Licensure Renewal Application for APRN with RN Compact License (not Kentucky)", 6/2010, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL KOMARA, President

APPROVED BY AGENCY: June 16, 2011

FILED WITH LRC: July 14, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2011 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2011.

Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It primarily incorporates applications for licensure for nurses. It also sets some requirements for licensure for nurses.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By incorporating the licensure applications and by setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By incorporating the licensure applications and by setting requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates three Advanced Practice Registered Nurse (APRN) application forms. The laws concerning APRNs were recently changed by the General Assembly.

(b) The necessity of the amendment to this administrative regulation: The changes to the law necessitated changes to the application forms for APRNs.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to develop these applications.

(d) How the amendment will assist in the effective administration of the statutes: By conforming the applications to the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for APRN license, number unknown.

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

including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will utilize a new application form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply other than payment of the application fee which is not set by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Respiratory Care (Amendment)

201 KAR 29:050. Continuing education requirements.

RELATES TO: KRS 314A.115

STATUTORY AUTHORITY: KRS 314A.205(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314A.115 requires the submission of proof of continuing education in order to renew certification. This administrative regulation delineates the requirements for continuing education and prescribes

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methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic courses" means courses offered by an accredited postsecondary institution including:

(a) A respiratory care course, designated by a respiratory care course number, beyond the premandatory certification level; and
[(b) An academic course in the biological, psychological, sociological, or physical sciences relevant to patient care and is beyond the premandatory certificate level; or]

(b) [(e)] An academic course applicable to respiratory care practice and appropriate for the respiratory care practitioner employed in the areas of clinical practice, administration, education, or research.

(2) "American Association for Respiratory Care [for Continuing Respiratory Care Education] [AARC] [(AARC-CRCE)] approval" means any offering having received recognition by this organization.

(3) "Approved" means Kentucky Board of [for] Respiratory Care (KBRC) recognized.

(4) "Continuing education unit" means sixty (60) contact minutes of participating in continuing education experiences.

(5) "Offering" means an organized learning experience planned and evaluated to meet behavioral objectives and may be presented in one (1) session or in a series. [(6) "Provider" means an organization approved by the Kentucky Board of Respiratory Care (KBRC) for offering continuing education programs.]

(6) [(7)] "Relevant" means having content applicable to the practice of respiratory care.

(7) "Sponsor" means an individual or organization, other than AARC, applying for approval of continuing education programs.

(8) "Successful completion" means that the practitioner has satisfactorily met and can appropriately document the specific requirements of the offering and earned the continuing education units.

Section 2. Accrual of Continuing Education Units Mandatory; Computation of Accrual. (1) A minimum of twenty-four (24) continuing education units shall be accrued by each person holding mandatory certification during the two (2) year certification period for renewal.

(2) The certification period shall be January 1 of one (1) year through December 31 of the following calendar year, regardless of when a mandatory certificate is issued.

(3) All units shall be in or related to the field of respiratory care.

Section 3. Methods of Acquiring Continuing Education Units. Continuing education units applicable to the renewal of the mandatory certificate shall be directly related to the professional growth and development of the respiratory care practitioner. Units may be earned by completing any of the following educational activities: [(4) Offerings having American Association for Respiratory Care (AARC) Continuing Respiratory Care Education (CRCE) approval (including traditional and nontraditional);]

[(1)] [(2)] (a) Academic courses as defined in Section 1 of this administrative regulation; and [(b) General education courses, either electives or designated to meet degree requirements, shall not be acceptable; and]

(b) [(e)] Academic credit equivalency for continuing education units shall be based on one (1) credit hour = fifteen (15) continuing education units;

(2) Continuing education units approved by AARC;

(3) Continuing education units offered by other organizations or institutions approved by the board; or

[(3) Offerings provided by the Committee on Accreditation for Respiratory Care (CoARC) or its equivalent accredited educational programs;

(4) Relevant offerings provided by:

(a) American Thoracic Society (ATS) and American Lung Association (ALA);

(b) Kentucky Board of Nursing (KBN);

(c) American Heart Association (AHA);

(d) American Medical Association (AMA);

(e) American Cancer Society; or

(f) Other organizations or institutions approved by the KBRC;]

(4) [(5)] Scientific and educational lectures, workshops, or seminars presented by the person holding mandatory certification.

(a) A maximum of one-half (1/2) of the continuing education units may be credited for scientific and educational lectures, workshops, or seminars presented by the certificate holder.

(b) Credit shall not be issued for repeated instruction of the same course; [(6) Related areas not specifically a part of the field of respiratory care may be approved for up to two (2) continuing education units if the board believes that those related areas may serve to enhance the certificate holder's ability to practice; or

(7) Presenters of nonacademic offerings may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of same course.]

Section 4. Procedure[s] for Preapproval [Accreditation] of Sponsors [and Approval of Continuing Education Activities]. (1) A sponsor [Any entity] desiring approval [to establish accreditation] of a continuing education offering prior to attendance shall apply for approval to the board at least seventy-five (75) [forty-five (45)] days in advance of the date [commencement] of the offering, on the Application for Continuing Education Approval [Process] stating the type of learning activity, the subject matter, the date and time of the program, and the names and qualifications of the instructors, [and the number of continuing education units offered.] A continuing education activity shall be approved [qualified for approval] if the board determines that the activity being presented:

(a) [(1)] Is an organized program of learning;

(b) [(2)] Pertains to subject matters which integrally relate to the practice of respiratory care;

(c) [(3)] Contributes to the professional competency of the licensee; and

(d) [(4)] Is conducted by individuals who have educational training, or experience acceptable to the board.

(2) A non-refundable and one (1) time fee of ten (10) dollars shall be charged for each continuing education offering; and

(3) An approved continuing education offering shall expire two (2) years from the date of approval; and

(4) A continuing education offering shall be approved in increments of no less than thirty (30) minutes; and

(5) Product based continuing education offerings shall be approved for a maximum of up to two (2) continuing education units during each certification period; and

(6) The board may choose not to approve a sponsor's offerings if the board finds the sponsor engaged in fraud, deceit, or misrepresentations concerning any continuing education offerings.

Section 5. Procedure for Postapproval of Individuals. (1) An individual desiring approval of a continuing education offering within ninety (90) days after the date the continuing education program is conducted shall submit an Application for Continuing Education Approval stating the type of learning activity, the subject matter, the date and time of the program, and the names and qualifications of the instructors. A continuing education activity shall be approved if the board determines that the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters which integrally relate to the practice of respiratory care;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have educational training, or experience acceptable to the board.

(2) An approved continuing education offering shall expire two (2) years from the date of approval; and

(3) A continuing education offering shall be approved in increments of no less than thirty (30) minutes; and

(4) Product based continuing education offerings shall be approved for a maximum of up to two (2) continuing education units during each certification period; and

(5) The board may choose not to approve an individual's offerings if the Board finds the individual engaged in fraud, deceit, or misrepresentations concerning any continuing education offerings.

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Section 6. All continuing education units and academic courses shall be preapproved or postapproved for credit.

Section 7[5]. Responsibilities and Reporting Requirements of Certificate Holders. A certificate holder shall be responsible for obtaining required continuing education units. The certificate holder shall identify his or her own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding mandatory certification shall:

(1) Select approved activities by which to earn continuing education units; ~~and (2) Obtain from the board prior approval for continuing education activities not accredited by the board;~~

~~(2)(3) Maintain all documentation verifying successful completion of continuing education units for a period of three (3) years from conclusion of the certification period in which the continuing education unit was obtained. [records of continuing education units.~~

~~(a) Each person holding mandatory certification shall maintain, for a period of three (3) years, all documentation verifying successful completion of continuing education units.~~

~~(b) During each certification renewal period, up to fifteen (15) percent of all certificate holders shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education units for the current renewal period.~~

~~(c) Verification of continuing education units is not otherwise reported to the board;~~

~~(4)(a) Document attendance and participation in a continuing education activity in the form of official documents including:~~

- ~~1. Transcripts;~~
- ~~2. Certificates;~~
- ~~3. Affidavits signed by instructors;~~
- ~~4. Receipts for fees paid to the sponsor; or~~
- ~~5. Less formal evidence including written summaries of experiences that are not otherwise formally or officially documented in any way.~~

~~(b) The type of documentation required may vary depending on the specific activity submitted to the board for approval; and]~~

Section 8. Audit Procedures. (1) In January following the certification period, the board shall audit a minimum of fifteen (15) percent of certificate holders who were designated to complete continuing education by December 31 of the preceding year;

(2) Each certificate holder shall be required by the board to furnish documentation of completion of continuing education units for the certification period.

(3) Documentation shall include:

(a) Official transcripts for completed academic courses;

(b) A copy of the program showing an individual as a presenter of scientific and educational lectures, workshops, or seminars;

(c) Official verification from an official Registrar for academic courses taught;

(d) Completion certificates or cards, including a course number, for relevant offerings whether preapproved or postapproved.

Section 9. [(5)] [Fully comply with the provisions of this administrative regulation.] Audit verification shall be submitted before March 1 of the year following the certification period. Failure to fully comply with the provisions of this administrative regulation shall constitute unprofessional conduct as set forth in KRS 314A.225 and may result in the refusal to renew, suspension, or revocation of the certification.

Section 10 [6]. Temporary Certificate Holders; Limited Mandatory Certificate Holders. Continuing education requirements shall not apply to the holders of a temporary certificate or a limited mandatory certificate.

Section 11 [7]. Audit verification [Continuing education units] shall be reported on the Audit Continuing Education Unit Verification Form [Application for Renewal].

Section 12 [8]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Continuing Education Approval [Process]", 6/11 [5/06] edition; and

(b) "Continuing Education Audit Verification Form" ["Application for Renewal"], 6/11 [5/06] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Respiratory Care Board, Traditional Bank Bldg, 163 W Short St., Ste 350, Lexington, Kentucky 40507, [Spindletop Administration Building, 2624 Research Park Drive, Suite 306, Lexington, Kentucky 40514], Monday through Friday, 8 a.m. to 4:30 p.m.

TAMARA G. MCDANIEL, Chair

APPROVED BY AGENCY: July 15, 2011

FILED WITH LRC: July 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2011 at 10:00 a.m. at the Board's office, Traditional Bank Building, 163 W. Short St., Ste. 350, Lexington, Kentucky 40507. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 16, 2011, five work-days prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30 p.m. on August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Peggy Lacy-Moore, Executive Director, Kentucky Board of Respiratory Care, Traditional Bank Bldg., 163 W. Short St., Suite 350, Lexington, Kentucky 40507, phone (859) 246-2747, fax (859) 246-2750.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Peggy Lacy-Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the requirements for: preapprovals and postapprovals, continuing education requirements, and audit procedures.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 314A.115.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statutes that require the board to promulgate administrative regulations governing requirements for continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets out the requirements for: preapprovals and postapprovals, continuing education requirements, and audit procedures.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation clarifies procedures for pre-approval and post-approval of continuing education offerings and yearly audits.

(b) The necessity of the amendment to this administrative regulation: Amendments were necessary to further clarify continuing education processes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314A.115 requires the board to promulgate administrative regulations regarding continuing education requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendments further clarify the continuing education regulation that is required by KRS 314A.115.

(3) List the type and number of individuals, businesses, organi-

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zations, or state and local governments affected by this administrative regulation: The board issues mandatory certificates to approximately 3300 respiratory therapists who are required to obtain continuing education every two (2) years.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Respiratory therapists will obtain continuing education credit through pre-approval or post-approval of relevant continuing education offerings. Approximately 10% of renewing licensees will be audited each year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a one-time \$10 fee for continuing education courses that are offered by sponsors. An approval is good for two (2) years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Respiratory therapists shall have the benefit of knowing that pre or post approved courses will receive full continuing education credit at the time of renewal.

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

(a) Initially: The Board will pay reviewing board members per diems that will approximate \$2000 annually.

(b) On a continuing basis: The Board will pay reviewing board members per diems that will approximate \$2000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The \$10 fee paid by the sponsors of continuing education courses.

(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 a one-time \$10 fee charged to sponsors for preapproval of continuing education courses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish a one-time \$10 fee charged to sponsors for preapproval of continuing education courses.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all sponsors seeking preapproval, all individuals seeking postapproval, and all audited individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact licensees of the Kentucky Board of Respiratory Care and sponsors of continuing education courses.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314A.115 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. The Board expects the sponsor fees to generate approximately \$2,000 annually. The fees paid will cover the per diem payments to board members that review continuing education offerings. Since this is a "break even" measure, the Board expects no real revenue from the fees.

(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? Approximately \$2000.

(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? Approximately \$2000.

(c) How much will it cost to administer this program for the first year? Approximately \$2000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$2000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Kentucky Department of Fish and Wildlife Resources (Amendment)

301 KAR 1:015. Boats and motor restrictions.

RELATES TO: KRS 150.010, 235.010(4), 150.090, 150.625, 150.990, 235.990

STATUTORY AUTHORITY: KRS 150.620, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state.]~~ KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state. This administrative regulation is necessary to limit the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. (1) A person shall not operate on the lakes listed in subsection (2) of this section:

(a) A house boat;

(b) A monohull boat with a center line length exceeding twenty-two (22) feet; or

(c) A pontoon boat with a float or decking exceeding twenty-two (22) feet, except for the following lakes where a pontoon boat with a float or decking up to thirty (30) feet may be operated:

1. Cedar Creek Lake, Lincoln County;
2. Lake Beshear, Caldwell County; and
3. Lake Malone, Muhlenburg and Logan County.

(2) List of lakes:

1. Arrowhead Slough, Ballard County;
2. Beaver Creek Lake, Anderson County;
3. Beaver Dam Slough, Ballard County;
4. Bert Combs Lake, Clay County;
5. Big Turner Lake, Ballard County;
6. Boltz Lake, Grant County;
7. Briggs Lake, Logan County;
8. Bullock Pen Lake, Grant County;
9. Burnt Pond, Ballard County;
10. Burnt Slough, Ballard County;
11. Butler Lake, Ballard County;
12. Carnico Lake, Nicholas County;
13. Carpenter Lake, Daviess County;
14. Carter Caves Lake, Carter County;
15. Cedar Creek Lake, Lincoln County;
16. Corinth Lake, Grant County;
17. Cross Slough, Ballard County;
18. Cypress Slough, Ballard County;
19. Deep Slough, Ballard County;
20. Dennie Gooch Lake, Pulaski County;
21. Elmer Davis Lake, Owen County;
22. Fishpond Lake, Letcher County;
23. Goose Lake, Muhlenberg County;
24. Greenbo Lake, Greenup County;
25. Guist Creek Lake, Shelby County;

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26. Happy Hollow Lake, Ballard County;
27. Island Lake, Ohio County;
28. Kincaid Lake, Pendleton County;
29. Kingdom Come Lake, Harlan County;
30. Kingfisher Lakes, Daviess County;
31. Lake Beshear, Caldwell County;
32. Lake Chumley, Lincoln County;
33. Lake Malone, Muhlenberg County;
34. Lake Mauzy, Union County;
35. Lake Reba, Madison County;
36. Lake Washburn, Ohio County;
37. Lebanon City Lake, Marion County;
38. Lincoln Homestead Lake, Washington County;
39. Little Green Sea, Ballard County;
40. Little Turner Lake, Ballard County;
41. Long Pond, Ballard County;
42. Marion County Lake, Marion County;
43. Martin County Lake, Martin County;
44. McNeely Lake, Jefferson County;
45. Metcalfe County Lake, Metcalfe County;
46. Mill Creek Lake, Wolfe County;
47. Mitchell Lake, Ballard County;
48. Pan Bowl Lake, Breathitt County;
49. Pikeville City Lake, Pike County;
50. Sandy Slough, Ballard County;
51. Shanty Hollow Lake, Warren County;
52. Shelby Lake, Ballard County;
53. South Lake, Ohio County;
54. Spurlington Lake, Taylor County;
55. Swan Lake, Ballard County;
56. Twin Pockets Slough, Ballard County;
57. Wilgreen Lake, Madison County.

(3) Length restrictions in this section shall not apply to a canoe.

(4) A person shall not operate a personal watercraft as defined in KRS 235.010(4) on Cedar Creek Lake.

Section 2. A person shall not operate:

(1) A boat motor without an underwater exhaust; or

(2) A boat faster than idle speed when passing a boat with an occupant actively engaged in fishing, except in a designated skiing zone;

(3) The requirements in subsections (1) and (2) of this section shall apply on:

- (a) Beaver Lake, Anderson County;
- (b) Boltz Lake, Grant County;
- (c) Bullock Pen Lake, Grant County;
- (d) Carnico Lake, Nicholas County;
- (e) Cedar Creek Lake, Lincoln County;
- (f) Corinth Lake, Grant County;
- (g) Elmer Davis Lake, Owen County;
- (h) Greenbo Lake, Owen County;
- (i) Guist Creek Lake, Shelby County;
- (j) Kincaid Lake, Pendleton County;
- (k) Lake Beshear, Caldwell County;
- (l) Lake Malone, Muhlenburg County;
- (m) Pan Bowl Lake, Breathitt County;
- (n) Shanty Hollow Lake, Warren County;
- (o) Swan Lake, Ballard County and;
- (p) Wilgreen Lake, Madison County.

Section 3. A person shall not operate an electric or an internal combustion boat motor on:

- (1) Dennie Gooch Lake, Pulaski County;
- (2) Kingdom Come Lake, Harlan County; and
- (3) Lake Chumley, Lincoln County.

Section 4. A person shall not operate an internal combustion boat motor and shall only be allowed to use an electric trolling motor on:

- (1) Arrowhead Slough, Ballard County and;
- (2) Beaver Dam Slough, Ballard County;
- (3) Bert Combs Lake, Clay County;
- (4) Big Turner Lake, Ballard County;
- (5) Briggs Lake, Logan County;

- (6) Burnt Pond, Ballard County;
- (7) Burnt Slough, Ballard County;
- (8) Butler, Ballard County;
- (9) Carpenter Lake, Daviess County;
- (10) Carter Caves Lake, Carter County;
- (11) Cross Slough, Ballard County;
- (12) Cypress Slough, Ballard County;
- (13) Deep Slough, Ballard County;
- (14) Fishpond Lake, Letcher County;
- (15) Goose Lake, Muhlenberg County;
- (16) Happy Hollow Lake, Ballard County;
- (17) Island Lake, Ohio County;
- (18) Kingfisher Lake, Daviess County;
- (19) Lake Mauzy, Union County;
- (20) Lake Reba, Madison County;
- (21) Lake Washburn, Ohio County;
- (22) Lebanon City Lake, Marion County;
- (23) Lincoln Homestead Lake, Washington County;
- (24) Little Green Sea, Ballard County;
- (25) Little Turner Lake, Ballard County;
- (26) Long Pond, Ballard County;
- (27) Marion County Lake, Marion County;
- (28) Martin County Lake, Martin County;
- (29) McNeely Lake, Jefferson County;
- (30) Metcalfe County Lake, Metcalfe County;
- (31) Mill Creek Lake, Wolfe County;
- (32) Mitchell Lake, Ballard County;
- (33) Pikeville City Lake, Pike County;
- (34) Sandy Slough, Ballard County;
- (35) Shelby Lake, Ballard County;
- (36) South Lake, Ohio County;
- (37) Spurlington Lake, Taylor County; and
- (38) Twin Pockets Slough, Ballard County.

Section 5. On the following lakes, a person shall not operate a boat motor larger than ten (10) horsepower:

- (1) Beaver Lake, Anderson County;
- (2) Boltz Lake, Grant County;
- (3) Bullock Pen Lake, Grant County;
- (4) Corinth Lake, Grant County;
- (5) Elmer Davis Lake, Owen County;
- (6) Kincaid Lake, Pendleton County;
- (7) Shanty Hollow Lake, Warren County; and
- (8) Swan Lake, Ballard County.

Section 6. A person shall not operate a motorboat faster than idle speed on:

- (1) ~~operate:~~
- (1) ~~A boat motor larger than 150 horsepower on Lake Beshear;~~
- (2) ~~A motorboat faster than idle speed on:~~
- (a) ~~Carnico Lake, Nicholas County;~~
- (2) ~~[(b)] Greenbo Lake, Greenup County;~~
- (3) ~~[(c)] Pan Bowl Lake, Breathitt County; and~~
- (4) ~~[(d)] Wilgreen Lake, Madison County.~~

Section 7. A person operating a boat motor larger than ten (10) horsepower shall not exceed idle speed at any time on the following lakes:

- (1) Herb Smith/Cranks Creek Lake; and
- (2) Martins Fork Lake.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: June 3, 2011

FILED WITH LRC: July 14, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 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

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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 August 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 administrative regulation controls the size of boats and motors that can be used on small lakes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the safety of individuals boating on these small lakes and to minimize interference with other users.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the Department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of all waters of the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps fulfill the purpose of KRS 150.620 and 235.280 by providing fair, reasonable, equitable, and safe use of small lakes in the state.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the horsepower restriction on Lake Beshear.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary on Lake Beshear to improve enforcement capability and increase fishing and boating opportunities; but not at the expense of safety.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who own boats having a motor above 150 horsepower will no longer be restricted from Lake Beshear.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions will be required of people listed in question (3).

(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 individuals as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All individuals who own boats having a motor above 150 horsepower will now be able to use them on Lake Beshear.

(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 initially to implement this administrative 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 fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 235.280 authorizes the Department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of all waters of the state.

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 during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional cost will be incurred the first year as the Department's Law Enforcement Division already enforces the regulation.

(d) How much will it cost to administer this program for subsequent years? No additional cost will be 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 (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Kentucky Department of Fish and Wildlife Resources (Amendment)

301 KAR 1:201. Recreational fishing limits.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife and to regulate bag or creel limits. KRS 150.470 authorizes the department to promulgate creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure or fly

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made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(5) "Daylight hours" are defined by KRS 150.010(6).

(6) "Lake" means impounded waters from the dam upstream to the first riffle on the main stemriver and tributary streams.

(7) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(8) "Processed fish" means a fish that has been gutted and head removed.

(9) "Recreational fishing" means the act of taking or attempting to take for personal use, and not for sale, any freshwater fish species by traditional fishing methods, including a line that is held in the hand or is attached to a rod that is held in the hand or closely attended, and to which one or more hooks are attached.

(10) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(11) "Single hook" means a hook with no more than one (1) point.

(12) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(13) "Slot limit" means a minimum and maximum size limit that requires a fish of that size range to be released.

(14) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Size Limits, Daily Creel Limits, and Possession Limits. (1) A person fishing in public or private waters shall observe the following daily creel limits and size limits, except as specified in Section 3 of this administrative regulation or by 301 KAR 1:180.

(a) Black bass: daily creel limit, six (6).

1. Largemouth bass and smallmouth bass: size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass: no size limit.

(b) Rock bass: daily creel limit, fifteen (15).

(c) Sauger, walleye, and their hybrids: daily creel limit, singly or in combination, six (6); size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger.

(d) Muskellunge: daily creel limit, one (1); size limit, thirty (30) inches.

(e) Chain pickerel: daily creel limit, five (5); no size limit.

(f) White bass and hybrid striped bass singly or in combination: daily creel limit, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(g) Striped bass: daily creel limit, five (5); size limit, fifteen (15) inches.

(h) Crappie: daily creel limit, thirty (30); no size limit.

(i) Rainbow trout and brown trout, singly or in combination: daily limit, eight (8), no more than three (3) of which shall be brown trout; no size limit on rainbow trout; twelve (12) inch size limit on brown trout.

(j) Redear sunfish: daily creel limit, twenty (20); no size limit.

(k) Yellow bass: daily creel limit, thirty (30); no size limit.

(2) The possession limit shall be two (2) times the daily creel limit, except as specified in Section 3 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release lake sturgeon.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative

tive regulation; and

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) Fishing tournament organizers and their representatives, excluding tournament anglers, may possess more than the daily creel limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) When transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) Fishing tournament organizers and their representatives, excluding the tournament anglers, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites specified in subsection (7) of this section for subsequent disposal by one (1) of the following methods:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Given to a charity for the purposes of human consumption;

or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists:

(a) While fishing;

(b) On the shoreline; or

(c) While on the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(3); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the following items to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year round.

Section 3. Exceptions to Statewide Administrative Regulations. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the following exceptions:

(1) AJ Jolly Lake. A person shall release all flathead catfish.

(2) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook.

(3) Barkley Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches; daily creel limit, twenty (20).

(c) Sauger: size limit, fourteen (14) inches.

(4) Barren River Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Largemouth and smallmouth bass: size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Barren River Lake shall extend up:

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1. Barren River to the Highway 100 bridge;
2. Long Creek to the Highway 100 bridge;
3. Beaver Creek to the Highway 1297 bridge;
4. Skaggs Creek to the Mathews Mill Road bridge; and
5. Peter Creek to the Peter Creek Road bridge.
- (5) Beaver Lake, Anderson County.
 - (a) Largemouth bass: size limit, fifteen (15) inches.
 - (b) Channel catfish: size limit, twelve (12) inches.
 - (c) A person shall not possess shad or use shad for bait.
- (6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad for bait.
- (7) Beshears Lake, Caldwell County. Channel catfish: size limit, twelve (12) inches.
- (8) Boltz Lake, Grant County.
 - (a) A person shall not possess shad or use shad for bait.
 - (b) Channel catfish: size limit, twelve (12) inches.
- (9) Briggs Lake, Logan County. A person shall not possess shad or use shad for bait.
- (10) Buckhorn Lake.
 - (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
 - (b) Muskellunge: size limit, thirty-six (36) inches.
 - (c) Crappie size limit, nine (9) inches.
- (11) Bullock Pen Lake, Grant County. Channel catfish: size limit, twelve (12) inches.
- (12) Carnico Lake, Nicholas County. Largemouth bass: size limit, fifteen (15) inches.
- (13) Carpenter Lake, Daviess County. A person shall not possess shad or use shad for bait.
- (14) Carr Creek Lake.
 - (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
 - (b) Crappie: size limit, nine (9) inches.
- (15) Carter Caves State Park Lake, Carter County.
 - (a) Fishing shall be during daylight hours only.
 - (b) Largemouth bass: no size limit.
 - (c) A person shall not possess shad or use shad for bait.
- (16) Cave Run Lake.
 - (a) Largemouth bass: slot limit - a person shall release fish between thirteen (13) and sixteen (16) inches.
 - (b) Smallmouth bass: size limit, eighteen (18) inches.
 - (c) Muskellunge: size limit, thirty-six (36) inches.
- (17) Cedar Creek Lake, Lincoln County.
 - (a) Largemouth bass: size limit, twenty (20) inches; daily creel limit, one (1).
 - (b) Channel catfish: size limit, twelve (12) inches.
 - (c) A person shall not possess shad or use shad for bait.
- (18) Chimney Top Creek, Wolfe County. Brown trout: size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only.
- (19) Corinth Lake, Grant County.
 - (a) A person shall not possess shad or use shad for bait.
 - (b) Channel catfish: size limit, twelve (12) inches.
- (20) Cumberland Lake shall extend up:
 - (a) The Cumberland River to Cumberland Falls;
 - (b) The Big South Fork to Devils Jump;
 - (c) The Rockcastle River to The Narrows; and
 - (d) The Laurel River to Laurel River Dam:
 1. Largemouth: size limit, fifteen (15) inches.
 2. Smallmouth bass: size limit, eighteen (18) inches.
3. Striped bass: size limit, twenty-four (24) inches; daily creel limit, two (2).
4. Crappie: size limit, ten (10) inches.
- (21) Cumberland River downstream from Barkley Lake Dam. Sauger: size limit, fourteen (14) inches.
- (22) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries.
 - (a) Brown trout: size limit, twenty (20) inches; daily creel limit (no cull), one (1).
 - (b) Brook trout: size limit, fifteen (15) inches; daily creel limit one (1), with no culling.
 - (c) Rainbow trout: slot limit - a person shall release fish between fifteen (15) and twenty (20) inches. Daily creel limit with no cull, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.
 - (d) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.
- (e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.
- (23) Dale Hollow Lake.
 - (a) Smallmouth bass: slot limit - a person shall release fish between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.
 - (b) Walleye and its hybrids: daily creel limit, five (5); size limit, sixteen (16) inches.
 - (c) Sauger: daily creel limit, ten (10); size limit, fourteen (14) inches.
 - (d) Rainbow trout and brown trout: no size limit; daily creel limit, seven (7), singly or in combination. [Rainbow trout and lake trout:
 1. Daily creel limit, April 1 – October 31: seven (7), no more than two (2) of which may be lake trout.
 2. Daily creel limit, November 1 – March 31: two (2); size limit, twenty-two (22) inches.]
 - (e) Largemouth bass: size limit, fifteen (15) inches.
 - (f) Black bass: aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.
 - (g) Crappie: size limit, ten (10) inches; daily creel limit, fifteen (15).
- (24) Dewey Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
- (25) Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall not fish except with an artificial bait.
- (26) Doe Run Lake, Kenton County.
 - (a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).
 - (b) Channel catfish: daily creel limit, four (4).
 - (c) A person shall not possess shad or use shad for bait.
- (27) Dog Fork, Wolfe County. A person shall:
 - (a) Not fish except with an artificial bait with a single hook; and
 - (b) Release brook trout.
- (28) Elkhorn Creek downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches.
- (29) Elmer Davis Lake, Owen County.
 - (a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
 - (b) Channel catfish: size limit, twelve (12) inches.
 - (c) A person shall not possess shad or use shad for bait.
- (30) Fishtrap Lake.
 - (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
 - (b) Crappie: size limit, nine (9) inches.
- (31) Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish: daily limit, five (5); size limit, fifteen (15) inches.
- (32) General Butler State Park Lake, Carroll County.
 - (a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).
 - (b) Channel catfish: daily creel limit, four (4).
 - (c) A person shall not possess shad or use shad for bait.
- (33) Grayson Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
- (34) Greenbo Lake, Greenup County.
 - (a) A person shall not possess shad or use shad for bait.
 - (b) Bluegill and sunfish: daily and possession limit, fifteen (15) fish.
- (35) Green River Lake.
 - (a) Crappie: size limit, nine (9) inches.
 - (b) Muskellunge: size limit, thirty-six (36) inches.

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- (36) Guist Creek Lake, Shelby County. Channel catfish: size limit twelve (12) inches.
- (37) Jerrico Lake, Henry County.
- (a) Largemouth bass: size limit, fifteen (15) inches.
- (b) A person shall not possess shad or use shad for bait.
- (38) Kentucky Lake and the canal connecting Kentucky and Barkley lakes.
- (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
- (b) Crappie: size limit, ten (10) inches; daily limit, twenty (20).
- (c) Sauger: size limit, fourteen (14) inches.
- (39) Kincaid Lake, Pendleton County. Channel catfish: size limit, twelve (12) inches.
- (40) Lake Blythe, Christian County. Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
- (41) Lake Malone, Muhlenburg and Logan County.
- (a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
- (b) Channel catfish: size limit, twelve (12) inches.
- (42) Lake Mingo, Jessamine County.
- (a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).
- (b) Channel catfish: daily creel limit, four (4).
- (c) A person shall not possess shad or use shad for bait.
- (43) Lake Pollywog, Grant County.
- (a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).
- (b) Channel catfish: daily creel limit, four (4).
- (c) A person shall not possess shad or use shad for bait.
- (44) Lake Reba, Madison County.
- (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily creel limit three (3).
- (b) A person shall not possess shad or use shad for bait.
- (45) Lake Shelby, Shelby County.
- (a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).
- (b) Channel catfish: daily creel limit, four (4).
- (c) A person shall not possess shad or use shad for bait.
- (46) Laurel River Lake.
- (a) Largemouth bass: size limit, fifteen (15) inches.
- (b) Smallmouth bass: size limit, eighteen (18) inches; daily creel limit, two (2).
- (c) Crappie: size limit, nine (9) inches; daily creel limit, fifteen (15).
- (47) Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
- (48) Leary Lake, Grant County.
- (a) A person shall not fish except during daylight hours.
- (b) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).
- (c) Channel catfish: daily limit, four (4).
- (49) Lincoln Homestead Lake, Washington County.
- (a) A person shall not fish except during daylight hours.
- (b) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).
- (c) Channel catfish: daily creel limit, four (4).
- (d) A person shall not possess shad or use shad for bait.
- (50) Marion County Lake.
- (a) Largemouth bass: size limit, fifteen (15) inches.
- (b) A person shall not possess shad or use shad for bait.
- (51) McNeely Lake, Jefferson County. A person shall not possess shad or use shad for bait.
- (52) Mill Creek Lake, Powell County.
- (a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).
- (b) A person shall not possess shad or use shad for bait.
- (53) New Haven Optimist Lake, Nelson County.
- (a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).
- (b) Channel catfish: daily creel limit, four (4).
- (c) A person shall not possess shad or use shad for bait.
- (54) Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.
- (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily creel limit may contain one (1) bass under fifteen (15) inches.
- (b) Crappie: size limit, nine (9) inches.
- (55) Ohio River.
- (a) Walleye, sauger, and their hybrids: no size limit; daily creel limit, ten (10), singly or in combination.
- (b) White bass, ~~[yellow bass,]~~ striped bass and their hybrids: daily creel limit, thirty (30), no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.
- (56) Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout: size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only.
- (57) Paintsville Lake.
- (a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
- (b) Smallmouth bass: size limit, eighteen (18) inches.
- (58) Parched Corn Creek, Wolfe County. A person shall:
- (a) Not fish except with an artificial bait with a single hook; and
- (b) Release brook trout.
- (59) Pennyrile Lake, Christian County. Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
- (60) Pikeville City Lake, Pike County. Catch and release largemouth bass fishing (no harvest).
- (61) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:
- (a) Not fish except with an artificial bait with a single hook; and
- (b) Release brook trout.
- (62) Rough River Lake.
- (a) Crappie: size limit, nine (9) inches.
- (b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.
- (63) Shanty Hollow Lake, Warren County.
- (a) Largemouth bass: size limit, fifteen (15) inches.
- (b) Channel catfish: size limit, twelve (12) inches.
- (c) A person shall not possess shad or use shad for bait.
- (64) Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:
- (a) Not fish except with an artificial bait with a single hook; and
- (b) Release brook trout.
- (65) Sportsman's Lakes, Franklin County.
- (a) A person shall not possess shad or use shad for bait.
- (b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3).
- (c) Channel catfish: daily creel limit, four (4).
- (66) Spurlington Lake, Taylor County. A person shall not possess shad or use shad for bait.
- (67) Sympson Lake, Nelson County. Largemouth bass: size limit, fifteen (15) inches.
- (68) Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.
- (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
- (b) Blue and channel catfish:
1. Aggregate daily creel limit of fifteen (15); and
2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.
- (c) Crappie: size limit, nine (9) inches; daily creel limit, fifteen (15).
- (69) ~~[Taylorsville Lake WMA ponds, Spencer County (as designated):~~
- ~~(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).~~
- ~~(b) Channel catfish: daily creel limit, four (4).~~
- ~~(70)]~~ Tennessee River downstream from Kentucky Lake Dam. Sauger: size limit, fourteen (14) inches.
- ~~(71) [(74)]~~ Wood Creek Lake. Largemouth and smallmouth bass: size limit, fifteen (15) inches.
- ~~(72) [(72)]~~ Yatesville Lake: Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

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Section 5. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 - March 31 for the bodies of water listed in subsection 3 of this section.

(2) A person shall:

- (a) Only use artificial bait; and
- (b) Release all caught trout.

(3) The following streams shall be open for the catch and release trout season:

- (a) Bark Camp Creek in Whitley County;
 - (b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;
 - (c) Big Bone Creek within Big Bone Lick State Park in Boone County;
 - (d) Cane Creek in Laurel County;
 - (e) Casey Creek in Trigg County;
 - (f) Clear Creek from mouth upstream to 190 Bridge in Bell County;
 - (g) East Fork of Indian Creek in Menifee County;
 - (h) Elk Spring Creek in Wayne County;
 - (i) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;
 - (j) Middle Fork of Red River in Natural Bridge State Park in Powell County;
 - (k) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park; and
 - (l) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County.
- (4) The seasonal catch and release for trout season for Swift Camp Creek in Wolf County shall be October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

- (a) Size limits for selected species;
- (b) Daily creel limits for selected species;
- (c) Eligible participants; and
- (d) Dates and times of special limits.

(2) Event sponsors shall post signs informing anglers of the special limits a minimum of twenty-four (24) hours before the event.

Section 7. Creel and Size Limits for Special Lakes and Ponds.

(1) The following requirements shall apply to all bodies of water listed in subsection (2) of this section:

- (a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, one (1);
 - (b) Channel catfish; daily creel limit, four (4);
 - (c) Sunfish or bream: daily creel limit, fifteen (15); and
 - (d) Rainbow trout: daily creel limit, five (5).
- (2) Special lakes and ponds:
- (a) Anderson County Community Park Lake, Anderson County;
 - (b) Bloomfield Park Lake, Nelson County;
 - (c) Bob Noble Park Lake, Nelson County;
 - (d) Brickyard Pond, Knox County;
 - (e) Camp Ernst, Boone County;
 - (f) Carlson Lake, Meade County in Fort Knox;
 - (g) Cherokee Park Lake, Jefferson County;
 - (h) Dickerson Lake, Meade County in Fort Knox;
 - (i) Easy Walker Park Pond, Montgomery County;
 - (j) Fisherman's Park Lakes, Jefferson County;
 - (k) Jack C Fisher Park Lake, Daviess County;
 - (l) Kingdom Come State Park Lake, Harlan County;
 - (m) Lake Mingo, Jessamine County;
 - (n) Lake Pollywog, Grant County;
 - (o) Lower Sportsman's Lake, Franklin County;
 - (p) Lusby Lake, Scott County;
 - (q) Martin County Lake, Martin County;
 - (r) Middleton Mills Long Pond, Kenton County;
 - (s) Middleton Mills Shelterhouse Pond, Kenton County;
 - (t) Mike Miller Park Lake, Marshall County;
 - (u) Miles Park Lake #4, Jefferson County;
 - (v) Millennium Park Pond, Boyle County;
 - (w) Panther Creek Park Lake, Daviess County;
 - (x) Prisoners Lake, Kenton County;
 - (y) Scott County Park Lake, Scott County;

- (z) Southgate Lake, Campbell County;
- (aa) Stein Community Park Lake, Campbell County;
- (bb) Three Springs Lake, Warren County;
- (cc) Tom Wallace Park Lake, Jefferson County;
- (dd) Upper Sportsman's Lake, Franklin County;
- (ee) Watterson Park Lake, Jefferson County;
- (ff) Waverly Park Lake, Jefferson County; and
- (gg) Whitehall Park Lake, Madison County; and
- (hh) Yellow Creek Park Lake, Daviess County.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: June 3, 2011

FILED WITH LRC: July 14, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2011, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by August 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 administrative regulation establishes size limits, daily creel limits, and possession limits for sport fish that may be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the sport fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department to promulgate administrative regulations to regulate bag, creel, and possession limits of game and fish.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at high levels.

(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 rainbow and brown trout harvest restrictions in Dale Hollow Lake to a no size limit with a daily creel limit of seven (7) singly or in combination. This regulation will also be amended to segregate yellow bass from the Ohio River white and hybrid striped bass aggregate of 30 fish daily. The statewide yellow bass creel limit of 30 daily will be applicable in the Ohio River. Additionally, special regulations for largemouth bass and catfish will be removed on the Taylorsville Wildlife Management Area (WMA) ponds, and five (5) additional Fish-In-The-Neighborhood (FINS) lakes will be established with daily harvest limits for catfish, trout, sunfish and largemouth bass.

(b) The necessity of the amendment to this administrative regulation: This amendment simplifies the current trout harvest

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regulation in Dale Hollow Lake, puts less restrictions trout harvest in the lake, and it conforms this department's regulation to Tennessee's regulations for trout in the lake. Removing yellow bass from the Ohio River special regulation allows anglers to take more white and hybrid striped bass and this department to match regulations with Ohio, Indiana, and Illinois on the Ohio River. This change simplifies regulations for Kentucky anglers as well since reciprocal agreements allow Kentucky anglers to fish Ohio and Indiana waters. The Taylorsville WMA ponds have been modified to statewide limits. The fishing pressure does not necessitate the previous harvest restrictions. The Fishing-In-The-Neighborhood (FINS) ponds will be increased to 34 ponds from the previous 29 ponds. The ponds are heavily stocked because fishing pressure is extremely high. These ponds provide fishing opportunities to less proficient or agile anglers, the elderly, children, and families that would otherwise never have the opportunity to experience high quality fishing.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who fish for trout in Kentucky's portion of Dale Hollow Lake in Lake, bass species in the Ohio River and any species in the Taylorsville WMA and the urban fishing program ponds will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers will need to comply with the changes identified in 2(a).

(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 incurred by of the anglers identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers should benefit in the long run with a higher quality fishing experience at the locations listed in 2(a).

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

(a) Initially: There will be no initial cost to implement this administrative regulation with the exception of adding five ponds to the urban fishing program. Additional trout and catfish reared and stocked in the ponds will cost approximately \$48,400.

(b) On a continuing basis: The costs listed in 5(a) will be annually accrued.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be from 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? Tiering was not applied because all individuals fishing in Kentucky are treated equally with these amendments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Rose Mack

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 Fisheries and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the Department to promulgate administrative regulations to regulate bag, creel, and possession limits of game and fish. KRS 150.470 authorizes the department to promulgate creel and size limits for fish.

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 direct revenue. It is unknown how much revenue will be indirectly generated by this administrative regulation through potential increased license sales.

(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 direct revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no initial cost to implement this administrative regulation except with adding the five ponds to the urban fishing program. Additional trout and catfish reared and stocked in the ponds will cost approximately \$48,400 the first year.

(d) How much will it cost to administer this program for subsequent years? Additional trout and catfish reared and stocked in the ponds will cost approximately \$48,400 annually 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 (+/-): Unknown

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Northpoint Training Center.

Section 1. Incorporation by Reference. (1) Northpoint Training Center policies and procedures, July 13, 2011 [January 7, 2008], are incorporated by reference. Northpoint Training Center policies and procedures include:

NTC 01-17-01 Relationships with Public, Media and Other Agencies Amended 7/13/11 [(Amended 5/42/06)]

NTC 02-07-02 Institutional Religious Center Fund Amended 7/13/11 [(Amended 5/42/06)]

NTC 02-08-01 Inmate Canteen Amended 7/13/11

NTC 02-12-01 Inmate Accounts Amended 7/13/11 [(Amended 5/42/06)]

NTC 06-01-01 Offender Information Services Amended 7/13/11 [(Added 5/42/06)]

NTC 06-01-02 Offender Information Services - Release of Information Amended 7/13/11 [(Amended 6/4/03)]

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- NTC 08-05-02 Fire Procedures (Amended 01/08/08)
 NTC 08-05-03 Fire Prevention (Amended 4/15/03)
 NTC 08-07-01 Safety Standards
 NTC 09-06-01 Searches and Contraband Procedures; Disposition of Contraband Amended 7/13/11 [(Amended 11/15/07)]
 NTC 09-14-01 Inmate Death Amended 7/13/11 [(Amended 11/15/07)]
 NTC 09-16-01 Restricted Areas (Amended 01/07/08)
 [NTC 09-33-01 Use of the Electronic Identification Card Scanner; Metal Detector and X-ray Machine (Amended 5/12/06)]
 NTC 10-01-01 Special Management Unit Amended 7/13/11 [(Amended 7/11/06)]
 NTC 11-03-01 Food Services; General Guidelines (Amended 11/15/07)
 NTC 11-04-02 Menu, Nutrition, Special, and Individual Diets Amended 7/13/11 [(Amended 4/15/03)]
 NTC 11-05-02 Health Standards and Regulations for Food Service Employees (Amended 11/15/07)
 NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens Amended 7/13/11 [(Amended 5/12/06)]
 NTC 12-02-02 Issuance of Personal Hygiene Products Amended 7/13/11
 NTC 12-06-01 Housekeeping Procedures Amended 7/13/11 [(Amended 5/12/06)]
 NTC 12-07-01 Grooming and Hair Care Standards Amended 7/13/11
 NTC 13-01-01 Emergency Medical Care Plan (Amended 11/15/07)
 NTC 13-01-02 Emergency and Specialized Health Services Amended 7/13/11 [(Amended 10/14/05)]
 NTC 13-02-01 Provisions and Authority for Health Services (Added 7/13/11)
 NTC 13-03-01 Sick Call and Pill Call Amended 7/13/11 [(Amended 10/14/05)]
 NTC 13-04-01 Utilization of Pharmaceutical Products Amended 7/13/11
 NTC 13-05-01 Dental Services Amended 7/13/11 [(Amended 11/15/07)]
 [NTC 13-05-03 Dental Radiation Levels
 NTC 13-07-01 Provisions for Health Care Delivery (Amended 10/14/05)]
 NTC 13-08-01 Medical and Dental Records (Amended 11/15/07)
 NTC 13-10-01 Notification of Inmate's Family or Designation Individual of Serious Illness or Injury, Surgery, or Inmate Death (Added 11/15/07)
 NTC 13-11-01 Inmate Health Screening and Evaluation Amended 7/13/11
 NTC 13-12-01 Special Health Care Programs Amended 7/13/11 [(Amended 11/15/07)]
 NTC 13-13-01 Inmate Self-administration of Medication Amended 7/13/11
 [NTC 13-17-01 Inmates Assigned to the Health Services Department]
 NTC 13-19-01 Mental Health Care Program Amended 7/13/11 [(Amended 11/15/07)]
 NTC 13-19-03 Suicide Prevention and Intervention Program Amended 7/13/11
 [NTC 13-20-01 Infectious Disease (Amended 10/14/05)]
 NTC 13-20-02 Infection Control Amended 7/13/11 [(Amended 10/14/05)]
 [NTC 13-21-01 Vision Care and Optometry Services]
 NTC 13-22-01 Informed Consent Amended 7/13/11
 [NTC 13-23-01 Special Needs Inmates]
 NTC 13-26-01 Public Advocacy Access to Psychological and Psychiatric Reports (Amended 12/13/05)
 NTC 14-01-01 Legal Services Program Amended 7/13/11 [(Amended 11/15/07)]
 NTC 14-02-01 Inmate Grievance Procedure (Amended 5/12/06)
 [NTC 14-03-01 Inmate Rights and Responsibilities]
 NTC 14-03-02 Board of Claims Amended 7/13/11
 NTC 15-02-01 Due Process and Disciplinary Procedures Amended 7/13/11 [(Amended 4/15/03)]
 NTC 15-02-02 Extra Duty Assignments
 [NTC 15-02-03 Hearing Officer (Amended 5/12/06)]
 NTC 15-03-01 Rules for Inmates Assigned to Outside Detail Amended 7/13/11 [(Amended 5/12/06)]
 NTC 15-03-02 Rules and Regulations for General Population Dormitories Amended 7/13/11 [(Amended 6/10/03)]
 NTC 15-03-03 Nonsmoking Dormitory
 NTC 15-04-01 Inmate Identification Amended 7/13/11 [(Amended 5/12/06)]
 NTC 15-05-01 Drug Abuse and Intoxicants Testing Amended 7/13/11
 NTC 16-01-01 Mail Regulations Amended 7/13/11 [(Amended 5/12/06)]
 NTC 16-02-01 Visiting Amended 7/13/11 [(Amended 5/12/06)]
 [NTC 16-02-02 Extended and Special Visits (Amended 5/12/06)
 NTC 16-02-04 Controlled Visitation
 NTC 16-03-01 Inmate Furloughs]
 NTC 16-05-01 Telephone Use and Control Amended 7/13/11
 NTC 17-01-01 Personal Property Control Amended 7/13/11 [(Amended 5/12/06)]
 [NTC 17-01-02 Authorized Inmate Personal Property
 NTC 17-01-03 Unauthorized Inmate Property (Amended 4/15/03)]
 NTC 17-01-04 Disposition of Unauthorized Property Amended 7/13/11
 [NTC 17-01-05 State Issue and Required Inmate Clothing (Amended 5/12/06)]
 NTC 17-03-01 Assessment and Orientation Amended 7/13/11 [(Amended 4/15/03)]
 NTC 18-01-01 Parole Progress Report Amended 7/13/11 [(Amended 4/15/03)]
 NTC 18-02-01 Classification Amended 7/13/11 [(Amended 5/12/06)]
 NTC 18-02-02 Classification - 48 Hour Notification (Amended 5/12/06)
 NTC 18-03-01 Conflict Notification Form Amended 7/13/11 [(Amended 6/10/03)]
 NTC 18-05-01 Transfers of Inmates Amended 7/13/11 [(Amended 4/15/03)]
 [NTC 18-05-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center]
 NTC 19-01-01 Inmate Work Program Amended 7/13/11
 [NTC 19-02-01 Correctional Industries (Amended 5/12/06)
 NTC 19-02-02 Guidelines for Correctional Industries]
 NTC 20-01-01 Educational Programs Amended 7/13/11 [(Amended 5/12/06)]
 NTC 20-02-02 Live Work Projects in Technical School Classes Amended 7/13/11 [(Amended 4/15/03)]
 NTC 21-01-01 Library Services (Amended 5/12/06)
 NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs Amended 7/13/11
 NTC 23-01-01 Religious Services Amended 7/13/11 [(Amended 11/15/07)]
 NTC 23-03-01 Marriage of Inmates Amended 7/13/11 [(Amended 5/12/06)]
 NTC 24-04-01 Honor Housing Amended 7/13/11 [(Amended 6/10/03)]
 [NTC 24-05-01 Unit Management (Amended 5/12/06)]
 NTC 25-01-01 Release Preparation Program
 NTC 25-01-02 Temporary and Community Center Release
 [NTC 25-01-03 Graduated Release (Amended 6/10/03)]
 NTC 25-02-01 Funeral Trips and Bedside Visits
 NTC 25-03-01 Inmate Release Procedure Amended 7/13/11 [(Amended 5/12/06)]
 NTC 26-01-01 Citizen Involvement and Volunteer Services Program Amended 7/13/11
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.
- LADONNA H. THOMPSON, Commissioner
 APPROVED BY AGENCY: June 20, 2011
 FILED WITH LRC: July 13, 2011 at 2 p.m.
 PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

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public hearing on this administrative regulation shall be held on August 23, 2011 at 9:00 a.m. in the First Floor Conference Room, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Amy Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Northpoint Training Center including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) accreditation requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Northpoint Training Center.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Northpoint Training Center into compliance with ACA Standards and updates current practices for the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Northpoint Training Center.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the penal institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Northpoint Training Center 277 employees and 650 inmates, and visitors to the institution.

(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: Staff, inmates, and visitors will have to follow the changes made in the policies and procedures that apply to them. The institution, employees, and inmates of the Department of Corrections will have to change their actions to comply

with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not expected to be any increase in costs other than those to NTC stated in (7) below.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: The amendment is expected to increase implementation costs by approximately \$1000

(b) On a continuing basis: Exact costs are not known but are expected to be within budgeted funds

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Northpoint Training Center budgeted 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 amendments to NTC 10-01-01 will require safety smocks and safety mattresses to be used for inmates on suicide watch. This is expected to be an additional cost to the institution of approximately \$1000, which is expected to come from the normal operating budget for NTC.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation previously established a fee of \$3.00 to cover the costs to replace an identification card that was lost or damaged by the inmate.

(9) TIERING: Is tiering applied? NO. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

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 amendments to this regulation impact the operation of Northpoint Training Center.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this regulation do not create any revenue for the Kentucky Department of Corrections, state correctional institutions, or other government entity.

(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 to this regulation do not create any revenue for the Kentucky Department of Corrections, state correctional institutions, or other government entity.

(c) How much will it cost to administer this program for the first year? The amendments to this regulation impact how the Northpoint Training Center operates, but do not increase costs from what was previously budgeted to the Department of Corrections. The amendments to NTC 10-01-01 will require safety smocks and safety mattresses to be used for inmates on suicide watch. This is expected to be an additional cost to the institution of approximately \$1000, which is expected to come from the normal operating budget for NTC.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the

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Northpoint Training Center operates, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

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 Office Of Transportation Delivery (Amendment)

603 KAR 7:080. Human service transportation delivery.

RELATES TO: KRS [Chapters 96A,] 45A, 96A, 151B, 157, 163, 189.125, [494, 495,] 202A.011 [202A], 202B, 205, 209, 210, 216, 273, 281, 645, 45 C.F.R. 164, 49 C.F.R. 655, 42 U.S.C. 12102, 49 U.S.C. [Chapter] 53, Pres. EO 13330

STATUTORY AUTHORITY: KRS 96A.095 [281.600, 281.605], 281.870, 281.875[, 49 U.S.C. Chapter 53]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.870(3) requires the cabinet to promulgate administrative regulations specifying the duties and responsibilities of the Coordinated Transportation Advisory Committee (CTAC). KRS 281.875 requires the cabinet to promulgate administrative regulations concerning the human service transportation delivery program. This administrative regulation establishes procedures governing the human service delivery program on behalf of the CTAC. This administrative regulation also establishes the procedures required to provide efficient, safe, and coordinated transportation delivery to clients of the human service transportation delivery program. [49 U.S.C. Chapter 53 authorizes the formation and funding of human service transportation deliveries to transportation providers. KRS 96A.095 allows the Transportation Cabinet to accept funding to promote and develop mass transportation services in Kentucky. For the purpose of providing efficient, effective, safe, and coordinated transportation delivery to clients of the program groupings the Empower Kentucky Transportation Delivery work group recommended that a single agency be responsible for the transportation component of the programs. The function of this administrative regulation is to implement the procedures required to administer this program. Since many of the transportation providers are required by federal law or regulation to comply with safety and accountability procedures and the Transportation Cabinet is authorized in KRS 281.600 to establish safety criteria for a commercial transportation provider, all of the transportation providers, except a volunteer transportation provider, which receive funding under the provisions of this administrative regulation shall be required to comply with the same safety and accountability requirements].

Section 1. Definitions. (1) "Ambulance stretcher transportation" means an ambulance service used for transporting sick or injured people who are also bedridden.

(2) [(4)] "Broker" is defined by [in] KRS 281.014(8).

(3) [(2)] "Certificate Types 01, 02, 03, 04, 07, and 08" are [is] defined by [in] KRS 281.873(1)(a)-(f).

(4) [(3)] "CTAC" is defined by [in] KRS 281.014(10)

(5) [(4)] "Delivery area" is defined by [in] KRS 281.014(7).

(6) "Escort" means an individual attendant whose presence is required to assist a recipient during transport.

(7) "Eligible provider" means a transportation provider that has contracted with the regional broker, obtained a valid Medicaid provider number from the Department for Medicaid Services, and been approved by the cabinet to provide services to human service transportation delivery recipients upon verification of applicable transportation operating authority.

(8) [(5)] "Human service transportation delivery" is defined by [in] KRS 281.014(6).

(9) [(6)] "Level of eligibility" is defined by [in] KRS 281.873(1)(g).

(10) [(7)] "Mass transportation" is defined by [in] KRS 96A.010.

(11) "Medical necessity" means a condition requiring medical attention as established in 907 KAR 3:130.

(12) "Medical service area" means the Medicaid recipient's county of residence and contiguous counties.

(13) [(8)] "Mileage reimbursement" means a fixed rate set by the Commonwealth per mile that a motor vehicle is operated while the recipient is a passenger [that:

(a) Does not exceed the expense of operating the motor vehicle; or

(b) Is not considered a benefit of wage payment].

(14) [(9)] "Provider" means an individual with appropriate operating authority performing transportation operations for human service transportation delivery.

(15) [(10)] "Recipient" means a person who [that] is receiving benefits under one (1) of the service programs listed in Section 3 of this administrative regulation and who complies with [meets] the criteria of the participating program.

(16) [(14)] "RFP" means request for proposal.

(17) "Special circumstance" means an occasion for a broker to provide a trip after normal working hours, such as for a patient receiving dialysis, chemotherapy, or radiation treatment available only on nights and weekends, or TANF transportation for evening shift employment.

(18) [(12)] "Subcontractor" is defined by [in] KRS 281.014(9).

(19) [(13)] "TANF" means an acronym for Temporary Assistance for Needy Families Program administered by the Cabinet for Health and Family Services [Cabinet for Families and Children].

(20) (a) [(14)] "Urgent care" means:

(a) an unscheduled episodic situation in which [when] there is not a threat to life or limb, but the recipient needs to be [must] be seen within twelve (12) hours in order to avoid the likely onset of an emergency medical condition, [a time frame, which is less than the seventy-two (72) hour required notice, and treatment cannot be delayed; and]

(b) "Urgent care" does not include an emergency trip that is to be addressed by a qualified emergency service [:

1. Emergency trips which are to be addressed by qualified emergency services; or

2. Instances whereby recipients are required to be seen by a licensed medical provider or another licensed medical provider to whom the person is being referred for medical treatment with less than seventy-two (72) hours' notice. See Section 10(7) of this administrative regulation].

(21) [(15)] "Volunteer transportation" means transportation provided by a person or entity as a charitable act without the expectation of receiving a benefit or payment[, or being paid a wage]. [(16) "24-7 (twenty-four seven) human service transportation delivery" means twenty-four (24) hours a day and seven (7) days a week.]

Section 2. Program Availability. Active Human Service Transportation Delivery programs shall be available to eligible recipients in all 120 counties of the Commonwealth of Kentucky as divided into geographically coordinated service regions. [Section 2. Newly established transportation regions shall be in effect no later than July 1, 2001, and shall be as follows:

(1) Region 1:

(a) Ballard;
(b) Calloway;
(c) Carlisle;
(d) Fulton;
(e) Graves;
(f) Hickman;
(g) Marshall; and
(h) McCracken.

(2) Region 2:

(a) Caldwell;
(b) Christian;
(c) Crittenden;
(d) Hopkins;
(e) Livingston;
(f) Lyon;
(g) Muhlenberg;
(h) Todd; and

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- (i) Trigg;
- (3) Region 3:
- (a) Davies;
- (b) Hancock;
- (c) Henderson;
- (d) McLean;
- (e) Ohio;
- (f) Union; and
- (g) Webster.
- (4) Region 4:
- (a) Breckinridge;
- (b) Grayson;
- (c) Hardin;
- (d) Larue;
- (e) Marion;
- (f) Meade; and
- (g) Nelson.
- (5) Region 5:
- (a) Adair;
- (b) Allen;
- (c) Barren;
- (d) Butler;
- (e) Edmonson;
- (f) Green;
- (g) Hart;
- (h) Logan;
- (i) Metcalfe;
- (j) Simpson;
- (k) Taylor; and
- (l) Warren.
- (6) Region 6:
- (a) Jefferson;
- (b) The following counties shall be added to Region 6 effective

July 1, 2001:

- 1. Bullitt;
- 2. Oldham;
- 3. Shelby; and
- 4. Spencer.

(7) Region 7. The following counties shall be in Region 7 until

July 1, 2001:

- (a) Bullitt;
- (b) Henry;
- (c) Oldham;
- (d) Shelby;
- (e) Spencer; and
- (f) Trimble.
- (8) Region 8:
- (a) Anderson;
- (b) Boyle;
- (c) Casey;
- (d) Franklin;
- (e) Garrard;
- (f) Jessamine;
- (g) Lincoln;
- (h) Mercer;
- (i) Scott;
- (j) Washington; and
- (k) Woodford.
- (9) Region 9:
- (a) Boone;
- (b) Campbell;
- (c) Carroll;
- (d) Gallatin;
- (e) Grant;
- (f) Kenton;
- (g) Owen; and
- (h) Pendleton.

(i) The following counties shall be added to Region 9 effective

July 1, 2001:

- 1. Henry; and
- 2. Trimble.
- (10) Region 10: Fayette.
- (11) Region 11:
- (a) Bourbon;

- (b) Clark;
- (c) Estill;
- (d) Harrison;
- (e) Madison;
- (f) Montgomery;
- (g) Nicholas; and
- (h) Powell.
- (12) Region 12:
- (a) Bell;
- (b) Clinton;
- (c) Cumberland;
- (d) Knox;
- (e) Laurel;
- (f) McCreary;
- (g) Monroe;
- (h) Pulaski;
- (i) Rockcastle;
- (j) Russell;
- (k) Wayne; and
- (l) Whitley.
- (13) Region 13:
- (a) Breathitt;
- (b) Clay;
- (c) Harlan;
- (d) Jackson;
- (e) Knott;
- (f) Lee;
- (g) Leslie;
- (h) Letcher;
- (i) Owsley;
- (j) Perry; and
- (k) Wolfe.
- (14) Region 14:
- (a) Floyd;
- (b) Johnson;
- (c) Magoffin;
- (d) Martin; and
- (e) Pike.
- (15) Region 15:
- (a) Bath;
- (b) Boyd;
- (c) Carter;
- (d) Elliott;
- (e) Greenup;
- (f) Lawrence;
- (g) Menifee;
- (h) Morgan; and
- (i) Rowan.
- (16) Region 16:
- (a) Bracken;
- (b) Fleming;
- (c) Lewis;
- (d) Mason; and
- (e) Robertson.]

Section 3. Service Programs. (1) Excluding nonemergency ambulance stretcher transportation, nonemergency medical transportation[,] as established in [pursuant to] KRS Chapter 205[, 907 KAR 1:060,] and 907 KAR 3:066[,] shall be provided as follows:

(a) A broker shall transport a [any] Medicaid-eligible recipient, excluding qualified medicare beneficiaries "QMB" and Phase 3 KCHIP recipients, with a county code residence in the broker's delivery area.

(b) The broker shall be responsible for transportation arrangements if: [when]

1. The recipient is coded in the broker's delivery area[,] but has moved or is living in another human service transportation delivery area[.];

2. The recipient is county coded 121;

3. The recipient is physically residing in the broker's region; or

4. The recipient is a guardianship case.

(c) [(b)] Services outside a [the] recipient's medical service area [county or contiguous county] shall require[have] a referral from [by] the recipient's;

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1. Licensed physician;
2. Physician's assistant;
3. Advanced registered nurse practitioner; or
4. Qualified mental health professional as established in KRS 202A.011(12) [medical provider before transport].

(d) If a referral pursuant to paragraph (c) of this subsection cannot be obtained, services may be authorized by the contracting agency.

(e) A referral shall be to the closest appropriate medical service provider for the required service.

(f) A referral shall be valid for six (6) months.

(g) A referral shall be made by using the Office of Transportation Delivery form entitled Kentucky Non-Emergency Medical Transportation Program Medicaid Medical Referral Form.

(h) The Cabinet for Health and Family Services may waive this requirement if the waiver is in the best interests of the recipient or the Commonwealth.

Section 4. Nonemergency Medical Transportation. (1)(a) [(e)] Nonemergency medical transportation shall be available for a:

1. Kentucky Medicaid eligible recipient; [medically-covered] and

2. Medically-necessary service as established in 907 KAR 3:066 [in accordance with Medicaid regulations].

(b) A [The] Kentucky [nonemergency] Medicaid cardholder shall be transported to a Medicaid-covered service accompanied by a parent, guardian, or escort as established in KRS 281.873 [when necessary]. [(d) A parent or a guardian shall accompany a minor the age of twelve (12) years and under to a Medicaid-covered service. A parent or a guardian may accompany a minor between the ages of thirteen (13) and seventeen (17).]

(c) A [The] parent, guardian, or escort shall not be charged a fare.

(2) If an operational motor vehicle is registered to a Medicaid eligible recipient or household member, the recipient shall be denied non emergency medical transportation services unless:

(a) The recipient or a licensed driver in the recipient's home submits a licensed physician's statement to the Transportation Cabinet that he or she is medically unable to operate a motor vehicle;

(b) A recipient submits the statement of an automobile mechanic to the Transportation Cabinet certifying that the vehicle is mechanically inoperable; or

(c) A recipient submits a statement to the Transportation Cabinet from an employer or a school indicating that the motor vehicle is used for work or school during the time the recipient needs to be transported to a medical appointment.

(3) A physician's statement submitted to the Transportation Cabinet by a recipient shall be valid for six (6) months and may be renewed every six (6) months.

(4) A statement by an automobile mechanic submitted to the Transportation Cabinet by a recipient shall be valid for thirty (30) days.

(5) A recipient may submit up to three (3) mechanic's statements per vehicle during a one (1) year time period for each vehicle owned by the recipient.

(6) An employer statement submitted by the recipient to the Transportation Cabinet shall be valid for three (3) months and may be renewed every three (3) months.

(7) A school statement submitted by a recipient to the Transportation Cabinet shall be valid only during a current school semester.

(8) A motor vehicle in the recipient's home may be sold, junked, transferred, or cancelled out of the household through the services of the recipient's local county clerk's office.

Section 5. [(2)] Kentucky Works Program. (1) [Transportation pursuant to the Kentucky Works Program shall be provided as follows: (a)] Recipients participating in the Kentucky Works Program shall be transported to [covered] services or TANF component activities in the county of residence or contiguous county.

(2) Transportation services covered by the Kentucky Works Program shall include:

(a) Employment; [;]

(b) Child daycare centers; [;]

(c) Job interviews; [;] and

(d) Training.

(3) [(b)] Transportation shall be provided for training at vocational schools, community colleges, universities, and high schools within the recipient's county or human service transportation delivery area and contiguous to the human service delivery area. [(e) The broker shall pay a TANF recipient before or during the month of transportation services. Payment shall be contingent upon the TANF recipient receiving necessary authorization from the broker to use his or her private automobile, or the TANF recipient having access to an available automobile, to training, or employment activities.]

Section 6. Programs. (1) [(3)] Additional [Other] programs under the human service transportation delivery system shall include:

(a) Vocational rehabilitation as established in [pursuant to] KRS Chapter 151B or 157;

(b) Vocational rehabilitation for the blind as established in [pursuant to] KRS Chapter 151B or 163;

(c) Mental health, mental retardation, development disabilities, comprehensive care, or substance abuse services as established in [pursuant to] KRS Chapter 202A, 202B, 210, or 645; [and]

(d) The Office of Aging Services as established in [under] KRS Chapter 205, 209, 216, or 273; and

(e) Future Human Service Transportation Delivery programs as established in Presidential Executive Order 13330 (Section 3), effective February, 2004.

(2) [(4)] The state government agencies responsible for implementing the programs set forth in this section shall provide to the Transportation Cabinet:

(a) A monthly list of the persons eligible to receive human services transportation [pursuant to the programs set forth in this section,] including special Medicaid recipient waiver listings;

(b) The address of each person on the list; and

(c) The program for which each person on the list is eligible.

(3) [(5)] A denial of human services transportation to a recipient shall be as established in KRS 281.872 [a service as provided in subsections (1), (2), and (3) of this section shall be pursuant to the provisions of Section 14 of this administrative regulation].

Section 7. [Section 4.] Coordinated Advisory Transportation Committee (CTAC). (1) CTAC shall be composed of members designated by the:

(a) Cabinet for Health and Family Services;

(b) Education Cabinet;

(c) [Cabinet for Families and Children; Cabinet for Workforce Development; and] Transportation Cabinet; and

(d) Other future program partners as established in Presidential Executive Order 13330.

(2) The Cabinet for Health and Family Services[, Families and Children;] and the Transportation Cabinet shall each have two (2) voting members and the Education Cabinet [Workforce Development] shall have one (1) voting member.

(3) CTAC duties and responsibilities shall include:

(a) Providing information and assistance to the Transportation Cabinet [cabinet];

(b) Reviewing and recommending policies and operating procedures to the Transportation Cabinet; and

(c) Serving on broker evaluation committees as established in [; if designated, in accordance with] KRS Chapter 45A.

Section 8. [Section 5.] Transportation Broker Selection Process.

(1) A request for proposal (RFP) and the process of awarding a brokerage contract for each region shall comply with KRS Chapter 45A. The RFP evaluation process for broker selection shall[, at a minimum,] address areas that include the following:

(a) Overall quality in transportation delivery;

(b) [4.] Information regarding administration including:

1. [a.] Human resources, including staffing and employee categories by classification, number, and experience;

2. [b.] Insurance and risk management, types and levels of insurance coverage and emergency process, and training offered

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to reduce business risk;

3. [e.] Billing and accounting practice and procedures; and
4. [d.] Financial capability.

(c) [2.] Information regarding operations including:

1. [a.] Scheduling and reservations;
2. [b.] Fleet management;
3. [e.] Dispatching and radio communications;
4. [d.] Computer software and hardware;
5. [e.] Reporting for both the broker and subcontractor; [and]
6. [f.] Vehicle inspection or maintenance programs; and
7. [(b)] Experience.

(2) An applicant shall submit to the Commonwealth the documentation required by [in accordance with] KRS 281.875(2) and (3). [; a person that submits a request for proposal to be a broker under the human service transportation delivery program shall be required to submit documentation that he or she has at least one (1) year experience working with persons with special needs. The cabinet shall be prohibited from awarding higher scores, or giving any type of preferential treatment to any person that submits a request for proposal to be a broker, who is also a transportation provider, over a person who submits a request to be a broker and is not a transportation provider;

(3) An applicant shall demonstrate to the Commonwealth an [(e)] ability to coordinate trips with:

- (a) [1.] Local community based governmental offices;
- (b) [2.] Training, educational, or medical centers; and
- (c) [3.] Coordination with Other transportation providers.

(4) [(d)] An applicant shall [have operational characteristics which include]:

(a) [1.] Maintain an office in the regional area where the bidding takes place [Locations of operations];

(b) [2.] Have sufficient infrastructure and other resources including:

1. Telephone and dispatching capability;
2. Scheduling software; and
3. A building to serve as a place of business;

(c) [3.] Have sufficient capability to safely, securely, and confidentially store recipient and provider records and information [Storage of records];

4. Security and confidentiality of recipient and provider information];

(d) [5.] Demonstrate the ability to cover the delivery area including information regarding hours, days, and operator's availability [Coverage of the delivery area hours, days, and operators availability]; and

(e) [6.] Indicate if education and training programs are conducted on an ongoing basis.

Section 9. [(2)] Contractual Agreements [between the Transportation Cabinet and brokers].

(1) [(a)] A [Each] contract between the Commonwealth [cabinet] and a broker shall be for one (1) year with four (4) [three (3)] one (1) year options to renew.

(2) [(b)] Contracts shall be on a fiscal year basis, running July 1 through June 30.

(3) [Operating authority.] Except for a volunteer provider, each transportation provider shall have operating authority issued by the Transportation Cabinet pursuant to KRS Chapter 281 or 96A.

(4) A contract between the Commonwealth [cabinet] and the broker shall be subject to:

(a) Revocation in accordance with KRS 281.879; and [; Furthermore, the contract shall be subject to]

(b) Termination [by the Commonwealth] in accordance with 200 KAR 5:312.

Section 10. [Section 6.] Transportation Broker. (1) A broker shall [may] coordinate the human service transportation delivery program [with general public transportation] as provided in KRS 281.877.

(2) A [The] broker shall make a report to the cabinet on [all] traffic accidents and moving violations involving either the [a] broker or subcontractor that occur in route to or while transporting a human service transportation passenger within twenty-four (24) hours of the occurrence.

(3)(a) A [The] broker shall have all completed reports [pertinent] for payment to the cabinet no [not] later than the seventh day of each month following the reporting period.

(b) The cabinet shall reimburse the broker no [not] later than the fifteenth day of each month[;] if the broker has submitted the required reports, and if the Medicaid eligible count is received from the Department of Medicaid Services allowing adequate processing time through the Commonwealth's processing system.

(c) A broker shall [promptly] reimburse a subcontractor and a Medicaid private auto provider as established in KRS 281.875 (1)(f) [within three (3) business days of being paid by the cabinet each month for each valid invoice trip documentation].

(d) A valid subcontractor or private auto provider invoice post-dated after the first of the month shall be included in the next month's billing.

(e) A TANF private auto provider shall be paid by a broker within three (3) business days of receiving the TANF payment from the Transportation Cabinet [before the service month].

(f) Payment shall be contingent upon a TANF recipient:

1. Receiving written authorization from the broker to use his or her private automobile; or

2. Having access to an automobile for training or employment activities.

(4) A [The] broker shall have an established operating office located within the awarded delivery area.

(5) A [The] broker shall employ a sufficient number of [an adequate] staff to accommodate;

(a) Reservations;[;]

(b) Oversight of timely pickup and delivery;[;]

(c) Scheduling;[;]

(d) Accounting;[;]

(e) Complaint tracking;[;]

(f) Safety compliance;[;] and

(g) Reporting to the cabinet. [(6)] All brokers shall provide transportation services for recipients eligible under Section 3 of this administrative regulation.]

(6)(a) A broker or subcontractor shall immediately report allegations of criminal wrongdoing and Medicaid fraud to the Transportation Cabinet.

(b) A broker shall immediately report recipient abuse or neglect to the Cabinet for Health and Family Services.

(7) The cabinet shall utilize the peer-to-peer review process within the Department of Medicaid Services for any questionable documentation received from a medical provider during the delivery of transportation services.

(8) A broker shall require a subcontracting transportation company to provide its drivers with name tags and company photo identification.

(9) A broker that receives a complaint in writing from the Transportation Cabinet shall respond:

(a) Within twenty-four (24) hours of the complaint; or

(b) Immediately if a complaint is marked urgent.

Section 11. [Section 7.] Orientation Program. (1) A [All] broker shall provide an orientation program for [to] each subcontractor and potential subcontractor as established in KRS 281.875(1)(j). [The program shall at a minimum include:

(a) How and when payment will be made;

(b) Rates;

(c) Vehicle requirements;

(d) Driver conduct;

(e) Driver qualifications;

(f) Reporting requirements;

(g) Communication systems;

(h) Pickup and delivery standards;

(i) Training;

(j) Drug and alcohol testing;

(k) Safety;

(l) Confidentiality;

(m) Levels of transportation;

(n) Escort and attendants;

(o) Contract compliance;

(p) Scheduling and availability and standard state transportation requirements; and

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(q) ~~The role of the program coordinator as required by KRS 281.872.~~

(2)(a) ~~An orientation meeting between a [the] broker and subcontractor shall be held before transportation services are provided [the subcontractor provides transportation services].~~

(b) ~~A subsequent meeting shall [may] be held as needed or requested by the cabinet, broker, or subcontractor [to clarify new policies and administrative regulations, or as directed by the cabinet].~~

Section 12. ~~[Section 8.] Subcontractors and Volunteers.~~ (1) A subcontractor~~[-]~~ who has signed a contract with a broker to provide human service transportation delivery within a specific delivery area~~[-]~~ shall meet human service transportation delivery requirements, including:

(a) ~~Proper operating authority by state, county, or city; and~~

(b) ~~The use of authorized and qualified vehicles.~~

(2) ~~A [The] subcontractor shall not enter into an agreement with a broker without the prior approval of the Transportation Cabinet.~~

(3) ~~A [Each] broker shall submit and request approval of the cabinet for a [each] potential subcontractor.~~

(4) ~~A subcontractor shall not assign a trip to any other provider.~~

(5) ~~A [The] subcontractor shall submit the following documentation to the broker:~~

(a) ~~A copy of the subcontractor's operating authority;~~

(b) ~~Proof of insurance including the subcontractor, or independent contractor's vehicle liability insurance, and proof of Kentucky workers compensation insurance coverage;~~

(c) ~~A copy of the [draft of the] broker and subcontractor's agreement;~~

(d) ~~A copy of all vehicle lease agreements; and~~

(e) ~~A copy of the medicaid provider's enrollment letter.~~

(6) ~~[(e)] A [All] contract shall, at a minimum, include:~~

(a) ~~[1.] Payment administration as established [required] in KRS 281.875(1)(f);~~

(b) ~~[2.] A copy of the hours of operation and other scheduling requirements;~~

(c) ~~[3.] The rates for services;~~

(d) ~~[4.] Pickup and delivery standards;~~

(e) ~~[5.] Contract duration; [and]~~

(f) ~~[6.] Termination clause and compliance penalty provisions;[-]~~

(g) ~~Signed confidentiality agreement statements for subcontractor or volunteer employees; and~~

(f) ~~A current list of all safety sensitive persons within the subcontractor's company.~~

(7) ~~[(3)] A broker and subcontractor shall [ensure and] provide documentation to the cabinet certifying that all drivers and escorts during employment shall:~~

(a) ~~Be legally licensed by the Commonwealth of Kentucky to operate the transportation vehicle to which they are assigned;~~

(b) ~~Be courteous, patient, and helpful;~~

(c) ~~Be [at least] eighteen (18) years of age or older;~~

(d) ~~Have no more than two (2) convictions for moving violations in the last three (3) years;~~

(e) ~~[Have no prior convictions for a drug or alcohol-related offense in the last five (5) years, if a driver or attendant;~~

(f) ~~Have no convictions of any sexual crime or crime of violence;~~

(f) ~~[(g)] Have had a pre employment drug test; and~~

(g) ~~[(h)] Have received [Receive] orientation and safety training that includes:~~

1. ~~First aid training;~~

2. ~~Training regarding blood borne pathogens; and~~

3. ~~Passenger assistance training.~~

(8) ~~[(4)] A [Any] person who has been convicted of a misdemeanor or a felony during the last five (5) years shall drive or escort [attend] passengers only after review and approval by the broker, subcontractor, and the cabinet.~~

(9) ~~[(5)] A volunteer transportation provider shall have:~~

(a) ~~A valid driver's license;~~

(b) ~~Proof of insurance and registration; and~~

(c) ~~A vehicle that [which] meets the safety needs of the recipient.~~

(10) ~~[(6)] In order to receive mileage reimbursement, a [The subcontractor and the] private auto provider shall submit a valid invoice to the broker by the first of each month to allow for [accounting, payment processing, and mailing time for] payment [to be paid] within three (3) business days of payment received from the cabinet.~~

(11) ~~[(7)] A valid invoice postdated after the first [fifth] day of the month shall be included in the next month's billing.~~

(12) ~~[(8)] A subcontractor and a private auto provider shall submit all valid invoices to the broker within six (6) months of the date of service for reimbursement by the broker.~~

(13) ~~[(9)] A subcontractor shall immediately report to the broker a [any] moving violation or traffic accident that occurs in route or while transporting a human service transportation passenger [to the broker within thirty (30) days].~~

(14) ~~[(10)] A subcontractor shall not participate in determining recipient eligibility or type of transport.~~

(15) ~~A subcontractor shall not solicit for assignment of non-emergency Medicaid trips.~~

Section 13 ~~[Section 9.] Vehicle Requirements.~~ (1) ~~A [The] broker shall assure that [all] transportation providers maintain [all] vehicles and vehicle equipment adequately.~~

(2) ~~A vehicle and its [all] components shall comply with, or exceed the manufacturer's[-] state and federal[-] safety and mechanical operating and maintenance standards for the particular vehicle and model used.~~

(3) ~~A vehicle shall comply with [all applicable federal laws including] The Americans With Disabilities Act of 1990, (ADA), 42 U.S.C. 12102.~~

(4) ~~A [Any] vehicle that is non compliant with licensing requirements, operating authority requirements, or safety requirements shall be immediately removed from human service transportation delivery service by the broker service. [found noncompliant with the Cabinet, Department of Vehicle Regulation's licensing requirements, operating authority requirements, safety standards, or requirements shall be removed from service immediately. All vehicles shall meet the following requirements:]~~

(5)(a) ~~A [The] transportation provider shall provide and use a [two (2)-way] communication system that links the dispatcher with the provider, and the provider with the dispatcher [linking all vehicles used in delivering the services]. A [The two (2)-way] communication system shall be used:~~

1. ~~In a manner that facilitates communication and minimizes time in replacing or repairing [the time in which] out-of-service vehicles [can be replaced or repaired];~~

2. ~~In a confidential manner adhering to 45 C.F.R. Part 164, The Health Insurance Portability and Accountability Act of 1996 (HIPAA).~~

(b) ~~A [All] vehicle shall be equipped with adequate heating and air conditioning for driver and passengers. A [Any] vehicle with a nonfunctioning climate control system shall be placed out-of-service until appropriate corrective action is taken.[-]~~

(c) ~~A [All] vehicle shall have functioning, clean, and accessible seat belts for each passenger seat, [position and]~~

(d) ~~Seat belts shall be stored off the floor when not in use.~~

(e) ~~A [Each] vehicle shall utilize child safety seats pursuant to KRS 189.125 [when transporting children under age five (5)].~~

(f) ~~A [Each] vehicle shall have at least two (2) seat belt extensions provided.~~

(g) ~~[Additionally,] A [Each] vehicle shall be equipped with a seat belt cutter[-] mounted above the driver's door[-] for use in emergency situations;~~

(h) ~~[(d)] A [All] vehicle shall have a functioning speedometer and odometer;~~

(i) ~~[(e)] A [All] vehicle shall have [a] functioning interior lights within the passenger compartment;~~

(j) ~~[(f)] A [All] vehicle shall have adequate sidewall padding and ceiling covering;~~

(k) ~~[(g)] A [All] vehicle shall be smooth riding;~~

(l) ~~[(h)] A [All] vehicle shall have two (2) exterior rear view mirrors, one (1) on each side of the vehicle;~~

(m) ~~[(i)] A [All] vehicle shall be equipped with an interior mirror for the purpose of monitoring the passenger compartment that~~

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[which] shall be either clear-view laminated glass, or clear-view glass bonded to the back that [which] retains the glass in the event of breakage[.]. This interior mirror shall be for monitoring the passenger compartment[;].

(n) [(j)] A [The] vehicle's interior and exterior shall be clean and [have exteriors] free of:

1. Broken mirrors or windows;
2. Torn upholstery or floor covering;
3. Damaged or broken seats;
4. Protruding or sharp edges;
5. Dirt, oil, grease; or

6. Litter. [(k)] The vehicle shall have passenger compartments that are clean, free from torn upholstery or floor covering, damaged or broken seats, and protruding sharp edges and shall also be free of dirt, oil, grease or litter[;].

(o) [(l)] The vehicle floor shall be covered with commercial anti-skid, ribbed, rubber flooring, or carpeting. Ribbing shall not interfere with wheelchair movement between the lift and the wheelchair positions;

(p) [(m)] A [All] vehicle shall have the transportation provider's name, vehicle number, and the program coordinator's customer service phone number prominently displayed within the interior of each vehicle. This information shall also be available in written form on each vehicle for distribution to a rider on request;

(q) [(n)] A [All] vehicle shall have the following signs posted in the [all] vehicle interior, easily visible to the passengers and driver:

1. "No Smoking, Eating or Drinking;" and
2. "All passengers shall use seat belts";

(r) [(o)] A [All] vehicle shall be equipped with a functional fire extinguisher and shall display a current inspection tag or sticker;

(s) [(p)] A [All] vehicle with a floor threshold of greater than twelve (12) inches shall include a retractable step or a step stool as approved by the cabinet to aid in passenger boarding. A step stool shall;

1. [The step stool shall] Be used to minimize ground-to-first-step height[;] [-shall]

2. Have four (4) legs with antiskid tips[;]

3. Be made of sturdy metal with nonskid tread[;] [-with]

4. Have a height of eight and one-fourth (8 1/4) inches, a width of fifteen (15) inches, and a depth of fourteen (14) inches [or an equally suitable replacement].

5 [Under no circumstances shall] A milk crate or similar substitute shall not be considered a suitable replacement or a viable alternative for a step stool. [Milk crates or similar substitutes shall not be permitted on any vehicle];

(t) [(q)] A [All] vehicle shall have on board three (3) portable triangular reflectors mounted on stands;

(u) [(r)] A [All] vehicle shall include a vehicle information packet to be stored in the driver compartment[;] or securely stored on or in the driver's side visor. This packet shall include:

1. Vehicle registration;
2. Insurance card;
3. Bus or vehicle card; and
4. Accident procedures and forms;

(v) [(s)] A [All] vehicle shall be provided with a fully equipped first aid kit and a "spill kit" including:

1. Liquid spill absorbent[;]
2. Latex gloves[;]
3. Hazardous waste disposal bags[;]
4. Scrub brush[;] and
5. Disinfectant and deodorizer[;] and

(w) [(t)] A [Each] vehicle shall contain maps or global positioning devices with sufficient detail to locate recipients and destinations.

(x) A vehicle shall have the transportation provider's company signage posted on the exterior of the vehicle identifying the company's legal name.

(y) Signage shall be displayed on the driver and passenger side doors in two (2) inch block letters.

(2) A lift-equipped vehicle [requirements. All vehicles] used to transport wheelchair passengers[;] shall [at a minimum,] meet the requirements and specifications of The Americans with Disabilities Act of 1990 (ADA). [the following ADA requirements:

(a) A floor-to-ceiling height clearance of at least fifty-six (56)

inches for vehicles up to twenty-two (22) feet and of at least sixty-eight (68) inches for vehicles above twenty-two (22) feet in the passenger compartment;

(b) An engine-wheelchair lift interlock system which requires the vehicle's transmission be placed in park and emergency brake engaged to prevent vehicle movement if [when] the lift is deployed;

(c) A hydraulically or electromechanically powered wheelchair lift mounted so as not to impair the structural integrity of the vehicle that meets the following specifications:

1. Capable of elevating and lowering a 600-pound load and shall not cause the outer edge of the lift to sag, or tilt downwards more than one (1) inch, nor shall the platform deflection be more than three (3) degrees under a 600-pound load;

2. The lift platform is at least thirty (30) inches wide and forty-eight (48) inches long;

3. The lift platform shall not have a gap between the platform surface and the roll-off barrier greater than five-eighth (5/8) inch. When raised, the gap between the platform and the vehicle floor shall not exceed one-half (1/2) inch horizontally and five-eighth (5/8) inch vertically;

4. The lift controls shall be operable and accessible from inside and outside the vehicle, and shall be secure from accidental or unauthorized operation;

5. The lift shall be powered from the vehicle's electrical system. In the event of a power failure, the lift platform shall be able to be raised or lowered manually with passengers, and shall provide a method to slow free-fall in the event of power or component failure;

6. The lift operation shall be smooth without any jerking motion. Movement shall be less than or equal to six (6) inches per second during lift cycle and less than or equal to twelve (12) inches per second during stowage cycle;

7. When in storage in the passenger compartment, the lift platform shall not be capable of falling out of or into the vehicle, even if the power should fail;

8. The lift platform shall have a properly functioning, automatically engaged, anti-roll-off barrier, with a minimum of one and one-half (1 1/2) inch on the outbound end, to prevent ride over;

9. It is preferable but not required, that the platform, when in a stored position, not intrude into the body of the vehicle more than twelve (12) inches and be equipped with permanent vertical side plates to a height of at least two (2) inches above the platform surface;

10. The lift platform surface shall be a nonskid expanded metal, mesh or equivalent, to allow for vision through the platform;

11. The lift shall be furnished with reflector tape on each side except the side adjacent to the vehicle and on all step edges, thresholds and the boarding edge of lift platform; and

12. The lift platform on vehicles shall be equipped with a handrail on both sides of the lift platform for the purpose of loading or unloading ambulatory passengers. The handrail shall meet the following requirements: maximum height range thirty (30) inches to thirty-eight (38) inches; knuckle clearance handhold one and one-half (1 1/2) inch; shall be able to withstand force of 100 pounds; the handrail shall not reduce the lift platform width of at least thirty (30) inches; and shall be a ramp-equipped vehicle meeting ADA specifications.

(d) Wheelchair restraint system - for each wheelchair position, a wheelchair securement device (or tie down) shall be provided that shall:

1. Be placed as near to the accessible entrance as practical, providing clear floor area of thirty (30) inches by forty-eight (48) inches. Up to six (6) inches may be under another seat if there is nine (9) inches height clearance from floor. Vehicles in excess of twenty-two (22) feet shall have at least one (1) forward-facing position. Additional positions may be forward-facing or rearward, if there is a padded barrier;

2. Be tested to meet a thirty (30) m.p.h./twenty (20) gm standard;

3. Securely restrain the wheelchair during transport from movement forward, backward, lateral and overturning movements in excess of two (2) inches;

4. Be adjustable to accommodate all wheel bases, tires (including pneumatic) and motorized wheelchairs;

5. Be a lock system, belt system or both and acceptable to the

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cabinet. If a belt system is used the cargo strap shall be retractable or stored on a mounted clasp or in a storage box when not in use. A tract mounting lock system on the floor for wheelchair securement shall be flush with the floor so as not to be an obstruction or become a tripping hazard. In all cases, the straps shall be stored properly when not in use; and

6. Provide seat belts or a shoulder harness that are attached to the floor or to the sidewall of the vehicle, which shall be capable of securing both the passenger and wheelchair.

(e) Wheelchair entrance door shall:

1. Maintain a minimum vertical clearance of fifty-six (56) inches for vehicles or less in length (sixty-eight (68) inches for vehicles over twenty-two (22) feet in length) and a minimum clear door opening of thirty (30) inches wide;

2. Have no lip or protrusion at the door threshold of more than one-half (1/2) inch; and

3. Be equipped with straps or locking devices to hold the door open when the lift is in use.]

Section 14. [Section 10.] Scheduling. (1)(a) The recipient or his or her guardian shall call the regional broker of the coded county of the recipient's residence [recipient's county residence] at least seventy-two (72) hours prior to the scheduled appointment to schedule a trip.

(b) If a recipient is not county coded to the county of residence, the broker shall assist with arranging service with the assigned county coded broker.

(c) Weekends and holidays shall be included in determining the seventy-two (72) hour period for scheduling.

(2)(a) All brokers shall provide [offer] scheduling services [and transportation services] between 8 a.m. and [to] 4:30 p.m., Monday through Friday, and from 8 a.m. to 1 p.m. on Saturday.

(b) [In addition,] Transportation services shall be provided [effered] between 6 a.m. and [to] 8 p.m., Monday through Friday, and from 8 a.m. to 1 p.m. on Saturday.

(c) Scheduling services, transportation services, and business functions shall [may] be closed for:

1. New Year's Day; [;]

2. Memorial Day; [;]

3. July 4th; [;]

4. Labor Day; [;]

5. Thanksgiving Day; [;] and

6. Christmas Day.

(3)(a) The broker shall have [at a minimum,] paging services available after normal scheduling hours [periods] for urgent care transportation service.

(b) Urgent care transportation service shall be provided twenty-four (24) hours a day, seven (7) days a week, including any holiday.

(c) Urgent care transportation service may be [scheduled or] requested anytime.

(d) TANF recipients may request [have a need for] immediate transportation from employment or training, including transport of a recipient's child from a daycare facility [;] due to an illness or a family emergency.

(e) In-patient discharges shall be provided during the usual daily Human Service Transportation operating hours, but shall not require a seventy-two (72) hour notice of scheduling in advance. [An immediate transportation need may be requested anytime.]

(4)(a) A [The] broker may schedule and provide trips for recipients after the normal [scheduling] hours of operation for special circumstances as established in Section 1 of this administrative regulation.

(b) The broker may [provide the eligible recipient transportation service and may] contact the Transportation Cabinet for guidance. [For purposes of this section, special circumstances shall, at a minimum, include dialysis treatments available only on weekends, or TANF transportation for evening shift employment.]

(5) The broker shall collect the following information from each eligible recipient requesting transportation services [on each incoming call]:

(a) Name of recipient;

(b) Recipient's Medicaid identification number [Address of pickup and delivery];

(c) Recipient's pickup and delivery address;

(d) [(e)] Date of appointment;

(e) [(d)] Time of appointment;

(f) [(e)] Program identification;

(g) [(f)] Telephone number; [and]

(h) [(g)] Purpose of trip; and

(i) Special needs including:

1. Child safety seats; or

2. Lift-equipped vehicle.

(6) The broker shall confirm the trip has been scheduled and shall provide the recipient with a reservation confirmation number.

(7)(1) In order to waive the twelve (12) [seventy-two (72)] hour notice requirement [;] for urgent care, the cabinet shall receive verification from a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner; or

(d) Qualified mental health professional as defined in KRS 202A.011.

(8) The verification required in subsection seven (7) of this section shall be transmitted by [the licensed medical provider verification may be transmitted in any of the following methods]:

(a) Oral verification over a telephone;

(b) [(a)] Written verification on the licensed medical provider's letterhead delivered in person [by the person directly] to the broker;

(c) [(b)] Written verification transmitted electronically by computer or by facsimile on the [The transmittal shall include the] licensed medical provider's letterhead [or office name] and [be] submitted from the licensed medical provider's office directly to the broker's office.

(9) [; or

(c) Oral verification over the telephone.

4) If written verification cannot be submitted, the broker may initiate a telephone call to the licensed medical provider requesting oral verification that the recipient is required to [must] be seen at the appointed time.

(10) [2-] If the licensed medical provider initiates the call, the broker shall [may] return the call if there is a question concerning the call's legitimacy [to verify legitimacy of the call].

Section 15. [Section 14.] Eligibility. (1)(a) With the Transportation Cabinet and Cabinet for Health and Family Service's assistance [direction], a [each] broker shall have direct computer access to all relevant data bases needed to determine eligibility.

(b) If there is a question regarding eligibility, [and time does not warrant technological updates,] the broker shall contact the cabinet for assistance in determining eligibility.

(c) The cabinet shall [initially] investigate all complaints regarding subcontractors and the broker for the area, and attempt to immediately resolve the problem to the satisfaction of all parties.

(d) The cabinet shall forward all complaints relating to Medicaid fraud or abuse to the Cabinet for Health and Family Services.

(2)[(a)] A trip for a nonemergency medical recipient who does [de] not require a [escorts or] special-equipped vehicle [;] may be [transported] by taxi, community or [and] city bus, or private auto and shall be coordinated by the broker so that if it is feasible one (1) recipient may be transported with other recipients [to the greatest extent possible]. [(b) Escorts or attendants shall be individuals whose presence is required to assist a recipient during transport].

(3)(a) The broker shall ensure that an escort accompanies all Certificate Type 07 and Certificate Type 08 recipients certified for an escort pursuant to the cabinet's specialty carrier form entitled Medical Transportation Classification Form.

(b) A Medical Transportation Classification Form shall be submitted by the broker directly to the physician and sent from the physician directly to the broker.

(c) [(b)] One (1) escort [only] shall be required for each recipient.

(d) [(c)] A family member may serve as an escort.

(e) [(d)] One (1) escort may serve several recipients if the recipients are grouped and have the same destination.

(f) [(e)] An escort shall not be charged a fare.

(g) A transportation provider or a provider's employee shall not serve as a designated guardian for a child twelve (12) years or

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under.

Section 16. [Section 12.] Standards for Recipients [Passengers]. (1)(a) A trip for a recipient [Passengers] may be coordinated with public transit [the general public population for transportation services].

(b) [(2)(a)] A recipient [Passengers] shall give all pertinent information needed to the broker[,] including a request for an escort required, or information regarding special needs.

(2) [(b)] If the recipient is under the TANF Program, the recipient shall convey to the broker the number of children to be transported.

(3) Transportation to childcare shall not be provided under nonemergency medical transportation [unless the child is an eligible recipient and in need of covered medical service].

(4) A recipient shall not be under the influence of alcohol or illegal drugs.

(5) A recipient shall be ready at least [within] fifteen (15) minutes before scheduled pickup.

(6) Except for medical necessity, a recipient shall abide by signs in the vehicle and observe safety rules including seat belt requirements [, including no food or drink]. [(7) A recipient shall abide by the nonsmoking requirement and observe safety rules.

[(8) A recipient shall abide by applicable safety seat belt administrative regulations.]

(7) [(9)] A recipient shall not hold a child in his or her [children in] lap during transport.

(8) [(10)] A recipient shall call seventy-two (72) hours in advance for the transport unless it is an urgent care situation[or verified by a licensed medical provider request in accordance with Section 10(7) of this administrative regulation].

(9)(a) A [(11)] recipient shall cancel a [the] trip as soon as possible, but no less than twenty-four (24) hours in advance.

(b) A recipient who fails to show for a scheduled transportation service shall receive a letter from the Transportation Cabinet informing the recipient of their responsibility in scheduling and cancelling trips.

(10) A [(12)] recipient that engages in abusive, violent, seriously disruptive, or illegal conduct or contact shall [may] lose his or her [their] transportation privileges [Privileges may be removed] with approval from the cabinet [and applicable state agency].

(11) [(13)] If a recipient poses an immediate danger to the driver or other passengers, the driver shall call for emergency assistance.

(12) A [(14)] recipient may [shall have the right to] call a broker or the cabinet's toll free complaint phone line to lodge a complaint.

(13) [(15)] Failure to abide by subsections (3) through (11) [(13)] of this section shall be cause for trip denial as established in Section 15 [pursuant to Section 14] of this administrative regulation. [Section 13. Education Guidelines. Each broker shall educate interested persons in the delivery area regarding:

(1) Scheduling procedures contained in Section 10 of this administrative regulation;

(2) Rates for each service type;

(3) Recipient information as required in Section 10(5) of this administrative regulation;

(4) Pickup and delivery standards as provided for in Sections 8 and 12 of this administrative regulation;

(5) Denial of service to as provided for in Section 14 of this administrative regulation;

(6) Permissibility of escorts and attendants, as provided for in this administrative regulation and 907-KAR 1:061;

(7) Procedures for governing urgent care provided for in Section 10 of this administrative regulation;

(8) Standards for driver conduct as provided for in Section 8 of this administrative regulation;

(9) Standards for passengers as provided for in Section 12 of this administrative regulation; and

(10) Complaint process for recipients as provided for in Section 14 of this administrative regulation.]

Section 17. [Section 14.] Program Coordinators. (1) The cabinet shall employ a pool of program coordinators as established in [required by] KRS 281.872. [(a) These employees shall be respon-

sible for complaint resolution regarding recipients, subcontractors, and brokers.

(b) These employees shall work with other state agencies to resolve complaints.

(2) Issues of eligibility that result in the recipient being denied transportation shall be investigated by the program coordinators.

(3)(a) Eligibility issues shall be attempted to be resolved immediately.

(b) If eligibility cannot be resolved immediately, the recipient shall continue to receive transportation until the program coordinator:

1. Resolves the question of the person's eligibility; and

2. Verifies to the broker that the person is actually ineligible to receive transportation services.

(4)(a) The cabinet shall inform the recipient, in writing, of a denial of transportation services.

(b) The denial letter shall include information about recipients' rights, including appeals and representation.

(5)(a) The Department for Community-Based Services shall advise each recipient, in writing, of the availability of the program coordinators and the manner in which they may be contacted.

(b) The recipient may contact the program coordinator regarding complaints or questions about the services provided.]

Section 18. [Section 15.] Cabinet Performance Monitoring and Oversight. (1) A [The cabinet shall be satisfied as to the operational readiness of the broker. The] broker shall demonstrate operational readiness to the cabinet in an onsite inspection in the following areas:

(a) Hours of service and operation;

(b) Scheduling procedures;

(c) Pickup and delivery standards;

(d) Urgent care and immediate TANF transportation;

(e) Driver conduct, [and driver] qualification, and training;

(f) Passenger requirements;

(g) Vehicle requirements, inspections, and vehicle inventory;

(h) Back-up service;

(i) Appeals and complaint procedures;

(j) Telephone systems and reporting procedures, including TTY;

(k) Computer and technological capabilities;

(l) Driver manifest form procedures submittal and receipt;

(m) Roles and job descriptions of staff; and

(n) Educational and orientation procedures.]; and

(2) A broker shall [(a)] develop a Transportation Cabinet approved operational procedures manual for each region.

(2) Each regional [region] broker shall set up toll free lines giving the human service transportation delivery recipients and the general public information about the availability of services.

(3)(a) A [The] broker shall be available for scheduled visits by the Transportation Cabinet twice a year [on a periodic basis] to assess operations and [,] performance, and discuss service issues.

(b) A subsequent meeting or visit may be held as needed or requested by the broker or the cabinet.

(c) [(b) At a minimum:] One (1) meeting shall consist of a comprehensive assessment compliance review by the cabinet.

(d) A [(c) The] broker shall [also] be available for periodic conference calls with the cabinet to discuss issues, policy, and procedures.

(4)(a) A driver performing under the human service delivery network shall be subject to random drug and alcohol testing [to be administered by the cabinet].

(b) A new hire [new] safety-sensitive employee for a [of] transportation provider shall be required to pass a pre employment drug test.

(c) A [All] provider shall develop a drug and alcohol policy. [(d) Brokers shall submit monthly testing activities.]

(5)(a) Each broker shall submit the results of random drug and alcohol screenings to the Kentucky Transportation Cabinet on a monthly basis [information on each one (1) way trip performed during a month in the broker's region to the cabinet].

(b) All broker and subcontractor trips shall be reported and the dollar amount paid for each one (1) way trip.

(c) This information shall be reported in a computer ACCESS

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or Excel format utilizing the same field formats statewide.

(6)(a) The Transportation Cabinet shall compile a monthly report containing operating information on each program operated by the brokers[;] including rural public transportation, and denoting fleet, miles, hours, fuel, revenues, and expenses.

(b) The statistics shall be used for analysis and reporting to other state agencies and to the Federal Transit Administration (FTA). The cabinet shall issue a standard monthly summary form to each broker.

(7) The broker shall submit line item invoice forms each month to the cabinet with the request for reimbursement and detail current month's expenses broken out by line item, including salaries, sub-contractor payments [subpayments], maintenance, and fuel.

(8)(a) The broker, at its own expense, shall have an independent audit performed for the past fiscal year.

(b) This audit shall be conducted in accordance with applicable federal and state law, and be delivered to the cabinet by March 31 of the following fiscal year of service [upon completion].

(9)(a) Formalized program integrity plans shall be submitted by the broker to the Transportation Cabinet that [which] define the broker's program for identifying and deterring any suspected fraud or abuse activities within the human service transportation delivery program.

(b) The Transportation Cabinet shall issue a statewide program integrity plan format for all brokers.

(10)(a) Each broker shall develop and maintain a quality assurance plan. The plan shall address the following:

1. The scheduling and delivery of transportation services;

2. The broker's methodology for the identification and correction of problems relating to the scheduling and delivery of transportation services; and

3. Subcontractor payment efficiency.

(b) The Transportation Cabinet shall [may] require the broker to compile and provide to the cabinet additional reports that [which] further track the broker's performance including:

1. Those items in Section 21(3) of this administrative regulation; and

2. Drug and alcohol reports.

(11)(a) Each broker shall have a disaster recovery plan.

(b) The broker shall not transport in [unsafe] conditions that may negatively affect the health and safety of a driver or a passenger.

(c) The broker shall establish and maintain an inclement weather transportation policy that has been approved by the Transportation Cabinet.

(d) [(e)] In emergencies, the broker shall contact the National Guard or other emergency units to assist in the transport of dialysis clients or urgent care.

(e) [(d)] The broker shall operate on all routes or highways that are deemed safe, thereby offering limited services during inclement weather.

(12) A broker shall submit a monthly vehicle inventory report listing the number of vehicles used by each transportation provider in the delivery of human services transportation.

Section 19. [Section 16.] Fines and Penalties. (1)(a) A broker that fails to perform according to contractual obligations or statutory requirements and whose non-compliance causes a recipient to miss a scheduled appointment shall receive a written warning from the Transportation Cabinet outlining the provisions of non-compliance.

(2) A broker that receives a second written warning from the cabinet within a thirty (30) day period shall submit a corrective action plan to the cabinet within ten (10) days of receipt of the written warning.

(3) A broker that receives a third written notice from the cabinet within a thirty (30) day period shall:

(a) Receive a written reprimand outlining the provisions of non compliance;

(b) Receive notice in writing of a fine of \$1,000 as established in KRS 281.872(3).

Section 20. Appeal process. (1) A broker shall have fifteen (15) days to appeal the notice of a fine pursuant to KRS 281.872(3).

(2) An appeal shall be in writing and mailed to: Kentucky Transportation Cabinet, Executive Quality Management Committee (EQMC), Office of Transportation Delivery, 200 Mero Street, Frankfort, Kentucky 40622.

(3) The appeal of a fine shall be received ten (10) days prior to the next regularly scheduled EQMC meeting in order to be included on that agenda.

(4) An imposed fine shall be deducted from the monthly capitated payment made to the broker prior to the issuance of the monthly invoice.

Section 21. Revocation. (1) A broker who is required to pay a fine pursuant to KRS 281.872(3) shall be subject to having his or her contract revoked by the Transportation Cabinet within ninety (90) days of:

(a) The notice of a fine if it is accepted by the broker and not appealed; or

(b) The date of the EQMC hearing of the appeal.

(2) A broker whose contract is revoked shall be prohibited from participating in the human service transportation delivery program for five (5) years.

Section 22. Right to Choose Transportation Provider. (1) A participant may select a broker within the delivery area as established in KRS 281.874(1) [Persons participating in the human service transportation delivery program and designated a level of eligibility under a Certificate Type 07 or 08 shall be ensured the freedom of personal choice in selecting an eligible provider, which may include the broker within the delivery area in accordance with KRS 281.874(1)].

(2)(a) The broker shall schedule the trip with a participating provider if the recipient does not express a preference.

(b) A person expressing a personal preference under this section shall contact the broker as established in KRS 281.874(2) [in accordance with KRS 281.874(2), to arrange transportation services, even if the person is requesting an eligible subcontractor to provide the services].

(3)(a) [In accordance with KRS 281.874(2), the broker may select himself or herself if that broker also provides transportation services.]

(b) However, The broker shall establish a scheduling and reservation system of trip distribution approved by the cabinet.]

[(c)] If the recipient allows the broker to choose a provider, the criteria for trip distribution shall include[;] in order of priority:

1. Coordination;

2. Cost efficiencies; or [and]

3. If the first two (2) criteria are not met[;] the broker shall rotate certificate type 07 and certificate type 08 trips among providers, including the broker.

(3) [(4)](a) The broker and transportation provider shall evaluate routes presently utilized by the eligible recipients.

(b) If the broker determines that a route is inefficient, the broker shall elect a more efficient route.

(4) [(5)] The Transportation Cabinet shall resolve any disputes regarding choice of transportation provider.

Section 23. Cabinet Responsibilities. [Section 17. (1) Pursuant to KRS Chapter 45A, the Transportation Cabinet shall select and contract with a transportation broker in each region established in this administrative regulation.] (1)(a) [(2)(a)] The Transportation Cabinet shall establish provider rates for each certificate type for each human service transportation delivery area.

(b) The rates shall be uniform for the same certificate types for all providers, including the broker in each delivery area.

(c) The following factors shall be considered in determining the rates:

1. Geographical terrain;

2. Trip distance;

3. Recipient population;

4. Availability of medical and employment facilities;

5. Labor and economic factors; and

6. Utilization of services.

(2)(a) [(3)(a)] A forty-five (45) day notice shall be given to all brokers by the cabinet prior to any changes made to the subcon-

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tractor rates.

(b) A broker may waive the forty-five (45) day notice requirement in writing to the cabinet.

Section 24. ~~[Section 18.]~~ Safety and Accountability. (1) ~~A~~ [The] broker and subcontractor shall maintain [all] records for five (5) years.

(2) ~~Employees of a~~ [All] broker and subcontractor [employees and employees of the subcontractors] shall sign confidentiality statements regarding access to, and disclosure of confidential information or records.

(3) Collection and retention of records to be maintained by each broker and subcontractor pertaining to human service transportation delivery shall ~~[, at a minimum,]~~ include:

- (a) Encounter data;
- (b) Complaint tracking;
- (c) Monthly summary reports;
- (d) Trip invoices;
- (e) Phone reports;
- (f) Subcontractor requests;
- (g) Audits;
- (h) Line-item budgets; [and]
- (i) Monthly pay document submittals; and
- (j) Vehicle inventory reports.

(4) Collection and retention of encounter data on each trip shall be made by the broker~~[,]~~ if the broker provides transportation services, and by each subcontractor.

(5) Failure of a broker to timely record and report all data and broker trips as established in KRS 281.875 ~~[required by the cabinet]~~ shall be grounds for the Commonwealth ~~[cabinet]~~ to terminate the broker's contract.

(6) ~~Each transportation broker/provider and subcontractor subject to the provisions of 601 KAR 1:005 shall comply with the provisions of that administrative regulation. A~~ [(7) Each] transportation broker ~~or~~ ~~[/provider and]~~ subcontractor exempted in ~~[not subject to the provisions of]~~ 601 KAR 1:005 shall comply with the provisions of 49 C.F.R. Part 655 ~~[the following federal regulations:~~

~~(a) 49 C.F.R. 653, "Prevention of Prohibited Drug Use in Transit Operations", effective October 1, 1999; and~~

~~(b) 49 C.F.R. 654, "Prevention of Alcohol Misuse in Transit Operations", effective October 1, 1999].~~

~~(7)(a) [(8)(a)] A~~ [Each] transportation broker ~~or~~ ~~[/]~~ provider and subcontractor~~[,]~~ who operates a motor vehicle that ~~[which]~~ is not subject to the provisions of 601 KAR 1:005~~[,]~~ shall maintain each of the vehicles in a safe operating condition consistent with Section 13 of this administrative regulation.

(b) ~~A~~ [Each] motor vehicle being operated pursuant to the provisions of this administrative regulation~~[,]~~ that ~~[and which]~~ is not subject to the provisions of 601 KAR 1:005~~[,]~~ shall be inspected on an annual basis by an automotive technician.

(c) Prior to being operated pursuant to this administrative regulation, the transportation broker ~~or~~ ~~[/]~~ provider shall obtain written ~~[have]~~ proof that the motor vehicle has passed a safety inspection by an automotive technician.

Section 25. Incorporation by Reference. (1) "Medical Transportation Classification Form", June, 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Transportation Delivery, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. The telephone number is (502) 564-4733. ~~[Section 19. Adoption Without Change. (1) The following federal regulations are adopted without change:~~

~~(a) 49 C.F.R. 37, "Transportation Services for Individuals With Disabilities (ADA)", effective October 1, 1999;~~

~~(b) 49 C.F.R. 38, "Americans With Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles", effective October 1, 1999;~~

~~(c) 49 C.F.R. 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Program", effective October 1, 1999;~~

~~(d) 49 C.F.R. 653, "Prevention of Prohibited Drug Use in Transit Operations", effective October 1, 1999; and~~

~~(e) 49 C.F.R. 654, "Prevention of Alcohol Misuse in Transit Operations", effective October 1, 1999.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Transportation Delivery, 3rd Floor, State Office Building Annex, 125 Holmes Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is (502) 564-4733.]~~

REBECCA GOODMAN, Executive director

MIKE HANCOCK, Secretary

APPROVED BY AGENCY: July 8, 2011

FILED BY LRC: July 13, 2011 at noon.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2011 at 10:00 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 August 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 procedures governing the human service transportation delivery program in order to provide efficient, safe, and coordinated transportation delivery to the clients who use the service.

(b) The necessity of this administrative regulation: This regulation is necessary to establish procedures for the human service transportation delivery program so that clients of the service, brokers, and contractors will understand what is expected of them.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 281.870(3) requires the cabinet to promulgate administrative regulations specifying the duties and responsibilities of the CTAC. KRS 281.875 requires the cabinet to promulgate regulations concerning the human service transportation delivery program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The updates to procedures and law will insure that those affected by the program, as well as the brokers and sub contractors hired to carry out the requirements of the program, have the latest information assisting in more effective administration of the statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment will: update any changes in the law, procedures, and forms; add language to further define the use of human service transportation delivery by a recipient whose household has an operational motor vehicle; establish the procedures for a broker to receive a fine pursuant to KRS 281.872(3); and increase the program's flexibility by removing the list of regions and

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counties associated with each region. This change will allow individual counties to move to different regions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the existing administrative regulation to reflect changes in law and procedures since the last amendment in 2000.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment follows the structure and mandates provided by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: Amendments to the language and forms will more clearly establish the responsibilities and duties of recipients of the service, and the brokers and subcontractors who provide service.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are between 800,000 and 900,000 Kentuckians eligible for human services transportation. There are 15 brokers, and approximately 200 transportation providers such as taxicab companies and transit operators. There are four state government cabinets involved in the human service transportation delivery program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any new or different actions for any of the entities in (4). Rather, this amended regulation should update and clarify the program for all those involved.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The parties will benefit by having the most current forms and procedures for the human service transportation delivery program.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no costs associated with implementing these amendments.

(a) Initially:

(b) On a continuing basis:

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

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

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

(9) TIERING: Is tiering applied? No. All who qualify will be able to participate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts procedures in the Transportation Cabinet's Office of Transportation Delivery.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 96A.095, 281.870, 281.875

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

the first full year the administrative regulation is to be in effect. No additional costs are required or expected.

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

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

(c) How much will it cost to administer this program for the first year? No costs are required or expected based on these amendments.

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

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

Revenues (+):

Expenditures (+):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office of Employment and Training (Amendment)

787 KAR 1:010. Application for employer account; reports.

RELATES TO: KRS 341.190

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.190

requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. This administrative regulation establishes the application requirements for an employer account and the requirements for other additional reports required by the division.

Section 1. Each employing unit that has met one (1) or more of the requirements for coverage set forth in KRS 341.070 shall complete and file with the Division of Unemployment Insurance an "Application for Unemployment Insurance Employer Reserve Account" UI-1 no later than the last day of the calendar quarter in which the coverage requirements is first met.

Section 2. Each employing unit shall complete and file with the Division of Unemployment Insurance the following reports as required in accordance with the instructions contained on the forms:

(1) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account";

(2) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report";

(3) UI-3.2, "Account Status Information" [~~"Request to Place Subject Employer's Account in Inactive Status"~~];

(4) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part";

(5) UI-35, "Termination of Coverage" [UI-47, "~~Claim for Refund of Contributions~~"];

(6) UI-74, "Application for Partial Payment Agreement";

(7) UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits"; and

(8) UI-203, "Overpayment and Fraud Detection".

Section 3. If an employing unit elects to submit the information required in any report listed in Section 1 or 2 of this administrative regulation through the Web site provided by the Division of Unemployment Insurance for that purpose, the requirement for the filing of that report shall have been satisfied.

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

(a) UI-1, "Application for Unemployment Insurance Employer Reserve Account (Rev. 3/05)";

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(b) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account (Rev. 5/11 [4/93])";

(c) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report (Rev. 5/11 [5/99])";

(d) UI-3.2, "Account Status Information (Rev. 5/11)" [~~"Request to Place Subject Employer's Account in Inactive Status (Rev. 4/90)";~~];

(e) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part (Rev. 3/05)";

(f) UI-35, "Termination of Coverage (Rev. 5/11)" [UI-47, "Claim for Refund of Contributions (Rev. 8/93)"];

(g) UI-74, "Application for Partial Payment Agreement (Rev. 5/11[4/88])";

(h) UI-203, "Overpayment and Fraud Detection (Rev. 6/11[4/96])"; and

(i) UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits (Rev. 6/11 [9/92])".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of Unemployment Insurance, 275 E. Main Street, 2E, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM MONTEROSSO, Executive Director

APPROVED BY AGENCY: July 15, 2011

FILED WITH LRC: July 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2011 at 10:00 a.m. at the offices of the Office of Employment and Training, 275 E. Main Street, 2nd floor, Executive Director's Office, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2011, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: William Monterosso, Executive Director, Office of Employment and Training, 275 East Main, 2C, Frankfort, Kentucky 40602, phone (502) 564-5331, fax (502) 564-7452.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Monterosso

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires each employing unit to keep specified work records and authorizes the secretary to require additional reports.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the employing unit the application requirements for an employer account and the requirements for other additional reports required by the division.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115 (1) authorizes the secretary to promulgate administrative regulations necessary in the administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation determines the forms employers are responsible to file with the division.

(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 streamline the form processing requirements for employers by combining or removing obsolete forms and updating existing forms in a more readable format.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary due to statutory changes

in House Bill 5 passed during the 2010 Extraordinary Session of the Kentucky General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow more efficient/effective form processing for the employer and the division.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 95,000 active employer accounts in Kentucky. These changes to our forms will streamline the forms processing responsibility for our employers. The Office of Employment and Training will be responsible for updating the forms on the website and in paper copy.

(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 Office of Employment and Training will need to provide technical resources to accommodate the necessary programming updates to our forms listed on the website and in paper form. The Division of Unemployment Insurance will be responsible for updating all forms. The employer will be required to complete the necessary reports.

(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 to the employer. The Office of Employment and Training will be responsible for funding the updates to the website. These programming changes will be negligible costs and absorbed in the course of normal operating expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The number of forms required by employers will be streamlined and completion of the forms will be simplified.

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

(a) Initially: Changes will be necessary only to forms listed on the Office of Employment and Training's website. These programming changes will be negligible costs and absorbed in the course of normal operating expenses.

(b) On a continuing basis: Changes will only be necessary to forms listed on the Office of Employment and Training's website. These programming changes will be negligible costs and absorbed in the course of normal operating expenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Unemployment Insurance is entirely federally funded. Unemployment Insurance administrative funds will be used to make the necessary updates to the website and the paper forms.

(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 fees necessary for this change. The unemployment insurance program is entirely federally funded and any technical changes necessary will be funded by unemployment insurance administrative funds.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? This informs the employing unit the application requirements for an employer account and the requirements for other additional reports required by the division. This amendment will be applied to all employers and tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,

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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? Any state or local government (including cities, counties, fire departments, or school districts) will be able to utilize the updated forms.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 341.190.

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

(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 with the implementation of this administrative regulation 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 with the implementation of this administrative regulation for subsequent years.

(c) How much will it cost to administer this program for the first full year? Implementation of this amendment will create no additional administrative costs in the first full year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs 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 (+/-): None

Expenditures (+/-): None

Other Explanation:

PUBLIC PROTECTION CABINET Department of Insurance Agent Licensing Division (Amendment)

806 KAR 9:020. False or deceptive names, titles, prohibited.

RELATES TO: KRS 304.09, 304.12-130

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes that the Commissioner [~~Executive Director~~] of Insurance to make [reasonable rules and] administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. This administrative regulation prohibits the use of names, titles, degrees, certificates, accomplishments, or the like, that implies a greater skill or knowledge than the person actually possesses.

Section 1. Definitions [Definition].

(1) "Agent" is defined in KRS 304.9-020(1).

(2) "Annuity" is defined in KRS 304.5-030.

(3) "Consultant" is defined in KRS 304.9-040.

(4) "Commissioner" is defined in KRS 304.1-050(1).

(5) "Insurer" is defined in KRS 304.1-040.

(6) "Licensee" means agent, insurer, if an agent is not involved, and consultant.

(7) "Life Insurance" is defined in KRS 304.5-020. [~~"Executive director" means the Executive Director of the Office of Insurance.~~]

Section 2. A person licensed pursuant to KRS Chapter 304, Subtitle 9, shall not, in the conduct of business, use, or knowingly permit to be used on the person's behalf, any name, title, letters, degrees, certificate, accomplishment, award, designation or the like, which:

(1) [(a)] Implies or purports to convey that the person pos-

sesses a greater skill, knowledge, experience or qualification than is actually a fact; [or]

(2) [(b)] Exceeds the maximum requirements for licensing under the Kentucky Insurance Code as defined in KRS 304.1-010; or[-]

(3) Implies or purports to convey that the person possesses a greater skill, knowledge, experience or qualification in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product.

Section 3. Section 2 of this administrative regulation shall not prohibit the use of names, titles, letters, degrees, certificates, recognition of accomplishments, awards, designations or the like which have been properly conferred upon a licensee by:

(1) A duly accredited and recognized college or university; or

(2) A duly accredited and recognized professional association or society.

Section 4. Factors Constituting a Certification or Designation.

In determining if a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

(1)(a) Use of the words "senior", "retirement", "elder", or similar words;

(b) Combined with "certified", "registered", "chartered", "advisor", "specialist", "consultant", "planner", or similar words; and

(2) The manner in which those words are combined.

Section 5. Certain Job Titles. A job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates insurance licensees, is not a certification or professional designation, unless it is used in a job title:

(1) Indicating seniority or standing within the organization; or

(2) Specifying an individual's area of specialization within the organization.

Section 6. Nothing in this administrative regulation shall exempt an individual from compliance with the registration requirements of KRS 292.330(1) if the individual transacts business in this state as a broker-dealer, investment adviser, agent, or investment adviser representative.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2011, at 9:00 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 August 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 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 August 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:

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(a) What this administrative regulation does: This administrative regulation prohibits the use of names, titles, degrees, certificates, accomplishments, or the like, that implies a greater skill or knowledge than the person actually possesses.

(b) The necessity of this administrative regulation: This administrative regulation will provide protection for Kentucky citizens by prohibiting the use of false or deceptive names, titles, certifications and designations in the sale of insurance products.

(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. KRS Chapter 304 subtitle 9 establishes the licensure and education requirements for Agents, Consultants, Solicitors and Adjusters. KRS Chapter 304 subtitle 12 prohibits various practices that are unfair or misleading to Kentucky citizens.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation will assist by stating that use of misleading false or deceptive names, titles, certifications and designations is prohibited by this administrative regulation and the Kentucky Insurance Code.

(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 sets forth requirements relating to the use of senior specific certifications and designations.

(b) The necessity of the amendment to this administrative regulation: This amendment will provide protection for Kentucky citizens by prohibiting the use of the misleading senior specific certifications and designations in the sale of insurance products, in particular life and annuity products.

(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. KRS Chapter 304 subtitle 9 establishes the licensure and education requirements for Agents, Consultants, Solicitors and Adjusters. KRS Chapter 304 subtitle 12 prohibits various practices that are unfair or misleading to Kentucky citizens.

(d) How the amendment will assist in the effective administration of the statutes: The Amendment will assist by stating that use of misleading senior specific certifications and designation is prohibited by this administrative regulation and the Kentucky Insurance Code.

(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 129,543 agents offering insurance products.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Since this is an amendment to a current regulation, regulated entities are most likely in compliance with these requirements. To the extent that a licensee is using a prohibited title or designation, the licensee will need to cease.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The cost should be minimal since licensees should be complying with the current regulation and this amendment is a clarification to address senior-specific certifications or designations.

(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 not be competing with licensees using misleading titles or designations.

(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 licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky 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 Insurance Health and Life Division (Amendment)

806 KAR 12:150. Annuity disclosures

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230, 26 U.S.C. 4010, 403, 414, 457, 29 U.S.C. 1001-1461

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or

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is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current Annuity Buyer's Guide published by the Commonwealth of Kentucky Department of Insurance.

(2) "Charitable gift annuity" is defined in KRS 304.1-120(6)(b).

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements derived from processes or methods that are guaranteed at issue and not subject to company discretion, but ones in which the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine at issue. An element is determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one (1) or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated.

(7) "Guaranteed elements" means the premiums and credited interest rates, including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(8) "Nonguaranteed elements" means the premiums and credited interest rates including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(9) "Structured settlement annuity" means

(a) A "qualified funding asset" as defined in 26 U.S.C. 130(d); or

(b) An annuity that would be a qualified funding asset pursuant to 26 U.S.C. 130(d) except for the fact that it is not owned by an assignee under a qualified assignment.

Section 2. Applicability. This administrative regulation shall apply to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products;

(2)(a) Annuities used to fund:

1. An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;

2. A plan described by 26 U.S.C. 401(a), (k), or 403(b), if the plan, for purposes of ERISA, is established or maintained by an employer;

3. A governmental or church plan defined in 26 U.S.C. 414 or a deferred compensation plan of a state or local government or a tax exempt organization under 26 U.S.C. 457; or

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(b)1. Notwithstanding paragraph (a) of this subsection, this administrative regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and if the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract.

2. As used in this subsection, direct solicitation shall not include a meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

(3) Structured settlement annuities;

(4) Charitable gift annuities; and

(5) Funding agreements.

Section 3. Standards for the Disclosure Document and Buyer's Guide. (1)(a) If the application for an annuity contract is solicited personally by an agent, the applicant shall be given both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than the time of application.

(b) If the application for an annuity contract is taken by means other than a personal solicitation by an agent, the applicant shall be sent both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

1. With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application; or

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

2. With respect to an application received via the Internet:

a. Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's Web site shall satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application; or

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's Web site shall satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

3. A solicitation for an annuity contract that is not personally solicited by an agent shall include a statement that the proposed applicant may obtain a free Annuity Buyer's Guide by contacting the Department of Insurance or the insurer.

(c) 1. If the Buyer's Guide and disclosure document described in subsection (3) of this section are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty.

2. This free look period shall run concurrently with any other free look period provided under state law or administrative regulation.

(2) The following information shall be included in the disclosure document:

(a) The generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) The insurer's name and address;

(c) A description of the contract and its benefits, emphasizing its long-term nature, including the following information:

1. The guaranteed, nonguaranteed, and determinable elements of the contract and their limitations, if any, and an explanation of how they operate;

2. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and shall not be guaranteed;

3. Periodic income options both on a guaranteed and nonguaranteed basis;

4. Value reductions caused by withdrawals from or surrender of the contract;

5. How values in the contract can be accessed;

6. The death benefit, if available, and how it will be calculated;

7. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

8. An explanation of the impact of a rider, such as a long-term care rider;

(d) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(3) The disclosure statement shall comply with the minimum standards for readability and intelligibility established in 806 KAR 14:121.

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Section 4. Report to Contract Owners. For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

- (1) The beginning and end date of the current report period;
- (2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;
- (3) The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and
- (4) The amount of outstanding loans, if any, as of the end of the current report period.

Section 5. Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date, determined pursuant to KRS 13A.330, or January 1, 2012, whichever is later. [The requirements, implementation, and enforcement of this administrative regulation shall begin on July 1, 2011.]

Section 6. Incorporation by Reference. (1) "The Annuity Buyer's Guide, Commonwealth of Kentucky", July 2011 [December 2010], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(3) This material is also available on the department's Web site at <http://insurance.ky.gov/>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on August 24, 2011, at 9:00 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 August 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 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 August 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 insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration

(b) The necessity of this administrative regulation: This administrative regulation will provide guidance and a consumer guide to insurer to assist in educating Kentucky citizens prior to purchasing an annuity.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky

Insurance Code, KRS Chapter 304. This regulation and the material incorporated by reference will aid insurer to educate consumer regarding the purchase of annuities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance, procedures and The Annuity Buyer's Guide to insurers for use with consumers.

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

(a) How the amendment will change this existing administrative regulation The amendment will amend the material incorporated by reference to correct the name and telephone number for rating entities referenced in the guide. The amendment will also provide insurers until January 1, 2012 to implement these changes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate appropriate changes into the buyer's guide.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This amendment will make technical changes to update the contact information in the buyer's guide.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the information provided in the buyer's guide, which is incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Amendment to this administrative regulation will affect approximately 470 insurers offering annuity products.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These entities will be required to provide a copy of the new buyer's guide to consumers due to this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since these insurers and agents are already providing the previous version of the buyer's guide, the costs associated with providing the amended version should be minimal. The insurer or agent may print or e-mail a link to the buyer's guide which is published on the Department of Insurance website.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The insurers and agents will be in compliance with state law and will have resources to aid consumers in purchasing an annuity.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all insurers who have annuity products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: DJ Wasson

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

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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 Insurance Health and Life Division (Amendment)

806 KAR 12:170. Life insurance disclosures

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation establishes requirements for insurers to deliver information to purchasers of life insurance that is designed to improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current Life Insurance Buyer's Guide published by the Commonwealth of Kentucky Department of Insurance.

(2) "Generic name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

(3) "In force illustration" means an illustration furnished after the policy has been in force for one (1) year or more.

(4) "Nonguaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, non-interest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(5) "Policy data" means a display or schedule of numerical values, both guaranteed and nonguaranteed, for each policy year or a series of designated policy years of the following information:

(a) Illustrated annual, other periodic, and terminal dividends;

(b) Premiums;

(c) Death benefits; and

(d) Cash surrender values, outstanding policy loans, current policy loan interest rate, and endowment benefits.

(6) "Policy summary" means a separate document describing the elements of the policy and complying with the requirements established in Section 3 of this administrative regulation.

Section 2. Application. (1) Except as provided in subsection (2) of this section of this administrative regulation, this administrative regulation shall apply to:

(a) A solicitation, negotiation, or procurement of life insurance occurring within this state; and

(b) An issuer of life insurance contracts including fraternal benefit societies.

(2) This administrative regulation shall not apply to:

(a) Individual and group annuity contracts;

(b) Credit life insurance;

(c) Group life insurance;

(d) Life insurance policies issued in connection with pension and welfare plans which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 et seq. as amended; or

(e) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

Section 3. Policy Summary. A policy summary shall describe the elements of the policy including the following:

(1) A permanently placed title stating: "STATEMENT OF POLICY COST AND BENEFIT INFORMATION";

(2) The name and address of the insurance agent or, if an agent is not involved, a statement of procedure to be followed in order to receive responses to inquiries regarding the policy summary;

(3) The full name and home office or administrative office address of the life insurance company issuing the policy;

(4) The generic name of the basic policy and each rider;

(5) The following amounts shall be listed in total, not on a per thousand or per unit basis and, if applicable for the first ten (10) policy years and representative policy years thereafter, the amounts shall be listed sufficiently to clearly illustrate the premium and benefit patterns, including at least an age from sixty (60) through sixty-five (65) and policy maturity:

(a) The annual premium of the basic policy;

(b) The annual premium for each optional rider;

(c) 1. The amount payable upon death at the beginning of the policy year pursuant to the basic policy with additional benefits for each rider shown separately.

2. If more than one (1) insured is covered pursuant to one (1) policy or rider, death benefits shall be displayed separately for each insured or for each class of insured's if death benefits do not differ within the class;

(d) The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider; and

(e) Endowment amounts payable pursuant to the policy that are not included pursuant to the cash surrender values described in this subsection;

(6)(a) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether the rate is applied in advance or in arrears.

(b) If the policy loan interest rate is adjustable, the policy summary shall state that the annual percentage rate shall be determined in accordance with the provisions of the policy and the applicable law; and

(7) The date on which the policy summary was prepared.

Section 4. Duties of Insurers. (1) Requirements for new issues.

(a) 1. Except as provided in subparagraph 2 of this paragraph, the insurer shall provide the Buyer's Guide to each prospective purchaser prior to accepting the applicant's initial premium or premium deposit.

2. If the policy for which application is made contains an un-

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conditional refund provision of at least ten (10) days, the Buyer's Guide may be delivered with the policy or prior to delivery of the policy.

(b) The insurer shall provide a policy summary to prospective purchasers in which the insurer shall identify the policy form as not marketed with an illustration.

1. The policy summary shall show guarantees only.

2. The policy summary shall consist of a separate document with all required information set out in a manner that does not minimize or render any portion of the summary obscure.

3. Amounts that remain level for two (2) or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year.

4. Amounts in Section 3(5) of this administrative regulation shall be listed in total, not on a per thousand or per unit basis.

5. If more than one (1) insured is covered under one (1) policy or rider, death benefits shall be displayed separately for each insured or for each class of insured [insured's] if death benefits do not differ within the class.

6. Zero amounts shall be displayed as a blank space.

7. Delivery of the policy summary shall be consistent with the time for delivery of the Buyer's Guide as specified in paragraph (a) of this subsection.

(2) Requirements applicable to existing policies.

(a) Upon request by the policy owner, the insurer shall furnish the policy data or an in force illustration as follows:

1. For policies issued prior to January 1, 2008, the insurer shall furnish policy data, or, at its option, an in force illustration meeting the requirements of 806 KAR 12:140.

2. For policies issued on and after January 1, 2008 and declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has chosen not to furnish an in force illustration meeting the requirements of 806 KAR 12:140.

3. If the policy was issued on and after January 1, 2008 and declared to be used with an illustration, an in force illustration shall be provided.

4. Unless otherwise requested, the policy data shall be provided for twenty (20) consecutive years beginning with the previous policy anniversary.

5. The insurer may charge a reasonable fee for the policy data, not to exceed ten (10) dollars.

(b)1. If a life insurance company changes its method of determining scales of nonguaranteed elements on existing policies, it shall notify each affected policy owner of the change and its effect on the policy no later than the date of the first payment on the new basis.

2. The requirement established in subparagraph 1. of this paragraph shall not apply to policies for which the death benefit pursuant to the basic policy on the date of notice does not exceed \$5,000.

(c) If the insurer makes a material revision in the terms and conditions which will limit its right to change any nonguaranteed factor, it shall notify each affected policy owner of the change no later than the first policy anniversary following the revision.

Section 5. General Rules. (1)(a) Prior to commencing a life insurance sales presentation, an agent shall inform the prospective purchaser that the agent is acting as a life insurance agent.

(b) The agent shall inform the prospective purchaser in writing of the full name of the insurance company which the agent represents.

(c) In sales situations in which an agent is not involved, the insurer shall identify the insurer's full name.

(2)(a) An insurance producer marketing insurance products shall not use a title or designation, including "financial planner," "investment advisor," "financial consultant," or "financial counseling" to imply that the insurance producer is engaged in an advisory or consulting business in which compensation is unrelated to sales.

(b) This subsection shall not preclude:

1. A person recognized as having a financial planning or consultant designation from using the designation even if only selling insurance; or

2. Members of a recognized trade or professional association

from having these terms as part of the organization's name from citing membership. If authorized only to sell insurance products, a person citing membership shall disclose that fact.

(c) A person shall not charge an additional fee for services customarily associated with the solicitation, negotiation, or servicing of policies.

(3)(a) A reference to nonguaranteed elements shall include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements.

(b) If a nonguaranteed element would be reduced by the existence of a policy loan, a statement to that effect shall be included in each reference to nonguaranteed elements.

Section 6. Failure to Comply. Failure of an insurer to provide or deliver the Buyer's Guide, an in force illustration, a policy summary, or policy data shall constitute an omission that misrepresents the benefits, advantages, conditions, or terms of an insurance policy.

Section 7. Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date, determined pursuant to KRS 13A.330, or January 1, 2012, whichever is later. [The requirement, implementation, and enforcement of this administrative regulation shall begin on July 1, 2014].

Section 8. Incorporation by Reference. (1) "The Life Insurance Buyer's Guide, Commonwealth of Kentucky", July 2011 [December 2010], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the 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://insurance.ky.gov/>.

SHARON P. CLARK, Commissioner

ROBERT D.VANCE, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on August 24, 2011, at 9:00 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 August 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 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 August 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 insurers to deliver information to purchasers of life insurance that will improve the buyer's ability to select the most appropriate product for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration.

(b) The necessity of this administrative regulation: This administrative regulation will provide guidance and a consumer guide to insurer to assist in educating Kentucky citizens prior to purchasing life insurance.

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(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation and the material incorporated by reference will aid an insurer in educating the consumer regarding the purchase of life insurance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance, procedures and the The Life Insurance and Annuities buyer's guide to insurers for use with consumers.

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

(a) How the amendment will change this existing administrative regulation? The amendment will make technical corrections to the material incorporated by reference to correct the name and contact information for rating entities. The amendment provides insurers until January 1, 2012 to implement these changes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate appropriate changes into the buyer's guide.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This amendment will make technical changes to the material incorporated by reference.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the information provided in the buyer's guide, which is incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Amendment to this administrative regulation will affect approximately 470 insurers offering life insurance products and approximately 47,700 agents and 3,500 business entities agents licensed to sell life insurance products.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These entities will be required to provide a copy of the new buyer's guide to consumers due to this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since these insurers and agents are already providing the previous version of the buyer's guide, the costs associated with providing the amended version should be minimal. The insurer or agent may print or e-mail a link to the buyer's guide which is published on the Department of Insurance website.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The insurers and agents will be in compliance with state law and will have resources to aid consumers in purchasing life insurance.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

(9) TIERING: Is tiering applied? Tiering is not applied; the pro-

visions of this administrative regulation will be implemented in the same manner for all insurers who have life insurance products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

Kentucky Department of Insurance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statute 304.2-110 (1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance code.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of administering this program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program will not change.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 1:027. Entries, subscriptions, and declarations.

RELATES TO: KRS 230.215, 230.240, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 authorizes the commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260 grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. This administrative regulation establishes requirements for entry, subscription, and declaration of thoroughbred horses in order to race.

Section 1. Definition. "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, entered in the race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) An entry, subscription, declaration, or scratch shall be filed with the racing secretary and shall not be effective until received by the racing secretary. The racing secretary shall maintain a record of the time of

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receipt of an entry, subscription, declaration, or scratch for a period of one (1) year.

(2) An entry shall be made by the owner, the trainer, or an authorized agent of the owner or trainer. An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary pursuant to 810 KAR Chapter 1.

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, a horse shall be designated by name, age, color, sex, sire, and dam as reflected by its registration certificate, racing permit, or entry in a software application available online and approved by the commission that allows an association's racing secretary, or his designee, or horse identifier, or his designee, full access to horse and trainer records from all tracks in North America, including current owner information.

(a) A horse shall not race unless registered pursuant to 810 KAR 1:012 or otherwise correctly identified to the satisfaction of the stewards.

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person required to certify the identity of the horse. A person shall be subject to appropriate disciplinary action under 810 KAR 1:028 for incorrect identification.

~~(5)(a) A horse that bleeds shall be registered with the commission veterinarian prior to entry pursuant to 810 KAR Chapter 1. (b) A horse that is not properly registered shall not be permitted to race with furosemide or an adjunct bleeder medication.~~

~~(6)(c) The racing program shall indicate usage of furosemide or an adjunct bleeder medication.~~

~~(7)(e) An entry shall not be altered after the closing of entries, except to correct an error with permission of the stewards.~~

~~(8)(f) A horse shall not be entered in two (2) races to be run on the same day.~~

~~(9)(g)(a) A horse that has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards.~~

(b) A horse starting for the first time shall not be permitted to start unless it has three (3) published workouts, one (1) of which is from the starting gate, and one (1) of which is within twenty (20) days of entry.

(c) If a horse has performed the requisite workout, but the workout does not appear in the past performances through no fault of the trainer, the horse shall be permitted to start. The correct workout shall be publicly displayed on television monitors, the tote board, and, if available, the bulletin boards where photo finishes are shown at the time when mutual windows are opened and shall be displayed until the conclusion of the race in which the horse is entered.

(d) A horse that has never started shall not be entered until the trainer has produced a document or card issued by the starter indicating that the horse has been adequately trained to race from the starting gate.

~~(10)(h) If the published conditions of the race permit, an association may accept in a turf race an entry designated "main track only." Preference shall apply to all horses drawn into a race, except that horses entered as "main track only" shall be considered only if the race is taken off the turf.~~

Section 4. Limitation as to Spouses. (1) An entry in a race shall not be accepted for a horse owned wholly or in part or trained by a person whose spouse is under license suspension at the time of the entry except as provided in subsection (2) of this section.

(2) If the license of a jockey has been suspended for a routine riding offense, depending on the severity of the offense, the stewards may waive the application of this section as to the licensed spouse of the suspended jockey.

Section 5. Mutuel Entries. (1) More than two (2) horses having common ties through training shall be not entered in a purse race.

(2) Horses entered in the same race and owned wholly or in

part by the same owner or spouse, shall be joined as a mutual entry and single betting interest, except as provided in subsection (5) of this section.

(3) More than two (2) horses having common ties through ownership shall not be joined as a mutual entry in a purse race. If making a double entry of horses owned wholly or in part by the same owner or spouse a preference for one (1) of the horses shall be made.

(4)(a) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single entry, unless the horses have been uncoupled pursuant to subsection (5) of this section.

(b) In a purse race, the racing secretary may uncouple entries having common ties through training to make two (2) separate betting interests.

(5) In any thoroughbred stakes race with added money of \$50,000 or more, the racing secretary may uncouple mutual entries of horses sharing common ties through training or ownership or both.

Section 6. Subscriptions. (1) A subscriber to a stakes race may transfer or declare a subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry if the horse is eligible shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of a stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 7. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, if the approval of a steward has been obtained.

(2) Entries that have closed shall be compiled without delay by the racing secretary and shall be posted along with declarations.

Section 8. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses that, in the opinion of the stewards after considering the safety of the horses and riders and the distance from the start to the first turn, may be afforded a fair and equal start.

(2)(a) A maiden, starter, or claiming race shall be run if:

1. Eight (8) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(b) Except as provided in paragraph (c) of this subsection, any other purse race shall be run if:

1. Six (6) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

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(c) If a purse race under paragraph (b) of this subsection includes two (2) horses having common ties through training, the race shall be run if eight (8) or more horses are entered.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare the race off. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry.

Section 9. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day that may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) If a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made and the following conditions:

(a) Horses originally joined as a mutual entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates the coupling of horses is not to be uncoupled if the race is split;

(b) Division of entries in any split stakes race may be made according to age, sex, or both; and

(c) Entries for any split race not divided by any method provided for in this administrative regulation shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

Section 10. Post Positions. (1) Post positions for all races shall be determined by lot, except as described in Section 11(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing.

(2) Post positions in split races shall be redetermined by lot. Owners, trainers, and their representatives shall have the opportunity to be present at the redetermination.

(3) The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except if a race includes two (2) or more horses joined as a single betting interest.

Section 11. Also-Eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 8 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn by ~~lot~~[preference], unless otherwise stipulated in the conditions of the race.

(3)(a) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) A horse on the also-eligible list for a race on the present day that has been drawn into a race as a starter on a succeeding day, shall not be permitted to run in the race on the present day for which it had been listed as also-eligible.

(5) A horse on the also-eligible list shall be assigned a post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

Section 12. Preferred List[; Stars]. (1) The racing secretary shall maintain a list of horses that were entered but denied an opportunity to race because they were eliminated from a race in-

cluded in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it is also entered for a race on the succeeding day. This ~~shall not include~~[includes] stakes and handicaps.

Section 13. Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 14. Declarations. (1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

Section 15. Scratches. Scratches shall be irrevocable and shall be permitted under the following conditions:

(1)(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time until four hours prior to post time for the race by obtaining written approval from the stewards. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of the scratch to be made.

(b) If a list of also-eligible horses has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be scratched unless:

1. A valid physical reason exists; or

2. The scratch is related to adverse track conditions or change of racing surface.

(2) A horse shall not be scratched from a purse race unless:

(a) The approval of the stewards has been obtained; and

(b) Intention to scratch has been filed in writing with the racing secretary or his assistant at or before the time conspicuously posted as "scratch time."

(3) A scratch of one (1) horse coupled in a mutual entry in a purse race shall be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(4) In a purse race, a horse that is physically disabled or sick shall be permitted to be scratched first. If horses representing more than ten (10) betting interests remain in after horses with physical excuses have been scratched, an owner or trainer may be permitted to scratch horses without physical excuses at scratch time, down to a minimum of ten (10) betting interests. This privilege shall be determined by lot if an excessive number of owners or trainers wishes to scratch their horses.

(5) A horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall be placed on the commission's veterinarian list for six (6) calendar days beginning the day after the horse was scratched or excused.

(6) Each licensed racing association offering thoroughbred racing shall keep records and statistics documenting the effect upon field sizes of the six (6) day veterinarian list requirement in subsection (5) of this section. Records and statistics kept pursuant to this section shall be retained by the licensed racing association for one (1) year.

Section 16. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form, Racing Times or similar publication as the commission considers appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign county, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

ROBERT M. BECK, JR., Chairman

VOLUME 38, NUMBER 2 – AUGUST 1, 2011

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 14, 2011

FILED WITH LRC: July 15, 2011 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2011 at 10:00 AM, at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by August 17, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by 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 August 31, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(I) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for entry, subscription and declaration of thoroughbred horses in order to race.

(b) The necessity of this administrative regulation: The regulation is necessary to provide the requirements for entering a horse in a race in Kentucky, including outlining the procedures for scratches and drawing of post positions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260 grants the commission the authority to regulation conditions under which thoroughbred racing shall be conducted in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes procedures for entering a thoroughbred horse to race in Kentucky, including procedures for scratches and drawing of post positions.

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

(a) How the amendment will change this existing administrative regulation: The amendments make minor revisions to reflect actual race track practice.

(b) The necessity of the amendment to this administrative regulation: The amendments are consistent with actual practice.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to prescribe conditions under which all legitimate horse racing is conducted in Kentucky. KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendments are consistent with actual practice on the race track and with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Racing associations, owners and trainers are affected by this administrative regulation. The amendments, however, reflect actual practice on the race track.

(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): The amendment will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Makes the regulation consistent with actual practice.

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

(a) Initially: There is no anticipated increase in cost to the Commission.

(b) On a continuing basis: There is no anticipated increase in cost to the Commission.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215 and 230.260.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in expenditures or revenues.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(Amendment)

815 KAR 4:010. Annual inspection of [passenger] elevators.

RELATES TO: KRS 198B.400, 198B.470, 198B.480, 198B.500, 198B.510, 198B.540

STATUTORY AUTHORITY: KRS 198B.060(18), 198B.490

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.490 requires the commissioner of the Department of Housing, Buildings and Construction [executive director] to promulgate administrative regulations [an administrative regulation] governing the safety and inspection of [passenger] elevators as defined by KRS 198B.400(1) [and (2)]. This administrative regulation establishes the annual inspection requirements and fees for [safety standards governing the annual inspection of passenger] elevators within the Commonwealth.

Section 1. Annual Inspection of [Passenger] Elevators [and Escalators]. (1) Except as provided in subsection (2) of this section, an annual inspection of an elevator [a passenger-elevator or escalator] shall be conducted in accordance with the standards as adopted and incorporated by reference in 815 KAR 7:120 Kentucky Building Code, [following standards:

- (a) "Safety Code for Elevators and Escalators", ASME A17.1-2004 sections 5.10, 8.7, 8.10, and 8.11 in their entirety with the exception of rules 2.2.4.3, 2.19.2, 2.19.3.2(A)(3), 2.26.2.33, 2.27.3.2.6, 2.27.3.3.7, 3.17.3, 3.26.10, 6.1.3.3.9, and 8.6.5.8 for existing elevators and escalators, or the edition of A17.1 Safety Code in its entirety that the elevator was originally permitted under;
- (b) "Inspectors' Manual for Hydraulic Elevators", ASME A17.2-2-1997;
- (c) "Inspectors' Manual for Escalators and Moving Walks", ASME A17.2-3-1998;
- (d) "Safety Code for Existing Elevators and Escalators", ASME A17.3-2002;
- (e) "Guide for Emergency Personnel", ASME A17.4-1999;
- (f) "Elevator and Escalator Electrical Equipment", ASME A17.5-1996;
- (g) "Safety Standard for Conveyors and Related Equipment", ASME B20.1-1996; and
- (h) "Safety Standard for Platform Lifts and Stairway Chairlifts", ASME A18.1-2003 in its entirety with the exception of rules 5.7.1 and 10.1.2.1;
- (i) "Automated People Mover Standards Part 1", ANSI/ASCE/T&D1-21-05;
- (j) "Automated People Mover Standards Part 2", ASE 21-98; and
- (k) "Automated People Mover Standards Part 3", ASCE 21-00.]

(2) Compliance with a later edition of the standards required by subsection (1) of this section shall be deemed equivalent and may be used by the owner or contractor in lieu of the edition specified. If installed in compliance with a later edition, the elevator shall be inspected for compliance with the installation standards utilized.

(3) For annual inspections of freight elevators, the owner or operator shall provide elevator maintenance or contractor personnel present to conduct testing procedures necessary for inspection.

Section 2. Inspection Fees. (1) The annual inspection fees for the issuance of a certificate of operation shall be as follows: [established in this subsection.]

Elevators	Inspection Fee
Wheelchair and Stair Chair Lift	\$75
Dumbwaiter	\$85
Limited Use, Limited Access (Lula)	\$100
Moving Sidewalk	\$100
Passenger	\$100
Hydraulic	\$100
Special Purpose (private residential or vertical reciprocating conveyor)	\$100
Escalator	\$120
Freight	\$200
Traction	\$100 for initial ten (10) stories; plus \$10 for each additional ten (10) stories or portion thereof

~~[(a) The wheelchair and stair chair lift inspection fee shall be seventy-five (75) dollars.~~

~~(b) The dumbwaiter inspection fee, if under contract to inspect, shall be eighty-five (85) dollars.~~

~~(c) The limited use limited access (Lula) elevator inspection fee shall be \$100.~~

~~(d) The escalator and moving walk inspection fee shall be \$120.~~

~~(e) The hydraulic elevator inspection fee shall be \$100.~~

~~(f) Inspection of traction elevators. The fee for:~~

~~1. The first ten (10) floors shall be \$100; and~~

~~2. Each additional ten (10) floors, or portion thereof, shall be an additional ten (10) dollars.~~

(2) The fee for an inspection conducted at the request of the owner or user of a unit, other than an inspection made pursuant to a construction, installation or alteration permit, or annual inspection, shall be subject to [be based on] the same fee schedule as an annual inspection in subsections [subsection] (1) and (2) of this section.

Section 3. Certificate of Approval. Upon demonstration during final inspection of compliance with applicable codes and standards for the elevator, a certificate of approval shall be issued by the department. [Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Safety Code for Elevators and Escalators", ASME A17.1-2004 Sections 5.10, 8.7, 8.10, and 8.11;
- (b) Inspector's Manual for Hydraulic Elevators, ASME A17.2-2-1997;
- (c) "Inspectors' Manual for Escalators and Moving Walks", ASME A17.2-3-1998;
- (d) "Safety Code for Existing Elevators and Escalators", ASME A17.3-2002;
- (e) "Guide for Emergency Personnel", ASME A17.4-1999;
- (f) "Elevator and Escalator Electrical Equipment", ASME A17.5-1996;
- (g) "Safety Standard for Conveyors and Related Equipment", ASME B20.1-1996; and
- (h) "Safety Standard for Platform Lifts and Stairway Chairlifts", ASME A18.1-2003.
- (i) "Automated People Mover Standards Part 1", ANSI/ASCE/T&D1-21-05, 2006;
- (j) "Automated People Mover Standards Part 2", ASE 21-98, 1999; and
- (k) "Automated People Mover Standards Part 3", ASCE 21-00, 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the 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.

(3) This material may also be obtained from the American Society of Mechanical Engineers, 1901 Alexander Bell Drive, Reston, Virginia 20191-4400.]

JERRY T. LUNSFORD, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2011, at 11 am, EDT, 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 August 15, 2011 (five 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 August 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

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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 annual inspection requirements and fees for elevators.

(b) The necessity of this administrative regulation: This amendment is necessary to establish the fees for newly mandated annual inspections of freight elevators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.490 requires the commissioner of the Department of Housing, Buildings and Construction to promulgate administrative regulations governing the safety and inspection of elevators and to establish fees for inspections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the fee structure for annual elevator inspections.

(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 establishes the fees for annual inspections of freight elevators pursuant to legislation passed during the 2010 Regular Session of the General Assembly.

(b) The necessity of the amendment to this administrative regulation: This amendment establishes the fees for annual inspections of freight elevators which have previously not required annual inspections.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.490 requires the commissioner of the Department of Housing, Buildings and Construction to promulgate administrative regulations governing the safety and inspection of elevators and to establish fees for inspections.

(d) How the amendment will assist in the effective administration of the statutes: Providing a standardized fee structure for elevator inspections ensures uniformity and meets statutory mandates.

(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 Building Codes Enforcement, Elevator Section, elevator contractors, elevator mechanics and owners of elevators.

(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 perform required annual inspections of elevators for the associated fees established by 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): Depending upon the type of elevator to be inspected, the fee assessed is established to approximate and offset the expenditures to the Department for inspection services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Elevator owners will be compliant with annual inspection requirements and ensure safety to users of the elevators.

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

(a) Initially: At initial, minimal staffing levels, HBC anticipates costs to be \$225,000.

(b) On a continuing basis: With the identification and inspections of all elevators within the Commonwealth, administrative

costs are anticipated to increase proportionately.

(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 Building Codes Enforcement, Elevator Section.

(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 existing annual inspection fees for passenger elevators. However, spending authority will need to be increased to allow the Elevator Section to utilize newly established freight inspection fees to be used to offset additional costs for the freight elevator inspection duties.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation establishes new fees for the inspection of freight elevators as these elevators were not previously subject to mandatory annual inspections.

(9) TIERING: Is tiering applied? Tiering is applied to this administrative regulation to reflect the difference in time and manpower necessary for various elevator inspections.

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 Building Code Enforcement, and Elevator Section 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 198B.490.

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. Although exact numbers cannot be established, based upon the information the Department has from elevator manufacturers and local jurisdiction inspection programs, there are approximately 2500 freight elevators currently operational within the Commonwealth. The Department estimates that the first year of freight elevator inspections will be of approximately 1000 (due to the need for identifying and locating the remaining inventory of freight elevators statewide). Taking the estimated 1000 to be inspected in year one of the program and multiplying by the \$200 inspection fee, the revenues are estimated to be \$200,000.

(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. Assuming that the number of freight elevators statewide are consistent with the figure of 2500 freight elevators believed to be currently operational within the Commonwealth then multiplying the estimated number of freight elevators times the \$200 inspection fee, the revenues are estimated to ultimately reach \$500,000 annually.

(c) How much will it cost to administer this program for the first year? The agency estimates the expanded elevator inspection program's expenditures to approximate the increase in revenues.

(d) How much will it cost to administer this program for subsequent years? The costs of administering the elevator inspection program is anticipated to remain consistent once all elevators subject to annual inspection are identified and located in the Commonwealth.

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

Revenues (+/-): Increase due to new freight elevator inspection

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program.

Expenditures (+/-): Increase to carry out new freight elevator inspection program.

Other Explanation:

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (Amendment)

815 KAR 4:025. Permit fees for new and altered elevators.

RELATES TO: KRS 198B.050, 198B.400-198B.540

STATUTORY AUTHORITY: KRS 198B.060, 198B.4009, 198B.490, 198B.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.490 authorizes the Commissioner [Executive Director] of the Department of Housing, Buildings and Construction to make inspections and prescribe the associated fees to be charged for each elevator constructed, installed, or altered within the Commonwealth. This administrative regulation establishes the permitting and inspection fees for passenger and freight elevators. [the installation and alteration of each elevator as defined by KRS 198B.400(1). This administrative regulation includes the substance of 815 KAR 4:021, which has been repealed.]

Section 1. Definitions. (1) "Alteration" means a [any] change to an elevator, elevator equipment, or elevator devices. Maintenance, repair, or replacement of parts in kind does not constitute "alteration". [; however, maintenance, repair or replacement of parts in kind shall not be included in this definition.]

(2) "Elevator" is defined by [as defined in] KRS 198B.400(1).

Section 2. Issuance of Permits. (1) Permits to construct, install, or alter an elevator shall only be issued to a Kentucky licensed contractor.

(2) A Kentucky licensed elevator mechanic shall not construct, install, or alter an elevator unless the work is performed under the supervision of a Kentucky licensed elevator contractor or exempt from supervision under the provisions of KRS 198B.4009(2). [Permit Fees for Inspection of Elevator Construction and Alteration. (4) Construction permits shall be obtained from the Office of Housing, Buildings and Construction for the installation or alteration of an elevator, except for those alterations made pursuant to the report of an inspector, and inspection fees shall be required.

(2) Fees for the inspections made incident to the permit shall be as follows:

(a) Zero to five (5) horsepower, per unit – seventy-five (75) dollars;

(b) Six (6) to ten (10) horsepower, per unit – eighty-five (85) dollars;

(c) Eleven (11) horsepower and over, per unit – eighty-five (85) dollars, plus ten (10) dollars for each horsepower over ten (10);]

Section 3. Permit Required. (1) An application shall be made for a permit prior to construction, installation, or alteration of an elevator on one (1) of the following:

(a) Form EV-1, Elevator Construction and Installation Permit Application; or

(b) Form EV-2, Elevator Alteration Permit Application.

(2) An application shall be submitted to the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator section before commencing elevator work requiring permit.

Section 4. Passenger Elevator Construction, Installation, and Alteration Permit Fees. Permit and inspection fees for passenger elevators shall be as follows:

Horsepower (per unit)	Permit Fee
Zero (0) to five (5)	\$85
Six (6) to ten (10)	\$100
More than ten (10)	\$100 plus \$10 for each additional horsepower exceeding ten (10)

Section 5. Freight Elevator Construction, Installation and Alteration Permit Fees. Permit and inspection fees for freight elevators shall be as follows:

Horsepower (per unit)	Permit Fee
Zero (0) to five (5)	\$85
Six (6) to ten (10)	\$100
More than ten (10)	\$100 plus \$10 for each additional horsepower exceeding ten (10)

Section 6. Inspection Fees. (1)(a) Each passenger elevator permit shall include two (2) inspections (one (1) final and one (1) supplemental, if necessary) at no additional cost.

(b) All passenger elevator inspections in excess of two (2) provided with purchase of permit shall be performed at the rate of the original permit fee per inspection.

(2)(a) Each freight elevator permit shall include two (2) inspections (one (1) final and one (1) supplemental) at no additional cost.

(b) All freight elevator inspections in excess of two (2) provided with purchase of permit shall be performed at the rate of the original permit fee per inspection.

(3) Payment for all necessary permits and inspections shall be received by the elevator section prior to final approval of an elevator construction, installation, or alteration being granted.

Section 7. Certificate of Approval. Upon the satisfactory completion of final inspection of the constructed, installed, or altered elevator, a certificate of approval shall be issued by the department.

Section 8. Expiration of Permits. An elevator permits issued pursuant to this administrative regulation shall be subject to revocation, expiration, or extension pursuant to the provisions of KRS 198B.520.

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

(a) Elevator Construction and Installation Permit Application, Form EV-1, July 2011; and

(b) Elevator Alteration Permit Application, Form EV-2, July 2011.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY T. LUNSFORD, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 22, 2011, at 10:30 am, EDT, 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 August 15, 2011 (five 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 August 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:

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(a) What this administrative regulation does: This administrative regulation establishes the fees and charges for passenger and freight elevator installation permits in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: KRS 198B.490 authorizes the Department of Housing, Buildings and Construction make inspections and prescribe the fees to be charged for the construction, installation, and alterations of elevators within the Commonwealth. KRS 198B.4009 additionally authorizes the Department to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.400 to 198B.540.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the schedule of fees and charges for elevator installation permits for the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the elevator installation permit fee schedule as required by KRS 198B.490.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the permitting and inspection fee schedule for passenger elevators and establishes the permitting and inspection fee schedule for freight elevators in accordance with HB 220 (2010 Regular Session of the General Assembly).

(b) The necessity of the amendment to this administrative regulation: This amendment establishes fees for permitting and inspection of freight elevators which previously did not require permit or inspection in the Commonwealth. The amendment also updates the fees for passenger elevators which have not been amended in a decade.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment meets the mandate of KRS 198B.490 which authorizes the Department to make inspections and prescribe the fees to be charged for such.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes fees to offset costs to the agency to provide statutorily mandated elevator inspections statewide. The elevator program is a self-sustaining program which operates exclusively on restricted funds. These fees are established to approximate and offset expenditures incurred by the elevator section for providing inspections statewide.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Housing, Buildings and Construction; Division of Building Codes Enforcement; Elevator Section; Elevator licensees installing systems; and property owners.

(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: 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 installation permit is required for all elevator construction, installations, and alterations. The inspections incidental thereto are in place to ensure compliance with the Kentucky Building Code. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administrative regulation establishes the fee schedule for elevator construction, installations and alterations. The cost the inspection program (both new installations and annual inspections) is estimated at \$225,000 initially. As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include verification that the subject elevator has been constructed, installed, or altered according to the provisions of the Kentucky Building Code.

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

(a) Initially: New costs associated with the implementation of this administrative regulation are the result of the new legislative mandate to permit and inspect freight elevators within the Commonwealth.

(b) On a continuing basis: The costs associated with implementation of this administrative regulation on a continuing basis

will be determined by the number of elevators constructed, installed and altered within the Commonwealth.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing elevator funds and fees collected for the issuance of elevator installation permits will be utilized for the administration of the permitting and installation program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Implementation of this administrative regulation necessitates the establishment of fees for freight elevators (previously not permitted nor inspected by the Department of Housing, Buildings and Construction). The administrative regulation establishes the fees for permits pursuant to the authorization and directive of KRS 198B.6673.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes the fee schedule mandated by KRS 198B.490 for the statewide permitting and installation program of all elevators in the Commonwealth.

(9) TIERING: Is tiering applied? Tiering is applied to this administrative regulation. The permit fee for a project is determined by the horsepower per unit of the elevator being constructed, installed, or altered.

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 Building Codes Enforcement, and the Elevator Section 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 regulation is authorized by KRS 198B.060, 198B.4009, 198B.490 and 198B.520.

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 new elevator permitting and inspection fees for elevators which are anticipated to offset the costs of administering the program.

(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. Without having established actual inventory of currently installed freight elevators statewide, it is difficult to apply annual installation trend estimates. If freight construction, installation and alteration permits are estimated to be 50 for the initial year, at average fee of \$500, the estimated new revenue to the elevator section is \$25,000.

(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 agency anticipates estimates for the initial year to remain consistent for subsequent years; therefore revenues are anticipated to remain consistent.

(c) How much will it cost to administer this program for the first year? The agency estimates the expanded elevator inspection program's expenditures to approximate the increase in revenues.

(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 (+/-): Increased, due to addition of freight elevator permitting.

Expenditures (+/-): Increased, due to addition of freight elevator inspection.

Other Explanation:

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CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

900 KAR 6:075. Certificate of Need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.095, 216B.455, 216B.990
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(3) "Days" means calendar days, unless otherwise specified.

(4) "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(5) "Nonsubstantive review" is defined by KRS 216B.015(17).

(6) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(7) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(8) "Therapeutic cardiac catheterization outcomes" means in hospital mortality rates, door to balloon time, door to balloon time less than or equal to ninety (90) minutes, Percutaneous Coronary Intervention (PCI) related cardiac arrests and emergency open heart surgeries performed as a result of the PCI.

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to applications to change the location of a proposed health facility or to relocate a licensed health facility only if:

1. There is no substantial change in health services or bed capacity; and

2. The change of location or relocation is within the same county; or

~~(b) The change of location for a psychiatric residential treatment facility is within the same district as defined in KRS 216B.455 and is to the same campus as a licensed psychiatric residential treatment facility].~~

(2) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(f), the Office of Health Policy shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;

(c) The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district and the requirements established in this paragraph are met.

1.a. There shall not be an increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the beds are relocated delicens

those beds.

2. If neonatal Level II beds are relocated or transferred pursuant to this paragraph:

a. The receiving hospital shall have an existing licensed Level II or Level III neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;

(d) The proposal involves an application by an existing licensed hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted.

(e) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds;

(f) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds between certificate of need approved nursing facilities or from a certificate of need approved nursing facility to a proposed nursing facility and the requirements established in this paragraph are met.

1. The selling or transferring facility has a certificate of need nursing facility bed inventory of at least 250 beds;

2. The transfer or relocation takes place within the same Area Development District;

3. The application includes:

a. A properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6: 055; and

b. Evidence of the selling or transferring entity's binding commitment to sell or transfer upon approval of the application; and

4. A certificate of need approved nursing facility shall not sell or transfer more than fifty (50) percent of its certificate of need approved nursing facility beds;

~~(g) [The proposal involves an application to establish a nursing facility with no more than sixty-two (62) nursing facility beds and the requirements established in this paragraph are met.~~

~~1. The applicant is an existing licensed psychiatric hospital operated by the Commonwealth of Kentucky;~~

~~2. The proposed nursing facility shall be located on the psychiatric hospital's campus; and~~

~~3. The letter of intent is filed no later than March 1, 2010 and the application is filed no later than March 31, 2010;~~

~~(h) The proposal involves an application to establish a psychiatric hospital with no more than fifty (50) psychiatric beds and the requirements established in this paragraph are met.~~

~~1. The letter of intent is filed no later than March 1, 2010 and the application is filed no later than March 31, 2010;~~

~~2. The proposed psychiatric hospital shall be located in an area development district (ADD) which does not contain a licensed psychiatric hospital;~~

~~3. The applicant proposes to provide services only to individuals between the ages of four (4) and twenty-one (21);~~

~~4. The patient population to be served shall be limited to children with documented evidence of mental retardation or a developmental disability as defined under 907 KAR 1:145; physical aggression; or inappropriate sexual behavior;~~

~~5. The facility shall not refuse to admit a patient or discharge a patient due to the presence of the characteristics described in subparagraphs 3 and 4 of this paragraph;~~

~~6. The proposed psychiatric hospital shall have on staff a board-eligible or board-certified child psychiatrist who maintains responsibility for admissions and treatment. The board-eligible child psychiatrist shall be a doctor of psychiatry who has been~~

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board-certified in general psychiatry by the American Board of Psychiatry and Neurology and has completed a two (2) year fellowship in child psychiatry; and

7. The application shall include all of the following:

- a. The specific number of psychiatric beds proposed;
- b. An inventory of current psychiatric services in the Area Development District;
- c. Clear admission and discharge criteria;
- d. Linkage agreements with other child and adolescent serving agencies in the proposed service areas, including all regional inter-agency councils, community mental health centers, the Department for Community Based Services, and major referring school systems. These agreements shall demonstrate a commitment by these agencies and the hospital to joint treatment and discharge planning as appropriate; and
- e. Documentation of linkage agreements for the provision for case management services if necessary after discharge. A case manager:
 - (i) May be on the hospital's staff; and
 - (ii) Shall be closely involved in cases from treatment planning onward;

(f) The proposal involves an application to establish a therapeutic cardiac catheterization program and the requirements established in this paragraph are met.

1. The applicant is an acute care hospital which was previously granted a certificate of need to participate in a primary angioplasty pilot project and was evaluated after the first two (2) years of operation by an independent consultant who determined the hospital successfully demonstrated good therapeutic cardiac catheterization outcomes.

2. The applicant shall document that the nursing and technical catheterization laboratory staff are experienced and participate in a continuous call schedule.

3. The applicant shall document that the catheterization laboratory shall be equipped with optimal imaging systems, resuscitative equipment, and intra-aortic balloon pump support.

4. The applicant shall document that the cardiac care unit nurses shall be proficient in hemodynamic monitoring and intra-aortic balloon pump management.

5. The applicant shall document formalized written protocols in place for immediate and efficient transfer of patients to an existing licensed cardiac surgical facility.

6. The applicant shall utilize a Digital Imaging and Communications in Medicine (DICOM) standard image transfer system between the hospital and the backup surgical facility.

7. The applicant shall employ an interventional program director who has performed more than 500 primary PCI procedures and who is board certified by the American Board of Internal Medicine in interventional cardiology.

8. The applicant shall document that each cardiologist performing the therapeutic catheterizations shall perform at least seventy-five (75) PCIs per year.

9. The applicant shall document the ability to perform at least 200 interventions per year, with ideal minimum of 400 interventions per year by the end of the second year of operation.

10. The applicant shall participate in the American College of Cardiology National Cardiovascular Data Registry quality measurement program.

11. The applicant shall report therapeutic cardiac catheterization data annually to the Cabinet for Health and Family Services.

12. The application shall document the applicant's ability to produce therapeutic cardiac catheterization outcomes which are within two (2) standard deviations of the national means for the first two (2) consecutive years; or

(h) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds from one (1) long-term care facility to another long-term care facility and the requirements established in this paragraph are met.

1. The selling or transferring facility fails to meet regulations promulgated by the Centers for Medicare and Medicaid Services at 42 C.F.R. 483.70(a)(8) requiring nursing facilities to install sprinkler systems throughout their buildings;

2. The selling or transferring facility may sell or transfer portions of its total bed component to one (1) or more existing nursing

facility;

3. The facility acquiring the beds shall be located in a county contiguous to that of the selling or transferring facility;

4. The selling or transferring facility shall be licensed only for nursing facility beds at the time of transfer or application to transfer and shall not sell or transfer more than thirty (30) of its licensed nursing facility beds to an individual facility; and

5. The application shall include a properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055.

(3) If an application is denied nonsubstantive review status by the Office of Health Policy, the application shall automatically be placed in the formal review process.

(4) If an application is granted nonsubstantive review status by the Office of Health Policy, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(5)(a) If an application is granted nonsubstantive review status by the Office of Health Policy, any affected person who believes that the applicant is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c) Nonsubstantive review applications shall not be comparatively reviewed but may be consolidated for hearing purposes.

(6) If an application for certificate of need is granted nonsubstantive review status by the Office of Health Policy, there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status by the Office of Health Policy shall not be reviewed for consistency with the State Health Plan.

(7) Unless a hearing is requested pursuant to 900 KAR 6:090, the [The] Office of Health Policy [cabinet] shall approve applications for certificates of need that have been granted nonsubstantive review status [by the Office of Health Policy] if:

(a) The application does not propose a capital expenditure; or

(b) The application does propose a capital expenditure, and the Office of Health Policy [cabinet] finds the facility or service with respect to which the capital expenditure proposed is needed, unless the cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(8) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Applicant is not entitled to nonsubstantive review status; or

(b) Presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(9) A decision to [The cabinet shall] approve or disapprove an application which has been granted nonsubstantive review status shall be rendered [by the Office of Health Policy] within thirty-five (35) days of the date [that public notice is given] that nonsubstantive review status has been granted.

(10) If a certificate of need is disapproved [denied] following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

CARRIE BANAHAN, Executive Director

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on August 22, 2011, at 9:00 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 August 15, 2011, five (5) work-

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days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 August 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines and considerations for nonsubstantive review of applications for the certificate of need program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 194A.030, 194A.050, 216B.040(2)(a)1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the considerations for nonsubstantive review of certificate of need applications

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the considerations for nonsubstantive review of certificate of need applications.

(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 delete language that is no longer needed such as change of location for a psychiatric residential treatment facility, establishment of a nursing facility with no more than sixty-two nursing facility beds. The amendment will also provide flexibility so that decisions to approve or disapprove applications for certificate of need may be signed by the Executive Director of the Office of Health Policy.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to eliminate unnecessary language and provide more flexibility so that decisions to approve or disapprove applications for certificate of need may be signed by the Executive Director of the Office of Health Policy.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the considerations for nonsubstantive review of certificate of need applications.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide more flexibility so that decisions to approve or disapprove applications for certificate of need may be signed by the Executive Director of the Office of Health Policy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a certificate of need application. Approximately 100 entities file a certificate of need application each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: As the considerations for nonsubstantive review of certificate of need applications set forth in the administrative regulation are currently established and operational, no new action will be required of regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the considerations for nonsubstantive review of certificate of need applications set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide potential health care providers with a mechanism to establish health care facilities and services in compliance with KRS 216B and will provide more flexibility so that decisions to approve or disapprove applications for certificate of need may be signed by the Executive Director of the Office of Health Policy.

(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 as well as the Office of Health Policy within the Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030, 194A.050, 216B.040(2)(a)1.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 subse-

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quent 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 6:080. Certificate of Need emergency circumstances.

RELATES TO: KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the guidelines for alleviating an emergency circumstance for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(3) "Days" means calendar days, unless otherwise specified.

(4) "Emergency circumstance" means a situation that poses an imminent threat to the life, health, or safety of a citizen of the Commonwealth.

(5) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(6) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(7) "Public notice" means notice given through:

- (a) Public information channels; or
- (b) The cabinet's Certificate of Need Newsletter.

(8) "Service Area" means county unless otherwise specified in the state health plan.

(9) "State Health Plan" is defined by KRS 216B.015(27) and is incorporated by reference in 900 KAR 5:020.

Section 2. Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:

(a) The person is licensed by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services to provide the same or similar services necessary to alleviate the emergency;

(b) The Office of Health Policy is notified in writing within five (5) days of the commencement of the provision of the service required to alleviate the emergency; and

(c) The Office of Health Policy acknowledges in writing that it recognizes that an emergency does exist.

(2) The notice to the Office of Health Policy shall be accompanied by an affidavit and other documentation from the person proposing to provide emergency services that shall contain the following information:

(a) A detailed description of the emergency that shall include at least the following information:

1. A description of health care services that will be provided to the person or persons to whom the services will be provided, including proof of eligibility for the service;

2. A list of the providers in the service area licensed to provide

the services that will be provided during the emergency; and

3. Proof that:

a. Other providers licensed in the service area to provide the service are aware of the need for the service to be provided to the person and have refused or are unable to provide the service; or

b. Circumstances exist under which the transfer of a patient to another provider licensed in the service area to provide the service would present an unacceptable risk to a patient's life, health, or safety;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic service area where the emergency service is being provided; and

(d) The expected duration of the emergency.

(3) The Office of Health Policy may request additional information necessary to make its determination from the person proposing to provide emergency services before it acknowledges that an emergency circumstance does exist.

(4) If the provision of service to meet the emergency circumstance is required to continue beyond sixty (60) [thirty (30)] days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an OHP – Form 1, Letter of Intent and an application for a certificate of need for the next appropriate public notice pursuant to 900 KAR 6:060. Failure to submit a Letter of Intent and an application to the Office of Health Policy shall result in the rescission of the emergency acknowledgement and generate notification to the Office of Inspector General.

(5) The person providing the emergency service may continue to alleviate the emergency circumstances without a certificate of need until:

(a) The emergency circumstance ceases to exist; or

(b) The cabinet issues a final decision to approve or disapprove the application for certificate of need.

(6) The person providing the emergency service shall notify the Office of Health Policy within ten (10) days of the date the emergency circumstance ceases and emergency services are no longer required.

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2011, at 9:00 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 August 15, 2011, five (5) work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for proceeding without a certificate of need application in emergency circumstances.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the

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authorizing statute, KRS 194A.030, 194A.050, 216B.040(2)(a)1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the guidelines for alleviating an emergency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the guidelines for alleviating an emergency.

(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 time period by which an entity alleviating an emergency must submit a Letter of Intent and file an application for a Certificate of Need to continue to provide services from 30 days to 60 days. If the emergency circumstance ceases, the person providing the emergency service must notify OHP within 10 days of the date the emergency circumstance ceases and emergency services are no longer required.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow 30 days additional time for entities alleviating an emergency to complete the Certificate of Need application process. It also requires notification to OHP if the emergency circumstances cease.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the timeframes by which an application for Certificate of Need must be filed to alleviating an emergency and requires notification to OHP if the emergency circumstances ceases.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow 30 days additional time for entities alleviating an emergency to complete the Certificate of Need application process. It also requires notification to OHP if the emergency circumstances cease.

(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 about 10 to 15 entities each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will allow 30 days additional time for entities alleviating an emergency to complete the Certificate of Need application process. It also requires notification to OHP if the emergency circumstances cease.

(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 applicants alleviating an emergency will have an additional 30 days to file a Letter of Intent and a Certificate of Need Application.

(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. This administrative regulation is authorized by KRS 194A.030, 194A.050, 216B.040(2)(a)1.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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

DEPARTMENT FOR PUBLIC HEALTH Division of Public Health Protection and Safety (Amendment)

902 KAR 15:020. Recreational vehicles.

RELATES TO: KRS Chapter 13B, 211.180(1)(c), 219.310-219.410, 219.991(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3)

EFFECTIVE: July 30, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.090 requires the Secretary of the Cabinet for Health and Family Services to regulate and control matters set forth in KRS 211.180. KRS 211.180(1)(c) designates public and semipublic recreational areas as areas for which the secretary has responsibility to provide a safe and sanitary environment. The secretary is thus required to enforce the Kentucky Manufactured Home, Mobile Home, and Recreational Vehicle Community Act of 2002, KRS 219.310 to 219.410. This administrative regulation establishes standards for community construction and layout, sanitary standards for operation, and other matters necessary to insure a safe and sanitary recreational vehicle community operation.

Section 1. Definitions. (1) "Community street" means the paved portion of a roadway between curbs or, if not paved, the surfaced

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area separating sites.

(2) "Exempt recreational vehicle community" means any recreational vehicle community operated in accordance with KRS 219.410.

(3) [(2)] "Floodplain" means the area in a watershed that is subject to flooding at least one (1) time every 100 years.

(4) [(3)] "Recreational vehicle parking area" means that portion of the space used to park the recreational vehicle and towing vehicle, if any.

(5) [(4)] "Self-contained recreational vehicle community" means a community in which all recreational vehicle spaces are designed with water and sewer riser pipe connections that permit the parking of only self-contained recreational vehicles.

(6) [(5)] "Sewer riser pipe" means that portion of the sewer lateral which extends vertically to the ground elevation and terminates at each recreational vehicle space.

(7) "Seasonal" means a consecutive period of time not to exceed ninety (90) days within a calendar year.

(8) "Special Event" is a nonroutine activity within a community not to exceed fourteen (14) consecutive days in a calendar year.

(9) "Special Event Camping" is any camping that is in conjunction with a special event.

(10) "Temporary" means a period of time not to exceed fourteen (14) days within a calendar year.

Section 2. Submission of Construction Plan. (1) In accordance with KRS 219.350, each application for a permit to construct or alter a recreational vehicle community shall be submitted to the local health department.

(2) Each application shall be accompanied by a complete plan, drawn to scale, submitted in triplicate, of the proposed community or alteration.

(3) If the community is located within a floodplain, the plan shall be submitted in quadruplicate.

(4) The plans shall show all existing and proposed facilities including:

(a) [(1)] The size of the area and general dimensions of the tract of land being developed;

(b) [(2)] The number, location, and size of all recreational vehicle spaces;

(c) [(3)] The area within the space planned for location of the recreational vehicle including setback distances where applicable;

(d) [(4)] The location and width of roadways, driveways, and walkways;

(e) [(5)] The number, location, and size of all off-street automobile parking spaces;

(f) [(6)] The location of the exterior area lights and the exterior electrical distribution system;

(g) [(7)] Detailed drawings of water supply if source is other than public;

(h) [(8)] Detailed drawings of sanitary station and watering station;

(i) [(9)] Detailed drawings of sewage disposal facilities, including written specifications;

(j) [(10)] Detailed drawings of refuse storage facilities;

(k) [(11)] The location and size of water and sewer lines and riser pipes;

(l) [(12)] Size and location of any playground area within the community, if provided; and

(m) [(13)] A separate floor plan of all service buildings and other improvements constructed or to be constructed within the recreational vehicle community, including a plumbing riser diagram.

(5) The cabinet shall provide written response to the application within thirty (30) business days.

(a) If the construction plans are not approved, the cabinet shall give the reason in writing to the person submitting the construction plans

(b) Plans may be revised in response to written cabinet deficiencies and resubmitted for another review following steps outlined in Section 2 of this regulation.

Section 3. Location and General Layout Standards. (1) The recreational vehicle community shall be located on a well drained area, not in a floodplain. Each site shall be graded to prevent the

accumulation of storm or other waters.

(2) If the location is in an area at high risk for flooding, the applicant shall:

(a) Submit an engineering study to the cabinet; and

(b) Maintain flood insurance for the site.

(3) The area of the recreational vehicle community shall be large enough to accommodate the designated number of recreational vehicle spaces, necessary streets and roadways, and parking areas for motor vehicles.

(4) Each recreational vehicle space shall be numbered and displayed in some systematic order.

(5) Each recreational vehicle space shall contain a minimum of 1,500 square feet and adequate square footage to accommodate the maximum size recreational vehicle. A space measuring thirty (30) feet by fifty (50) feet is recommended.

(6) Recreational vehicles shall be separated from each other and from other structures by at least fifteen (15) feet.

(7) A recreational vehicle shall be located at least twenty-five (25) feet from a public street or highway right-of-way and at least ten (10) feet from other community property boundary lines.

(8) Each parking area shall be provided with safe and convenient vehicular access from abutting public or community streets or roads to each recreational vehicle space. Alignment and gradient shall be properly adapted to topography.

(9) Access to recreational vehicle parking areas shall be designed to minimize congestion and hazards at their entrance or exit and allow free movement of traffic on adjacent streets. All traffic into or out of the parking areas shall be through these entrances and exits.

(10) Each space shall abut upon a community street.

(a) For a two (2) way community street, the minimum width shall be eighteen (18) feet; and

(b) For [(for)] a one (1) way community street, the minimum width shall be twelve (12) feet.

(11) Community streets, driveways, and recreational vehicle parking areas shall be of all-weather construction, maintained in good condition, have natural drainage, be relatively free of dust, and be maintained free of holes.

(12) Each parking area shall provide sufficient parking and maneuvering space so that the parking, loading or maneuvering of recreational vehicles incidental to parking shall not necessitate the use of a public street, sidewalk or right-of-way, or private ground not part of the parking area.

(13) If a community provides a playground area, the area shall be easily accessible to all community residents and shall be fenced or otherwise rendered free of traffic hazards.

Section 4. Lighting within the Community. A minimum equivalent to a 175 watt mercury vapor type light shall be provided at community entrances, intersections, service buildings, sanitary stations, and other areas within the community deemed necessary by the cabinet.

Section 5. Community Water Supply. (1) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district, if available. If a public water supply of a municipality or a water district is not available, the supply for the community shall be developed and approved pursuant to applicable requirements of the Energy and Environment Cabinet [Natural Resources and Environmental Protection Cabinet]; except if a public water supply of a municipality or water district subsequently becomes available, connections shall be made to it and the community supply shall be discontinued.

(2) The water supply shall be capable of supplying a minimum of fifty (50) gallons per day per recreational vehicle space.

(3) Except as provided in subsection (4) of this section, each recreational vehicle community shall have at least one (1) easily accessible watering station for filling recreational vehicle water storage tanks.

(a) There shall be one (1) watering station for each fifty (50) recreational vehicle spaces or fraction thereof.

(b) Each watering station shall be protected against backflow, back-siphonage, and other means of contamination.

(c) A watering station shall be separated from a sanitary station

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by at least fifty (50) feet.

(4) In lieu of a watering station, individual water connections may be provided at each recreational vehicle space. Riser pipes provided for individual water-service connections shall be located and constructed to prevent damage by the parking of recreational vehicles.

(5) Water distribution lines and connections in the service buildings, sanitary stations, water stations, and at recreational vehicle spaces shall comply with KRS Chapter 318, Plumbers and Plumbing [the state plumbing code].

Section 6. Community Sewage and Waste Disposal. (1) All sewage and waste matter shall be disposed of into a public sewer system, if available. If a public sewer system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of the cabinet or the Energy and Environment Cabinet [Natural Resources and Environmental Protection Cabinet]; except if a public sewer system subsequently becomes available, connections shall be made to it and the community sewer system shall be discontinued.

(2) Except for self-contained recreational vehicle communities, each community shall provide at least one (1) sanitary station.

(a) If more than seventy-five (75) recreational vehicle spaces without sewer riser pipes are provided, additional sanitary stations shall be required at the ratio of one (1) station for each seventy-five (75) recreational vehicle spaces without sewer riser pipes or fraction thereof.

(b) Sanitary stations shall consist of at least a trapped four (4) inch sewer riser pipe connected to the community sanitary sewer system and [.] be surrounded at the inlet end by a concrete apron sloped to the drain. [.]

(c) The riser provided with a suitable hinged cover and the area around the station shall be sloped to drain the surface water away.

(d) A water outlet shall be included to permit sanitary maintenance of the station and be marked: "This Water for Flushing and Cleaning Purposes Only."

(e) The water outlet hose shall be reel or tower mounted to insure sanitary storage when not in use.

(f) A vacuum breaker shall be installed at the highest point on the reel or tower mounting.

(3) If facilities for individual sewer riser pipes are provided, the following requirements shall apply:

(a) The sewer riser pipe shall have at least a four (4) inch diameter and shall be located on the recreational vehicle space so that the sewer riser pipe to the recreational vehicle drain outlet will approximate a vertical position; and [.]

(b) Provision shall be made for capping the sewer riser pipe when a recreational vehicle does not occupy the space. Surface drainage shall be diverted away from the riser.

(4) Sewer systems connections in recreational vehicle communities shall comply with KRS Chapter 318, Plumbers and Plumbing [the state plumbing code].

Section 7. Storage, Collection, and Disposal of Community Refuse. (1) The storage, collection, and disposal of refuse in the community area shall be conducted to not create a health, safety, or fire hazard; [.] rodent harborage; [.] insect breeding area; or cause air pollution.

(2) Refuse shall be stored in flytight, watertight, rodent proof common containers. Common containers shall be provided at the ratio of one (1) container per two (2) recreational vehicle spaces and in additional numbers as may be necessary to properly store refuse.

(3) Refuse collection stands shall be provided for refuse containers with less than thirty-five (35) gallons capacity. Stands shall be designed to prevent containers from being tipped, to minimize spillage and container deterioration, and to facilitate cleaning around them.

(4) Refuse containing garbage shall be collected at least once a week or more often if necessary.

(a) If suitable collection service is not available from a municipal or private agency, the owner or operator of the community shall provide this service.

(b) Refuse shall be collected and transported in covered, leak-proof containers or vehicles.

(5) Refuse and waste collected at a community shall be disposed in a safe and sanitary manner approved by the Energy and Environment Cabinet [Natural Resources and Environmental Protection Cabinet] in accordance with 401 KAR Chapter 47.

Section 8. Community Service Buildings. (1) Except for self-contained recreational vehicle communities, each community shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures specified by the Plumber's and Plumbing KRS Chapter 318 [State Plumbing Code].

(2) A service building shall be conveniently located within a radius of approximately 500 feet of the spaces to be served, [.] except that [.] A variance may be granted by the cabinet due to topography and other geographical conditions.

(3)[(2)] A service building shall be constructed and maintained pursuant to the requirements of the State Building Code.

(4)[(3)] A room containing sanitary or laundry facilities shall have:

(a) Every opening to the outer air effectively screened and each door provided with a spring or other self-closing device;

(b) Illumination levels maintained as follows:

1. General visual tasks - ten (10) foot-candles;

2. Laundry room work area - forty (40) foot-candles; and

3. Toilet room, in front of mirrors - forty (40) foot-candles;

(c) Hot and cold water furnished to every lavatory, sink, shower, and laundry fixture, and cold water furnished to every water closet and urinal;

(d) Walls, floors, ceilings, [and] attached or freestanding fixtures, and equipment maintained in good repair and sanitary. Surfaces shall not consist of carpeting or any material that is not smooth and easily cleanable.

(e) Refuse stored in easily cleanable containers;

(f) Sanitary towels or a mechanical hand drying device located adjacent to the lavatories; and

(g) A covered waste receptacle for each toilet room stall used by women.

Section 9. Insect, Rodent, Pest, and Pet Control within the Community. (1) Grounds, buildings, and structures shall be maintained free of insect and rodent harborage and infestation. Approved extermination methods and other measures to control insects and rodents shall be used.

(2) Communities shall be maintained free of accumulations of debris which may provide rodent harborage or breeding places for flies, mosquitoes, and other pests.

(3) Storage areas shall be maintained to prevent rodent harborage. Lumber, pipe, and other building materials shall be stored at least one (1) foot above the ground.

(4) If the potential for insect and rodent infestation exists, all exterior openings in or beneath any structure shall be appropriately screened with wire mesh or other suitable materials.

(5) The growth of brush, weeds, and grass shall be controlled to prevent harborage of ticks, chiggers, and noxious insects within the area used for the parking of recreational vehicles.

(6) Communities shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac, and other noxious weeds considered detrimental to health. Open areas shall be maintained free of heavy undergrowth of any description.

(7)[(6)] An owner or person in charge of a dog, cat or other pet animal shall not permit the animal to run at large or to create a nuisance within the limits of the community.

Section 10. Community Electrical Distribution Systems. Every community shall contain an electrical system consisting of wiring, fixtures, equipment and appurtenances installed and maintained pursuant to the requirements of the Energy and Environment Cabinet [Natural Resources and Environmental Protection Cabinet].

Section 11. Community Fire Protection. Each community shall comply with applicable rules and administrative regulations of the State Fire Marshal and applicable local fire codes pertaining to fire safety, fuel supply storage, and fuel connections.

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Section 12. Community Maintenance and Registration of Occupants and Vehicles. (1) The permit holder shall maintain the community, its facilities and equipment in good repair and in a clean and sanitary condition.

(2) Every permittee shall maintain a register showing the following:

(a) The names and permanent addresses of all recreational vehicle occupants;

(b) The make, model, and license number of the recreational vehicle or the tow vehicle; and

(c) The dates of arrival and departure of the recreational vehicle or its occupants.

(3) The register shall be available to an authorized person inspecting the recreational vehicle parking area.

(4) An owner or operator of a self-contained recreational vehicle community shall not permit the parking of a dependent recreational vehicle within the self-contained recreational vehicle community.

(5) An owner or operator of a recreational vehicle community shall not construct, install or attach, or permit the construction, installation, or attachment of a lean-to, deck, addition, or other permanent or semipermanent structure upon a recreational vehicle or recreational vehicle space, except that a collapsible awning or screened enclosure mounted upon or transported with the recreational vehicle may be permitted.

Section 13. Communities Constructed prior to June 16, 1973. A recreational vehicle community in existence on June 16, 1973, the effective date of former Regulation MRP-2, may be eligible for a permit to operate notwithstanding that the community does not fully meet the design and construction requirements of this administrative regulation, if:

(1) The cabinet determines that the community can be operated in a safe and sanitary manner pursuant to the operational requirements of this administrative regulation; and

(2) The community has a service building, sanitary station, safe water supply, adequate sewage, and solid waste disposal, and does not create a nuisance.

Section 14. Special Event Camping. A recreational community shall notify the local health department of their intention to operate at least twenty (20) days prior to each special event.

Section 15. [14] Inspection of Communities. (1) At least once every twelve (12) months, the cabinet shall inspect each community and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) Special event camping communities shall be inspected and reinspected daily or with sufficient frequency to ensure enforcement of this administrative regulation and to protect public health.

(3) [(2)] An inspector shall record inspection findings on an official Cabinet report form, DFS 318, and shall provide the permit holder or operator with a copy. The inspection report shall:

(a) Set forth the specific violations if found;

(b) Establish a specific and reasonable period of time for the correction of the violations found; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the permit.

Section 16. [45] Suspension of Permits. (1) In addition to penalties established in KRS 219.991(2), the cabinet may suspend or revoke a permit [.] in accordance with KRS 219.380(2).

(2) [(1)] The cabinet shall, upon notice to the permit holder, immediately suspend the permit if:

(a) There is reason to believe that an imminent public health hazard exists; or

(b) The holder or an employee has interfered with the cabinet in the performance of its duties.

(3) [(2)] In all other instances of violation of the provisions of this administrative regulation, the cabinet shall:

(a) Serve on the permit holder or his designee a written notice

specifying the violation; and

(b) Afford the holder a reasonable opportunity for correction.

(4) [(3)] The cabinet shall notify, in writing, the permit holder or operator who fails to comply with a written notice issued under the provisions of this section, that the permit shall be suspended at the end of ten (10) days following service of the notice.

Section 17 [46]. Reinstatement of Suspended Permits. (1) A person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit.

(2) Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection.

(3) If the applicant is found to be in compliance with the requirements of this administrative regulation, the permit shall be reinstated.

Section 18 [47]. Revocation of Permits. (1) A permit shall be permanently revoked for:

(a) Serious [serious] or repeated violations of a requirement of this administrative regulation; or

(b) Interference with an agent of the cabinet in the performance of his duties. [or her].

(2) Prior to the action, the cabinet shall notify the permit holder or his designee, in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice.

Section 19 [48]. Permit Renewal. (1) A permit to operate a recreational vehicle community shall be renewed annually, in the month of July. A permit fee shall be assessed pursuant to 902 KAR 45:120, Section 2(2).

(2) Exempt recreational vehicle communities shall register with the cabinet or its agents. Required information for registration shall be the:

(a) Name of community;

(b) Name of owner; and

(c) Dates the recreational community will be operation.

(3) [(2)] If the cabinet or its agent is on notice that a recreational vehicle community is in violation of another agency's lawful requirement, the permit shall not be renewed until the permit holder or his designee demonstrates to the cabinet or its agent that the violation has been corrected.

Section 20. [49] Appeals. (1) A permit holder, his designee, or an applicant aggrieved by a decision of the cabinet may request a conference or administrative hearing. The request shall be submitted within ten (10) days of receipt of a written notice of:

(a) A violation;

(b) Suspension or revocation of a permit;

(c) Denial to renew a permit; or

(2) Conference hearings.

(a) A conference hearing shall be conducted in accordance with 902 KAR 1:400, Administrative hearings, with the following exceptions:

1. The conference hearing shall be less formal than an administrative hearing;

2. The matter at issue shall be discussed before a representative of the Department for Public Health; and

3. Participants in the discussion shall be:

a. An agent of the cabinet; and

b. The permit holder, his designee, or the applicant.

(b) A request for a conference hearing shall be:

1. In writing; and

2. Submitted or addressed to the cabinet's agent at the local health department that issued or gave notice of the violation, suspension, or revocation.

(c) A permit holder, his designee, or an applicant who does not agree with the conference report issued after the conference hearing may appeal by requesting an administrative hearing.

(3) Administrative hearing.

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(a) A request for an administrative hearing shall waive the right to request a conference hearing.

(b) The administrative hearing shall be conducted in accordance with 902 KAR 1:400, Administrative hearings.

(c) A request for an administrative hearing shall be:

1. In writing;
2. Submitted or addressed to the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621; and
3. Accompanied by a copy of the notice of violation, notice to suspend or revoke, letter denying an application, or the conference hearing report.

Section 21. Exceptions. Exempt recreational vehicle communities as defined in KRS 219.410 are not subject to the regulations outlined in Sections two (2) through twenty (20) unless indicated otherwise within this regulation.

Section 22. Variance. The owner of a site where special event camping or campground is proposed to be installed may request, in writing, from the local board of health or its designated agent, a variance to the requirements included within this administrative regulation.

(1) A written request for variance shall include:

(a) Pertinent information about the site including a detailed site plan;

(b) The specific portion of the administrative regulation requested for waiver;

(c) The specific reasons for the request; and

(d) Documents, drawings, specifications and other evidence of compliance with the intent of this regulation through alternative means that support the granting of the variance.

(2) A request for variance shall be acted upon by the local board of health, or its designated agent within ten (10) business days of receipt of the request. A written decision on the request shall be presented to the applicant within five (5) business days of the decision. The variance may be granted with stipulations and, if so, are to be included in the decision notice.

(3) An applicant for a variance may appear before the local board of health or its agent for the purpose of presenting the request or to appeal a decision.

(4) If a hearing on the variance request or decision is requested, the local board of health or its agent shall:

(a) Set a time and date for the hearing within ten (10) business days of the request; and

(b) Notify the applicant, in writing, within five (5) business days of receipt of the request and at least two (2) days prior to the date of hearing, of the time and date for the hearing.

(5) A decision regarding a variance shall be based upon evidence presented by:

(a) The applicant; and

(b) The local health department representative; or

(c) expert professional witnesses.

(6) A decision regarding a variance shall be considered by:

(a) The requirements of 902 KAR 15:020, KRS 219.310 to 219.410 and related laws; and

(b) The presence or absence of reasonable assurance, derived from evidence presented, that the granting of the variance shall not result in the creation of:

1. A public health hazard; or

2. A public health nuisance.

Section 22. [(20)] Incorporation by Reference. (1) The following material is incorporated by reference: "DFS-317, Application for a Permit"; "DFS-318, Mobile Home and Recreational Vehicle Park Inspection Report".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621[40602], Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, M.D., FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: June 28, 2011

FILED WITH LRC: June 30, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2011, at 9 a.m. in the Conference Suite A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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 August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ken Spach

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for community construction and layout, sanitary standards for operation, and other matters necessary to insure a safe and sanitary recreational vehicle community operation.

(b) The necessity of this administrative regulation: The Secretary of the Cabinet for Health and Family Services is required to regulate and control matters set forth in KRS 211.180. KRS 211.180(1)

(c) designates public and semipublic recreational areas as areas for which the secretary has responsibility to provide a safe and sanitary environment. The secretary is thus required to enforce the Kentucky Manufactured Home, Mobile Home, and Recreational Vehicle Community Act of 2002, KRS 219.310 to 219.410.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation carries out the intent and provisions of the authorizing statutes by establishing the guidelines for the layout, construction and sanitary standards for recreational vehicle communities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for sanitation requirements and the inspection process for recreational vehicle communities in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment exempts all city, county, charter county, urban-county, or consolidated local government or its agencies owned Recreational Vehicle (RV) communities that operate on a seasonal or temporary basis from the same requirements of those RV communities that are permanent. It also includes provisions for the granting of variances for recreational vehicle parks operated in conjunction with special events.

(b) The necessity of the amendment to this administrative regulation: HB 94 passed by the 2006 General Assembly exempted all city, county, charter county, urban-county, or consolidated local government owned RV communities that operate on a seasonal or temporary basis from the same requirements of permanent communities. This amendment carries out that intent. Amendments will also allow local health departments to grant variances for special event camp communities.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment carries out the intent and provision of the authorizing statutes and the legislation which changed them.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets forth mini-

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mum sanitary standards for recreational vehicle communities in the Commonwealth. It also defines temporary or seasonal; special event camp usage and updates information required for permit renewal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any city, county, charter county, urban-county, or consolidated local government or its agencies owned recreational vehicle communities that are operated on a seasonal or temporary basis. Any entity that wishes to operate a recreational vehicle community during a special event in the community.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Government owned RV Communities: There will be no change for permanent communities. RV communities will continue to register with the local health department. Those communities that are owned by a city, county, charter county, urban-county or consolidated local government and operate no more than ninety (90) days per calendar year will be exempt. Special Event RV Communities: They will pay a permit fee, and adhere to the regulations or the variance issued by the local health department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be incurred by the government owned RV communities regulated entities as they will now be exempt from compliance with this regulation. The special event RV communities will pay a permit fee to submit plans for their facilities. They will also be responsible for any temporary RV site costs required to comply with this regulation and their proposed variance from it.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A city, county, charter county, urban-county, or consolidated local government or its agencies owned recreational vehicle communities used for seasonal or temporary basis will not have to abide by this administrative regulation. It will aid those permanent communities by having clear guidelines on sanitary stations, the types of structures that can be placed, how to register and the appeals process. Special Event Camping Communities or Special Event RV Communities: It will allow these communities some flexibility to operate using alternative methods which meet the intent of the regulation through a variance granted by the local health agency evaluates the local resources and needs.

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

(a) Initially: No additional cost will be incurred to implement this regulation.

(b) On a continuing basis: No additional cost will be incurred to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The inspection and permit fees collected by the local health departments will be used to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees will not be necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering was appropriate in this administrative regulation because the administrative regulation treated different RV communities in a different manner, specifically, Government owned RV communities are exempt from the provisions of this regulation, and: Special Event Camping/RV Communities will be required to comply with the provision of this regulation or their approved variance and pay fees for both the application and inspection.

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? Any city, county, charter county, urban-county, or consolidated local government or its agencies that own a recreational vehicle community that operates on a temporary or seasonal basis and its county health department or any entity that wishes to develop a RV Community that operates only during special events in the community.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 219.310 -219.410 (Kentucky Manufactured Home, Mobile Home, and Recreational Vehicle Community Act of 2002) and 902 KAR 45:120.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no cost to the government owned entities which choose to operate recreational vehicle parks. Local Health jurisdictions may have some decrease in revenue due to this exemption, but will this will be offset by no longer having to regulate these entities. Revenues and expenditures will be neutral. The RV Communities that wish to operate only during special events in the community will continue to pay permit fees and will be inspected for compliance. Revenues and expenditures will be 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? RV Communities that wish to be developed and operated during special events will generate permit fees as revenue for the local government that are dependent on the number of spaces they wish to develop.

(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? Expected temporary RV Communities that wish to be developed and operated during special events will generate minimal revenue depending on the size of the event; however, subsequent costs for monitoring will make all revenues and expenses neutral.

(c) How much will it cost to administer this program for the first year? No additional cost will be required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost will be required to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 100:019. Standards for protection against radiation.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 20.1001-20.1906, 20.2101-20.2204, 20.2206, Appendixes A, B-20.1001-20.2401, 40 C.F.R. 190, 49 C.F.R. 100-180, 173.403(m),(w), 173.421-173.424

STATUTORY AUTHORITY: KRS 13B.170, 194.050, 211.090, 211.844, 10 C.F.R. 10.1001-20.1906, 20.2101-20.2204, 20.2206, Appendixes A, B-20.1001-20.2401, 40 C.F.R. 190, 49 C.F.R. 100-180, 49 C.F.R. 173.403(m),(w), 173.421-173.424, [EQ-96-862]

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NECESSITY, FUNCTION, AND CONFORMITY: [~~Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.~~] KRS 211.844 ~~requires~~ authorizes the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides standards for the protection of the user and general public against radiation exposure and ~~[shall]~~ establishes ~~[establish]~~ standards for protection against ionizing radiation resulting from activities conducted by persons issued licenses or registrations by the cabinet. This administrative regulation provides standards to control the receipt, possession, use, transfer, and disposal of sources of radiation by a person, licensee, or registrant so the total dose to an individual (including doses resulting from licensed and unlicensed radioactive material and radiation sources other than background radiation) shall not exceed the standards for protection against radiation prescribed in this administrative regulation. ~~[902 KAR 100:020 and 902 KAR 100:025 are repealed due to the promulgation of new radiation standards by the U.S. Nuclear Regulatory Commission in 40 C.F.R. 20.]~~

Section 1. Radiation Protection Implementation. (1) This administrative regulation shall not limit actions required in order to protect against an immediate danger to public health and safety.

(2) This administrative regulation shall apply to a person licensed or registered by the cabinet to receive, possess, use, transfer, or dispose of sources of radiation.

(3) The limits in this administrative regulation shall not apply to doses due to background radiation, exposure of patients to radiation for the purpose of medical diagnosis or therapy, or voluntary participation in medical research programs.

Section 2. Radiation Protection Programs. A person, licensee, or registrant shall:

(1) Develop, document, and implement a radiation protection program commensurate with the scope and extent of the person's ~~[their]~~ activities and sufficient to ensure compliance with the provisions of this administrative regulation.

(2) Use procedures and engineering controls based upon sound radiation protection principles, to the extent practical, to achieve occupational doses and doses to members of the public that shall be as low as reasonably achievable (ALARA) pursuant to 902 KAR 100:015, Section 2.

(3) Annually review the radiation protection program content and implementation.

(4) Establish a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its daughters, to implement the ALARA requirements of subsection (2) of this section and ~~[in addition to]~~ the requirements of Section 10 of this administrative regulation.

(a) Any constraint shall ensure that the highest dose that could be received by a person shall not exceed a dose in excess of ten (10) millirems (0.1 mSv) per year ~~[These constraints shall be established so that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of ten (10) millirems (0.1 mSv) per year from these emissions].~~

(b) A licensee, if required to establish these constraints, shall report any ~~[an]~~ exceedance as provided in Section 40 of this administrative regulation and take appropriate corrective action to ensure against recurrence.

Section 3. Occupational Dose Limits for Adults. (1) A person, licensee, or registrant shall control the occupational dose to individual adults, except for planned special exposures as described in Section 7 of this administrative regulation, to the following dose limits:

(a) An annual limit, which shall be the more limiting of the:

1. Total effective dose equivalent being equal to five (5) rems (0.05 sievert (Sv)); or

2. Sum of the deep-dose equivalent and the committed dose

equivalent to an individual organ or tissue, other than the lens of the eye, being equal to fifty (50) rems ~~[five-tenths]~~ (0.50) Sv).

(b) The annual limits to the lens of the eye, the skin, and the extremities shall be:

1. A lens ~~[An eye]~~ dose equivalent of fifteen (15) rems (0.15 Sv); and

2. A shallow-dose equivalent of fifty (50) rems ~~(five-tenths)~~ (0.50) Sv to the skin of the whole body or to the skin of an ~~[each of the]~~ extremity ~~[extremities]~~.

(2) Doses received in excess of the annual limits, including doses received ~~[resulting from justified]~~ during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime as described in Section 7(3)(a) and (b) of this administrative regulation.

(3) The assigned deep-dose equivalent and shallow-dose equivalent shall be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous ten (10) square centimeters of skin receiving the highest exposure. If the individual monitoring device was not in the region of highest potential exposure, ~~[or the results of individual monitoring are unavailable,]~~ the deep-dose equivalent, lens ~~[eye]~~ dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified ~~[are presented]~~ in 10 C.F.R., 20 Appendix 13 ~~[Section 44 of this administrative regulation]~~ and shall be used to:

(a) Determine the individual's dose as required in Section 34 of this administrative regulation; and

(b) Demonstrate compliance with the occupational dose limits.

(5) In addition to the annual dose limits, the person, licensee, or registrant shall limit the soluble uranium intake by an individual to ten (10) milligrams in a week in consideration of chemical toxicity as described in 10 C.F.R., 20 Appendix B ~~[see footnote 3 in Section 44 of this administrative regulation]~~.

(6) A person, licensee, or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by a person as described in Section 32 of this administrative regulation.

Section 4. Compliance with Requirements for Summation of External and Internal Doses. (1) If a licensee or registrant is required to monitor by both Section 13(1) and (2) of this administrative regulation, the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses.

(2) If a licensee or registrant is required to monitor only by Section 13(1) or (2) of this administrative regulation, summation shall not be required to demonstrate compliance with the dose limits.

(3) A licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses by meeting one (1) of the conditions specified in subsection (5) of this section and the conditions in subsections (6) and (7) of this section.

(4) The dose equivalents for the lens of the eye, the skin, and the extremities shall not be included in the summation~~[,]~~ but shall be subject to separate limits.

(5) If the only intake of radionuclides occurs by inhalation, the total effective dose equivalent limit shall not be exceeded if the sum of the deep-dose equivalent divided by the total effective dose equivalent limit, and one (1) of the following, does not exceed unity:

(a) Sum of the fractions of the inhalation ALI for each radionuclide;

(b) Total number of derived air concentration-hours (DAC-hours) for radionuclides divided by 2,000; or

(c) Sum of the calculated committed effective dose equivalents to significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as

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a fraction of the annual limit.

(6) If the occupationally exposed individual also receives an intake of radionuclides by oral ingestion greater than ten (10) percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(7) A licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and may not need to be further evaluated.

Section 5. Determination of External Dose from Airborne Radioactive Material. (1) If determining the dose from airborne radioactive material, a licensee or registrant shall include the contribution to the deep-dose equivalent, ~~lens [eye]~~ dose equivalent, and shallow-dose equivalent from external exposure to the radioactive cloud.

(2) If the airborne radioactive material includes radionuclides other than noble gases or the cloud of airborne radioactive material is not relatively uniform, airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep-dose equivalent.

(3) The determination of the deep-dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

Section 6. Determination of Internal Exposure. (1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, if required by Section 13 of this administrative regulation, take suitable and timely measurements of:

(a) Concentrations of radioactive materials in the air in work areas;

(b) Quantities of radionuclides in the body;

(c) Quantities of radionuclides excreted from the body; or

(d) Combinations of these measurements.

(2) A licensee or registrant shall assume an individual inhales radioactive material at the airborne concentration in which the individual is present, unless respiratory protective equipment is used, as provided in Section 19 of this administrative regulation, or the assessment of intake is based on bioassays.

(3) If specific information on the physical and biochemical properties of the radionuclides taken into the body, or the behavior or material in an individual is known, a licensee or registrant may:

(a) Use the information to calculate the committed effective dose equivalent; and, if used, the licensee or registrant shall document the information in the individual's record;

(b) Upon prior approval by the cabinet, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material (for example, aerosol size distribution or density); and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a radionuclide, as provided in 10 C.F.R., 20 Appendix A ~~[Section 44 of this administrative regulation]~~, to the committed effective dose equivalent.

(4) If a licensee or registrant chooses to assess intakes of Class Y material using the measurements provided in subsection (1)(b) or (c) of this section, the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven (7) months, unless otherwise required by Sections 39 or 40 of this administrative regulation, in order to permit the licensee or registrant to make additional measurements basic to the assessments.

(5) If the identity and concentration of radionuclides in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be the:

(a) Sum of the ratios of the concentration to the appropriate DAC value (e.g., D, W, Y) from 10 C.F.R., 20 Appendix B ~~[Section 44 of this administrative regulation]~~ for radionuclides in the mixture; or

(b) Ratio of the total concentration for radionuclides in the mixture to the most restrictive DAC value for a radionuclide in the mixture.

(6) If the identity of radionuclides in a mixture is known, but the concentration of one (1) or more of the radionuclides in the mixture

is not known, the DAC for the mixture shall be the most restrictive DAC of a radionuclide in the mixture.

(7) If a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if the:

(a) Licensee or registrant uses the total activity of the mixture in demonstrating compliance with the dose limits in Section 3 of this administrative regulation and in

complying with the monitoring requirements in Section 13(2) of this administrative regulation;

(b) Concentration of a disregarded radionuclide is less than ten (10) percent of its DAC; and

(c) Sum of these percentages for the disregarded radionuclides in the mixture does not exceed thirty (30) percent.

(8) In order to calculate the committed effective dose equivalent, a licensee or registrant may assume that the inhalation of one (1) ALI_i or an exposure of 2,000 DAC-hours_i results in a committed effective dose equivalent of five (5) rems (0.05 Sv) for radionuclides having their ALIs or DACs based on the committed effective dose equivalent.

(a) If the ALI_i and the associated DAC_i ~~are [is]~~ determined by the nonstochastic organ dose limit of fifty (50) rems (five-tenths (0.50) Sv), the intake of radionuclides that result in a committed effective dose equivalent of five (5) rems (0.05 Sv) (the stochastic ALI) is listed in parentheses in 10 C.F.R., 20 Appendix B ~~[Section 44 of this administrative regulation]~~. A licensee or registrant may, as a simplifying assumption, use the stochastic ALIs to determine committed effective dose equivalent.

(b) If a licensee or registrant uses the stochastic ALIs, the licensee or registrant shall also demonstrate that the limit in Section 3(1)(a)2 of this administrative regulation ~~is [shall be]~~ met.

Section 7. Planned Special Exposures. (1) A licensee or registrant may authorize an adult worker to receive doses in addition to, and accounted for separately from the doses received under, the limits specified in Section 3 of this administrative regulation provided each of the following conditions are satisfied:

(a) The licensee or registrant authorizes a planned special exposure only in an exceptional situation if alternatives that may avoid the dose ~~estimated to result from the planned special exposure~~ [higher exposure] are unavailable or impractical;

(b) The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorize the planned special exposure, in writing, before the exposure occurs;

(c) Before a planned special exposure, the licensee or registrant ensures that the individuals involved are:

1. Informed of the purpose of the planned operation;

2. Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that may be involved in performing the task; and

3. Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(2) Prior to permitting an individual to participate in a planned special exposure, a licensee or registrant shall ascertain prior doses as required by Section 32(2) of this administrative regulation during the lifetime of the individual for each individual involved.

(3) Subject to Section 3(2) of this administrative regulation, a licensee or registrant shall not authorize a planned special exposure that shall cause an individual to receive a dose from planned special exposures and doses in excess of the limits to exceed:

(a) The numerical values of the dose limits in Section 3(1) of this administrative regulation in a year; and

(b) Five (5) times the annual dose limits in Section 3(1) of this administrative regulation during the individual's lifetime.

(4) A licensee or registrant shall:

(a) Maintain records of the conduct of a planned special exposure pursuant to

Section 33 of this administrative regulation; and

(b) Submit a written report pursuant to Section 41 of this administrative regulation.

(5) A licensee or registrant shall record the best estimate of the dose resulting from the planned special exposure in the individual's record and inform the individual, in writing, of the dose within thirty (30) days from the date of the planned special exposure. The dose

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from planned special exposures shall not be considered in controlling future occupational dose of the individual by Section 3(1) of this administrative regulation~~;~~ but shall be included in evaluations required by Section 7(2) and (3) of this administrative regulation.

Section 8. Occupational Dose Limits for Minors. The annual occupational dose limits for minors shall be ten (10) percent of the annual dose limits specified for adult workers in Section 3 of this administrative regulation.

Section 9. Dose Equivalent to an Embryo or Fetus. (1) A licensee or registrant shall ensure that the dose equivalent to an embryo or fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed five-tenths (0.5) rem (5 mSv). Recordkeeping requirements are provided in Section 42.

(2) A licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman to satisfy the limit in subsection (1) of this section.

(3) The dose equivalent to an embryo or fetus shall be taken as the sum of:

(a) The deep-dose equivalent to the declared pregnant woman; and

(b) The dose equivalent to the embryo or fetus resulting from radionuclides in the embryo or fetus and radionuclides in the declared pregnant woman.

(4) If the dose equivalent to the embryo or fetus is found to have exceeded five-tenths (0.5) rem (five (5) mSv), or is within 0.05 rem (five-tenths (0.5) mSv) of this dose, by the time the woman declares the pregnancy to a licensee or registrant, the licensee or registrant shall be in compliance with subsection (1) of this section if the additional dose equivalent to the embryo or fetus does not exceed 0.05 rem (five-tenths (0.5) mSv) during the remainder of the pregnancy.

Section 10. Radiation Dose Limits for Individual Members of the Public. (1) A licensee or registrant shall conduct operations to ensure:

(a) The total effective dose equivalent to individual members of the public from licensed, registered, and other operations shall not exceed one-tenth (0.1) rem (one (1) mSv) in a year, exclusive of the dose contributions from:

1. Background radiation;

2. A medical administration the individual received;

3. An exposure to individuals administered radioactive material and released in accordance with 902 KAR 100:072 [073], Section 27 [25];

4. Voluntary participation in medical research programs; and

5. The licensee's or registrant's disposal of radioactive material into sanitary sewerage under 902 KAR 100:021, Section 3; and

(b) The dose in an unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with 902 KAR 100:072 [073], Section 27 [25], shall not exceed 0.002 rem (0.02 mSv) in one (1) hour.

(2) If a licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public specified in this section shall ~~continue to~~ apply to those individuals.

(3) A licensee, registrant, or applicant for a license or registration may apply for prior authorization to operate up to an annual dose limit for an individual member of the public of five-tenths (0.5) rem (five (5) mSv). The application shall include the following information:

(a) Demonstration of the need for, and the expected duration of, operations in excess of the limit in subsection (1) of this section;

(b) A licensee's or registrant's program to assess and control dose within the five-tenths (0.5) rem (five (5) mSv) annual limit; and

(c) The procedures to be followed to maintain the dose ALARA.

(4) In addition to the provisions of this administrative regulation, a person, licensee, or registrant subject to the provisions of U.S. Environmental Protection Agency's applicable environmental

radiation standards in 40 C.F.R. [C.F.R.] 190 shall comply with those standards.

(5) The cabinet may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

(6) In addition to the requirements in subsection (1)(a) of this section, a licensee may permit visitors to an individual who cannot be released under 902 KAR 100:072, Section 27, to receive a radiation dose greater than one tenth (0.1) rem (1 mSv) if:

(a) The radiation dose received does not exceed five-tenths (0.5) rem (5 mSv); and

(b) The authorized user, as defined in 902 KAR 100:010, has determined before the visit that it is appropriate.

Section 11. Compliance with Dose Limits for Individual Members of the Public. (1) To demonstrate compliance with the dose limits for individual members of the public in Section 10 of this administrative regulation, a licensee or registrant shall make or cause to be made~~, as appropriate,~~ surveys of:

(a) Radiation levels in unrestricted and controlled areas; and

(b) Radioactive materials in effluents released to unrestricted and controlled areas.

(2) A licensee or registrant shall show compliance with the annual dose limit in Section 10 of this administrative regulation by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed operation shall not exceed the annual dose limit; or

(b) Demonstrating that:

1. The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the restricted area shall not exceed the values specified in 10 C.F.R., Appendix B [Section 44(9), Table II, of this administrative regulation]; and

2. If an individual were continually present in an unrestricted area, the dose from external sources shall not exceed 0.002 rem (0.02 mSv) in an hour and 0.05 rem (five-tenths (0.5) mSv) in a year.

(3) Upon approval from the cabinet, a licensee or registrant may adjust the effluent concentration values in 10 C.F.R., 20 Appendix B [Section 44(9), Table II, of this administrative regulation]; for members of the public, to take into account the actual physical and chemical characteristics of the effluents (for example, aerosol size distribution, solubility, density, radioactive decay equilibrium, or chemical form).

Section 12. Surveys and Monitoring. (1) A licensee or registrant shall make or cause to be made, surveys that are:

(a) Necessary for the licensee or registrant to comply with the provisions in this administrative regulation; and

(b) Reasonable under the circumstances to evaluate:

1. The magnitude and extent of radiation levels;

2. Concentrations or quantities of radioactive material; and

3. The potential radiological hazards ~~[that may be present]~~.

(2) A licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements (for example, dose rate and effluent monitoring) are calibrated periodically for the radiation measured.

(3) Personnel dosimeters, except direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities, that require processing to determine the radiation doses used by licensees or registrants to comply with Section 3 of this administrative regulation, other applicable provisions of 902 KAR Chapter 100, or conditions specified in a license shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

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Section 13. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose. (1) A licensee or registrant shall monitor exposures to radiation and radioactive material at levels sufficient to demonstrate compliance with the occupational dose limits of this administrative regulation. At [As] a minimum, the licensee or registrant shall monitor occupational exposure to radiation, from licensed and unlicensed, registered and unregistered radiation sources under the licensee's or registrant's control and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in one (1) year from radiation sources external to the body, a dose in excess of ten (10) percent of the limits in Section 3(1) of this administrative regulation;

(b) Minors ~~[and declared pregnant women]~~ likely to receive, in one (1) year from sources external to the body, a deep dose equivalent in excess of one-tenth (0.1) rem (1 mSv), a lens dose equivalent in excess of 0.15 rem (1.5 mSv), or a shallow dose equivalent to the skin or to the extremities in excess of five-tenths (0.5) rem (5 mSv) [ten (10) percent of the applicable limits in Sections 8 or 9 of this administrative regulation]; [and]

(c) Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of one-tenth (0.1) rem (1mSv). All of the occupational doses in Section 3 continue to be applicable to the declared pregnant worker as long as the embryo or fetus dose limit is not exceeded; and

(d) Individuals entering a high or very high radiation area.

(2) A licensee or registrant shall monitor, pursuant to Section 6 of this administrative regulation, the occupational intake of radioactive material by, and assess the committed effective dose equivalent to:

(a) Adults likely to receive, in one (1) year, an intake in excess of ten (10) percent of the applicable ALIs in 10 C.F.R., 20 Appendix B [Section 44(9), Table I, Columns 1 and 2, of this administrative regulation]; and

(b) Minors ~~[and declared pregnant women]~~ likely to receive, in one (1) year, a committed effective dose equivalent in excess of one-tenth (0.1) rem (1 mSv); and [0.05 rem (five-tenths (0.5) mSv).]

(c) Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of one-tenth (0.1) rem (1 mSv).

Section 14. Control of Access to High Radiation Areas. (1) A licensee or registrant shall ensure that each entrance or access point to a high radiation area shall have at least one (1) of the following features:

(a) A control device that, upon entry into the area, shall cause the level of radiation to be reduced below the level an individual may receive a deep-dose equivalent of one-tenth (0.1) rem (one (1) mSv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates;

(b) A control device that shall energize a conspicuous visible or audible alarm signal so the individual entering the high radiation area and the supervisor of the activity shall be made aware of the entry; or

(c) Entryways that shall be locked, except during periods that access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by subsection (1) of this section for a high radiation area, a licensee or registrant may substitute continuous direct or electronic surveillance that shall be capable of preventing unauthorized entry.

(3) A licensee or registrant may apply to the cabinet for approval of alternative methods for controlling access to high radiation areas.

(4) A licensee or registrant shall establish the controls required by subsections (1) and (3) of this section that shall not prevent individuals from leaving a high radiation area.

(5) Control shall not be required for an entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with 49 C.F.R. [C.F.R.] 100-180 if the packages will not remain in the area longer

than three (3) days, and the dose rate at one (1) meter from the external surface of a package will not exceed 0.01 rem (one-tenth (0.1) mSv) per hour.

(6) Control of entrance or access to rooms or other areas in hospitals shall not be required solely because of the presence of patients containing radioactive material if personnel are in attendance who:

(a) Take the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the limits established in this administrative regulation; and

(b) Operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(7) A registrant is not required to control entrance or access to rooms or other

areas containing sources of radiation capable of producing a high radiation area as described in this section if the registrant has met the specific requirements for access and control specified in 902 KAR 100:100, [902-KAR] 100:115, and [902-KAR] 100:155.

Section 15. Control of Access to Very High Radiation Areas.

(1) In addition to the

provisions in Section 14 of this administrative regulation, a licensee or registrant shall institute additional measures to ensure that an individual shall not be able to gain unauthorized or inadvertent access to areas in which radiation levels may be encountered at 500 rads (five (5) grays) or more in one (1) hour at one (1) meter from a radiation source or a surface through which the radiation penetrates.

(2) A registrant shall not be required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in subsection (1) of this section if the registrant has met the specific requirements for access and control specified in 902 KAR 100:100, [902-KAR] 100:115, and [902-KAR] 100:155.

Section 16. Control of Access to Very High Radiation Areas for Irradiators. (1) This section shall apply to radiation from sources of radiation used in sealed sources in nonself-shielded irradiators.

(2) This section shall not apply to:

(a) Sources of radiation used in teletherapy, radiography, or completely self-shielded irradiators in which the source:

1. Is both stored and operated within the same shielding radiation barrier; and

2. In the designed configuration of the irradiator[_;] is always physically inaccessible

to an individual and cannot create high levels of radiation in an area that is accessible to an individual.

(b) Sources from which the radiation shall be incidental to some other use or to nuclear reactor-generated radiation.

(3) Areas where radiation levels may exist in excess of 500 rads (five (5) grays) in

one (1) hour at one (1) meter from a source of radiation used to irradiate materials shall meet the following requirements.

(a) An entrance or access point shall be equipped with entry control devices which:

1. Function automatically to prevent an individual from inadvertently entering the area if very high radiation levels exist;

2. Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below a level where it is possible for an individual to receive a deep-dose equivalent in excess of one-tenth (0.1) rem (one (1) mSv) in one (1) hour; and

3. Prevent operation of the source of radiation if the source would produce radiation levels in the area that may result in a deep-dose equivalent to an individual in excess of one-tenth (0.1) rem (one (1) mSv) in one (1) hour.

(b) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by subsection (3)(a) of this section:

1. The radiation level within the area, from the source of radiation, is reduced below a level where it is possible for an individual

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to receive a deep-dose equivalent in excess of one-tenth (0.1) rem (one (1) mSv) in one (1) hour; and

2. Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard, and at least one (1) other authorized individual who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices;

(c) A licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the source's shielded storage container:

1. The radiation level from the source of radiation shall be reduced below a level where it is possible for an individual to receive a deep-dose equivalent in excess of one-tenth (0.1) rem (one (1) mSv) in one (1) hour; and

2. Conspicuous visible and audible alarm signals shall be generated to make potentially affected individuals aware of the hazard, and a licensee, registrant, or at least one (1) other individual who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier;

(d) If the shield for the stored source is a liquid, the licensee or registrant shall provide means to:

1. Monitor the integrity of the shield; and

2. Automatically signal loss of adequate shielding;

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of paragraphs (c) and (d) of this subsection;

(f) An area shall be equipped with devices that automatically generate conspicuous visible and audible alarm signals:

1. To alert personnel in the area before the source can be put into operation;

2. In sufficient time for an individual in the area to operate a clearly identified control device, which is installed in the area and can prevent the source from being put into operation;

(g) An area shall be controlled by use of administrative procedures and devices as are necessary to ensure that the area is cleared of personnel prior to use of the source;

(h) An area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after use of the source of radiation, the radiation level from the source of radiation in the area is below a level where it is possible for an individual to receive a deep-dose equivalent in excess of one-tenth (0.1) rem (one (1) mSv) in one (1) hour;

(i) The entry control devices required in paragraph (a) of this subsection shall have been tested for proper functioning as follows:

1. Daily prior to initial operation with the source of radiation, unless operations were continued uninterrupted from a previous day;

2. Prior to resumption of operation of the source of radiation after an unintended interruption; and

3. By adherence to a submitted schedule for periodic tests of the entry control and warning systems.

(j) A licensee or registrant shall not conduct operations if control devices are not functioning properly, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls;

(k) Entry and exit portals used in transporting materials to and from the irradiation area, and not intended for use by individuals, shall be controlled by devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by an individual through these portals. Exit portals for processed materials shall be equipped to detect and signal the presence of loose radiation sources carried toward an exit to automatically prevent loose radiation sources from being carried out of the area.

(4)(a) Persons holding licenses or registrations, or applicants for licenses or registrations, for radiation sources may apply to the cabinet for approval of the use of alternative safety measures if they:

1. Are governed by the provisions of subsection (3) of this section; and

2. May be used in a variety of positions or in locations, such as open fields or forests, that make it impracticable to comply with

provisions of subsection (3) of this section (for example, those for the automatic control of radiation levels).

(b) Alternative safety measures shall provide a degree of personnel protection equivalent to those specified in subsection (3) of this section.

(c) At least one (1) of the alternative measures shall include an entry-preventing interlock control, based on a measurement of the radiation, that ensures the absence of high radiation levels before an individual may gain access to the area in which sources of radiation are used.

(5) Entry control devices required by subsections (3) and (4) of this section shall be established in a way that an individual shall [will] not be prevented from leaving the area.

Section 17. Use of Process or Other Engineering Controls. The licensee or registrant shall use, to the extent practicable, process or other engineering controls [~~for example~~] [such as:] containment, decontamination, or ventilation] to control the concentration [~~concentrations~~] of radioactive material in air.

Section 18. Use of Other Controls. (1) If it is not practicable to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, a licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one (1) or more of the following means:

(a) ~~[(1)]~~ Control of access;

(b) ~~[(2)]~~ Limitation of exposure times;

(c) ~~[(3)]~~ Use of respiratory protection equipment; or

(d) ~~[(4)]~~ Other controls [~~approved by the cabinet~~].

(2) If the licensee or registrant performs an ALARA analysis to determine whether or not respirators should be used, the licensee or registrant may consider safety factors other than radiological factors. The licensee or registrant may also consider the impact of respirator use on workers' industrial health and safety.

Section 19. Use of Individual Respiratory Protection Equipment. (1) If a licensee or registrant uses respiratory protection equipment to limit the intake [~~intakes~~] of radioactive material [~~pursuant to Section 18 of this administrative regulation~~];

(a) ~~The~~ [the] licensee or registrant shall use only respiratory protection equipment that shall be tested and certified [~~or shall have had certification extended~~] by the National Institute for Occupational Safety and Health [~~Mine Safety and Health Administration~~] (NIOSH [~~MSHA~~])~~]; or~~

(b)1. [(a) If a licensee or registrant wishes to use] Prior to using equipment that has not been tested or certified by NIOSH/[MSHA, has not had certification extended by NIOSH/MSHA], or for which there exists no schedule for testing or certification, the licensee or registrant shall submit to the cabinet[:

4.-] An application for authorized use of that equipment, except as provided in this administrative regulation [including a demonstration by testing]; [or]

2. The application shall include evidence that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated condition of use; and

3. The material and performance characteristics shall be demonstrated either by licensee or registrant testing or on the basis of reliable test information. [A demonstration on the basis of reliable test information that the material and performance characteristics of the equipment shall be capable of providing the proposed degree of protection under anticipated conditions of use;]

(c) ~~[(b)]~~ A licensee or registrant shall implement and maintain a respiratory protection program that shall include:

1. Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses [~~exposures~~];

2. Surveys and bioassays, as appropriate, to evaluate actual intakes;

3. Testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use;

4. Written procedures regarding:

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a. Respirator selection, [fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately prior to use];

b. Supervision and training of respirator users [personnel];

c. Monitoring, including air sampling and bioassays; [and]

d. Fit testing;

e. Breathing air quality;

f. Inventory and control;

g. Storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

h. Recordkeeping; and

i. Limitations on periods of respirator use and relief from respirator use.

5. Determination by a physician prior to initial fitting of a face sealing respirator [respirators], and either every twelve (12) months or periodically at a frequency determined by a physician, that the individual user shall be medically fit [physically able] to use the respiratory protection equipment;

6. Fit testing, with fit factor ten (10) times the APF for negative pressure devices and a fit factor greater than or equal to 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed one (1) year. Fit testing shall be performed with the facepiece operating in the negative pressure mode.

(d) [(e)] A licensee or registrant shall issue a written policy statement on respirator usage covering the:

1. Use of process or other engineering controls, instead of respirators;

2. Routine, nonroutine, and emergency use of respirators; and

3. Periods of respirator use and relief from respirator use;

(e) [(d)] A licensee or registrant shall advise a respirator user that the user may leave the area for relief from respirator use in the event of:

1. Equipment malfunction;

2. Physical or psychological distress;

3. Procedural or communication failure;

4. Significant deterioration of operating conditions; or

5. Other conditions that may require relief; or [and]

6. Any other conditions that may require such relief; and

(f) [(e)] A licensee or registrant, when selecting respiratory devices, shall:

1. Consider limitations appropriate to [Use equipment within limitations for] type and mode of use; [and]

2. Provide [If needed, provide proper] visual correction, adequate communication, low temperature work environments, and concurrent use of other safety or radiological equipment; and [other special capabilities such as adequate skin protection.];

3. Use equipment in a way as not to interfere with the proper operation of the respirator.

(g) Standby rescue persons shall:

1. Be required whenever one-piece atmosphere-supplying suits or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself.

2. Be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards;

3. Observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means); and

4. Be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress.

(h) A sufficient number of standby rescue persons shall be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

(i)1. Atmosphere-supplying respirators shall be supplied with respirable air of grade D quality or better as defined by Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 and included in the regulations of the Occupational Safety and Health Administration (29 C.F.R. 1910.134(i)(1)(ii)(A) through (E)).

2. Grade D quality of air criteria include:

a. Oxygen content (v/v) of 19.5-23.5%;

b. Hydrocarbon (condensed) content of five (5) milligrams per cubic meter of air or less;

c. Carbon monoxide (CO) content of ten (10) parts per million (ppm) or less;

d. Carbon dioxide content of 1,000 ppm or less; and

e. Lack of noticeable odor.

(j) The licensee or registrant shall ensure that no objects, materials or substances, such as, facial hair, or any conditions that interfere with the face-facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

(k)(1.) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection divided by the assigned protection factor.

2. If the dose is later found to be greater than the estimated dose, the corrected value shall be used.

3. If the dose is later found to be less than the estimated dose, the corrective value may be used.

(2) The licensee shall obtain authorization from the cabinet before using assigned protection factors in excess of those specified in 10 C.F.R. 20 Appendix A. The cabinet may authorize a licensee to use higher assigned protection factors on receipt of an application that [In estimating exposure of individuals to airborne radioactive materials, a licensee or registrant may make allowance for respiratory protection equipment used to limit intakes under Section 18 of this administrative regulation, if the following conditions, in addition to those in subsection (1) of this section, are satisfied]:

(a) Describes the situation for which a need exists for higher protection factors [The licensee or registrant selects respiratory protection equipment that provides a protection factor greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in Section 44(9), Table I, Column 3, of this administrative regulation.

1. If the selection of a respiratory protection device with a protection factor greater than the peak concentration is inconsistent with the goal specified in Section 18 of this administrative regulation of keeping the total effective dose equivalent ALARA, the licensee or registrant may select respiratory protection equipment with a lower protection factor only if the selection would result in keeping the total effective dose equivalent ALARA;

2. The concentration of radioactive material in air that is inhaled if respirators are worn may be initially estimated by dividing the average concentration in air during each period of uninterrupted use by the protection factor;

3. If the exposure is later found to be greater than estimated, the corrected value shall be used; and

4. If the exposure is later found to be less than estimated, the corrected value may be used; and

(b) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use [The licensee or registrant shall obtain authorization from the cabinet before assigning respiratory protection factors in excess of those specified in Section 43 of this administrative regulation. The cabinet may authorize the licensee or registrant to use higher protection factors on receipt of an application that:

1. Describes the situation for which a need exists for higher protection factors; and

2. Demonstrates the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

(3) A licensee or registrant shall use as emergency devices only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by NIOSH/MSHA.

(4) A licensee or registrant shall notify, in writing, the Manager of the Radiation Control Branch at least thirty (30) days before the

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~~date that respiratory protection equipment will first be used under the provisions of either subsection (1) or (2) of this section].~~

Section 20. Further Restrictions on the Use of Respiratory Protection Equipment. The cabinet may impose restrictions in addition to those in Sections 18[,] and 19[,] and 43] of this administrative regulation and 10 C.F.R. 20 Appendix A to:

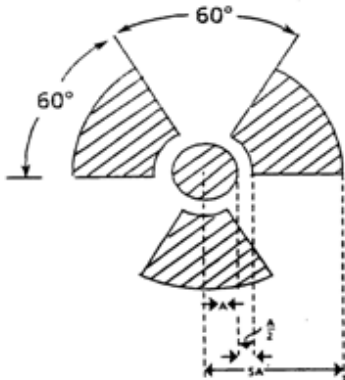
(1) Ensure that the respiratory protection program of the licensee shall be adequate to limit doses to [exposures of] individuals from intakes of [to] airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(2) Limit the extent to which a licensee shall use respiratory protection equipment instead of process or other engineering controls.

Section 21. Security of Sources of Radiation. A licensee or registrant shall secure from unauthorized removal or access licensed materials stored in controlled or unrestricted areas.

Section 22. Control of Sources of Radiation Not in Storage. A licensee or registrant shall control and maintain constant surveillance of licensed or registered material in a controlled or unrestricted area and not in storage.

Section 23. Caution Signs and Standard Radiation Symbol. (1) Unless otherwise authorized by the cabinet, the symbol prescribed by this section shall use the colors magenta, purple, or black on yellow background. The symbol prescribed by this section shall be the three (3) bladed design:



RADIATION SYMBOL

- (a) Cross-hatched area shall be magenta, purple, or black; and
- (b) The background shall be yellow.

(2) Exception to color requirements for standard radiation symbol. A licensee or registrant may label sources, source holders, or device components containing sources of radiation subjected to high temperatures with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(3) Additional information on signs and labels. In addition to the contents of signs and labels prescribed in this section, a licensee or registrant may provide[,] on or near the required signs and labels[,] additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

Section 24. Posting Requirements. (1) Posting of radiation areas. A licensee or registrant shall post a radiation area with a conspicuous sign or signs bearing the radiation symbol and the words: "CAUTION, RADIATION AREA".

(2) Posting of high radiation areas. A licensee or registrant shall post a high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words: "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA".

(3) Posting of very high radiation areas. A licensee or registrant shall post a very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words: "GRAVE DANGER, VERY HIGH RADIATION AREA".

(4) Posting of airborne radioactivity areas. A licensee or registrant shall post an airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words: "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA".

(5) Posting of areas or rooms in which licensed or registered material shall be used or stored. A licensee or registrant shall post an area or room in which there is used or stored an amount of licensed or registered material exceeding ten (10) times the quantity of the material specified in 902 KAR 100:030, Section 1 [2], with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)".

Section 25. Exceptions to Posting Requirements. (1) A licensee or registrant shall not be required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight (8) hours[,] if the following conditions are met:

(a) The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to radiation or radioactive materials in excess of the limits established in this administrative regulation; and

(b) The area or room are subject to the licensee's or registrant's control.

(2) Rooms or other areas in hospitals occupied by patients shall not be required to be posted with caution signs pursuant to Section 24 of this administrative regulation if the patient could be released from licensee control in accordance with 902 KAR 100:072 [973], Section 27 [25].

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source if the radiation level at thirty (30) centimeters from the surface of the source container or housing does not exceed 0.005 rem (0.05 mSv) per hour.

(4) Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under Section 24 when:

1. Access to the room is controlled pursuant to 902 KAR 100:072, Section 50; and

2. Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in this administrative regulation.

Section 26. Labeling Containers. (1) A licensee or registrant shall ensure a container of licensed or registered material bears a durable, clearly visible label with the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL".

(a) The label shall provide the following information:

- 1. Radionuclide present;
- 2. An estimate of the quantity of radioactivity;
- 3. Date the activity is estimated;
- 4. Radiation levels, kinds of materials; and
- 5. Mass enrichment.

(b) Information in this subsection shall permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) A licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas:

(a) [1-] Remove or deface the radioactive material label; or

(b) [2-] Clearly indicate the container no longer contains radioactive materials.

Section 27. Exemptions to Labeling Requirements. (1) A licensee or registrant shall not be required to label:

(a) Containers holding licensed or registered material in quantities less than the quantities listed in 902 KAR 100:030, Section 2;

(b) Containers holding licensed or registered material in concentrations less than those specified in 10 C.F.R. 20 Appendix B

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[Section 44(9), Table III, of this administrative regulation];

(c) Containers attended by an individual who takes precautions necessary to prevent the exposure of individuals in excess of the limits established by this administrative regulation;

(d) Containers if they are in transport and packaged and labeled in accordance with 49 C.F.R. Parts 100-180; or

(e) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record (for example, containers in locations that include water-filled canals, storage vaults, or hot cells). The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(c) [(f)] Installed manufacturing or process equipment, such as chemical process equipment, piping, and tanks;

(2) Labeling of packages containing radioactive materials shall be required by the U.S. Department of Transportation (DOT) if the amount and type of radioactive material exceeds the limits for an excepted quantity or article pursuant to 49 C.F.R. 173.403(m) and (w) and 173.421-173.424.

Section 28. Procedures for Receiving and Opening Packages.

(1) A licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity pursuant to 902 KAR 100:010 shall make arrangements to receive:

(a) The package if the carrier offers it for delivery; or

(b) Notification of the arrival of the package at the carrier's terminal and take possession of the package expeditiously.

(2)(a) A licensee or registrant shall monitor the external surfaces of a labeled package for:

1. Radioactive contamination unless the package contains only radioactive material in the form of a gas or in special form as defined in 902 KAR 100:010;

2. Radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity defined in 902 KAR 100:010; and

(b) All packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of potential contamination such as packages that are crushed, wet, or damaged.

(3) A licensee or registrant shall perform the monitoring required by subsection (2) of this section as soon as practicable after receipt of the package, but not later than:

(a) Three (3) hours after the package is received at the licensee's facility if received during the licensee's or registrant's normal working hours; or

(b) Three (3) hours from the beginning of the next working day if received after working hours.

(4) A licensee or registrant shall immediately notify the final delivery carrier and, ~~by telephone, telegram, mailgram, or facsimile;~~ the Manager of the Radiation Health ~~[Control] Branch by telephone when [if]:~~

(a) Removable radioactive surface contamination exceeds the limits of 902 KAR 100:070, Section 17 [44]; or

(b) External radiation levels exceed the limits of 902 KAR 100:070, Section 17 [44].

(5) A licensee or registrant shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and due consideration is given to special instructions for the type of package being opened.

(6) A licensee or registrant transferring special form sources in licensee or registrant owned or operated vehicles to and from a work site shall be exempt from the contamination monitoring requirements of subsection (2) of this section, but shall not be exempt from the survey requirement for measuring radiation levels that are required to ensure the source shall remain properly lodged in its shield.

Section 29. General Provisions for Records. (1)(a) A licensee or registrant shall use the units curie, rad, and rem, including mul-

tiples and subdivisions, and shall clearly indicate the units of quantities on records required by this administrative regulation.

(b)1. All quantities shall be recorded as stated in paragraph (a) of this section, however, the licensee may record quantities in the International System of Units (SI) in parentheses following each of the units specified in paragraph (a) of this section:

2. Information shall be recorded in SI or in SI and units as specified in paragraph (a) of this section when recording information on shipment manifests, as required in 902 KAR 100:021, Section 9.

(2) A licensee or registrant shall make a clear distinction among the quantities entered on the records required by this administrative regulation, such as:

(a) Total effective dose equivalent;

(b) Shallow-dose equivalent;

(c) Eye dose equivalent;

(d) Deep-dose equivalent; and

(e) Committed effective dose equivalent.

Section 30. Records of Radiation Protection Programs. (1) A licensee or registrant shall maintain records of the radiation protection program, including:

(a) The provisions of the program; and

(b) Audits and other reviews of program content and implementation.

(2) A licensee or registrant shall retain records required by subsection (1)(a) of this section until the cabinet terminates each pertinent license requiring the record.

(3) A licensee or registrant shall retain records required by subsection (1)(b) of this section for three (3) years after the record is made.

Section 31. Records of Surveys. (1) A licensee or registrant shall:

(a) Maintain records showing the results of surveys and calibrations required by Sections 12 and 28(2) of this administrative regulation; and

(b) Retain records for three (3) years after the record is made.

(2) A licensee or registrant shall retain the following records until the cabinet terminates the pertinent license or registration requiring the record:

(a) Results of surveys to determine the dose from external sources of radiation and used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents;

(b) Results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose;

(c) Results of air sampling, surveys, and bioassays required pursuant to Section 19(1)(c)1 and 2 of this administrative regulation; and

(d) Results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

Section 32. Determination of Prior Occupational Dose. (1) For an individual likely to receive, in a year, an occupational dose requiring monitoring under Section 13 of this administrative regulation, the licensee or registrant shall:

(a) Determine the occupational radiation dose received during the current year; and

(b) Attempt to obtain the records of lifetime cumulative occupational radiation dose.

(2) Prior to permitting an individual to participate in a planned special exposure, a licensee or registrant shall determine:

(a) The internal and external doses from previous planned special exposures; and

(b) Doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(3) In complying with the requirements of subsection (1) of this section, a licensee or registrant may:

(a) Accept, as a record of the occupational dose the individual received during the current year, a written signed statement from the individual[,] or from the individual's most recent employer for

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work involving radiation exposure, that discloses the nature and amount of an occupational dose the individual may have received during the current year.

(b) Accept, as the record of lifetime cumulative radiation dose, an up-to-date NRC Form 4, "Cumulative Occupational Exposure History," or equivalent, signed by the individual and counter-signed by an:

1. Appropriate official of the most recent employer for work involving radiation exposure; or

2. The individual's current employer if the individual is not employed by the licensee or registrant.

(c) Obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer if the individual is not employed by the licensee or registrant, by telephone, telegram, electronic media, or letter. If the authenticity of the transmitted report cannot be established, a licensee or registrant shall request a written verification of the dose data.

(4) A licensee or registrant shall record the exposure history, as required by subsection (1) of this section, on NRC Form 4, or other clear and legible record, of the information required on that form.

(a) The form or record shall:

1. Show each period the individual received occupational exposure to radiation or radioactive material; and

2. Be signed by the individual who received the exposure;

(b) For each period a licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing NRC Form 4; and

(c) For a period in which a licensee or registrant does not obtain a report, the licensee shall place a notation on NRC Form 4 indicating the periods of time for which data are not available.

(5) If a licensee is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

(a) In establishing administrative controls under Section 3(6) of this administrative regulation for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (twelve and five-tenths (12.5) mSv) for each quarter for which records were unavailable and the individual was engaged in activities that may have resulted in occupational radiation exposure; and

(b) That the individual is not available for planned special exposures.

(6) A licensee or registrant shall:

(a) [4-] Retain the records on NRC Form 4, or equivalent, until the cabinet terminates the pertinent license or registration requiring this record; and

(b) [2-] Retain records used in preparing NRC Form 4 for three (3) years after the record is made.

Section 33. Records of Planned Special Exposures. (1) For each use of the provisions of Section 7 of this administrative regulation for planned special exposures, a licensee or registrant shall maintain records that include[s]:

(a) The name of the management official who authorized the planned special exposure; and

(b) A copy of the signed authorization; and

(c) Description of:

1. The exceptional circumstances requiring the use of a planned special exposure;

2. What actions were necessary;

3. Why the actions were necessary;

4. How doses were maintained ALARA;

5. What individual and collective doses were expected to result; and

6. The doses actually received in the planned special exposure.

(2) A licensee or registrant shall retain the records until the cabinet terminates the pertinent license or registration requiring these records.

Section 34. Records of Individual Monitoring Results. (1) A licensee or registrant shall maintain records of doses received:

(a) By individuals for whom monitoring was required by Section

13 of this administrative regulation; and

(b) During planned special exposures, accidents, and emergency conditions.

(2) The recordkeeping requirements shall include, if applicable:

(a) Deep-dose equivalent to the whole body;

(b) Lens [Eye] dose equivalent;

(c) Shallow-dose equivalent to the skin and extremities;

(d) Estimated intake [~~or body burden~~] of radionuclides;

(e) Committed effective dose equivalent assigned to the intake [~~or body burden~~] of radionuclides;

(f) Specific information used to calculate the committed effective dose equivalent under Section 6(1) and (3), and Section 13 when required, of this administrative regulation;

(g) Total effective dose equivalent, if required by Section 4 of this administrative regulation; and

(h) Total of the deep-dose equivalent and the committed dose to the organ receiving the highest total dose.

(3) A licensee or registrant shall make entries of the records specified in subsection (1) of this section at least annually.

(4) A licensee or registrant shall maintain the records specified in subsection (1) of this section on NRC Form 5, "Occupational Exposure Record for a Monitoring Period," in accordance with the instructions for NRC Form 5, or in clear and legible records containing the information required by NRC Form 5.

(5) The records required under this section shall be protected from public disclosure because of their personal privacy nature.

(6) A licensee or registrant shall maintain the:

(a) Records of dose to an embryo or fetus with the records of dose to the declared pregnant woman; and

(b) Declaration of pregnancy on file, which [but] may be maintained separately from the dose records.

(7) A licensee or registrant shall retain each required form or record until the cabinet terminates the pertinent license or registration requiring the record.

(8) Assessments of dose equivalent and records made using units in effect before a licensee's or registrant's adoption of this administrative regulation need not to be changed.

Section 35. Records of Dose to Individual Members of the Public. (1) A licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public.

(2) A licensee or registrant shall retain the records required by subsection (1) of this section until the cabinet terminates the pertinent license or registration requiring the record.

Section 36. Records of Testing Entry Control Devices for Very High Radiation Areas. (1) A licensee or registrant shall maintain records of tests made under Section 16(4)(i) of this administrative regulation on entry control devices for very high radiation areas. These records shall include the date, time, and results of each test of function.

(2) A licensee or registrant shall retain the records required by subsection (1) of this section for three (3) years after the record is made.

Section 37. Form of Records. (1) Records required by 902 KAR Chapter 100 shall be legible throughout the specified retention period.

(2) The record shall be:

(a) [1-] The original;

(b) [2-] A reproduced copy; or

(c) [3-] 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.

(3) The record may be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period.

(4) Records such as letters, drawings, and specifications[;] shall include pertinent information such as stamps, initials, and signatures.

(5) A licensee or registrant shall maintain adequate safeguards against tampering with and loss of records.

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Section 38. Reports of Theft or Loss of Licensed or Registered Sources of Radiation. (1) Telephone reports.

(a) A licensee or registrant shall report by telephone as follows:

1. Immediately after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or registered material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in 902 KAR 100:030, Section 2, under circumstances where it appears to the licensee or registrant that an exposure may result to persons in unrestricted areas; or

2. Within thirty (30) days after the occurrence of lost, stolen, or missing licensed or registered material becomes known to the licensee or registrant, licensed or registered material in a quantity greater than ten (10) times the quantity pursuant to 902 KAR 100:030, Section 2, still missing at this time.

(b) Reports shall be made to the cabinet.

(2) Written reports.

(a) A licensee or registrant required to make a report pursuant to subsection (1) of this section shall, within thirty (30) days after making the telephone report, make a written report setting forth the following information:

1. Description of the licensed or registered material involved, including:

- a. Kind;
- b. Quantity; and
- c. Chemical and physical form;

2. Description of the circumstances under which the loss or theft occurred;

3. Statement of disposition, or probable disposition, of the licensed or registered material involved;

4. Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas;

5. Actions that have been[,] or shall be[,] taken to recover the material; and

6. Procedures or measures that have been[,] or shall be[,] adopted to ensure against a recurrence of the loss or theft of licensed or registered material.

(b) Reports shall be made to the cabinet.

(3) Subsequent to filing the written report, a licensee or registrant shall report additional substantive information on the loss or theft within thirty (30) days after the licensee or registrant learns of the information.

(4) A licensee or registrant shall prepare and file a report with the cabinet as required by this section so that names of individuals who may have received exposure to radiation shall be stated in a separate and detachable part of the report.

Section 39. Notification of Incidents. (1) Immediate notification. A licensee or registrant shall immediately report an event involving radioactive material possessed by the licensee or registrant that may have caused, or threatens to cause, one (1) or more of the following conditions:

(a) An individual may receive:

1. A total effective dose equivalent of twenty-five (25) rems (0.25 Sv) or more;

2. A lens [An-eye] dose equivalent of seventy-five (75) rems (0.75 Sv) or more; or

3. A shallow-dose equivalent to the skin or extremities of 250 rads (two and five-tenths (2.5) Gy) or more;

(b) The release of radioactive material, inside or outside of a restricted area; so that, had an individual been present for twenty-four (24) hours, the individual may have received an intake five (5) times the occupational annual limit on intake. The provisions of this paragraph shall not apply to locations in which personnel are not normally stationed during routine operations, such as in hot-cells or process enclosure;

(c) A loss of one (1) working week or more of the operation of facilities affected; or

(d) Damage to property in excess of \$200,000.

(2) Twenty-four (24) hour notification. A licensee or registrant shall, within twenty-four (24) hours of discovery of the event, report an event involving loss of control of licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or shall threaten to cause, one (1) or more of the following

conditions:

(a) An individual to receive, in a period of twenty-four (24) hours:

1. A total effective dose equivalent exceeding five (5) rems (0.05 Sv);

2. A lens [An-eye] dose equivalent exceeding fifteen (15) rems (0.15 Sv); or

3. A shallow-dose equivalent to the skin or extremities exceeding fifty (50) rems (five-tenths (0.5) Sv);

(b) The release of radioactive material, inside or outside of a restricted area[,] so that, had an individual been present for twenty-four (24) hours, the individual may have received an intake in excess of one (1) occupational annual limit on intake. The provisions of this paragraph shall not apply to locations in which personnel are not normally stationed during routine operations, such as in hot-cells or process enclosures;

(c) A loss of one (1) day or more of the operation of facilities affected; or

(d) Damage to property in excess of \$2,000.

(3) A licensee or registrant shall prepare and file a report with the cabinet as required by this section so that names of individuals who have received exposure to radiation or radioactive material are stated in a separate and detachable part of the report.

(4) Licensees or registrant shall make reports required by this section to the cabinet by:

(a) Telephone;

(b) Telegram;

(c) Mailgram; or

(d) Facsimile.

(5) The provisions of this section shall not include doses that result from planned special exposures that are within the limits for planned special exposures, and are reported under Section 41 of this administrative regulation.

Section 40. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits. (1) Reportable events. In addition to the notification required by Section 39 of this administrative regulation, a licensee or registrant shall submit a written report within thirty (30) days after learning of one (1) or more of the following occurrences:

(a) An incident for which notification shall be required by Section 39 of this administrative regulation; or

(b) Doses in excess of one (1) of the following:

1. Occupational dose limits for adults in Section 3 of this administrative regulation;

2. Occupational dose limits for a minor in Section 8 of this administrative regulation;

3. Limits for an embryo or fetus of a declared pregnant woman in Section 9 of this administrative regulation;

4. Limits for an individual member of the public in Section 10 of this administrative regulation;

5. Applicable limit in the license or registration;

6. ALARA constraints for air emissions established under Section 2(4); or

(c) Levels of radiation or concentrations of radioactive material in:

1. A restricted area in excess of an applicable limit in the license or registration; or

2. An unrestricted area in excess of ten (10) times an applicable limit set forth in this administrative regulation, the license, or the registration, regardless of exposure of an individual in excess of the limits in Section 10 of this administrative regulation occurs; or

(d) For a person, agency, or licensee subject to the provisions of 40 C.F.R. 190, levels of radiation or releases of radioactive material in excess of those standards, or conditions related to those standards.

(2) Contents of reports.

(a) A report required by subsection (1) of this section shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

1. Estimates of each individual's dose;

2. The levels of radiation and concentrations of radioactive material involved;

3. The cause of the elevated exposures, dose rates, or con-

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centrations; and

4. Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints and environmental standards, and associated license or registration conditions.

(b) A report filed under subsection (1) of this section shall include for each individual exposed:

1. Name of the individual;
2. Social Security number; and
3. Date of birth.

(c) The report shall be prepared so that information is stated in a separate and detachable part.

(d) With respect to the limit for the embryo or fetus, the identifiers shall be of the declared pregnant woman.

(3) A licensee or registrant who makes a report under subsection (1) of this section shall submit the report, in writing, to the Manager of the Radiation Health [Control] Branch, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 41. Reports of Planned Special Exposures. (1) A licensee or registrant shall submit a written report to the Manager of the Radiation Health [Control] Branch, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) days following a planned special exposure conducted in accordance with Section 7 of this administrative regulation.

(2) A licensee or registrant shall:

(a) Inform the Manager of the Radiation Health [Control] Branch that a planned special exposure was conducted;

(b) Indicate the date the planned special exposure occurred; and

(c) Provide the information required by Section 33 of this administrative regulation.

Section 42. Reports of Individual Monitoring. (1) This section shall apply to persons licensed or registered by the cabinet to:

(a) Possess or use sources of radiation for purposes of radiography authorized by 902 KAR 100:100;

(b) Receive radioactive waste from other persons for disposal pursuant to 902 KAR 100:022; or

(c) Possess or use, for processing or manufacturing for distribution required by 902 KAR 100:058, byproduct material in amounts exceeding one (1) of the following quantities:

	Quantity of Radionuclide ^a in curies
Cesium-137	1
Cobalt-60	1
Gold-198	100
Iodine-131	1
Iridium-192	10
Krypton-85	1,000
Promethium-147	10
Technetium-99m	1,000

^aThe cabinet may require as a license or registration condition, KRS 211.842-211.852 or 902 KAR 100:015, Section 8, reports from licensees or registrants who are licensed or registered to use radionuclides not on this list, in quantities sufficient to cause comparable radiation levels.

(2) A licensee or registrant in a category listed in subsection (1) of this section shall:

(a) Submit an annual report of the results of individual monitoring carried out by the licensee for each individual for whom monitoring was required by Section 13 of this administrative regulation during that year;

(b) The licensee or registrant shall use Form NRC 5, or other clear and legible record, which contains all the information required by Form NRC 5.

(3) A licensee or registrant may include additional data for individuals for whom monitoring may be provided, but not required.

(4) A licensee or registrant shall:

(a) File the report required by subsection (2) of this section covering the preceding year on or before April 30 of each year; and

(b) Submit the report to the Manager of the Radiation Health

[Control] Branch, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 43. Protection Factors for Respirators. Protection Factors^a shall be determined as described in 10 C.F.R. 20 Appendix A

Description ^b	Protection Factors ^a		Particulates, gases & vapors ^e	Tested & Certified Equipment National Institute for Occupational Safety and Health & Mine Safety and Health Administration tests for permissibility
	Mod- es ^e	Particu- lates only		
I. AIR-PURIFYING RESPIRATORS:				
Face-piece, half-mask ^g	N	10	-	30 C.F.R. Part 11, Subpart K.
Face-piece, full	NP	50	-	-
Face-piece, half-mask	PP	1000	-	-
full, or hood	-	-	-	-
II. ATMOSPHERE-SUPPLYING RESPIRATORS:				
1. Air-line respirator:				
Face-piece, half mask	CF	-	1000	30 C.F.R. Part 11, Subpart J.
Face-piece, half-mask	D	-	5	-
Face-piece, full	CF	-	2000	-
Face-piece, full	D	-	5	-
Face-piece, full	PD	-	2000	-
Hood	CF	-	(^h)	-
Suit	CF	-	(^h)	(^h)
2. Self-contained breathing apparatus (SCBA)				
Face-piece, full	D	-	50	30 C.F.R. 11, Subpart H.
Face-piece, full	PD	-	^k 40,000	-
Face-piece, full	RD	-	50	-
Face-piece, full	RP	-	^l 5,000	-
III. COMBINATION RESPIRATORS:				
A combination of air-purifying and atmosphere-supplying respirators	Protection factor for type and mode of operation as listed above.		-	30 C.F.R. 11, Sec. 11.63(b)
			-	-
See footnotes.				

[FOOTNOTES]

a. For use in the selection of respiratory protective equipment to be used only if the contaminants have been identified and the concentrations, or possible concentrations, are known.

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b. Only for shaven faces and if nothing interferes with the seal of tight fitting facepieces against the skin. Hoods and suits shall be excepted. The mode symbols shall be defined as follows:

CF = continuous flow

D = demand

NP = negative pressure, that is, negative phase during inhalation

PD = pressure demand, that is, always positive pressure

PP = positive pressure

RD = demand, recirculating or closed circuit

RP = pressure demand, recirculating or closed circuit]

1. The protection factor shall be a measure of the degree of protection afforded by a respirator, defined as the ratio of the concentration of airborne radioactive material outside the respiratory protective equipment to that inside the equipment, usually inside the facepiece, under conditions of use. It shall be applied to the ambient airborne concentration to estimate the concentrations inhaled by the wearer according to the following formula:

Concentration inhaled =

Ambient airborne concentration

Protection factor

2. The protection factors apply:

(a) Only for individuals trained in using respirators and wearing properly fitted respirators that shall be used and maintained under supervision in a well-planned respiratory protective program.

(b) For air-purifying respirators only if high efficiency particulate filters, above 99.97% removal efficiency by thermally generated three-tenths (0.3) micron (3-μm) dioctyl phthalate (DOP) test or equivalent, shall be used in atmospheres not deficient in oxygen and not containing radioactive gas or vapor respiratory hazards.

(c) Adjustment shall not be made for the use of sorbents against radioactive material in the form of gases or vapors.

(d) For atmosphere-supplying respirators only if supplied with adequate respirable air. Respirable air shall be provided of the quality and quantity required in accordance with the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration certification described in 30 C.F.R. Part 11. Oxygen and air shall not be used in the same apparatus.

e. Excluding radioactive contaminants that present an absorption or submersion hazard. For tritium oxide, approximately one-third (1/3) of the intake occurs by absorption through the skin so that an overall protection factor of less than two (2) shall be appropriate if atmosphere-supplying respirators are used to protect against tritium oxide. If the protection factor for respiratory protective equipment is five (5), the effective protection factor for tritium is about one and four-tenths (1.4); with protection factors of 10 (10), the effective factor for tritium oxide is about one and seven-tenths (1.7); and with protection factors of 100 or more, the effective factor for tritium oxide is about one and nine-tenths (1.9). Air-purifying respirators shall not be suitable for protection against tritium oxide. See also footnote I concerning supplied-air suits.

f. Canisters and cartridges shall not be used beyond service-life limitations.

g. Under-chin type only. This type of respirator shall not be satisfactory for use if it may be possible, that if an accident or emergency were to occur, for the ambient airborne concentrations to reach instantaneous values greater than ten (10) times the pertinent values in Table I, Column 3 of Section 44(9) of this administrative regulation. This type of respirator shall not be suitable for protection against plutonium or other high-toxicity materials. The mask shall be tested for fit prior to use, each time it is donned.

1. Equipment shall be operated in a manner that ensures that proper airflow rates are maintained. A protection factor of no more than 1000 may be utilized for tested and certified supplied-air hoods if a minimum air flow of six (6) cubic feet per minute (0.17 m³/min) is maintained and calibrated air line pressure gauges or flow measuring devices are used. A protection factor of up to 2000 may be used for tested and certified hoods only if the air flow is maintained at the manufacturer's recommended maximum rate for the equipment, this rate is greater than six (6) cubic feet per minute (0.17 m³/min) and calibrated air line pressure gauges or flow measuring devices are used.

2. The design of the supplied-air hood or helmet, with a minimum flow of six (6)

cubic feet per minute (0.17 m³/min) of air, may determine its overall

efficiency and the protection it provides. For example, some hoods aspirate contaminated air into the breathing zone if the wearer works with hands-over-head. This aspiration may be overcome if a short cape-like extension to the hood is worn under a coat or overalls.

Other limitations specified by the approval agency shall be considered before using a

hood in certain types of atmospheres. See footnote c.

i. Appropriate protection factors shall be determined, taking into account the design of the suit and its permeability to the contaminant under conditions of use. There shall be a standby rescue person equipped with a respirator or other apparatus appropriate for the potential hazards and communications equipment if supplied-air suits are used.

j. No approval schedules are currently available for this equipment. Equipment shall be evaluated by testing or on the basis of reliable test information.

k. This type of respirator may provide greater protection and be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure, for example, as skin absorption, shall be taken into account in these circumstances.

l. Quantitative fit testing shall be performed on each individual, and no more than 0.02% leakage shall be allowed with this type of apparatus. Perceptible outward leakage of gas from this or a positive pressure self-contained breathing apparatus shall be unacceptable because service life shall be reduced substantially. Special training in the use of this type of apparatus shall be provided to the wearer.

Note 1: Protection factors for respirators approved by the U.S. Bureau of Mines

and the National Institute for Occupational Safety and Health, according to applicable approvals for respirators for type and mode of use to protect against airborne radionuclides, may be used to the extent that they do not exceed the protection factors listed in this table. The protection factors listed in this table may not be appropriate to circumstances if chemicals or other respiratory hazards exist in addition to radioactive hazards. The selection and use of respirators for these circumstances shall take into account applicable approvals of the U.S. Bureau of Mines and the National Institute for Occupational Safety and Health.

Note 2: Radioactive contaminants, for which the concentration values in Table I, Column 3 of Section 44(9) are based on internal dose due to inhalation, may present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.]

Section 44. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage. shall be determined as described in 10 C.F.R. 20 Appendix B [(1) For each radionuclide, subsection (9), Table I, of this section indicates the chemical form which shall be used for selecting the appropriate ALI or DAC value.

(2) The ALIs and DACs for inhalation are given for:

(a) An aerosol with an activity median aerodynamic diameter (AMAD) of one (1) μm; and

(b) Three (3) classes (D,W,Y) of radioactive material, which refer to their retention (approximately days, weeks, or years) in the pulmonary region of the lung. This classification applies to a range of clearance half-times for:

1. D if less than ten (10) days;

2. W from ten (10) to 100 days; and

3. Y greater than 100 days.

(3) Subsection (9) of this section provides concentration limits for airborne and liquid effluents released to the general environment.

(4) Subsection (9) of this section provides concentration limits for discharges to sanitary sewerage.

(5) The values in Tables I, II, and III of subsection (9) of this section are presented in the computer "E" notation. In this notation:

(a) A value of 6E-02 represents a value of 6×10^{-2} or 0.06;

(b) 6E+2 represents 6×10^2 or 600; and

(c) 6E+0 represents 6×10^0 or 6.

(6) Occupational Values – Table I.

(a) The columns in Table I of subsection (9) of this section captioned "Oral Ingestion ALI," "Inhalation ALI," and "DAC," shall be applicable to occupational exposure to radioactive material.

(b) The ALIs in subsection (9) of this section are the annual intakes of a given radionuclide by "Reference Man" which result in a committed effective dose equivalent of:

1. Five (5) rem (0.05 Sv), stochastic ALI; or

2. Fifty (50) rem (five-tenths (0.5) Sv) to an organ or tissue; nonstochastic ALI.

(c) The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep dose equivalent to the whole body of five (5) rem (0.05 Sv).

1. The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, w_T ;

2. This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue (T) to the total risk of stochastic effects if the whole body is irradiated uniformly; and

3. The values of w_T are listed under the definition of weighting factor in 902 KAR 100:010.

(d) The nonstochastic ALIs were derived to avoid nonstochastic effects, such as prompt damage to tissue or reduction in organ function.

(e) A value of $w_T = 0.06$ shall be applicable to each of the five (5) organs or tissues in the "remainder" category receiving the highest dose equivalents, and the dose equivalents of other remaining tissues may be disregarded. The following portions of the GI tract shall be treated as four (4) separate organs:

1. Stomach;

2. Small intestine;

3. Upper large intestine; and

4. Lower large intestine.

(f) The dose equivalents for an extremity, skin, and lens of the eye shall not be considered in computing the committed effective dose equivalent, and shall be subject to limits that are met separately.

(g) If an ALI shall be defined by the stochastic dose limit, this value alone is given. If an ALI shall be determined by the nonstochastic dose limit to an organ, the organ or tissue to which the limit applies is shown, and the ALI for the stochastic limit is shown in parentheses. Abbreviated organ or tissue designations are used as follows:

1. LLI wall = lower large intestine wall;

2. St. wall = stomach wall;

3. Blad wall = bladder wall; and

4. Bone surf = bone surface.

(h) The use of the ALIs listed first, the more limiting of the stochastic and

nonstochastic ALIs, shall ensure nonstochastic effects are avoided and the risk of stochastic effects is limited to an acceptably low value.

1. If, in a particular situation involving a radionuclide for which the nonstochastic ALI is limiting, use of that nonstochastic ALI may be considered unduly conservative, a licensee may use the stochastic ALI to determine the committed effective dose equivalent;

2. A licensee shall also ensure that the fifty (50) rem (five-tenths (0.5) Sv) dose equivalent limit for an organ or tissue shall not be exceeded by the sum of the external deep dose equivalent plus the internal committed dose equivalent to that organ, not the effective dose;

3. If there is no external dose contribution, the requirements of subparagraph 2 of this paragraph shall be demonstrated if the sum of the fractions of the nonstochastic ALIs (ALI_{ns}) that contribute to the committed dose equivalent to the organ receiving the highest dose shall not exceed unity, that is, $\sum (intake \text{ in } \mu\text{Ci of each radionuclide} / ALI_{ns}) \leq 1.0$; and

4. If there is an external deep dose equivalent contribution of H_{ext} , then this sum shall be less than $1 - (H_{\text{ext}}/50)$, instead of ≤ 1.0 .

(i) The dose equivalents for an extremity, skin, and lens of the

eye shall not be

considered in computing the committed effective dose equivalent, but shall be subject to limits that shall be met separately.

(j) The derived air concentration (DAC) values are derived limits intended to control chronic occupational exposures. The relationship between the DAC and the ALI shall be given by:

1. $DAC = ALI(\text{in } \mu\text{Ci}) / (2000 \text{ hours per working year} \times 60 \text{ minutes/hour} \times 2 \times 10^4 \text{ ml}$

per minute) = $(ALI / 2.4 \times 10^9) \mu\text{Ci/ml}$, if $2 \times 10^4 \text{ ml}$ is the volume of air breathed per minute at work by the reference man under working conditions of light work;

2. The DAC values relate to one (1) of two (2) modes of exposure with external submersion or the internal committed dose equivalents resulting from inhalation of radioactive materials. DACs based upon submersion shall be for immersion in a semi-infinite cloud of uniform concentration and shall apply to each radionuclide separately;

3. The ALI and DAC values include contributions to exposure by the single radionuclide named and in-growth of daughter radionuclides produced in the body by decay of the parent. Intakes that include both the parent and daughter radionuclides shall be treated by the general method appropriate for mixtures;

4. The values of ALI and DAC shall not apply directly if the individual both ingests and inhales a radionuclide, if the individual is exposed to a mixture of radionuclides by inhalation, ingestion, or both, or if the individual is exposed to both internal and external irradiation (see Section 13 of this administrative regulation). If an individual is exposed to radioactive materials which fall under several of the translocation classifications of the same radionuclide (for example, Class D, Class W, or Class Y), the exposure may be evaluated as if it were a mixture of different radionuclides; and

5. It shall be noted that the classification of a compound as Class D, W, or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radionuclides. Values are given for Class D, W, and Y compounds, even for very short-lived radionuclides.

(7) Effluent Concentrations – Table II.

(a) The columns in Table II of subsection (9) of this section captioned "Effluents,"

"Air," and "Water" shall be applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of 902 KAR 100:021, Section 3. The concentration values given in Columns 1 and 2 of Table II, subsection (9) of this section, are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, shall produce a total effective dose equivalent of 0.05 rem (five-tenths (0.5) mSv).

(b) Consideration of nonstochastic limits has not been included in deriving the air and water effluent concentration limits because nonstochastic effects are presumed not to occur at or below the dose levels established for individual members of the public. For radionuclides, where the nonstochastic limit will be governing in deriving the occupational DAC, the stochastic ALI shall be used in deriving the corresponding airborne effluent limit in Table II, subsection (9) of this section. For this reason, the DAC and airborne effluent limits are not always proportional.

(c) The air concentration values listed in Table II, subsection (9) of this section, Column 1, were derived by one (1) of two (2) methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4×10^9 , relating the inhalation ALI to the DAC, as explained in subsection (6)(j)1, of this section and then divided by a factor of 300. The factor of 300 includes the following components:

1. A factor of fifty (50) to relate the 0.05 rem (0.05 Sv) annual occupational dose limit to the one-tenth (0.1) rem limit for members of the public;

2. A factor of three (3) to adjust for the difference in exposure time and the inhalation rate for a worker and for members of the public; and

3. A factor of two (2) to adjust the occupational values, derived for adults, so they are applicable to other age groups.

(d) For those radionuclides for which submersion, that is external dose, shall be limiting, the occupational DAC in Table I, Column 3, of subsection (9) of this section shall be divided by 219.

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The factor of 219 is composed of:

1. A factor of fifty (50), as described in subsection (7)(c) of this section;

2. A factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure (8,760 hours per year); and

3. An additional factor of two (2) for age considerations shall not be warranted in the submersion case.

(e) The water concentrations shall be derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^7 . The factor of 7.3×10^7 (ml) includes the following components:

1. The factors of fifty (50) and two (2) described above; and

2. A factor of 7.3×10^5 (ml) which is the annual water intake of the reference man.

(f) This section provides groupings of radionuclides which shall be applicable to unknown mixtures of radionuclides. These groupings, including occupational inhalation ALIs and DACs, air and water effluent concentrations, and releases to sewer, require demonstrating the most limiting radionuclides in successive classes are absent. The limit for the unknown mixture shall be defined if the presence of one (1) of the listed radionuclides cannot be definitely excluded as being present from knowledge of the radionuclide composition of the source or from actual measurements.

(8) Releases to Sewers – Table III.

(a) The monthly average concentrations for release to sanitary sewerage shall be applicable to Section 11 of this administrative regulation.

(b) The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^6 (ml). The factor of 7.3×10^6 (ml) shall be composed of a factor of 7.3×10^5 (ml), the annual water intake by the reference man, and a factor of ten (10), that the concentrations, if the sewage released by the licensee was the only source of water ingested by a reference man during a year, shall result in a committed effective dose equivalent of five-tenths (0.5) rem.

FOOTNOTES:

¹"Submersion" means that values given are for submersion in a hemispherical semi-infinite cloud of airborne material.

²These radionuclides have radiological half-lives of less than 2 hours. The total effective dose equivalent received during operations with these radionuclides may include a significant contribution from external exposure. The DAC values for all radionuclides, other than those designated Class "Submersion," are based upon the committed effective dose equivalent due to the intake of the radionuclide into the body and do NOT include potentially significant contributions to dose equivalent from external exposures. The licensee may substitute $1\text{E-}7$ $\mu\text{Ci/ml}$ for the listed DAC to account for the submersion dose prospectively, but may use individual monitoring devices or other radiation measuring instruments that measure external exposure to demonstrate compliance with the limits. (See Section 43 of this administrative regulation)

³For soluble mixtures of U-238, U-234, and U-235 in air, chemical toxicity may be the limiting factor (Section 3(5) of this administrative regulation). If the percent by weight

(enrichment) of U-235 is not greater than five (5), the concentration value for a forty (40) hour workweek is two-tenths (0.2) milligrams uranium per cubic meter of air average. For enrichment, the product of the average concentration and time of exposure during a forty (40) hour workweek shall not exceed $8\text{E-}3$ (SA) $\mu\text{Ci-hr/ml}$, if SA is the specific activity of the uranium inhaled. The specific activity for natural uranium is $6.77\text{E-}7$ curies per gram U. The specific activity for other mixtures of U-238, U-235, and U-234, if not known, shall be:

$\text{SA} = 3.6\text{E-}7$ curies/gram U-U depleted

$\text{SA} = (0.4 + 0.38 (\text{enrichment}) + 0.0034 (\text{enrichment})^2) \text{E-}, \text{enrichment} \square 0.72$

if enrichment is the percentage by weight of U-235, expressed as percent.

NOTE:

1. If the identity of each radionuclide in a mixture is known but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of a radionuclide in the mixture.

2. If the identity of each radionuclide in the mixture is not known, but it is known that certain radionuclides specified in this appendix are not present in the mixture, the inhalation ALI, DAC, and effluent and sewage concentrations for the mixture shall be the lowest values specified in this appendix for a radionuclide that is not known to be absent from the mixture; or

3. If a mixture of radionuclides consists of uranium and its daughters in ore dust (ten (10) μm AMAD particle distribution assumed) prior to chemical separation of the uranium from the ore, the following values may be used for the DAC of the mixture: $6\text{E-}11$ μCi of gross alpha activity from uranium-238, uranium-234, thorium-230, and radium-226 per milliliter of air; $3\text{E-}11$ μCi of natural uranium per milliliter of air; or forty-five (45) micrograms of natural uranium per cubic meter of air.

4. If the identity and concentration of each radionuclide in a mixture are known, the limiting values may be derived as follows: determine, for each radionuclide in the mixture, the ratio between the concentration present in the mixture and the concentration otherwise established in Section 44 of this administrative regulation for the specific radionuclide if not in a mixture. The sum of ratios for the radionuclides in the mixture shall not exceed "1" (i.e., "unity"). Example: If radionuclides "A," "B," and "C" are present in concentrations CA , CB , and CC , and if the applicable DACs are DAC_A , DAC_B , and DAC_C , respectively, then the concentrations shall be limited so that the following relationship exists:]

$$\frac{\text{CA}}{\text{DAC}_A} + \frac{\text{CB}}{\text{DAC}_B} + \frac{\text{CC}}{\text{DAC}_C}$$

Section 45. Material Incorporated by Reference. (1) The following forms are incorporated by reference:

(a) NRC Form 4, "Cumulative Occupational Exposure History, "June 1992"; and

(b) NRC Form 5, "Occupational Exposure Record for a Monitoring Period," (June 1992).

(2) The forms in subsection (1) of this section may be viewed or copied at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on August 22, 2011, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 2010, 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 August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes standards for the protection against radiation.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended their regulations.

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Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:019 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By updating the Kentucky Administrative Regulations to be consistent with the Code of Federal Regulations thereby ensuring that Kentucky licensees are bound by the same requirements as their counterparts across the country.

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

(a) How the amendment will change this existing administrative regulation: It updates Calculations of Dose and Dose Equivalent, Dose limits for minors and declared pregnant women, Analysis of airborne intakes may now consider factors other than radiological factors, Numerous revisions to the requirements for the use of respiration equipment including a new protection factor table and, Posting requirements for teletherapy rooms

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: See KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. This amendment conforms to that requirement by bring state regulations into conformance with federal regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the state regulations into compliance with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will assist all 430 licensees in making Kentucky Administrative Regulations consistent with the Code of Federal Regulations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All license holders will need to be aware of the new requirements in this regulation. However, the license holders are already familiar with them as they are in compliance with federal regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation will not require any cost of compliance for the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have consistent regulations between state and federal agencies.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is operated with general funds. No additional funds will be required to implement or enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All units of state and local government where radioactive material is present are impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:019 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will have no effect on the expenditures or revenues of state and local governments.

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

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

(c) How much will it cost to administer this program for the first year? It will not cost any additional funds to administer this regulation the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred by the program to administer this regulation in subsequent years.

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

Revenues (+/-):

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Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 100:022. Licensing requirements for land disposal of radioactive waste.

RELATES TO: KRS 211.842-211.852, 211.990(4) 40 C.F.R. 261, Pub.L.

STATUTORY AUTHORITY: KRS 194A.050, 211.090, 211.844, 211.846, 211.852

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the [The] Cabinet for Health and Family Services [Human Resources] [is authorized by KRS 211.844] 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 procedures, criteria, terms, and conditions upon which the cabinet issues licenses for the land disposal of radioactive wastes received from other persons.

Section 1. Applicability. This administrative regulation shall apply to a person [persons] prescribing land disposal that [which] involves disposal in the uppermost portion of the earth, approximately thirty (30) meters, of radioactive waste received from another person [other persons] except:

(1) Disposal of "by-product material" as defined by [in] 902 KAR 100:010 in quantities greater than 10,000 kilograms and containing more than five (5) millicuries of radium-226; or

(2) Disposal of licensed material as provided for in 902 KAR 100:021.

~~Section 2. Definitions. [As used in this administrative regulation, the following definitions apply:]~~ (1) "Active maintenance" means a significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in Section 18 and Section 19 of this administrative regulation are met. "Active [The active] maintenance" includes ongoing activities, such as the pumping and treatment of water from a disposal unit, or one (1) time measures, such as replacement of a disposal unit cover. "Active maintenance" does not include custodial activities, such as repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep such as mowing grass.

(2) "Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

(3) "Chelating agent" means: (a) amine [a mine] polycarboxylic acids, such as EDTA, DTPA, or hydroxy-carboxylic acids; and (b) [gluconic acid and] Polycarboxylic [polycarboxylic] acids, such as citric acid, carboxylic acid, or gluconic acid.

(4) "Commencement of construction" means clearing of land, excavation, or other substantial action that would adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

(5) "Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

(6) "Disposal" means the isolation of radioactive wastes from the biosphere inhabited by man and his food chains by emplacement in a land disposal facility.

(7) "Disposal site" means that portion of a land disposal facility that [which] is used for disposal of waste. It consists of disposal units and a buffer zone.

(8) "Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal the unit is usually a trench.

(9) "Engineered barrier" means a manmade structure or device that is intended to improve the land disposal facility's ability to meet the performance objectives in this administrative regulation [part].

(10) "Explosive material" means a [any] chemical compound, mixture, or device that [which] produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

(11) "Hazardous waste" means those wastes designated as hazardous by U.S. Environmental Protection Agency regulations in 40 C.F.R. [C.F.R.] Part 261.

(12) "Hydrogeologic unit" means a soil or rock unit or zone that [which] by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of ground water.

(13) "Inadvertent intruder" means a person who might occupy the disposal site after closure and engage in normal activities, such as agriculture, dwelling construction, or other pursuits in which an individual might be unknowingly exposed to radiation from [for] the waste.

(14) "Intruder barrier" means: (a) A [a] sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder shall meet the performance objectives set forth in this administrative regulation; [.] or

(b) Engineered [engineered] structures that provide equivalent protection to the inadvertent intruder.

(15) "Land disposal facility" means the land, buildings, or [and] equipment [which] [is] intended to be used for the disposal of radioactive wastes [into the subsurface of the land]. A "geologic repository" as defined by C.F.R. Parts 60 or 63 is not considered a land disposal facility.

(16) "Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

(17) "Near-surface disposal facility" means a land disposal facility in which radioactive waste is disposed of within approximately the upper thirty (30) meters of the earth's surface.

(18) "Pyrophoric liquid" means a liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (fifty-four and five-tenths (54.5) degrees Centigrade). A pyrophoric solid is a solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and if ignited burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

(19) "Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

(20) "Stability" means structural stability.

(21) "Surveillance" means monitoring and observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements.

(22) "Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-level Radioactive Waste Policy Act, Pub.L. [PL] 96-573 that is, radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e.(2) of the Atomic Energy Act, 42 U.S.C. 2011 et seq., (uranium or thorium tailings and waste).

Section 3. License Required. (1) A [No] person shall not [may] receive, possess, or [and] dispose of waste received from another person [other persons] at a land disposal facility unless authorized by a license issued by the cabinet as provided by this administrative regulation, and 902 KAR 100:021.

(2) Each person shall file an application with the cabinet as provided by 902 KAR 100:040, Section 4, and obtain a license as

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provided in this administrative regulation before commencing construction of a land disposal facility. Failure to comply with this requirement ~~shall~~ may be grounds for denial of a license.

Section 4. Content of Application. In addition to the requirements of set forth in 902 KAR 100:040, Section 5, an application to receive from others, possess, ~~or~~ and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in Sections 5 through 9 of this administrative regulation.

Section 5. General Information. The general information shall include each of the following:

(1) Identity of the applicant including:

(a) The full name, address, telephone number, and description of the business or occupation of the applicant;

(b) If the applicant is a partnership, the name and address of each partner and the principal location where the partnership does business;

(c) If the applicant is a corporation or an unincorporated association, the state where it is incorporated or organized and the principal location where it does business and the names and addresses of its directors and principal officers; and

(d) If the applicant is acting as an agent or representative of another person in filing the application, all information required by this subsection shall ~~[under subsection (1) of this section must]~~ be supplied with respect to the other person.

(2) Qualifications of the applicant.

(a) The organizational structure of the applicant, both off-site and on-site, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;

(b) The technical qualifications, including training and experience, of the applicant and members of the applicant's staff to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in paragraph (a) of this subsection shall be provided;

(c) A description of the applicant's personnel training program; and

(d) The plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.

(3) A description of:

(a) The location of the proposed disposal site;

(b) The general character of the proposed activities;

(c) The types and quantities of radioactive waste to be received, possessed, ~~or~~ and disposed of;

(d) Plans for use of the land disposal facility for purposes other than disposal of radioactive wastes; and

(e) The proposed facilities and equipment.

(4) Proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

Section 6. Specific Technical Information. The specific technical information shall include the following information needed for demonstration that the performance objectives and the applicable technical requirements of this administrative regulation shall be met:

(1) A description of the natural and demographic disposal site characteristics as determined by disposal site selection and characterization activities. The description shall include geologic, geo-technical, hydrologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity;

(2) A description of the design features of the land disposal facility and the disposal units. For near-surface disposal, the description shall include those design features related to:

(a) Infiltration ~~[infiltration]~~ of water;

(b) Integrity ~~[integrity]~~ of covers for disposal units;

(c) Structural ~~[structural]~~ stability of backfill, wastes, and covers;

(d) Contact ~~[contact]~~ of wastes with standing water;

(e) Disposal ~~[disposal]~~ site drainage;

(f) Disposal ~~[disposal]~~ site closure and stabilization;

(g) Elimination ~~[elimination]~~ to the extent practicable of long-term disposal site maintenance;

(h) Inadvertent ~~[inadvertent]~~ intrusion; occupational exposures;

(i) Disposal ~~[disposal]~~ site monitoring; and

(j) Adequacy ~~[adequacy]~~ of the size of the buffer zone for monitoring and potential mitigative measures;

(3) A description of the principal design criteria and their relationship to the performance objectives;

(4) A description of the design basis natural events or phenomena and their relationship to the principal design criteria;

(5) A description of codes and standards ~~that~~ which the applicant has applied to the design and ~~that~~ which will apply to construction of the land disposal facilities;

(6) A description of the construction and operation of the land disposal facility. The description shall include at ~~as~~ a minimum, the:

(a) Methods of construction of disposal units;

(b) Waste emplacement;

(c) ~~[the]~~ Procedures for and areas of waste segregation;

(d) Types of intruder barriers;

(e) On-site traffic and drainage systems;

(f) Survey control program;

(g) Methods and areas of waste storage; and

(h) Methods to control surface water and ground water access to the wastes. The description shall also include a description of the methods to be employed in the handling and disposal of wastes containing chelating agents or other nonradiological substances that might affect meeting the performance objectives of this administrative regulation;

(7) A description of the disposal site closure plan, including those design features ~~that~~ which are intended to facilitate disposal site closure and to eliminate the need for ongoing active maintenance;

(8) An identification of the known natural resources at the disposal site~~;~~ whose exploitation could result in inadvertent intrusion into the low-level wastes after removal of active institutional control;

(9) A description of the kind, amount, classification, and specifications of the radioactive material proposed to be received, possessed, ~~or~~ and disposed of at the land disposal facility;

(10) A description of the quality control program for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste. Audits and managerial controls shall be included;

(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in Section 18 of this administrative regulation and occupational radiation exposure to ensure compliance with the requirements of 902 KAR 100:020 and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site. Both routine operations and accidents shall be addressed. The program description shall include procedures, instrumentation, facilities, and equipment;

(12) A description of the environmental monitoring program to provide data to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration of radionuclides is indicated; and

(13) A description of the administrative procedures that the applicant shall apply to control activities at the land disposal facility.

Section 7. Technical Analyses. The specific technical information shall also include the following analyses needed to demonstrate that the performance objectives of these administrative regulations shall be met:

(1) Pathways analyzed in demonstrating protection of the general population from releases of radioactivity shall include air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly:

(a) Identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes; and ~~;~~

(b) ~~[The analyses shall clearly]~~ Demonstrate that there is reasonable assurance that the exposures to humans from the release

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of radioactivity shall not exceed the limits set forth in Section 18 of this administrative regulation;

(2) Analyses of the protection of individuals from inadvertent intrusion shall include demonstration that there is reasonable assurance the waste classification and segregation requirements shall be met and that adequate barriers to inadvertent intrusion will be provided;

(3) Analyses of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, or [and] disposal of waste. The analyses shall provide reasonable assurance that exposures shall be controlled to meet the requirements of 902 KAR 100:020; and

(4) Analyses of the long-term stability of the disposal site and the need for ongoing active maintenance after closure shall be based upon analyses of active natural processes such as erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, and surface drainage of the disposal site. The analyses shall provide reasonable assurance that there shall not be a need for ongoing active maintenance of the disposal site following closure.

Section 8. Institutional Information. The institutional information submitted by the applicant shall include:

(1) A certification by the Commonwealth of Kentucky, or federal agency that [which] owns the disposal site, that the Commonwealth of Kentucky or federal agency is prepared to accept transfer of the license if the provisions of Section 15 of this administrative regulation are met, and shall assume responsibility for custodial care after site closure and postclosure observation and maintenance; and

(2) If the proposed disposal site is on land not owned by the Commonwealth of Kentucky or federal government, the applicant shall submit evidence that arrangements have been made for assumption of ownership in fee by the Commonwealth of Kentucky or federal agency before the cabinet issues a license.

Section 9. Financial Information. The financial information shall be sufficient to demonstrate that the financial qualifications of the applicant are adequate to carry out the activities for which the license is sought and meet other financial assurance requirements of this administrative regulation.

Section 10. Standards for Issuance of a License. A license for the receipt, possession, or [and] disposal of waste containing or contaminated with radioactive material shall be issued by the cabinet upon finding that:

(1) The issuance of the license shall not constitute an unreasonable risk to the health and safety of the public;

(2) The applicant is qualified by reason of training and experience to carry out the disposal operations requested in a manner that protects health and minimizes danger to life and property;

(3) The applicant's proposed disposal site; [disposal design; land disposal facility operations;] including equipment, facilities, [and] procedures, disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they provide reasonable assurance that the general population shall be protected from releases of radioactivity as specified in the performance objective in Section 18 of this administrative regulation;

(4) The applicant's proposed disposal site; [disposal site design; land disposal facility operations;] including equipment, facilities, [and] procedures, disposal site closure, and postclosure institutional control are adequate to protect the public health and safety in that they shall provide reasonable assurance that individual inadvertent intruders are protected in accordance with the performance objective in Section 19 of this administrative regulation;

(5) The applicant's proposed disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in that they shall provide reasonable assurance that the standards for radiation protection set out in 902 KAR 100:019 [100:020] shall be met;

(6) The applicant's proposed disposal site, disposal site design,

land disposal facility operations, disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they shall provide reasonable assurance that long-term stability of the disposed waste and the disposal site shall be achieved and shall eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure;

(7) The applicant's demonstration provides reasonable assurance that the applicable technical requirements of this administrative regulation shall be met;

(8) The applicant's proposal for institutional control provides reasonable assurance that the care shall be provided for the length of time found necessary to ensure the findings in Subsection (3) through (6) of this section [Section 10(3) through (6) of this administrative regulation] and that the institutional control meets the requirements of Section 27 of this administrative regulation; and

(9) The information on financial assurances meets the requirements of this administrative regulation.

Section 11. Conditions of Licenses. (1) A license issued under this administrative regulation, or a right thereunder, may be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, through transfer of control of the license to a person. A transfer, assignment, or disposition shall occur only if the cabinet finds, after securing full information, that the transfer is in accordance with the provisions of the Act. The cabinet shall provide the approval or denial [and gives its consent] in writing in the form of a license amendment.

(2) The licensee shall submit a written statement [statements] under oath upon request of the cabinet, before termination of the license, and to enable the cabinet to determine if [whether or not] the license shall be modified, suspended, or revoked.

(3) The license shall be terminated only on the full implementation of the final closure plan as approved by the cabinet, including postclosure observation and maintenance.

(4) The licensee shall be subject to the provisions of the Act; [and to all rules], 902 KAR Chapter 100 [administrative regulations], and orders of the cabinet. The terms and conditions of the license shall be [are] subject to amendment, revision, or modification; [by reason of amendments to, or by reason of rules, administrative regulations, and orders issued in accordance with the terms of the Act].

(5) Each person licensed by the cabinet as authorized by this administrative regulation shall confine possession and use of materials to the locations and purposes authorized in the license.

(6) The licensee shall not dispose of waste until the cabinet has inspected the land disposal facility and has found it to be in conformance with the description, design, and construction described in the application for a license.

(7) The cabinet may incorporate in a license at issuance, or thereafter, by 902 KAR Chapter 100 [appropriate rule, administrative regulation,] or order; [additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste [as it deems appropriate or] necessary in order to:

(a) Protect health or to minimize danger to life or property; and

(b) Require reports and the keeping of records; and to provide for inspections of activities under the license as [that may be] necessary or appropriate to effectuate the purposes of the Act and 902 KAR Chapter 100 [administrative regulations thereunder].

(8) The authority to dispose of wastes expires on the date stated in the license. An expiration date on a license applies only to the aboveground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for carrying out site closure, postclosure observation, and transfer of the license to the site owner.

Section 12. Application for Renewal or Closure. (1) An application for renewal or an application for closure shall be filed at least ninety (90) days prior to license expiration.

(2) An application [Applications] for renewal of a license shall be filed in accordance with Sections 4 through 9 of this administrative regulation. An application [Applications] for closure shall be filed in accordance with Section 13 of this administrative regulation. Information contained in previous applications, statements, or re-

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ports filed with the cabinet under the license may be incorporated by reference if the references are clear and specific.

(3) In a case in which a licensee has filed an application in proper form for renewal of a license, the license shall not expire until the cabinet has taken action on the application for renewal.

(4) In determining if [whether] a license shall be renewed, the cabinet shall apply the criteria set forth in Section 10 of this administrative regulation.

Section 13. Contents of Application for Closure. (1) Prior to final closure of the disposal site, or as otherwise directed by the cabinet, the applicant shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included as part of the license application submitted under Section 6(7) of this administrative regulation that includes each of the following:

(a) Additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;

(b) The results of tests, experiments, or other analyses relating to backfill of excavated areas; closure and sealing; waste migration and interaction with emplacement media; or other tests, experiments, or analysis pertinent to the long-term containment of emplaced waste within the disposal site;

(c) Proposed revision of plans for:

1. Decontamination or dismantlement of surface facilities;

2. Backfilling of excavated areas; or

3. Stabilization of the disposal site for postclosure care; and

(d) Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with subsection (1) of this section, the cabinet shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of this administrative regulation shall be met.

Section 14. Postclosure Observation and Maintenance. (1) The licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the cabinet in accordance with Section 15 of this administrative regulation.

(2) Responsibility for the disposal site shall be maintained by the licensee for five (5) years.

(3) A shorter or longer time period for postclosure observation and maintenance may be established and approved as part of the site closure plan, based on site-specific conditions.

Section 15. Transfer of License. Following closure and the period of postclosure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred if the cabinet finds:

(1) The closure of the disposal site has been made in conformance with the licensee's disposal site closure plan, as amended and approved as part of the license;

(2) Reasonable assurance has been provided by the licensee that the performance objectives of this administrative regulation are met;

(3) Funds and necessary records for care shall be transferred to the disposal site owner;

(4) The postclosure monitoring program is operational for implementation by the disposal site owner; and

(5) The Commonwealth of Kentucky or federal agency that [which] shall assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under Section 10(8) of this administrative regulation shall be met.

Section 16. Termination of License. (1) Following a period of institutional control needed to meet the requirements found necessary under Section 10 of this administrative regulation, the licensee may apply for an amendment to terminate the license.

(2) This application shall be reviewed in accordance with the

provisions of 902 KAR 100:040, Section 4.

(3) A license shall be [is] terminated only if the cabinet finds:

(a) The institutional control requirements found necessary under Section 10(8) of this administrative regulation have been met;

(b) Additional requirements resulting from new information developed during the institutional control period have been met; and

(c) Permanent monuments or markers warning against intrusion have been installed.

Section 17. General Requirement. Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals are within the limits established in the performance objectives in Section 18 through Section 21 of this administrative regulation.

Section 18. Protection of the General Population from Releases of Radioactivity. A concentration [Concentrations] of radioactive material that [which] may be released to the general environment in groundwater, surface water, air, soil, plants, or animals shall not result in an annual dose exceeding an equivalent of twenty-five (25) millirems to the whole body, seventy-five (75) millirems to the thyroid, and twenty-five (25) millirems to any other organ of a member of the public. Reasonable effort shall be made to maintain releases of radioactivity in effluents to the general environment as low as it is reasonably achievable.

Section 19. Protection of Inadvertent Intrusion. Design, operation, and closure of the land disposal facility shall ensure protection of an individual inadvertently intruding into the disposal site and occupying the site or contacting the waste any time after active institutional controls over the disposal site are removed.

Section 20. Protection of Individuals During Operations. Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in 902 KAR 100:019 [100:020], except for releases of radioactivity in effluents from the disposal facility, which shall be governed by Section 18 of this administrative regulation. Every reasonable effort shall be made to maintain radiation exposures as low as is reasonably achievable.

Section 21. Stability of the Disposal Site After Closure. The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.

Section 22. Disposal Site Suitability Requirements for Land Disposal. Disposal site suitability for near-surface disposal. The following are the minimum characteristics a disposal site shall have to be acceptable for use as a near-surface disposal facility:

(1) The primary emphasis in disposal site suitability is isolation of wastes, and the disposal site features that ensure that the long-term performance objectives are met.

(2) The disposal site shall be capable of being characterized, modeled, analyzed, and monitored.

(3) Within the region where the facility is to be located, a disposal site shall be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of this administrative regulation.

(4) Areas shall be avoided having known natural resources that [which], if exploited, would result in failure to meet the performance objectives of this administrative regulation.

(5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area, or wetland, as defined in U.S. Executive Order 11988, [Flood plain Management Guidelines].

(6) Upstream drainage areas shall be minimized to decrease the amount of run-off that [which] could erode or inundate waste disposal units.

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(7)(a) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste shall not occur.

(b) The cabinet ~~shall~~ may consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics may result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement may result in the performance objectives being met.

(c) In no case shall waste disposal be permitted in the zone of fluctuation of the water table.

(8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

(9) Areas shall be avoided if tectonic processes, such as faulting, folding, seismic activity, or vulcanism may occur with a frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this administrative regulation or may preclude defensible modeling and prediction of long-term impacts.

(10) Areas shall be avoided if surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with a frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this administrative regulation, or may preclude defensible modeling and prediction of long-term impacts.

(11) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of this administrative regulation or significantly mask the environmental monitoring program.

Section 23. Disposal Site Design for Land Disposal. Disposal site design for near-surface disposal.

(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives shall be met.

(3) The disposal site shall be designed to complement and improve ~~[if where appropriate,]~~ the ability of the disposal site's natural characteristics to assure that the performance objectives shall be met.

(4) Covers shall be designed to minimize ~~[to the extent practicable]~~ water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients ~~that~~ which shall not result in erosion that shall require ongoing active maintenance in the future.

(6) The disposal site shall be designed to minimize ~~[to the extent practicable]~~ the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

Section 24. Land Disposal Facility Operation and Disposal Site Closure:~~[-]~~ Near-surface Disposal [disposal] Facility [facility] Operation [operation] and Disposal [disposal] Site [site] Closure [closure].

(1) Wastes designated as Class A in 902 KAR 100:021 shall be segregated from other wastes by placing in disposal units ~~that~~ which are sufficiently separated from disposal units for the other waste classes so that an interaction between Class A wastes and other wastes shall not result in the failure to meet the performance objectives of this administrative regulation. This segregation is not necessary for Class A wastes if they meet the stability requirements in 902 KAR 100:021, Section 7(8)(2).

(2) Wastes designated as Class C in 902 KAR 100:021 shall be disposed of so that the top of the waste is a minimum of five (5) meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inad-

vertent intrusion for at least 500 years.

(3) Except as provided in subsection (1) of this section, only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. All waste shall be disposed of in accordance with requirements of subsections (4) through (11) of this section.

(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and allows ~~permits~~ the void spaces to be filled.

(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum shall permit the licensee to comply with all provisions of 902 KAR ~~100:019~~ 100:020, ~~Sections [Section]~~ 10 [7] and 11, if ~~[when]~~ the license is transferred as authorized by Section 15 of this administrative regulation.

(7) The boundaries and locations of each disposal unit shall be accurately located and mapped by means of a land survey.

(8) Near-surface disposal units shall be marked in a way that the boundaries of each unit can be easily defined.

(9) Three (3) permanent survey marker control points, referenced to United States Geological Survey (USGS) or National Geodetic Survey (NGS) survey control stations, shall be established on the site to facilitate surveys.

(10) The USGS or NGS control stations shall provide horizontal and vertical controls as checked against USGS or NGS record files.

(11) ~~[(8)]~~ A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in Section 25~~[(4)]~~ of this administrative regulation and take mitigative measures if needed.

(12) ~~[(9)]~~ Closure and stabilization measures set forth in the approved site closure plan shall be carried out as each disposal unit is filled and covered.

(13) ~~[(10)]~~ Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(14) ~~[(11)]~~ Only wastes containing or contaminated with radioactive materials shall be disposed of at the disposal site.

(15) ~~[(12)]~~ A proposal ~~[Proposals]~~ for disposal of waste that is not generally acceptable for near-surface disposal because the waste form and disposal methods need to ~~[must]~~ be different, and in general more stringent than ~~[that]~~ those specified for Class C waste, may be submitted to the cabinet for approval.

Section 25. Environmental Monitoring. (1)(a) ~~If~~ When a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics.

(b) The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site.

(c) For those characteristics that are subject to seasonal variation, data shall cover at least a twelve (12) month period.

(2)

(a) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program.

(b) Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and the need for mitigative measures.

(c) The monitoring system shall be capable of providing early warning of releases of radionuclides from the disposal site before they leave the site boundary.

(3) After the disposal site is closed, the licensee responsible for postoperational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall be capable of providing early warning of releases of radionuclides from the disposal site before they leave the site boundary.

(4) The licensee shall have plans for taking corrective meas-

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ures if the environmental monitoring program detects migration of radionuclides that [which] would indicate that the performance objectives may not be met.

Section 26. Alternative Requirements for Design and Operations. The cabinet may, upon request or on its own initiative, authorize provisions other than those set forth in Sections 23 through 25 of this administrative regulation for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis[,] if it finds reasonable assurance of compliance with the performance objectives of this administrative regulation.

Section 27. Institutional Requirements. (1) Land ownership. Disposal of radioactive waste received from other persons may be permitted only on land owned, in fee, by the Commonwealth of Kentucky or federal government.

(2) Institutional control.

(a) The land owner or custodial agency shall carry out an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator.

(b) The institutional control program shall also include, in part [but not be limited to], carrying out an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other requirements as determined by the cabinet[,] and administration of funds to cover the costs for these activities.

(c) The period of controls shall be determined by the cabinet, but controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

Section 28. Alternative Requirements for Waste Classification and Characteristics. The cabinet licensing a low-level disposal facility may, upon request or on its own initiative, authorize other provisions for the classification and characteristics of waste on a specific basis[,] if, after evaluation of the specific characteristics of the waste, disposal site, or method of disposal, it finds reasonable assurance of compliance with the performance objectives specified in this administrative regulation.

Section 29. Applicant Qualifications and Assurances. Each applicant shall show that he [it] either possesses the necessary funds or has reasonable assurance of obtaining the necessary funds[,] or, by a combination of the two (2), to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

Section 30. Funding for Disposal Site Closure and Stabilization. (1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds shall be available to carry out disposal site closure and stabilization, including:

(a) Decontamination or dismantlement of land disposal facility structures;

(b) Closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance shall be [is] eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring shall be [are] required; and

(c) Assurances shall be based on cabinet-approved cost estimates reflecting the cabinet-approved plan for disposal site closure and stabilization. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(2) In order to avoid unnecessary duplication and expense, the cabinet may accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of other federal or state agencies or local governing bodies for the [such] decontamination, closure, and stabilization. If the [The] cabinet accepts [may accept] these arrangements they shall be [only if they are considered] adequate to satisfy these requirements and that the portion of the surety that [which] covers the closure of the disposal site that shall be [is] clearly identified and committed for use in accomplishing these activities.

(3) The licensee's surety mechanism shall be submitted annually for review by the cabinet to assure that sufficient funds are

available for completion of the closure plan, assuming that the work has to be performed by an independent contractor.

(4) The amount of surety liability shall change in accordance with the predicted cost of future closure and stabilization. Factors affecting closure and stabilization cost estimates include:

(a) Inflation;

(b) Increases in the amount of disturbed land;

(c) Changes in engineering plans;

(d) Closure and stabilization that has already been accomplished; and

(e) Other conditions affecting costs. This shall yield a surety that is at least sufficient at all times to cover the costs of closure of the disposal units that are expected to be used before the next license renewal.

(5)(a) The term of the surety mechanism shall be open unless it can be demonstrated that another arrangement would provide an equivalent level of assurance.

1. This assurance shall be provided with a surety mechanism [which is] written for a specified period of time (for example [e.g.], five (5) years) yet which shall be automatically renewed unless the party who issues the surety notifies the cabinet and the beneficiary (the site owner) and the principal (the licensee) not less than ninety (90) days prior to the renewal date of the [its] intention not to renew.

2. In this situation the licensee shall submit a replacement surety within thirty (30) days after notification of cancellation.

(b) If the licensee fails to provide a replacement surety acceptable to the cabinet, the site owner may collect on the original surety.

(6)(a) Proof of forfeiture shall not be necessary to collect the surety so that if the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration.

(b) The conditions described in this section [above] shall [would have to] be clearly stated on a surety instrument that [which] is not open-ended, and shall be agreed to by all parties. Liability under the surety mechanism shall remain in effect until the closure and stabilization program has been completed and approved by the cabinet and the license has been transferred to the site owner.

(7)(a) Financial surety arrangements [generally] acceptable to the cabinet include:

1. Surety bonds; [;]

2. Cash deposits; [;]

3. Certificates of deposit; [;]

4. Deposits of government securities; [;]

5. Escrow accounts; [;]

6. Irrevocable letters or lines of credit; [;]

7. Trust funds; [;] and

8. Combinations of the above [or other types of arrangements as may be approved by the cabinet].

(b) [However,] Self-insurance, or an arrangement that [which] essentially constitutes pledging the assets of the licensee, shall not satisfy the surety requirement for private sector applicants because [since] this does not provide [provides no] additional assurance other than that which already exists through license requirements.

Section 31. Financial Assurances for Institutional Controls. (1) Prior to the issuance of the license, the applicant shall provide for cabinet review and approval or denial a copy of a binding arrangement, such as a lease, between the applicant and the disposal site owner that ensures that sufficient funds shall be available to cover the costs of monitoring and required maintenance during the institutional control period. The binding arrangement shall be reviewed periodically by the cabinet to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.

(2) Subsequent changes to the binding arrangement specified in subsection (1) of this section relevant to institutional control shall be submitted to the cabinet for approval or denial.

Section 32. Maintenance of Records, Reports, and Transfers.

(1) Each licensee shall maintain records and make reports in con-

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nection with the licensed activities as ~~[may be]~~ required by the conditions of the license or by 902 KAR Chapter 100 or ~~[the rules, administrative regulations, and]~~ orders of the cabinet.

(2)(a) A record ~~[Records which are]~~ required by 902 KAR Chapter 100 ~~[these administrative regulations]~~ or by license conditions shall be maintained for a period specified by the appropriate administrative regulation in 902 KAR Chapter 100 ~~[regulations in this section]~~ or by license condition.

(b) If a retention period is not otherwise specified, these records shall be maintained and transferred to the officials specified in subsection (5) of this section as a condition of license termination unless the cabinet otherwise authorizes ~~[their]~~ disposition.

(3)(a) A record that ~~[Records which]~~ shall be maintained as required by this section shall ~~[may]~~ be the original, ~~[or]~~ a reproduced copy, or microform ~~[microfilm]~~ if this reproduced copy or microform ~~[microfilm]~~ is capable of producing copy that is clear and legible at the end of the required retention period.

(b)1. The record may also be stored in electronic media with the capability of producing legible, accurate, and complete records during the retention period.

2. Records such as letters, drawings, and specifications shall include all pertinent information such as stamps, initials, and signatures.

(c) The licensee shall maintain adequate safeguards against tampering with and loss of records.

(4) If there is a conflict between the cabinet's administrative regulations, license condition, or other written cabinet approval or authorization pertaining to the retention period for the same type of record, the longest retention period specified shall take ~~[takes]~~ precedence.

(5) In addition to the requirements of subsections (1) through (4) of this section, copies of records of the location and the quantity of radioactive wastes contained in the disposal site shall be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the Governor of the Commonwealth of Kentucky, ~~[and]~~ other Kentucky local agencies, and federal governmental agencies as designated by the cabinet when the license is terminated.

(6) Following receipt and acceptance of a shipment of radioactive waste, the licensee shall record:

(a) The date that the shipment is received at the disposal facility;

(b) The date of disposal of the waste; [;]

(c) A traceable shipment manifest number;

(d) A description of any engineered barrier or structural over-pack provided for disposal of the waste;

(e) The location in the disposal site; [;]

(f) The condition of the waste packages as received; [;]

(g) Any discrepancies between materials listed on the manifest and those received; [;]

(h) The volume of pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials; and

(i) Any evidence of leaking or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and 902 KAR Chapter 100 ~~[cabinet administrative regulations]~~.

(7) The licensee shall briefly describe repackaging operations of the waste packages included in the shipment, plus other information required by the cabinet as a license condition.

(8) The licensee shall retain these records until the cabinet transfers or terminates the license that authorizes the activities described in this section.

(9)(~~(7)~~) Each licensee authorized to dispose of radioactive waste received from other persons shall file a copy of its financial report or a certified financial statement annually with the cabinet in order to update the information base for determining financial qualifications.

(10) (~~(8)~~)(a) Each licensee authorized to dispose of waste materials received from other persons, authorized by this administrative regulation, shall submit an annual report ~~[reports]~~ to the cabinet. Reports shall be

submitted by the end of the first calendar quarter of each year for the preceding year;

(b) The reports shall include:

1. Specification of the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in airborne effluents during the preceding year;

2. The results of the environmental monitoring program;

3. A summary of licensee disposal unit survey and maintenance activities;

4. A summary, by waste class, of activities and quantities of radionuclides disposed of;

5. Instances in which observed site characteristics were significantly different from those described in the application for a license; and

6. Other information the cabinet may require.

(c) The report specifically cover instances in which the ~~[If the]~~ quantities of radioactive materials released during the reporting period, monitoring results, or maintenance performed are significantly different from those expected in the materials previously reviewed as part of the licensing action~~[- the report shall cover this specifically].~~

(11)(a) In addition to the other requirements of this section, the licensee shall store or have stored, manifest and other information pertaining to receipt and disposal or radioactive waste in an electronic recordkeeping system.

(b) The manifest information that shall be stored electronically is:

1. That required in 902 KAR 100:021, Sections 9 and 10, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

2. The information required in subsection (6) of this section.

(c) As specified in license conditions, the licensee shall report the stored information, or subsets of the information, on a computer-readable medium.

Section 33. Tests at Land Disposal Facilities. Each licensee shall perform, or allow ~~[permit]~~ the cabinet to perform, any tests the cabinet deems appropriate or necessary for the administration of this administrative regulation, including, in part ~~[but not limited to]~~, tests of:

(1) Radioactive wastes and facilities used for the receipt, storage, treatment, handling, or ~~[and]~~ disposal of radioactive wastes;

(2) Radiation detection and monitoring instruments; and

(3) Other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of radioactive waste.

Section 34. Cabinet Inspections of Land Disposal Facilities. (1) Each licensee shall:

(a) Afford to the cabinet at all reasonable times opportunity to inspect radioactive waste not yet disposed of~~[-]~~ and the premises, equipment, operations, and facilities in which radioactive wastes are received, possessed, handled, treated, stored, or disposed~~[-]~~;

(b) (~~(2)~~) Provide the cabinet with the necessary equipment to meet the activities, such as monitoring, surveying, and recordkeeping as required by this section; and ~~[-]~~;

(c) (~~(3)~~ ~~Each licensee shall~~) Make available to the cabinet for inspection, upon ~~[reasonable]~~ notice, records kept by it as required by this administrative regulation.

(2) Authorized representatives of the cabinet may copy and take away copies off~~[- for the cabinet's use,-]~~ any record required to be kept by this administrative regulation.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2011, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 2011 prior to the hearing, of their intent to attend. If no notification of intent to

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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 August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation is being amended to make minor changes regarding records and receipt criteria of radioactive waste as well as clarifying the distinction between "Land disposal facility" and "Geologic repository".

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended their federal regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:022 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will make radioactive waste receipt and acceptance criteria compatible with the federal regulations. Given the interstate nature of this activity, this is essential to providing meaningful regulatory oversight.

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

(a) How the amendment will change this existing administrative regulation: It updates minor administrative requirements to section 32 and other minor updates in section 2.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. This amendment updates those requirements.

(d) How the amendment will assist in the effective administration of the statutes: KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. This amendment ensures Kentucky's program is in compliance 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 no licensees in Kentucky authorized to receive radioactive waste; however, this administrative regulation will assist all 430 licensees in preparing waste for shipment out of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If any entity applies to become an authorized radioactive waste storage site they must conform to this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If any entity applies to become an authorized radioactive waste storage site they must conform to this regulation as a cost of doing business. There are currently no radioactive waste storage sites authorized in Kentucky.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If any entity applies to become an authorized radioactive waste storage site they must conform to this regulation.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None. No additional cost will be incurred as a result of amending this administrative regulation

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established directly or indirectly as a result of this amendment.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? NONE

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:022 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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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 generate no additional revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program in the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 100:040. General provisions for specific licenses.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 30.31-30.34, 30.36-30.39, 30.41, 30.50, 30.51, 30.61, 11 U.S.C. 101(2), (14)

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires [authorizes] the Cabinet for Health and Family Services to promulgate administrative regulations for regulating and licensing the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes general provisions for the issuance of radioactive material licenses to possess, use, or transfer radioactive material within Kentucky.

Section 1. License Requirement. Except for persons exempted by 902 KAR 100:015 and [902 KAR] 100:045, a person shall not manufacture, produce, receive, possess, use, transfer, own, or acquire radioactive material except as authorized in a specific or general license issued in accordance with 902 KAR Chapter 100. Authority to transfer possession or control by the manufacturer;[-] processor;[-] or producer of equipment, devices,[or] commodity, or other products containing radioactive material whose subsequent possession, use, transfer or[and] disposal by other persons are exempted from regulatory requirements, may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D. C., 20555.

Section 2. Types of Licenses. (1) Licenses for radioactive material shall be of two (2) types:

(a) General; or [and]

(b) Specific.

(2) Except as specified in 902 KAR 100:050, general licenses shall be:

(a) Effective without the filing of an application with the cabinet or the issuance of licensing documents to the licensee; and

(b) Subject to other applicable requirements of 902 KAR Chapter 100 and limitations of 902 KAR 100:050.

(3) Specific licenses shall require:

(a) The submission of an application to the cabinet; and

(b) The issuance of a licensing document by the cabinet.

(4) ~~[The license shall be]~~ Subject [subject] to applicable requirements of 902 KAR Chapter 100 and to limitations specified in the licensing document.

Section 3. Filing of Application for a Specific License. (1) An application for "specific license" shall be filed with the Cabinet for Health and Family Services on ["Form RPS-7"], incorporated by reference.

(2)(a) ~~[The cabinet may at a time]~~ After the filing of the original application, or [and] before the expiration of the license if the applicant has already been granted, the Cabinet may require additional information [further statements] in order [to enable the cabinet] to determine if [whether]:

1. The application is to [shall] be granted or denied; or

2. A license is to [shall] be modified or revoked.

(b) Prelicensing visits may be made to the applicant's facility for the purpose of obtaining information in addition to that furnished in the original application.

(c) If the applicant or licensee fails to respond within 30 days of receipt to a written request, ~~[in writing, forwarded by certified mail,]~~ for additional information [within thirty (30) days of the date of the receipt of the request, or within another specified time if health and safety are threatened], the cabinet shall suspend, modify, or revoke the license in accordance with 902 KAR 100:170, or shall deny the application.

(3) The application shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(4) An application for a license may include a request for a license authorizing one (1) or more activities if the application specifies the additional activities and complies with the provisions of 902 KAR Chapter 100 relating to specific licenses.

(5)(a) The applicant may incorporate in the application, by reference, information contained in previous applications, statements, or reports filed with the cabinet, if references are clear and specific.

(b) Information provided to the cabinet by an applicant or licensee, or information required to be maintained by statute, by 902 KAR Chapter 100, cabinet orders, or license conditions, shall be complete and accurate in all aspects.

(6) An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source shall:

(a) Identify the source or device by manufacture and model number as registered with:

1. The cabinet;

2. The U.S. Nuclear Regulatory Commission; or

3. An agreement state; and [or]

(b) Contain the information identified in 902 KAR 100:058, Section 1.

(7) An application for a specific license shall contain, if required by the administrative regulation referenced:

(a) 1. A proposed decommissioning funding plan; or

2. [(b)] A certification of financial assurance for decommissioning in accordance with 902 KAR 100:042; and

(b) [(e)] An emergency plan for responding to a release in accordance with 902 KAR 100:041.

Section 4. General Requirements for the Issuance of a Specific License. (1) A license application shall be approved if the cabinet determines:

(a) The applicant is qualified by reason of training and experience to use the radioactive material in question for the purpose requested, in accordance with 902 KAR Chapter 100, and in a manner that [as to] minimizes [minimize] danger to public health and safety or property;

(b) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property;

(c) The issuance of the license will not be adverse to the health and safety of the public; and

(d) The applicant satisfies applicable special requirements in 902 KAR Chapter 100.

(2) For an application for a license to receive and possess

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radioactive material ~~that~~ [which] the cabinet determines will significantly affect the quality of the environment, the following shall apply:

(a) The secretary of the cabinet or his designee shall, before commencement of construction of the plant or facility in which the activity is to be conducted, weigh the environmental, economic, technical, and other benefits against environmental costs and shall consider available alternatives.

(b) The secretary ~~shall~~ [may], if [where] appropriate, approve a license modified by conditions designed to protect environmental values.

(c) Commencement of construction prior to cabinet determination shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility.

1. As used in this subsection, the term "commencement of construction" means clearing of land, excavation, or other substantial action that would adversely affect the environment of a site.

2. The term shall not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

(3)(a) The licensee shall notify the cabinet in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under ~~a chapter of~~ Title 11 of the United States Code by or against:

1. The licensee;

2. An entity, ~~is defined in U.S.C § 101(15) [as that term is defined in 11 U.S.C. or section 101(14),~~ controlling the licensee or listing the license or licensee as property of the estate; or

3. An affiliate, ~~as [that term is] defined in 11 U.S.C. or Section 101(2),~~ of the licensee.

(b) The notification shall indicate:

1. The bankruptcy court in which the petition for bankruptcy was filed; and

2. The date and case number of the filing of the petition.

Section 5. Issuance of Specific Licenses. (1) Upon a determination that an application meets the requirements of KRS 211.842 to 211.852 and 902 KAR Chapter 100, the cabinet shall issue a specific license authorizing the proposed activity in a form containing conditions and limitations the cabinet deems appropriate or necessary.

(2) The cabinet may incorporate in a license when issued, or thereafter by appropriate rule, 902 KAR Chapter 100, or order, or as specified in Section 13 of this administrative regulation, additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to 902 KAR Chapter 100 as it deems appropriate or necessary in order to:

(a) Minimize danger to public health and safety or property;

(b) Require reports are maintained and the keeping of records, and provide for inspections of activities under the license as may be appropriate or necessary; and

(c) Prevent loss or theft of licensed material.

Section 6. Specific Terms and Conditions of Licenses. (1) A license issued pursuant to this administrative regulation shall be subject to the provisions of KRS 211.842 to 211.852, 902 KAR Chapter 100, and orders of the cabinet.

(2) Neither the license nor a right under the license shall be assigned or otherwise transferred in violation of the provisions of KRS 211.842 to 211.852.

(3) A licensee ~~[person licensed by the cabinet]~~ under 902 KAR Chapter 100 shall confine [his] use and possession of the licensed radioactive material [licensed] to the locations and purposes authorized in the license.

(4) A portable gauge licensee shall use a minimum of two (2) independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, if portable gauges are not under the control and constant surveillance of the licensee.

Section 7. Expiration and Termination of Licenses. (1) Except

as specified in subsection (4) of this section and in Section 8[(2)] of this administrative regulation, a specific license shall expire at midnight on the day, ~~[in the] month,~~ and year stated in the license.

(2) A licensee shall promptly notify the cabinet ~~[promptly]~~, in writing, and request termination of the license, if the licensee decides to terminate activities involving licensed materials ~~[authorized under the license]~~. This notification and request for termination of the license shall include:

(a) The reports and information specified in subsection (3)(d) and (e) of this section; and

(b) A plan for completion of decommissioning, if required~~[-]~~ by 902 KAR 100:042 or by license condition.

(3) If a licensee does not submit an application for license renewal under Section 8[(2)] of this administrative regulation, the licensee, on or before the expiration date specified in the license, shall:

(a) Terminate use of radioactive material;

(b) Remove radioactive contamination to the extent practicable except for those procedures covered by subsection (4) of this section;

(c) Properly dispose of radioactive material;

(d) File the ~~["Disposition of Radioactive Material"]~~, "Form RPS-10", with the Cabinet for Health and Family Services; and

(e) ~~[Prior to license termination, a licensee authorized]~~ If licensed to possess radioactive material with a half-life greater than 120 days~~[-]~~ in an unsealed form, ~~[shall]~~ forward ~~[the following records]~~ to the cabinet:

1. Records of disposal of radioactive material made pursuant to 902 KAR 100:021, Sections 3-6, including burials authorized before January 28, 1981; and

2. Records required by 902 KAR 100:019, Section 31(2)(d).

(f) If licensed activities are transferred or assigned in accordance with 902 KAR 100:040, Section 6, a licensee authorized to possess radioactive material with a half-life greater than 120 days, in an unsealed form, shall transfer the following records to the new licensee. The new licensee ~~shall~~ [will] be responsible for maintaining these records until the license is terminated:

1. Records of disposal of licensed material made pursuant to 902 KAR 100:021, Sections 3 through 6 of this administrative regulation, including burials authorized before January 28, 1981; and

2. Records required by 902 KAR 100:019, Section 31(2)(d).

(g) Prior to license termination, a licensee shall forward the records required by 902 KAR 100:042, Section 15~~(3)~~[(7)], to the cabinet.

(4) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the cabinet notifies the licensee in writing that the license shall be terminated. During this time, the licensee shall:

(a) Limit actions involving radioactive material to those related to decommissioning; and

(b) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the cabinet notifies the licensee in writing that the license shall be terminated.

Section 8. Renewal of License. If a licensee has filed~~[more than thirty (30) days prior to expiration of his existing license,]~~ an application in proper form for renewal or for a new license authorizing the same activities more than thirty (30) days prior to expiration of an existing license, the existing license shall not expire until the application has been finally determined by the cabinet.

Section 9. Amendment of Licenses. (1) An application for amendment of a license at the request of the licensee shall specify the respects in which the licensee desires the license to be amended and the grounds for the amendment.

(2) Every five (5) years or at the request of the cabinet, the licensee shall be required to amend the license in its entirety by submitting a complete application.

Section 10. Cabinet Action on Applications to Renew or Amend. In considering an application by a licensee to renew or amend his license, the cabinet shall apply the requirements of 902 KAR Chapter 100.

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Section 11. Inalienability of Licenses. A license issued or granted under 902 KAR Chapter 100 or right to possess or utilize radioactive material granted by a license issued under 902 KAR Chapter 100 shall not be transferred, assigned, or otherwise disposed of, through transfer of control of a license to a person unless the cabinet, after securing full information, finds that the transfer is in accordance with the requirements of 902 KAR Chapter 100 and gives its consent in writing.

Section 12. Transfer of Material. (1) A licensee shall not transfer radioactive material except as authorized by this administrative regulation.

(2) Except as stated in the license and subject to the provisions of subsections (3) and (4) of this section, a licensee may transfer radioactive material subject to the acceptance of the transferee to a person:

(a) Exempt from the requirements for a license as specified in this administrative regulation to the extent permitted under the exemption;

(b) Authorized to receive radioactive material under terms of a general license as specified in 902 KAR 100:050, or its equivalent, or a specific license or equivalent licensing document, issued by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state [Agreement State];

(c) Otherwise authorized to receive radioactive material by the federal government or an agency thereof, the cabinet, or an agreement state [Agreement State]; or

(d) As otherwise authorized by the cabinet in writing.

(3) Before transferring radioactive material to a specific licensee of the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state [Agreement State] or to a general licensee who is required to register with the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state [Agreement State] prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by this administrative regulation shall be acceptable:

(a) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;

(b) The transferor may have in his possession a written certificate by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(c) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, if the oral certification is confirmed in writing within ten (10) days of the shipment.

(d) The transferor may obtain other sources of information compiled by a reporting service from official records of the cabinet, the U.S. Nuclear Regulatory Commission, or the licensing agency of an agreement state [Agreement State] as to the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) If none of the methods of verification described in paragraphs (a) through (d) of this subsection are readily available or if a transferor desires to verify that information received by one (1) of the methods is correct or up-to-date, the transferor may obtain and record confirmation from the cabinet, U.S. Nuclear Regulatory Commission, or the licensing agency of an agreement state [Agreement State] that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall meet the requirements of 902 KAR Chapter 100.

Section 13. Modification, Revocation, and Suspension of Licenses. (1) The terms and conditions of a license shall be subject to amendment, revision, or modification, or the license may be

suspended or revoked by reason of amendments to or violation of KRS 211.842 to 211.852, 902 KAR Chapter 100, or orders issued by the cabinet.

(2) A license may be revoked, suspended, or modified, in whole or in part, for:

(a) A material false statement in the application or in a statement of fact required under provisions of KRS 211.842 to 211.852;

(b) A condition revealed by application or statement of fact;

(c) A report, record, or inspection, or other means that [which] would warrant the cabinet to refuse to grant a license on an original application; or

(d) A violation of, or failure to observe the terms and conditions of KRS 211.842 to 211.852, ~~[or of]~~ the license, ~~[or of rules,]~~ 902 KAR Chapter 100, or orders of the cabinet.

(3) Except in a case of willful violation or in which the public health, interest, or safety requires otherwise, a license shall not be modified, suspended, or revoked unless, prior to the institution of proceedings:

(a) The Cabinet shall notify the licensee in writing, according to 902 KAR 1:400, Section 1, of the fact or conduct that may warrant Cabinet action on the license. [A fact or conduct which may warrant cabinet action shall have been called to the attention of the licensee, in writing; and]

(b) The Cabinet shall provide the licensee with the opportunity for a conference and conference report according to 902 KAR 1:400, Sections 1 through 3. [The licensee shall have been accorded an opportunity to demonstrate or achieve compliance with lawful requirements.]

(c) If no conference is requested within the timeframe, the Cabinet shall notify the licensee in writing according to 902 KAR 1:400 Section 2(a)-(c) and Section 3(2) of its final action and the licensee's right to appeal.

(4) A licensee whose license is suspended or revoked, shall have a right to a hearing under [in a manner established in] 902 KAR 1:400, Section 4 by, by making a written request as described in that Section.

Section 14. Retention of Records. (1) A person who receives radioactive material in accordance with a license issued under 902 KAR Chapter 100 shall keep records showing the receipt, transfer, and disposal of radioactive material.

(2)(a) Records of receipt of radioactive material that [which] are required by subsection (1) of this section shall be maintained as long as the licensee retains possession of the radioactive material and for two (2) years following transfer or disposal of the radioactive material.

(b) Records of transfer of radioactive material shall be maintained by the licensee who transferred the material for five (5) years after the transfer.

(c) Records of disposal of radioactive material shall be maintained in accordance with 902 KAR 100:021.

(3) Other records required by 902 KAR Chapter 100 or by a license condition shall be maintained for the period specified in 902 KAR Chapter 100. If the retention period is not specified by 902 KAR Chapter 100 or a license condition, the records shall be permanently maintained unless the cabinet authorizes ~~[their]~~ disposition upon proper application for ~~[their]~~ destruction.

(4) Records required to be maintained by 902 KAR Chapter 100 shall [may] be:

(a) The original, a reproduced copy, or a microform if duly authenticated by authorized personnel and capable of producing a clear and legible copy after storage for the period specified by 902 KAR Chapter 100; or

(b) In electronic media with the capability for producing legible, accurate, and complete records during the required retention period.

(5) Records, including letters, drawings, and specifications, shall include pertinent authentication stamps, initials, or signatures. The licensee shall maintain adequate safeguards against tampering with, and loss of, records.

Section 15. Reporting Requirements. (1) Immediate report. A licensee shall notify the Cabinet for Health and Family Services, Radiation Health ~~[and Toxic Agents]~~ Branch, no [as soon as possi-

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ble, but not] later than four (4) hours, after the discovery of an event that prevents or overcomes immediate protective actions necessary to avoid exposure to radiation or radioactive materials or a release of radioactive materials that may exceed regulatory limits. An event includes a fire, explosion, or toxic gas release.

(2) Twenty-four (24) hour report. A licensee shall notify the Cabinet for Health and Family Services, Radiation Health [Control] Branch within twenty-four (24) hours after the discovery of an event involving radioactive material, as follows:

(a) An unplanned contamination event that:

1. Requires access to the contaminated area, by workers or the public, to be restricted for more than twenty-four (24) hours by imposing additional radiological controls or by prohibiting entry into the area;

2. Involves a quantity of material greater than five (5) times the lowest annual limit on intake specified in 10 C.F.R. 20 Appendix B [902 KAR 100:019, Section 44], for the material; and

3. Requires[Has] access to the area restricted for a reason other than to allow isotopes with a half-life of less than twenty-four (24) hours to decay prior to decontamination[.];

(b) An event in which equipment is disabled or fails to function as designed, if:

1. The equipment is required by administrative regulation or license condition to prevent a release exceeding regulatory limits, to prevent an exposure to radiation or radioactive material exceeding regulatory limits, or to mitigate the consequences of an accident;

2. The equipment is required to be available and operable if it is disabled or fails to function; and

3. Redundant equipment is not available and operable to perform the required safety function[.];

(c) An event that requires unplanned medical treatment, at a medical facility, of an individual with spreadable radioactive contamination on the individual's clothing or body; or[.];

(d) An unplanned fire or explosion damaging radioactive material or a device, container, or equipment containing radioactive material, if:

1. The quantity of material involved is greater than five (5) times the lowest annual limit on intake specified in 10 C.F.R. 20 Appendix B [902 KAR 100:019, Section 44], for the radioactive material; and

2. The damage affects the integrity of the radioactive material or its container.

(3) A report [Reports] by a licensee [licensees] in response to the requirements of this section shall be made as follows:

(a) A licensee [Licensees] shall make a report [reports] as required by subsections (1) and (2) of this section by telephone to the Cabinet for Health and Family Services, Radiation Health [and Toxic Agents] Branch at (502) 564-3700 from 8 a.m.-4:30 p.m. Eastern Time Monday through Friday, or [and] at (800) 255-2587 [(502) 564-7845] at other hours. To the extent that the information is available at the time of notification, the information provided in these reports shall include:

1. The caller's name and call back telephone number;

2. A description of the event, including date and time;

3. The exact location of the event;

4. The isotopes, quantities, and chemical and physical form of the radioactive material involved; and

5. Available personnel radiation exposure data.

(b) A licensee who makes a telephone report shall submit a written follow-up report within thirty (30) days of the initial report. A written report prepared pursuant to another administrative regulation of 902 KAR Chapter 100 may be submitted to fulfill this requirement, if the report contains the necessary information and the appropriate distribution is made. The report shall be sent to the Manager, Radiation Health [and Toxic Agents] Branch, 275 East Main Street, [Mail Stop HS-2E-D,] Frankfort, Kentucky 40621. The report shall include the following:

1. A description of the event, including the probable cause and the manufacturer and model number, if applicable, of equipment that failed or malfunctioned;

2. The exact location of the event;

3. The isotopes, quantities, and chemical and physical form of the radioactive material involved;

4. Date and time of the event;

5. Corrective actions taken or planned and results of evaluations or assessments; and

6. The extent of every exposure of every individual to radiation or to a radioactive material, without identification of any individual by name.

Section 16. Material Incorporated by Reference. (1) The following material is [forms are] incorporated by reference:

(a) Cabinet for Health and Family Services Form RPS-7 "Application for Radioactive Material License" 2/2011; and

(b) Cabinet for Health and Family Services Form RPS-10 "Disposition of Radioactive Material" 3/2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 902 KAR 100:040 General provisions for specific licenses

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2011, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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 August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: It requires portable gauge licensees to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the portable gauges are not under the control and constant surveillance of the licensee. The intent of this amendment is to increase licensees' control of portable gauges to reduce the opportunity for unauthorized removal or theft and subsequent radiation exposure. It also updates the proper names of the Branch (Radiation Health Branch) and the Cabinet (Cabinet for Health and Family Services).

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:040 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of ha-

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zards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will increase licensees' control of portable gauges to reduce the opportunity for unauthorized removal or theft.

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

(a) How the amendment will change this existing administrative regulation: It adds subsection 4 to section 6 which requires portable gauge licensees to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the portable gauges are not under the control and constant surveillance of the licensee. It also updates the proper names of the Branch (Radiation Health Branch) and the Cabinet (Cabinet for Health and Family Services).

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. This amendment updates the regulation to conform to federal standards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the regulation into compliance with federal standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 115 users of portable gauges licensed by the Kentucky Radiation Health Branch who actively conduct business 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 regulated entities will have to ensure that they have provided for two independent physical controls that form tangible barriers to secure their portable gauges. Examples of how this may be accomplished are (1) Adding a chain and lock to a locked case secured in a truck, (2) Storing the gauge inside a locked cabinet, inside a locked room. This has long been considered a good work practice and as such, most affected licensees are already in compliance.

(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 be in compliance with this regulation is minimal, <\$20.00.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will be at reduced risk of unauthorized removal or theft of property.

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

(a) Initially: No additional cost will be incurred by the administrative body as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred by the administrative body as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be required as a result 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: This amendment will not require an increase in fees directly or indirectly to

implement.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not establish directly or indirectly any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:040 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Any entity that is a licensee of a gauge will incur minimal costs to implement. That cost will be less than \$20.00

(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 generate no 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 generate no revenue.

(c) How much will it cost to administer this program for the first year? This amendment will not increase costs of administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not increase costs of administration.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 100:042. Decommissioning and financial surety.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R.

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20.1401-20.1406, 30, Appendices A-E, 30.35, 30.36, 40.36, 70.25, 15 U.S.C. Chapter 2B, 78m

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the [The] Cabinet for Health and Family Services [is mandated by KRS 211.844] 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 decommissioning and financial assurance of radioactive material licensees.

Section 1. General Provisions and Scope. (1) This administrative regulation shall apply to the decommissioning and financial assurance requirements of a facility licensed under 902 KAR 100:040 or [902-KAR] 100:022, as well as other facilities subject to the cabinet's jurisdiction under KRS 211.842 to 211.852. For a low-level waste disposal facility licensed under 902 KAR 100:022, the criteria for decommissioning shall apply to only an ancillary surface facility that supports radioactive waste disposal activities.

(2) This administrative regulation shall not apply to a site that [which] has:

(a) Been decommissioned prior to the effective date of this administrative regulation;

(b) Previously submitted and received cabinet approval on a license termination or decommissioning plan prior to the effective date of this administrative regulation; or

(c) Submitted a license termination or decommissioning plan with an application, as required by 902 KAR 100:040, Section Z[9].

(3) After a site has been decommissioned and the license terminated in accordance with this administrative regulation, the cabinet shall require additional cleanup if, based on new information, it determines that necessary criteria were not met and residual radioactivity at the site may result in significant threat to public health and safety.

(4) To calculate [When calculating] Total Effective Dose Equivalent (TEDE) to the average member of the critical group, the licensee shall determine the peak annual TEDE dose expected within the first 1,000 [4000] years after decommissioning.

Section 2. Radiological Criteria for Unrestricted Use. (1) A site shall be considered acceptable for unrestricted use if:

(a) The residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed twenty-five (25) millirem (0.25 mSv) per year, including radioactivity from groundwater sources of drinking water; and

(b) The residual radioactivity has been reduced to As Low as Reasonably Achievable (ALARA) levels.

(2) Determination of ALARA levels shall take into account every foreseeable potential detriment that may result from decontamination and waste disposal.

Section 3. Criteria for License Termination Under Restricted Conditions. The cabinet shall terminate a license under restricted conditions if one (1) or more of the following circumstances exist at the site:

(1) The licensee demonstrates that further reductions in residual radioactivity necessary to comply with Section 2 of this administrative regulation:

(a) May result in net public or environmental harm; or

(b) The residual levels associated with restricted conditions are ALARA. Determination of ALARA levels shall take into account every foreseeable potential detriment that may result from decontamination and waste disposal[.];

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed twenty-five (25) mrem (0.25 mSv) per year[.];

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for neces-

sary control and maintenance of the site. Acceptable financial assurance mechanisms shall include [are]:

(a) Funds placed into an account segregated from the licensee's assets and outside the licensee's administrative control, as described in Section 15(2)(a) of this administrative regulation;

(b) Surety method, insurance, or other guarantee method[.]; as described in Section 15(2)(b) of this administrative regulation;

(c) For a federal, state, or local government licensee, a statement of intent as described in Section 15(2)(d) of this administrative regulation; or

(d) For a governmental entity assuming custody and ownership of a site, an arrangement deemed acceptable by the governmental entity.

(4) The licensee has submitted a decommissioning or license termination plan to the cabinet indicating the licensee's intent to decommission in accordance with Section 14(1) of this administrative regulation[.]; and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the plan how the advice of potentially [-]affected individuals and institutions in the community has been sought, analyzed, and incorporated, as appropriate.

(a) A licensee proposing to decommission by restricting use of the site shall seek advice from potentially- affected parties, as follows:

1. If institutional controls proposed by the licensee:

a. Provides reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed twenty-five (25) mrem (0.25 mSv) TEDE per year;

b. Are enforceable; and

c. Will not impose undue burdens on the local community or other affected parties.

2. If the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for necessary control and maintenance of the site;

(b) In seeking advice on the issues identified in paragraph (a) of this subsection, the licensee shall provide for:

1. Participation by representatives of a broad cross section of potentially-affected community interests;

2. An opportunity for a comprehensive, collective discussion on the issues by the participants; and

3. A publicly available summary of the results of the discussions, including a description of the participants' viewpoints and the extent of agreement and disagreement among the participants; and

(5) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is ALARA[.]; and shall not exceed:

(a) 100 mrem (1 mSv) per year; or

(b) 500 mrem (5 mSv) per year, if the licensee:

1. Demonstrates that further reductions in residual radioactivity necessary to comply with the value in subsection (5)(a) of this section are not technically achievable, are prohibitively expensive, or may result in net public or environmental harm;

2. Makes provisions for durable institutional controls;

3. Provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, to:

a. Carry out periodic rechecks of the site at least every five (5) years to assure that the institutional controls remain in place as necessary to meet the criteria established in subsection (2) of this section; and

b. Assume and carry out responsibilities for necessary control and maintenance of the institutional controls. Acceptable financial assurance mechanisms shall be as established [are those] in subsection (3) of this section.

Section 4. Alternate Criteria for License Termination. (1) The cabinet may terminate a license using alternate criteria greater than the dose criterion established in Sections 2 and 3(2) or (4)(a)1a of this administrative regulation, if the licensee:

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(a) Submits an analysis of possible sources of exposure in support of assurance that:

1. Public health and safety continues to be protected; and

2. It is unlikely that the dose from manmade sources combined, other than medical, are more than the 100 mrem/year (1 mSv/y) limit of 902 KAR 100:019, Section 10(1)(a);

(b) Has employed restrictions on site use, to the extent practical, according to the provisions of Section 3 of this administrative regulation;

(c) Reduces doses to ALARA levels, taking into consideration potential detriments expected to result from decontamination and waste disposal; and

(d) Has submitted a decommissioning or license termination plan to the cabinet indicating the licensee's intent to decommission in accordance with Section 14(1) of this administrative regulation, and specifying that the licensee proposes to decommission by use of alternate criteria.

1. The licensee shall document in the plan how the advice of potentially-affected individuals and institutions in the community has been sought, analyzed, and addressed, as appropriate.

2. In seeking advice, the licensee shall provide for:

a[4]. Participation by representatives of a broad cross section of potentially-affected community interests;

b[2]. An opportunity for a comprehensive, collective discussion on the issues by the participants; and

c[3]. A publicly available summary of the results of discussions, including a description of the participant's viewpoints and the extent of agreement and disagreement among the participants.

(2) The use of alternate criteria to terminate a license requires the approval of the cabinet, after consideration of recommendations that address comments provided by state and federal agencies[,] and public comments submitted pursuant to Section 5 of this administrative regulation.

Section 5. Public Notification and Public Participation. Upon receipt of a license termination or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to Section 3 or 4 of this administrative regulation, or if the cabinets determines a notice to be in the public interest, the cabinet shall:

(1) Notify and solicit comments from:

(a) Local and state governments in the vicinity of the site; and

(b) Other state and federal agencies, if the licensee proposes to release a site pursuant to Section 4 of this administrative regulation.

(2) Publish a notice to solicit comments from potentially-affected parties. Publication shall be in a medium readily accessible to individuals in the vicinity of the site, and may be:

(a) Local newspaper;

(b) Letters to state and local organizations; or

(c) Other appropriate media.

Section 6. Minimization of Contamination. An applicant for a license or for an amendment in its entirety shall:

(1) Describe in the application how facility design and procedures for operation shall minimize contamination of the facility and the environment to the extent practicable;

(2) Facilitate eventual decommissioning; and

(3) Minimize the generation of radioactive waste, to the extent practicable.

Section 7. Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning. (1) An applicant or licensee shall [may] provide reasonable assurance of the availability of funds for decommissioning based upon:

(a) Obtaining a parent company to guarantee the availability of funds for decommissioning costs; and

(b) A demonstration that the parent company meets financial requirements.

(2) Financial test.

(a) To pass the financial test, the parent company shall meet one (1) of the following criteria:

1. The parent company shall have:

a. Two (2) of the following three (3) ratios:

(i) A ratio of total liabilities to net worth less than two (2);

(ii) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1); or

(iii) A ratio of current assets to current liabilities greater than one and five-tenths (1.5);

b. Net working capital and tangible net worth each at least six (6) times the current decommissioning cost estimates for the total of facilities or parts of the facilities, or prescribed amount if a certification is used;

c. Tangible net worth of at least \$10,000,000; and

d. Assets located in the United States amounting to at least ninety (90) percent of the total assets or at least six (6) times the current decommissioning cost estimates for the total of facilities or parts of the facilities, or prescribed amount if a certification is used; or

2. The parent company shall have:

a. A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or AAA, AA, A, or BAA as issued by Moody's;

b. Tangible net worth each at least six (6) times the current decommissioning cost estimates for the total of facilities or parts of the facilities, or prescribed amount if a certification is used;

c. Tangible net worth of at least \$10,000,000; and

d. Assets located in the United States amounting to at least ninety (90) percent of the total assets or at least six (6) times the current decommissioning cost estimates for the total of facilities or parts of the facilities, or prescribed amount if a certification is used; or

(b) The parent company's independent certified public accountant shall compare the data used by the parent company in the financial test, which shall be derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in the financial statement. The licensee shall inform the cabinet, within ninety (90) days, of matters coming to the auditor's attention that [which] cause the auditor to believe that:

1. The data specified in the financial test requires adjustment; and

2. The company no longer passes the test.

(c)1. After the initial financial test, the parent company shall repeat the passage of the test within ninety (90) days after the close of each succeeding fiscal year.

2. a. If the parent company no longer meets the requirements of subsection (2)(a) of this section, the licensee shall notify the cabinet of its intent to establish alternate financial assurance.

b. The notice shall be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the parent company no longer meets the financial test requirements.

c. The licensee shall provide alternate financial assurance within 120 days after the end of a fiscal year.

(3) Parent company guarantee. The terms of a parent company guarantee that [which] an applicant or licensee obtains shall provide that:

(a) The parent company guarantee shall remain in force unless the guarantor notifies the licensee and the cabinet, by certified mail, return receipt requested, of cancellation. Cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation as evidenced by the return receipts.

(b) If the licensee fails to provide sufficient alternate financial assurance within ninety (90) days after receipt by the licensee and cabinet of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor shall provide an alternative financial assurance in the name of the licensee.

(c) The parent company guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license.

(d) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the cabinet. An acceptable trustee shall include an appropriate state or federal government agency or an entity that [which] has the authority to act as a trustee[,] and whose trust operations are regulated and examined by a federal or state agency.

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Section 8. Criteria Relating to Use of Financial Tests and Self-guarantees for Providing Reasonable Assurance of Funds for Decommissioning. (1) An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based upon:

(a) Furnishing its own guarantee of funds available for decommissioning costs pursuant to subsection (3) of this section; and

(b) A demonstration that the company passes the financial test established in subsection (2) of this section.

(2) Financial test.

(a) To pass the financial test, a company shall meet the following criteria:

1. Tangible net worth at least ten (10) times the total current decommissioning cost estimate for the total of facilities or parts of the facilities[,] or the current amount required if certification is used.

2. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least ten (10) times the total current decommissioning cost estimate for the total of facilities or parts of the facilities[,] or the current amount required if certification is used.

3. A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet the following additional requirements:

1. The company shall have at least one (1) class of equity securities registered pursuant to 15 U.S.C. Chapter 2B.

2. The company's independent certified public accountant shall compare the data used by the company in the financial test, which shall be derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in the financial statement. The licensee shall inform the cabinet, within ninety (90) days, of matters coming to the attention of the auditor that cause the auditor to believe that:

a. The data specified in the financial test requires adjustment; and

b. The company no longer passes the test.

3. After the initial financial test, the company shall repeat passage of the test within ninety (90) days after the close of each succeeding fiscal year.

(c) If the licensee no longer meets the requirements of paragraph (a) of this subsection, the licensee shall notify the cabinet immediately of its intent to establish alternate financial assurance within 120 days of the notice.

(3) Company self-guarantee. The terms of a self-guarantee that [which] an applicant or licensee furnishes shall provide that:

(a) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the cabinet. Cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the cabinet, as evidenced by the return receipt.

(b) The licensee shall provide alternative financial assurance as specified in 902 KAR Chapter 100 [the cabinet's administrative regulations] within ninety (90) days following receipt by the cabinet of a notice of cancellation of the guarantee.

(c) The guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license or until another financial assurance method acceptable to the cabinet has been put into effect by the licensee.

(d) The licensee shall promptly forward to the cabinet and the licensee's independent auditor the reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of 15 U.S.C. 78m.

(e) If the licensee's most recent bond issuance ceases to be rated "A" or above by either Standard and Poor's or Moody's, the licensee shall notify to the cabinet, in writing, within twenty (20) days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated "A" or above by both Standard and Poor's and Moody's, the licensee shall no longer meet the requirements of subsection (2)(a) of this section.

(f) An applicant or licensee shall provide to the cabinet a written commitment by a corporate officer stating that the licensee shall fund and carry out the required decommissioning activities or,

upon issuance of an order by the cabinet, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

Section 9. Criteria Relating To Use of Financial Tests and Self-guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies that Have No Outstanding Rated Bonds. (1) An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based upon:

(a) Furnishing its own guarantee of the availability of funds for decommissioning costs pursuant to subsection (3) of this section; and

(b) A demonstration that the company passes the financial test established in subsection (2) of this section.

(2) Financial test.

(a) To pass the financial test a company shall meet the following criteria:

1. Tangible net worth greater than \$10,000,000, or at least ten (10) times the total current decommissioning cost estimate, or the current amount required if certification is used, whichever is greater, for decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

2. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least ten (10) times the total current decommissioning cost estimate, or the current amount required if certification is used for decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

3. A ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by net worth less than one and five-tenths (1.5).

(b) A company shall also meet the following financial requirements:

1. The company's independent certified public accountant shall compare the data used by the company in the financial test, which shall be derived from the independently audited year-end financial statement[,] based on United States generally accepted accounting practices, for the latest fiscal year[,] with the amounts in the financial statement. The licensee shall inform the cabinet[,] within ninety (90) days[,] of matters that cause the auditor to believe that:

a. The data specified in the financial test requires adjustment; and

b. The company no longer passes the test.

2. After the initial financial test, the company shall repeat passage of the test within ninety (90) days after the close of each succeeding fiscal year.

3.a. If the licensee no longer meets the requirements of paragraph (a) of this subsection, the licensee shall notify the cabinet of intent to establish alternative financial assurance.

b. The notice shall be sent by certified mail, return receipt requested, within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the licensee no longer meets the financial test requirements.

c. The licensee shall provide alternative financial assurance within 120 days after the end of the fiscal year.

(3) Company self-guarantee. The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(a) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the cabinet. Cancellation shall not occur until an alternative financial assurance mechanism is in place.

(b) The licensee shall provide alternative financial assurance, as specified in this administrative regulation, within ninety (90) days following receipt by the cabinet of a notice of cancellation of the guarantee.

(c) The guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license or until another financial assurance method acceptable to the cabinet has been put into effect by the licensee.

(d) An applicant or licensee shall provide to the cabinet a written commitment by a corporate officer stating that the licensee shall fund and carry out the required decommissioning activities or, upon issuance of an order by the cabinet, the licensee shall set up

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and fund a trust in the amount of the current cost estimates for decommissioning.

Section 10. Criteria Relating to Use of Financial Tests and Self-guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Nonprofit Colleges, Universities, and Hospitals. (1) An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based upon:

(a) Furnishing its own guarantee of the availability of funds for decommissioning costs; and

(b) A demonstration that the applicant or licensee passes the financial test established in subsection (2) of this section.

(2) Financial test.

(a) A college or university shall meet either of the following criteria:

1. For an applicant or licensee that issues bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

2. For an applicant or licensee that does not issue bonds, unrestricted endowment consisting of assets located in the United States of at least \$50,000,000, or at least thirty (30) times the total current decommissioning cost estimate, or the current amount required if certification is used, whichever is greater, for decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

(b) A hospital shall meet the following criteria:

1. For an applicant or licensee that issues bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's; or

2. For an applicant or licensee that does not issue bonds:

a. The result of total revenues minus total expenditures[,] divided by total revenues[,] shall be equal to or greater than 0.04;

b. Long term debt divided by net fixed assets shall be less than or equal to 0.67;

c. The sum of current assets plus depreciation funds, divided by current liabilities, shall be greater than or equal to 2.55; and

d. Operating revenues shall be at least 100 times the total current decommissioning cost estimate, or the current amount required if certification is used, for decommissioning activities for which the hospital is responsible as a self-guaranteeing licensee.

(c) A licensee shall meet the following requirements:

1. A licensee's independent certified public accountant shall compare the data used by the licensee in the financial test, which shall be derived from the independently audited year-end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in the financial statement. The licensee shall inform the cabinet, within ninety (90) days, of matters coming to the attention of the auditor that cause the auditor to believe that:

a. The data specified in the financial test requires adjustment; and

b. The licensee no longer passes the test.

2. After the initial financial test, a licensee shall repeat passage of the test within ninety (90) days after the close of each succeeding fiscal year.

3. If a licensee no longer meets the requirements of subsection (1) of this section, the licensee shall notify the cabinet of its intent to establish alternative financial assurance. The notice shall be sent by certified mail, return receipt requested, within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the licensee no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of the fiscal year.

(3) Self-guarantee. The terms of a self-guarantee that [which] an applicant or licensee furnishes shall provide that:

(a) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the cabinet. Cancellation shall not occur unless an alternative financial assurance mechanism is in place.

(b) The licensee shall provide alternative financial assurance, as specified in this administrative regulation, within ninety (90) days following receipt by the cabinet of a notice of cancellation of

the guarantee.

(c) The guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license or until another financial assurance method acceptable to the cabinet has been put into effect by the licensee.

(d) An applicant or licensee shall provide to the cabinet a written commitment by a corporate officer or officer of the institution stating that the licensee shall:

1. Fund and carry out the required decommissioning activities; or

2. Upon issuance of an order by the cabinet, set up and fund a trust in the amount of current cost estimates for decommissioning.

(e) If the licensee's most recent bond issuance ceases to be rated "A" or above by either Standard and Poor's or Moody's, the licensee shall notify the cabinet, in writing, within twenty (20) days after publication of the change by the rating service.

Section 11. Financial Assurance and Recordkeeping for Decommissioning for Radioactive Material. (1)(a) An applicant for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities in Section 16 of this administrative regulation shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation.

(b) A decommissioning funding plan shall also be submitted if a combination of isotopes is involved, and if R divided by 10^{12} is greater than one (1) (known as the "unity rule"), where R is defined as the sum of the ratios of the quantity of an isotope to the applicable value in Section 16 of this administrative regulation.

(c) A holder of, or applicant for, a specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities in Section 16, or if a combination of isotopes is involved if R, divided by 10^{12} is greater than one (1) (known as the "unity rule"), where R is defined as the sum or the ratios of the quantity of an isotope to the applicable value in Section 16, shall submit a decommissioning funding plan as described in Section 15(1).

(2) An applicant for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in subsection (4) of this section shall:

(a) Submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation; or

(b) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by subsection (4) of this section, using one (1) of the methods described in Section 15 of this administrative regulation. For an applicant, the certification may state that the appropriate assurance shall be obtained after the application has been approved and the license issued, but before the receipt of licensed material. If an applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Section 15 of this administrative regulation shall be submitted to the cabinet before receipt of licensed material. If an applicant does not defer execution of the financial instrument, the applicant shall submit to the cabinet, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of Section 15 of this administrative regulation.

(3)(a) A holder of a specific license of a type described in subsection (1) or (2) of this section, shall provide financial assurance for decommissioning in accordance with the criteria established in this section.

(b) A holder of a specific license of a type described in subsection (1) of this section shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000 [750,000] in accordance with the criteria set forth in this section. If a licensee submits a certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in an application for license renewal.

(c) A holder of a specific license of a type described in subsection

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tion (2) of this section shall submit a decommissioning funding plan as described in Section 15 of this administrative regulation, or a certification of financial assurance for decommissioning in accordance with the criteria established in this section.

(d) A Waste collector or waste processor, as defined in 902 KAR 100:010, shall provide financial assurance in an amount based on a decommissioning funding plan as described in Section 15. The decommissioning funding plan shall include the cost of disposal of the maximum amount (curies) of radioactive material permitted by the license, and the cost of disposal of the maximum quantity, by volume, of radioactive material that could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of 902 KAR 100:019. The decommissioning funding plan shall be submitted by June 30, 2010.

(4) The following is a list [table] of required amounts of financial assurance for decommissioning, listed by quantity of radioactive material:

(a) Greater than 10^4 [4] but less than or equal to 10^5 [5] times the applicable quantities established in Section 16 of this administrative regulation, in unsealed form. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10^4 [4] is greater than one (1) but R divided by 10^5 [5] is less than or equal to one (1), the amount shall be \$1,125,000 [750,000].

(b) Greater than 10^3 [3] but less than or equal to 10^4 [4] times the applicable quantities established in Section 16 of this administrative regulation, in unsealed form. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10^3 [3] is greater than one (1) but R divided by 10^4 [4] is less than or equal to one (1), the amount shall be \$225,000 [450,000].

(c) Greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities established in Section 16 of this administrative regulation, in sealed sources or plated foils. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10^{10} [40] is greater than one (1), the amount shall be \$113,000 [75,000].

(d)1. A licensee required to submit the \$1,125,000 amount shall do so by June 30, 2010.

2. A licensee required to submit the \$113,000 or \$225,000 amount shall do so by June 30, 2010.

3. A licensee having possession limits exceeding the upper bounds of this list shall base financial assurance on a decommissioning funding plan.

Section 12. Financial Assurance and Recordkeeping for Decommissioning for Source Material. Criteria for providing financial assurance for decommissioning, except for licenses authorizing the receipt, possession, and use of source material for uranium or thorium milling, or radioactive material at sites formerly associated with such milling, shall be as follows:

(1) An applicant for a specific license authorizing the possession and use of more than 100 millicuries (mCi) of source material in a readily dispersible form shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation.

(2) An applicant for a specific license authorizing possession and use of quantities of source material greater than 10 millicuries (mCi) but less than or equal to 100 millicuries (mCi) in a readily dispersible form shall submit:

(a) A decommissioning funding plan as described in Section 15(1) of this administrative regulation; or

(b) A certification that financial assurance for decommissioning has been provided in the amount of \$225,000 [450,000] using one (1) of the methods described in Section 15 of this administrative regulation.

1. The certification may state that the appropriate assurance shall be obtained after the application has been approved and the license issued, but before the receipt of licensed material.

2. If an applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Section 15 of this administrative regulation shall be submitted to the cabinet prior to receipt of licensed material.

3. If an applicant does not defer execution of the financial instrument, the applicant shall submit to the cabinet, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of Section 15 of this administrative regulation.

(c)1. A holder of a specific license [which is] covered by subsection (1) of this section or by this subsection, shall provide financial assurance for decommissioning in accordance with the criteria established in this section.

2. A holder of a specific license of a type described in subsection (1) of this section shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation, or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000 [750,000], in accordance with the criteria in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in an application for license renewal.

3. A holder of a specific license of a type described in this subsection shall submit a decommissioning funding plan, as described in Section 15(1) of this administrative regulation, or a certification of financial assurance for decommissioning in accordance with the criteria established in this section.

Section 13. Financial Assurance and Recordkeeping for Decommissioning for Special Nuclear Material. (1)(a) An applicant for a specific license of the type authorizing the possession and use of unsealed nuclear material in quantities exceeding 10^5 [5] times the applicable quantity established in Section 16 of this administrative regulation shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation.

(b) A decommissioning funding plan shall be submitted if [when] a combination of isotopes is involved, and if R divided by 10^5 [5] is greater than one (1) (known as the "unity rule"), where R is the sum of the ratios of the quantity of each isotope to the applicable value in Section 16 of this administrative regulation.

(2) An applicant for a specific license authorizing possession and use of unsealed special nuclear material in quantities specified in subsection (4) of this section, shall submit:

(a) A decommissioning funding plan as described in Section 15(1) of this administrative regulation; or

(b) A certification that financial assurance for decommissioning has been provided in an amount established in subsection (4) of this section, using one (1) of the methods described in Section 15 of this administrative regulation.

1. The certification may state that the appropriate assurance shall be obtained after the application has been approved and the license issued, but before the receipt of licensed material.

2. If an applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Section 15 of this administrative regulation shall be submitted to the cabinet before receipt of licensed material.

3. If an applicant does not defer execution of the financial instrument, the applicant shall submit to the cabinet, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of Section 15 of this administrative regulation.

(3)(a) A holder of a specific license that [which] is of a type described in subsection (1) of this section, shall provide financial assurance for decommissioning in accordance with the criteria established in this section.

(b) A holder of a specific license of a type described in subsection (1) of this section shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation, or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000 [750,000], in accordance with the criteria established in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in an application for license renewal.

(c) Each holder of a specific license of a type described in subsection (1) of this section shall submit:

1. A decommissioning funding plan, described in Section 15(1)

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of this administrative regulation; or

2. A certification of financial assurance for decommissioning, in accordance with the criteria established in this section.

(4) The following is a table of required amounts of financial assurance for decommissioning, listed by quantity of material:

(a) Greater than 10^4 but less than or equal to 10^5 times the applicable quantities established in Section 16 of this administrative regulation. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10^4 is greater than one (1) but R divided by 10^5 is less than or equal to one (1), the amount shall be

\$1,125,000 [750,000].

(b) Greater than 10^3 but less than or equal to 10^4 times the applicable quantities established in Section 16 of this administrative regulation. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10^3 is greater than one (1) but R divided by 10^4 is less than or equal to one (1), the amount shall be \$225,000 [150,000].

(c) A licensee having possession limits exceeding the upper bounds of this section shall base financial assurance on a decommissioning funding plan.

Section 14. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas.

(1) Within sixty (60) days of the occurrence one (1) of the following events, a licensee shall notify the cabinet[;] in writing[;] and shall either begin decommissioning its site, separate building, or outdoor area containing residual radioactivity, so that the building or outdoor area is suitable for release in accordance with cabinet requirements, or shall submit[;] within twelve (12) months of notification[;] a decommissioning plan, if required by subsection (4)(a) of this section, and shall begin decommissioning upon approval of that plan if:

(a) The license has expired pursuant to 902 KAR 100:040, Section 7;

(b) The licensee has decided to permanently cease principal activities, as established in this section, at the entire site, in a separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is unsuitable for release in accordance with cabinet requirements;

(c) Principal activities under the license have not been conducted for a period of twenty-four (24) months; or

(d) Principal activities have not been conducted[;] for a period of twenty-four (24) months[;] in a separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is unsuitable for release in accordance with cabinet requirements.

(2) Coincident with the notification required by subsection (1) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to Sections 11, 12, and 13 of this administrative regulation[;] in conjunction with a license issuance or renewal[;] or as required by this section. The amount of the financial assurance shall be increased or decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to subsection (4)(d)5 of this section.

(a) A licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so within one year (1) after the effective date of this administrative regulation.

(b) Following approval of the decommissioning plan, and with cabinet approval, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site.

(3)(a) The cabinet may grant a request to extend the time periods established in this section[;] if the cabinet determines that an extension is not detrimental to public health or safety[;] and is in the public interest.

(b) The request shall be submitted at least thirty (30) days before the notification required by subsection (1) of this section.

(c) The schedule for decommissioning established in subsection (1) of this section shall [may] not commence until the cabinet has made a determination on the request.

(4)(a) A decommissioning plan shall be submitted if required by

a license condition or if the procedures and activities necessary to carry out decommissioning of the site, a separate building, or outdoor area have not been approved by the cabinet previously, and the decommissioning procedures may increase potential risk to the health or safety of workers or to the public, as in the following cases:

1. Procedures involving techniques not applied routinely during cleanup or maintenance operations;

2. Workers entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

3. Procedures potentially resulting in significantly greater airborne concentrations of radioactive materials than are present during operation; or

4. Procedures potentially resulting in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The cabinet may approve an alternate schedule for submittal of a decommissioning plan required pursuant to subsection (1) of this section[;] if the cabinet determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to public health or safety, and is in the public interest.

(c) A procedure with a potential health or safety impact, including a procedure listed in paragraph (a) of this subsection, shall [may] not be carried out prior to approval of the decommissioning plan.

(d) A proposed decommissioning plan for a site, separate building, or outdoor area shall include:

1. A description of the conditions of the site, separate building, or outdoor area sufficient to evaluate the acceptability of the plan;

2. A description of planned decommissioning activities;

3. A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

4. A description of the planned final radiation survey;

5. An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and

6. For decommissioning plans calling for completion of decommissioning later than twenty-four (24) months after plan approval, a justification for the delay based on the criteria in subsection (6) of this section.

(e) The proposed decommissioning plan shall be approved by the cabinet if the information therein demonstrates completion as soon as practicable[;] and adequate protection for the health and safety of workers and the public.

(5)(a) A licensee shall complete decommissioning of the site, separate building, or outdoor area as soon as practicable, but within twenty-four (24) months following the initiation of decommissioning, except as provided in subsection (6) of this section.

(b) If decommissioning involves the entire site, the licensee shall request license termination as soon as practicable, but within twenty-four (24) months following the initiation of decommissioning, except as provided in subsection (6) of this section.

(6) The cabinet shall [may] approve a request for an alternative schedule for completion of decommissioning of the site, separate building, or outdoor area, and license termination if appropriate, if the cabinet determines that the alternative is warranted by consideration of the following:

(a) If it is technically feasible to complete decommissioning within the allotted twenty-four (24) month period;

(b) If sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted twenty-four (24) month period;

(c) If a significant volume reduction in wastes requiring disposal can be achieved by allowing short-lived radionuclides to decay;

(d) If a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(e) Other site-specific factors, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions

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that may result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(7) As the final step in decommissioning, the licensee shall:

(a) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed cabinet [“]Form RPS-10[“], incorporated by reference in 902 KAR 100:040, or equivalent information; and

(b) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning established in Sections 1 through 6 of this administrative regulation. The licensee shall, as appropriate:

1. Report levels:

a. Of gamma radiation in units of microrentgen (mR) (millisieverts, mSv) per hour at one (1) meter from surfaces;

b. Of radioactivity, including alpha and beta, in units of disintegrations per minute, microcuries (megabecquerels) per 100 square centimeters removable and fixed radiation for surfaces;

c. Microcuries (megabecquerels) per milliliter for water; and

d. Picocuries (Becquerels) per gram for solids such as soils or concrete; and

2. Specify the survey instruments used and certify that each instrument is properly calibrated and tested.

(8) Specific licenses, including expired licenses, shall be terminated by written notice to the licensee if the cabinet determines that:

(a) Radioactive material has been properly disposed of;

(b) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) A radiation survey has been performed that [which] demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning established in Sections 1 through 6 of this administrative regulation; [or]

(d) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning established in Sections 1 through 6 of this administrative regulation; or

(e) Records required by 902 KAR 100:040, Section 7(3)(e), and Section 15(3) [(7)] of this administrative regulation have been received.

Section 15. Financial Assurance Methods. (1) A decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from subsection (2) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates shall be adjusted at intervals not to exceed three (3) years. The decommissioning funding plan shall also contain:

(a) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(b) A signed original of the financial instrument obtained to satisfy the requirements of subsection (2) of this section.

(2) Financial assurance for decommissioning shall be provided by one (1) or more of the following methods:

(a) A prepayment deposited prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds may be sufficient to pay decommissioning costs. Prepayment shall [may] be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(b) A surety method, insurance, or other guarantee method.

1. These methods guarantee that decommissioning costs shall be paid.

2. A surety method shall [may] be in the form of a surety bond, letter of credit, or line of credit.

3. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Section 7 of this administrative regulation.

4. A parent company guarantee shall [may] not be used in

combination with another financial method to satisfy the requirements of this section.

5. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used. If used, the guarantee and test shall be [if the guarantee and test are] in accordance with Section 8 of this administrative regulation.

6. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are in accordance with Section 9 of this administrative regulation.

7. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are in accordance with Section 10 of this administrative regulation.

8. A guarantee by the applicant or licensee shall not be used in combination with another financial method used to satisfy the requirements of this section, or in a situation in which [where] the applicant or licensee has a parent company holding majority control of the voting stock of the company.

9. A surety method, or insurance used to provide financial assurance for decommissioning, shall contain the following conditions:

a. The surety method or insurance shall be open-ended or, if written for a specified term, shall be renewed automatically unless the issuer notifies the cabinet, the beneficiary, and the licensee[;] at least ninety (90) days prior to the renewal date[;] of its intention not to renew. The surety method or insurance shall provide that the full face amount be paid to the beneficiary automatically, prior to expiration, without proof of forfeiture, if the licensee fails to provide a replacement acceptable to the cabinet within thirty (30) days after receipt of notification of cancellation.

b. The surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the cabinet. An acceptable trustee shall include an appropriate state or federal government agency or an entity that has the authority to act as a trustee, and whose trust operations are regulated and examined by a federal or state agency.

c. The surety method or insurance shall remain in effect until the cabinet has terminated the license.

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund.

1. An external sinking fund shall be a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control, in which the total amount of funds may be sufficient to pay decommissioning costs at the time termination of operation is expected.

2. An external sinking fund shall [may] be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

3. The surety or insurance provisions shall be as stated in subsection (2)(b) of this section.

(d) For a federal, state, or local government licensee, a statement of intent containing a cost estimate for decommissioning[;] or an amount based on the tables in Sections 11, 12, and 13 of this administrative regulation[;] and indicating that funds for decommissioning shall be obtained as [when] necessary.

(e) If a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by the governmental entity.

(3)(a) Each person licensed under 902 KAR 100:040 shall keep records of information pertinent to the decommissioning of a facility in an identified location until the site is released for unrestricted use.

(b) Before licensed activities shall be [are] transferred or assigned in accordance with 902 KAR 100:040, Section 6, a licensee shall transfer the records described in this subsection to the new licensee.

(c) The new licensee shall be responsible for maintaining these records until the license is terminated.

(d) If records pertinent to the decommissioning of a facility are

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kept for other purposes, reference to the records and their locations shall ~~may~~ be used.

(e) Information the cabinet considers pertinent to decommissioning shall consist of:

1. [(a)] Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site.

a. The records may be limited to instances in which ~~when~~ contamination remains after a cleanup procedure or if ~~when~~ there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete.

b. The records shall include all known information on identification of involved nuclides, quantities, forms, and concentrations.

2. [(b)] As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used, or stored, and of locations of possible inaccessible contamination, such as buried pipes, which may be subject to contamination.

a. If required drawings are referenced, each relevant document need not be indexed individually.

b. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

3. [(c)] A list contained in a single document and updated every two (2) years, except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having half-lives of less than sixty-five (65) days, or depleted uranium used only for shielding or as penetrators in unused munitions:

a. [4.] Areas designated and formerly designated restricted areas as defined in 902 KAR 100:010, Section 1. For requirements prior to January 26, 1994, see 902 KAR 100:010, Section 1 contained in the 1990 edition of 902 KAR Chapter 100;

b. [2.] Areas outside of restricted areas that require documentation under subsection (3) of this section; [-]

c. [3.] Areas outside of restricted areas where current and previous wastes have been buried as documented under 902 KAR 100:021, Section 11; and

d. [4.] Areas outside of restricted areas that contain material so that, if the license expired, the licensee shall be required to either decontaminate the area to meet the criteria for decommissioning in this administrative regulation[,] or to apply for approval for disposal under 902 KAR 100:021, Section 2.

4. [(d)] Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

Section 16. Quantities1 of Licensed Material.

Materials	Microcuries
Americium-241	.01
Antimony-122	100
Antimony-124	10
Antimony-125	10
Arsenic-73	100
Arsenic-74	10
Arsenic-76	10
Arsenic-77	100
Barium-131	10
Barium-133	10
Barium-140	10
Bismuth-210	1
Bromine-82	10
Cadmium-109	10
Cadmium-115m	10
Cadmium-115	100
Calcium-45	10
Calcium-47	10
Carbon-14	100
Cerium-141	100
Cerium-143	100
Cerium-144	1

Cesium-131	1,000
Cesium-134m	100
Cesium-134	1
Cesium-135	10
Cesium-136	10
Cesium-137	10
Chlorine-36	10
Chlorine-38	10
Chromium-51	1,000
Cobalt-58m	10
Cobalt-58	10
Cobalt-60	1
Copper-64	100
Dysprosium-165	10
Dysprosium-166	100
Erbium-169	100
Erbium-171	100
Europium-152 9.2h	100
Europium-152 13 yr	1
Europium-154	1
Europium-155	10
Fluorine-18	1,000
Gadolinium-153	10
Gadolinium-159	100
Gallium-72	10
Germanium-71	100
Gold-198	100
Gold-199	100
Hafnium-181	10
Holmium-166	100
Hydrogen-3	1,000
Indium-113m	100
Indium-114m	10
Indium-115m	100
Indium-115	10
Iodine-125	1
Iodine-126	1
Iodine-129	0.1
Iodine-131	1
Iodine-132	10
Iodine-133	1
Iodine-134	10
Iodine-135	10
Iridium-192	10
Iridium-194	100
Iron-55	100
Iron-59	10
Krypton-85	100
Krypton-87	10
Lanthanum-140	10
Lutetium-177	100
Manganese-52	10
Manganese-54	10
Manganese-56	10
Mercury-197m	100
Mercury-197	100
Mercury-203	10
Molbdenum-99	100
Neodymium-147	100
Neodymium-149	100
Nickel-59	100
Nickel-63	10
Nickel-65	100
Niobium-93m	10
Niobium-95	10
Niobium-97	10
Osmium-185	10
Osmium-191m	100
Osmium-191	100
Osmium-193	100

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Palladium-103	100
Palladium-109	100
Phosphorus-32	10
Platinum-191	100
Platinum-193m	100
Platinum-193	100
Platinum-197m	100
Platinum-197	100
Plutonium-239	.01
Polonium-210	0.1
Potassium-42	10
Praseodymium-142	100
Praseodymium-143	100
Promethium-147	10
Promethium-149	10
Radium-226	.01
Rhenium-186	100
Rhenium-188	100
Rhodium-103m	100
Rhodium-105	100
Rubidium-86	10
Rubidium-87	10
Ruthenium-97	100
Ruthenium-103	10
Ruthenium-105	10
Ruthenium-106	1
Samarium-151	10
Samarium-153	100
Scandium-46	10
Scandium-47	100
Scandium-48	10
Seelenium-75	10
Silicon-31	100
Silver-105	10
Silver-110m	1
Silver-111	100
Sodium-24	10
Strontium-85	10
Strontium-89	1
Strontium-90	0.12
Strontium-91	10
Strontium-92	10
Sulphur-35	100
Tantalum-182	10
Technetium-96	10
Technetium-97m	100
Technetium-97	100
Technetium-99m	100
Technetium-99	10
Tellurium-125m	10
Tellurium-127m	10
Tellurium-127	100
Tellurium-129m	10
Tellurium-129	100
Tellurium-131m	10
Tellurium-132	10
Terbium-160	10
Thallium-200	100
Thallium-201	100
Thallium-202	100
Thallium-204	10
Thorium (natural)1	100
Thulium-170	10
Thulium-171	10
Tin-113	10
Tin-125	10
Tungsten-181	10
Tungsten-185	10
Tungsten-187	100
Uranium (natural)2	100

Uranium-233	.01
Uranium-234 -- Uranium-235	.01
Vandium-48	10
Xenon-131m	1,000
Xenon-133	100
Xenon-135	100
Ytterbium-175	100
Yttrium-90	10
Yttrium-91	10
Yttrium-92	100
Yttrium-93	100
Zinc-65	10
Zinc-69m	100
Zinc-69	1,000
Zirconium-93	10
Zirconium-95	10
Zirconium-97	10
An alpha emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	.01
A radionuclide other than an alpha emitting radionuclides, not listed above, or mixtures of beta emitters of unknown composition	.1

¹Based on alpha disintegration rate of Th-232, Th-230 and their daughter products.

²Based on alpha disintegration rate of U-238, U-234, and U-235.

Note: For purposes of 902 KAR 100:021, Section 3, where there is involved a combination of isotopes in known amounts, the limit for the combination shall be derived as follows: Determine, for each isotope in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific isotope if [when] not in combination. The sum of such ratios for all the isotopes in the combination shall [may] not exceed one ("1") (i.e., "unity").

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall, if requested, be held on August 22, 2011, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 2011, five (5) work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation is used to establish levels of radioactive material possession and use at which a licensee must set aside a specified sum of money to be used for site decommissioning. This is meant to indemnify the state in the event a licensee becomes unable or unwilling to fulfill its

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obligation to properly dispose of licensed radioactive material and waste. It is being amended to establish financial assurance requirements for waste collectors and processors, to define "periodically over the life of the facility" as "intervals not to exceed three (3) years with regard to adjusting cost estimates for decommissioning funding plans, and to increase monetary amounts by fifty percent (50%).

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:042 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation will adjust the financial obligation of licensees who meet the financial assurance criterion to keep pace with the increasing cost of site decommissioning requirements. It also establishes specific requirements for waste collectors and processors. This will help reduce the financial liability of the state in the event a licensee becomes unable or unwilling to fulfill its obligation to properly dispose of licensed radioactive material and waste.

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

(a) How the amendment will change this existing administrative regulation: It updates requirements in Sections 11 through 13, specifically to establish financial assurance requirements for waste collectors and processors, to define "periodically over the life of the facility" as "intervals not to exceed three (3) years with regard to adjusting cost estimates for decommissioning funding plans, and to increase monetary amounts by fifty percent (50%).

(b) The necessity of the amendment to this administrative regulation: This amendment is being promulgated so this regulation is in compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. This amendment updates requirements of license holders.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is being promulgated so this regulation is in compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended, a requirement of the statutes

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation only applies to licensees who meet the financial surety criterion. Currently, only 2 licensees, Kentucky's two major universities, have been identified as being affected. In the unlikely event either of them would decommission their radioactive materials, the general assembly would ultimately be responsible for guaranteeing the surety provisions of this regulation.

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

including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by the affected entities in (3) unless they go out of business and decommission their radioactive materials, in which case this regulation takes effect. They would be required to guarantee surety of the decommissioning.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional cost will be incurred as a result of amending this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative body will not require an increase in fees or 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 sets financial limits for surety. It does not establish fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All parts of state and local government are covered by this regulation. However, only the two major Kentucky universities and the cities in which they reside are impacted as they alone meet the criteria of this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:042 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no revenue impact on state or local agencies as a result of

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this regulation. However there is an expenditure impact for the two state universities in that they will be required to increase their level of financial surety.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 100:100. Industrial radiography.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 34, 71, 21 C.F.R. 1020.40

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 sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides radiation safety requirements for industrial radiographic operations and shall apply to licensees or registrants who use sources of radiation for industrial radiography.

Section 1. Specific License and Registration Requirements for Industrial Radiography. (1) An application for a specific license or registration for the use of sources of radiation in industrial radiography shall be approved if the applicant meets the following requirements:

(a) The applicant shall satisfy the general requirements specified in 902 KAR

100:040, Section 4, or [902-KAR] 100:110 and [902-KAR] 100:145, and any specific [special] requirements contained in this administrative regulation.

(b) The applicant shall submit an adequate program for training a radiographer and a radiographers' assistant that meets the requirements of Section 14 of this administrative regulation.

1. After June 30, 2002, an applicant shall not describe the initial training and examination program for a radiographer in the subjects outlined in Section 14 of this administrative regulation.

2. From June 30, 2000, to June 30, 2002, an applicant shall [may] affirm that an individual acting as an industrial radiographer shall be certified in radiation safety by a certifying entity[.] as described in 10 C.F.R. [C.F.R.] Part 34, Appendix A, before commencing duty as a radiographer. This affirmation shall substitute for a description of the initial training and examination program for a radiographer in the subjects outlined in Section 14 of this administrative regulation.

(c) The applicant shall submit procedures for verifying and documenting the certification status of a radiographer and for ensuring that the certification of an individual acting as a radiographer remains valid.

(d) The applicant shall submit written operating and emergency

procedures as described in Section 15 of this administrative regulation.

(e) The applicant shall submit a description of a program for inspections of the job performance of a radiographer and a radiographers' assistant at intervals not to exceed six (6) months as described in Section 14 of this administrative regulation.

(f) The applicant shall submit a description of the applicant's overall organization structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

(g) The applicant shall identify and list the qualifications of the individual designated as the radiation safety officer (RSO) and of the potential designees responsible for ensuring that the licensee's radiation safety program is implemented in accordance with approved procedures.

(h) If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant shall describe the procedures for performing and the qualifications of the person authorized to do the leak testing.

(i) If the applicant intends to analyze the applicant's [its] own wipe samples, the application shall include a description of the procedures to be followed, which [~~The description~~] shall include:

1. Instruments to be used;
2. Methods of performing the analysis; and
3. Pertinent experience of the person analyzing the wipe samples.

(j) [(i)] If the applicant intends to perform an "in-house" calibration of a survey instrument, the applicant shall describe the method [methods] to be used and the relevant experience of the person performing the calibration. A calibration shall be performed according to the procedures and at the intervals prescribed in Section 5 of this administrative regulation.

(k) [(j)] The applicant shall identify and describe the location of each field station and permanent radiographic installation.

(l) [(k)] The applicant shall identify the location where records required by this and other administrative regulations in 902 KAR Chapter 100 shall be maintained.

(2) A licensee shall maintain a copy of its license, documents incorporated by reference, and amendments to these items until superseded by new documents approved by the cabinet[.] or until the cabinet terminates the license.

Section 2. Performance Provisions for Radiography Equipment. Equipment used in industrial radiographic operations shall meet the following criteria:

(1)(a) A radiographic exposure device, source assembly, or sealed source[.] and associated equipment shall meet the provisions specified in American National Standard Institute (ANSI) N432-1980, ["Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography"], published as "NBS Handbook 136", issued January 1981; and [.]

(b) Engineering analysis shall be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. If upon review, the cabinet determines that the engineering analysis demonstrates that actual testing of the component is not necessary, the engineering analysis shall be an acceptable alternative.

(2)(a) A radiographic exposure device shall have attached to it by the user, a durable, legible, clearly visible label bearing the:

1. Chemical symbol and mass number of the radionuclide in the device;
2. Activity and date on which this activity was last measured;
3. Model[.] or product code[.] and serial number of the sealed source;
4. Manufacturer of the sealed source; and
5. Name, address, and telephone number of the licensee or registrant.

(b) A radiographic exposure device intended for use as a Type B transport container shall meet the applicable provisions of 10 C.F.R. [C.F.R.] 71.

(c) Modification of an exposure device, source changer, source assembly, or associated equipment shall be prohibited, unless the design of a replacement component, including source holder,

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source assembly, control, or guide tube, shall not compromise the design safety features of the system.

(3) In addition to the provisions specified in subsections (1) and (2) of this section, the following provisions shall apply to a radiographic exposure device, source assembly, and associated equipment that allow the source to be moved out of the device for radiographic operation or to a source changer:

(a) The coupling between the source assembly and the control cable shall be designed in a manner that the source assembly cannot:

1. Become disconnected if cranked outside the guide tube; and
2. Be unintentionally disconnected under normal and reasonable foreseeable abnormal conditions.

(b) The device shall automatically secure the source assembly if it is cranked back into the fully shielded position within the device. The securing system shall be released only by a deliberate operation on the exposure device.

(c) Each outlet fitting, lock box, and drive cable fitting on a radiographic exposure device shall be equipped with a safety plug or cover, which shall be installed during storage and transportation to protect the source assembly from water, mud, sand, or other foreign matter.

(d) A sealed source or source assembly shall have attached to it or engraved on it, a durable, legible, visible label with the words: "DANGER-RADIOACTIVE." The label shall not interfere with the safe operation of the exposure device or associated equipment.

(e) The guide tube shall have passed:

1. A crushing test that closely approximates the crushing forces likely to be encountered during use; and
2. A kinking resistance test that closely approximates the kinking forces likely to be encountered during use.

(f) Guide tubes shall be used if moving the source out of the device.

(g) An exposure head or similar device designed to prevent the source assembly from passing out the end of the guide tube shall be attached to the outermost end of the guide tube during a radiographic operation.

(h) The guide tube exposure head connection shall withstand the tensile test for control units specified in ANSI N432-1980.

(i) A source changer shall provide a system for assuring that the source cannot be accidentally withdrawn from the changer if connecting or disconnecting the drive cable to or from a source assembly.

(j) A radiographic exposure device and associated equipment in use after January 10, 1996, shall comply with the provisions of this section.

(k) Notwithstanding subsection (1)(a) of this section, equipment used in industrial radiography operations need not comply with paragraph 8.9.2(c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiographic equipment can realistically exert on the lever or crankshaft of the drive mechanism.

Section 3. Limits on External Levels of Radiation for Radiographic Exposure Devices and Storage Containers. The maximum exposure rate limits for storage containers and source changers shall be:

- (1) 200 millirems (2 millisieverts) per hour at any exterior surface; and
- (2) Ten (10) millirems (0.1 millisieverts) per hour at one (1) meter from any exterior surface, with the sealed source in the shielded position.

Section 4. Locking of Radiographic Exposure Devices, Storage Containers, and Source Containers. (1) A radiographic exposure device shall have a lock or outer locked container designed to prevent unauthorized or accidental production of radiation or removal or exposure of a sealed source from its shielded position.

(a) An exposure device or its container shall be kept locked, and if a keyed lock, with the key removed at all times except:

1. If under the direct surveillance of a radiographer or radiographer's assistant; or
2. As authorized by Section 19 of this administrative regulation.

(b) During radiographic operation the sealed source assembly shall be secured in the shielded position each time the source is returned to that position.

(c) A sealed source storage container and source changer shall be:

1. Provided with a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position; and

2. Kept locked, and if a keyed lock, with the key removed at all times, if containing sealed sources, except if under the direct surveillance of a radiographer or radiographer's assistant.

(2) The control panel of a radiation machine shall be:

(a) Equipped with a lock that prevents the unauthorized use of an x-ray system or the accidental production of radiation; and

(b) Kept locked and the key removed at all times, except if under the direct visual surveillance of a radiographer or radiographer's assistant.

Section 5. Radiation Survey Instruments. (1) A licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments at a location where a source of radiation is present in order to perform radiation surveys as required by this administrative regulation and 902 KAR 100:019, Section 12(1).

(2) A radiation survey instrument shall be calibrated:

- (a) At intervals not to exceed six (6) months;
- (b) After an instrument servicing, except for battery changes;
- (c) 1. At two (2) points located approximately one-third (1/3) and two-thirds (2/3) of full-scale for linear scale instruments;
2. Midrange of each decade, and at two (2) points of at least one (1) decade for logarithmic scale instruments;
3. At three (3) points between two (2) and 1,000 [1000] millirems (90.02 and ten (10) millisieverts) per hour for digital instruments; and

(d) So that an accuracy within plus or minus twenty (20) percent of the calibration source can be demonstrated at the points checked.

(3) A record of each calibration shall be maintained for three (3) years after the calibration date for inspection by the cabinet.

(4) Instrumentation required by this section shall have a range so that two (2) millirems (0.02 millisieverts) per hour through one (1) rem (0.01 sievert) per hour may be measured.

Section 6. Leak Testing and Replacement of Sealed Sources.

(1) The replacement of a sealed source fastened to or contained in a radiographic exposure device, and leak testing, repairing, opening, or modification of a sealed source shall be performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement [Agreement] state [State].

(2) A sealed source shall be tested for leakage:

- (a) At intervals not to exceed six (6) months;
- (b) Using a method approved by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state; and

(c) 1. By taking a wipe sample from the nearest accessible point to the sealed source where contamination might accumulate.

2. The wipe sample shall be analyzed for radioactive contamination.

3. The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample; and

4. The analysis shall be performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state to perform the analysis.

(3) A sealed source shall not be used by the licensee until tested for leakage, except if:

(a) The source is accompanied by a certificate from the transferor showing it to have been leak-tested within six (6) months preceding the transfer; or

(b) The source has been in storage and not in use for six (6) months or less.

(4) (a) A test conducted in accordance with subsections (1) and (2) of this section that [which] reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material shall be considered evidence that the sealed source is leaking.

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(b) The licensee shall immediately withdraw the equipment involved from use and shall have it decontaminated and repaired or disposed of in accordance with 902 KAR 100:021.

(c) The licensee shall file a report with the Manager, Radiation Health ~~[and Toxic Agents]~~ Branch, Department of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, within five (5) days of a test with results that exceed the threshold in this subsection.

(d) The report shall describe the equipment involved, the test results, and the corrective action taken.

(5) An exposure device using depleted uranium (DU) shielding and an "S" tube configuration shall be tested for DU contamination at intervals not to exceed twelve (12) months.

(a) The analysis shall be:

1. Capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample; and

2. Performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state to perform the analysis.

(b) If testing reveals the presence of 0.005 microcuries (185 Bq) or more of removable DU contamination, the exposure device shall be removed from use until an evaluation of the wear on the S-tube has been made.

(c) If the evaluation reveals that the S-tube is worn through, the device shall not be used again.

(d) A DU shielded device shall:

1. ~~[Shall]~~ Not require testing for DU contamination while in storage and not in use; and

2. ~~[Shall]~~ Require testing before use or transfer if the interval of storage exceeded twelve (12) months.

(6) (a) A licensee shall maintain records of leak test results for each sealed source or device containing DU.

(b) The results shall be stated in units of microcuries (becquerels).

(c) The licensee shall retain a record for three (3) years after it is made or until the source in storage is removed.

Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for each source of radiation and each device containing depleted uranium received or possessed in accordance with the license.

(2) Records of the inventories shall be maintained for three (3) years from the date of the inventory for inspection by the cabinet. The records of inventories shall include:

(a) Radionuclide;

(b) Number of curies (becquerels) or mass (for DU) in a device;

(c) Location of sealed sources and devices;

(d) Date of the inventory;

(e) Name of the individual making the inventory; and

(f) Manufacturer, model number, and serial number of each sealed source or device, as appropriate.

Section 8. Utilization Logs. A licensee or registrant shall maintain utilization logs, which shall be kept available for inspection by the cabinet for three (3) years from the date of the recorded event, at the address specified in the license or on the registration, showing for a source of radiation the following information:

(1) A description including make, model, and serial number of the exposure device, radiation machine, or transport or storage container in which a sealed source is located;

(2) Identity and signature of the radiographer to whom assigned;

(3) Site or plant where used and dates of use;

(4) Date a source of radiation is removed from storage and returned to storage; and

(5) For permanent radiographic installations, the dates a radiation machine is energized.

Section 9. Inspection and Maintenance of Radiographic Exposure Devices, Radiation Machines, Transport and Storage Containers, Associated Equipment, Source Changes, and Survey Instruments. (1) A licensee or registrant shall perform:

(a) Visual and operability checks on survey meters, radiographic exposure devices, radiation machines, transport and sto-

rage containers, associated equipment, and source changers before use on a day the equipment is to be used to ensure that the:

1. Equipment is in good working condition;

2. Source is adequately shielded; and

3. Required labeling is present; and

(b) An operability check of survey instruments using check sources or other appropriate means.

(2) If an equipment problem is found, the equipment shall be removed from service until repaired.

(3) A licensee or registrant shall have written procedures for:

(a) Inspection and routine maintenance of radiographic exposure devices, radiation machines, source changers, associated equipment, transport and storage containers, and survey instruments at intervals not to exceed three (3) months, or before the first use~~[,]~~ in order to ensure the proper functioning of components important to safety;

(b)~~[4.]~~ Inspection and maintenance necessary to maintain the Type B packaging used to transport radioactive materials; and ~~[.]~~

~~[c]2.]~~ Inspection and maintenance program to assure that a Type B package is shipped and maintained in accordance with the certificate of compliance, or other approval.

(4) A replacement component shall meet design specifications~~[.]~~

(5) If an equipment problem is found, the equipment shall be removed from service until repaired~~[.]~~

(6)(a) A record of equipment problems found in daily checks and quarterly inspections of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments and of any maintenance performed in accordance with subsections (1) through (3) of this section shall be kept for three (3) years for inspection by the cabinet.

(b) The record shall include:

1. The date of check or inspection;

2. Name of the inspector;

3. Equipment involved;

4. Problems found; and

5. What repair and maintenance was done.

Section 10. Permanent Radiographic Installations. (1) Permanent radiographic installations with an entrance used for personnel access to a high radiation area shall have:

(a) Entrance controls of the type described in 902 KAR 100:019, Section 14(1)(b) and~~[.]~~ (c)~~[.]~~ and Section 14(2) that reduce the radiation level upon entry into the area; or:

(b) Both visible and audible warning signals to warn of the presence of radiation.

1. The visible signal shall be activated by radiation if the source is exposed or the machine is energized.

2. The audible signal shall be activated if an attempt is made to enter the installation while the source is exposed or the machine is energized.

(2)(a) The alarm system shall be tested for proper operation with a radiation source at the beginning of each day~~[.]~~ before the installation is used for radiographic operations.

(b) The test shall include a check of the visible and audible signals.

(c) Each entrance control device that reduces the radiation level upon entry, as designated in subsection (1) of this section, shall be tested monthly.

(3)(a) If an entrance device or alarm system is operating improperly, it shall be immediately labeled as defective and repaired within seven (7) calendar days.

(b) The facility may continue to be used during the seven (7) day repair period~~[.]~~ if the licensee:

1. Implements the continuous surveillance requirements of Section 19 [20] of this administrative regulation; and

2. Uses an alarming ratemeter.

(4) Records of tests for entrance control and audible and visual alarms shall be maintained for inspection by the cabinet for three (3) years from the date of the test.

Section 11. Labeling, Storage, and Transportation. (1) A licensee shall not use a source changer or a container to store radioactive material unless the source changer or the storage container

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has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional colors (magenta, purple or black on a yellow background, having a minimum diameter of twenty-five (25) millimeters), and the following words:

- (a) 1. CAUTION*; or
2. DANGER; ~~and~~
- (b) RADIOACTIVE MATERIAL; and
- (c) NOTIFY:
1. CIVIL AUTHORITIES; or
2. [NAME OF COMPANY].

(2) The licensee shall not transport radioactive material unless the material is packaged, and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with 10 C.F.R. [C.F.R.] Part 71.

(3) A locked radiographic exposure device, radiation machine, or storage container shall be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store radioactive material in a manner that minimizes danger from explosion or fire.

(4) The licensee shall lock and physically secure the transport package containing radioactive material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the radioactive material from the vehicle.

Section 12. Conducting Industrial Radiographic Operations.

(1)(a) If radiography is performed at a location other than a permanent radiographic installation, the radiographer shall be accompanied by at least one (1) other qualified radiographer or an individual who has met the requirements of Section 14 of this administrative regulation. The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry.

(b) Radiography shall not be performed unless more than [if only] one (1) qualified individual is present.

(2) A radiographic operation conducted at a location of use authorized on the license shall be conducted in a permanent radiographic installation, unless specifically authorized by the cabinet.

(3) A licensee shall have one (1) year from the effective date of 6-27-1999 [this administrative regulation] to meet the requirement for having two (2) qualified individuals present at a location other than a permanent radiographic installation, as specified in subsection (1) of this section.

Section 13. Radiation Safety Officer for Industrial Radiography.

The radiation safety officer (RSO) shall ensure that radiation safety is being performed in the daily operation of the licensee's program[,] in accordance with approved procedures and regulatory requirements.

(1) The minimum qualifications, training, and experience for RSOs for industrial radiography is as follows:

(a) Completion of the training and testing requirements of Section 14 of this administrative regulation;

(b) Two thousand [2,000] hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

(c) Formal training in the establishment and maintenance of a radiation protection program.

(2) The cabinet shall [may] consider alternatives if the RSO has:

(a) Appropriate training or experience in the field of ionizing radiation; and

(b) Adequate formal training in establishing and maintaining a radiation safety protection program.

(3) The specific duties and authorities of the RSO shall include:

(a) Establishing and overseeing operating, emergency and ALARA procedures as required by 902 KAR 100:019, and reviewing them regularly to ensure that the procedures in use conform to current 902 KAR 100:019 procedures, and conform to other requirements in 902 KAR Chapter 100 and to the license conditions.

(b) Overseeing and approving all phases of the training program for radiographic personnel, ensuring that appropriate and effective radiation protection is taught;

(c) Ensuring that:

1. Required radiation surveys and leak tests are performed and

documented in accordance with 902 KAR Chapter 100 [the regulations], including corrective measures if levels of radiation exceed established limits;

2. Personnel monitoring devices are calibrated and used properly by occupationally-exposed personnel;

3. Records are kept of the monitoring results;

4. Timely notifications are made as required by 902 KAR 100:019, Section 40; and

5. Operations are conducted safely; and

(d) Assuming control for instituting corrective actions including stopping of operations, if necessary.

(4) A licensee or registrant shall have two (2) years from the effective date of 6-27-1999 [this administrative regulation] to meet the requirements of subsections (1) and (2) of this section.

Section 14. Training. (1) A licensee or registrant:

~~a. [(4)]~~ Shall not permit an individual to act as a radiographer as defined in 902 KAR 100:010 until the individual has received:

1. ~~[(a)]~~ Formal training in the subjects identified in subsection ~~(4) [(8)]~~ of this section;

2. ~~[(b)]~~ At least two (2) months of on-the-job training; and

3. ~~[(c)]~~ Is certified through a radiographer certification program [, by a certifying entity[,]] in accordance with the criteria specified in Section 1 of this administrative regulation; or

~~b. [(2)]~~ May, until two (2) years from the effective date of 6-27-1999 [this administrative regulation], allow an individual who has not met the requirements of this section, to act as a radiographer if the individual has:

1. ~~[(a)]~~ Received training in the subjects identified in subsection ~~(4) [(8)]~~ of this section; and

2. ~~[(b)]~~ Demonstrated an understanding of the subjects by successful completion of a written examination previously submitted to and approved by the cabinet;

~~c. [(3)]~~ Shall not permit an individual to act as a radiographer until the individual has:

1. ~~[(a)]~~ Received copies of and instructions in the following:

a. ~~[(1)]~~ Provisions contained in this administrative regulation;

b. ~~[(2)]~~ ~~Other applicable~~ Provisions of 902 KAR 100:019, [902 KAR] 100:040, [902 KAR] 100:070, and [902 KAR] 100:165;

c. ~~[(3)]~~ Conditions of the license or registration certificate issued by the cabinet; and

d. ~~[(4)]~~ The licensee's or registrant's approved operating and emergency procedures;

2. ~~[(b)]~~ Demonstrated understanding of the licensee's license and operating and emergency procedures by successful completion of a written or oral examination covering this material;

3. ~~[(c)]~~ Received training in the:

a. ~~[(1)]~~ Use of the licensee's sources of radiation, the registrant's radiation machine, and other radiation exposure devices;

b. ~~[(2)]~~ Daily inspection of devices and associated equipment; and

c. ~~[(3)]~~ Use of radiation survey instruments; and

d. ~~[(d)]~~ Demonstrated an understanding of the use of radiographic exposure devices, sources, survey instruments, and associated equipment described in paragraphs (a) and (c) of this subsection, by successful completion of a practical examination covering the material;

~~d. [(4)]~~ Shall not permit an individual to act as a radiographer's assistant as defined in 902 KAR 100:010 until the individual has:

1. ~~[(a)]~~ Received copies of[,] and instructions in the following:

a. ~~[(1)]~~ Provisions contained in this administrative regulation;

b. ~~[(2)]~~ ~~Applicable~~ Requirements of 902 KAR 100:019, [902 KAR] 100:040, [902 KAR] 100:070, and [902 KAR] 100:165;

c. ~~[(3)]~~ Conditions of the license or registration certificate issued by the cabinet; and

d. ~~[(4)]~~ The licensee's or registrant's operating and emergency procedures;

2. ~~[(b)]~~ Demonstrated competence to use, under the personal supervision of the radiographer, the sources of radiation, radiographic exposure devices, radiation machines, associated equipment, and radiation survey instruments that the assistant uses; and

3. ~~[(c)]~~ Demonstrated:

a. ~~[(1)]~~ Understanding of the instructions provided in paragraph (a) of this subsection by successfully completing a written test on

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the subjects covered; and

b. [2-] Competence in the use of hardware described in paragraph (b) of this subsection by successfully completing a practical examination on the use of the hardware; and

(e)[(5)] Shall provide annual refresher safety training for a radiographer and radiographer's assistant at intervals not to exceed twelve (12) months.

(2)[(6)](a) Except in those operations in which [where] a single individual shall serve as both radiographer and RSO and shall perform all radiography operations, the RSO or designee shall conduct an inspection program of the job performance of a radiographer and radiographer's assistant to ensure that 902-KAR Chapter 100 [the cabinet's regulations], license requirements, and the applicant's operating and emergency procedures are followed.[;]

(b) The inspection program shall include observation of the performance of the radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals not to exceed six (6) months;

(c) If a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than six (6) months since the last inspection, the radiographer shall demonstrate knowledge of the training requirements of subsection (3)[(e)] of this section and the radiographer's assistant shall demonstrate knowledge of the training requirements of subsection (1)(d)2 [(4)(b)] of this section by a practical examination before either person may next participate in a radiographic operation; and

(d) The cabinet shall consider alternatives in those situations in which [where] the individual serves as both radiographer and RSO.

(3)[(7)] Records of training specified in subsection (1)(c)[(3)] of this section shall be maintained by a licensee or registrant for inspection by the cabinet for three (3) years after the record is made.

(a) Records shall include:

1. Radiographer certification documents;
2. Verification of certification status;
3. Copies or written tests;
4. Dates of oral tests and practical examinations;
5. Names of individuals conducting and receiving the oral and practical examinations; and

6. Documentation of annual refresher safety training and semi-annual inspections of job performance for a radiographer and a radiographer's assistant, which shall include[;]

a. Topics discussed during the refresher safety training;

b. Dates the annual refresher safety training was conducted; and

c. Names of the instructors and attendees.

(b) For inspections of job performance, the records shall also include a list showing the items checked and all noncompliances observed by the RSO.

(4)[(8)] The licensee or registrant shall include the following subjects required in subsection (1)(b)[(2)] of this section:

(a) Fundamentals of radiation safety including[;]

1. Characteristics of gamma radiation;
2. Units of radiation dose and quantity of radioactivity;
3. Hazards of exposure to radiation;
4. Levels of radiation from radioactive material; and
5. Methods of controlling radiation dose by time, distance, and shielding;

(b) Radiation detection instruments including:

1. Use, operation, calibration, and limitations of radiation survey instruments;

2. Survey techniques; and

3. Use of personnel monitoring equipment;

(c) Equipment to be used including:

1. Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtailed);

2. Storage, control, and disposal of radioactive material;

3. Inspection and maintenance of equipment; and

4. Operation and control of radiation machines;

(d) The requirements of 902 KAR Chapter 100, as applicable [pertinent cabinet administrative regulations]; and

(e) Case histories of accidents in radiography.

(5)[(9)] A licensee or registrant [Licensees and registrants]

shall have one (1) year from 6-27-1998 [the effective date of this administrative regulation] to comply with the additional training requirements specified in subsections (1)(c) and (d)[(3)(a) and (4)(a)] of this section.

(6)[(10)] Licensees and registrants shall have one (1) year from 6-27-1999 [the effective date of this regulation], to comply with the certification requirements specified in subsection (1) of this section. Records of radiographer certification maintained in accordance with subsection (3)[(7)] of this section shall provide appropriate affirmation of certification requirements specified in subsection (1) of this section.

Section 15. Operating and Emergency Procedures. (1) A licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(a) The handling and use of sources of radiation to be employed so an individual is not likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:019, Section 3;

(b) Methods and occasions for conducting radiation surveys;

(c) Methods for controlling access to radiographic areas;

(d) Methods and occasions for locking and securing a source of radiation, radiographic exposure device, or transport and storage container;

(e) Personnel monitoring and the use of personnel monitoring equipment, including steps that shall be taken immediately by radiography personnel if a pocket dosimeter is found to be off-scale or an alarm ratemeter alarms unexpectedly;

(f) Transportation of sources of radiation to field locations, including:

1. Packing of a radiographic exposure device and storage container in a vehicle;

2. Placarding of a vehicle if needed; and

3. Control of sources of radiation during transportation;

(g) Minimizing exposure of individuals if an accident occurs;

(h) The procedure for notifying proper personnel if an accident occurs;

(i) Maintenance of records; and

(j) The inspection, maintenance, and operability checks of radiographic exposure devices, radiation machines, storage containers, survey instruments, and transport containers.

(2) The licensee or registrant shall maintain copies of current operating and emergency procedures until the cabinet terminates the license.

(3) Superseded material shall be retained for three (3) years after the change is made.

Section 16. Personnel Monitoring. (1) A licensee or registrant shall not permit an

individual to act as a radiographer or radiographer's assistant unless, at all times during radiographic operations, the individual wears[;] on the trunk of the body[;] a direct reading pocket dosimeter[;] an operating alarm ratemeter[;] and a personal dosimeter that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor [film badge or a thermoluminescent dosimeter (TLD)].

(2)[(a)] The wearing of an alarm ratemeter shall not be required for permanent radiography facilities in which another appropriate alarming or warning device is in routine use[;] or during radiographic operations using radiation machines.

(3)[(b)] Pocket dosimeters shall have a range from zero to at least 200 milliroentgens (two (2) millisieverts) and shall be recharged daily or at the start of a shift. Electronic personal dosimeters may be used in place of ion-chamber pocket dosimeters only.

(4)[(c)] A personal [film badge or thermoluminescent] dosimeter shall be assigned to, and worn by, only one (1) individual.

(5)[(d)] A film badge shall be replaced each month, and other personal dosimeters processed and evaluated by an accredited NVLAP processor shall be replaced at intervals no to exceed [a TLD shall be replaced each] three (3) months.

(6)[(e)] After replacement, each personal dosimeter [a film badge or TLD] shall be processed as soon as possible.

(7)[(2)] Direct reading dosimeters, such as pocket dosimeters

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or electronic personal dosimeters, shall be read and exposures recorded at the beginning and end of a shift.

(a) If an individual's pocket dosimeter is found to be off scale, or if the electronic personal dosimeter [~~dosimeter~~] reads greater than 200 millirems (two (2) millisieverts), and the possibility of radiation exposure cannot be ruled out as the cause:

1. The individual's personal [~~film badge or thermoluminescent~~] dosimeter shall be sent for processing within twenty-four (24) hours;

2. Radiographic operations by the individual shall cease; and

3. The individual shall not return to work with sources of radiation until a determination of the radiation exposure has been made by the RSO or the RSO's designee. The results shall be included in the records maintained in accordance with paragraph (b) of this subsection and subsection (9)(4)(b) of this section.

(b) A licensee or registrant shall maintain the following exposure records:

1. Direct reading dosimeter readings and yearly operability checks for three (3) years after the record is made;

2. Reports received from the NVLAP processor of personal dosimeter results [~~film badge or TLD processor~~] until the cabinet terminates the license; and

3. Records of estimates of exposures as a result of off-scale personal direct reading dosimeters, or lost or damaged personal dosimeters [~~film badges or TLDs~~], until the cabinet terminates the license.

(8)(3) If a personal [~~film badge or thermoluminescent~~] dosimeter is lost or damaged, the worker shall cease work immediately until:

(a) A replacement personal [~~film badge or thermoluminescent~~] dosimeter meeting the requirements of subsection (1) of this section is provided; and

(b) The exposure is calculated for the time period from issuance to loss or damage of the personal [~~film badge or thermoluminescent~~] dosimeter. The results of the calculated exposure and the time period for which the personal dosimeter [~~film badge or TLD~~] was lost or damaged shall be included in the records maintained in accordance with subsection (7)(2) of this section.

(9)(4)(a) Pocket dosimeters, or electronic personal dosimeters, shall be checked for correct response to radiation at periods not to exceed twelve (12) months.

(b) Acceptable dosimeters shall read within plus or minus twenty (20) percent of the true radiation exposure.

(10)(5)(a) An alarm ratemeter shall:

1. Be checked to ensure that the audible alarm functions properly prior to use at the start of a shift;

2. Be set to give an alarm signal at a preset dose rate of 500 mR/hr (5mSv/hr);

3. Require special means to change the preset alarm functions;

4. Be calibrated at periods not to exceed twelve (12) months for correct response to radiation; and

5. Alarm within plus or minus twenty (20) percent of the true radiation dose rate.

(b) Records of alarm ratemeter calibrations shall be maintained for three (3) years after the record is made.

Section 17. Documents Required at Field Stations and Temporary Job Sites. A licensee or registrant shall have the following records available for inspection by the cabinet at each field station, if applicable, and at each job site:

(1) A copy of the operating and emergency procedures;

(2) A current copy of the radioactive material license or registration certificate;

(3) A copy of 902 KAR 100:019, [902-KAR] 100:100, and [902 KAR] 100:165;

(4) Latest survey records required by Section 22[20] of this administrative regulation;

(5) Records of direct reading dosimeters, such as pocket dosimeters or electronic personal dosimeters readings, as required by Section 16 of this administrative regulation;

(6) Evidence of The latest instrument calibration of the radiation survey instrumentation in use at the site, as required by Sec-

tion 5 of this administrative regulation;

(7) Utilization records for each radiographic exposure device dispatched from that location, as required by Section 8 of this administrative regulation;

(8) Records of equipment problems identified in daily checks of equipment required by Section 9 of this administrative regulation;

(9) Records of alarm system and entrance control checks required by Section 10 of this administrative regulation, if applicable;

(10) Evidence of the latest calibrations of alarm ratemeters and operability checks of pocket dosimeters and electronic personal dosimeters, as required by Section 16 of this administrative regulation;

(11) The shipping papers for the transportation of radioactive materials required by 902 KAR 100:070; and

(12) If operating in accordance with reciprocity pursuant to 902 KAR 100:065, a copy of the agreement [~~Agreement~~] state [~~State~~] or U.S. Nuclear Regulatory Commission license authorizing the use of radioactive materials.

Section 18. Specific Provisions for Radiographic Personnel Performing Industrial Radiography. (1) At a job site, the following shall be supplied by a licensee or registrant:

(a) At least one (1) operable, calibrated survey instrument for every exposure device or radiation machine in use;

(b) A current whole body personnel monitor (TLD or film badge) for an individual performing radiographic operations;

(c) An operable, calibrated pocket dosimeter with a range of zero to 200 milliroentgens for a worker performing radiographic operations;

(d) Appropriate barrier ropes and signs; and

(e) An operable, calibrated, alarming ratemeter for every person performing radiographic operations using a radiographic exposure device.

(2) A radiographer at a job site shall have on the radiographer's [~~their~~] person a valid certificate ID card issued by a certifying entity.

(3) An industrial radiographic operation shall not be performed if the items in subsections (1) and (2) of this section are not available at the job site or they are inoperable.

(4) During an inspection by the cabinet, the cabinet shall [~~may~~] terminate an operation if items in subsections (1) and (2) of this section are not available or not operable, or if the required number of radiographic personnel are not present. Operations shall not be resumed until required conditions are met.

Section 19. Surveillance. During a radiographic operation, a radiographer or the other individual present, as required by Section 12 of this administrative regulation, shall maintain direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, except at a permanent radiographic installation where:

(1) Entryways are locked; and

(2) The requirements of Section 10 of this administrative regulation are met.

Section 20. Posting. (1) An area in which radiography is being performed shall be conspicuously posted, as required in 902 KAR 100:019, Section 24(1) and (2).

(2) Exceptions listed in 902 KAR 100:019 do not apply to an industrial radiographic operation.

Section 21. Special Provisions and Exemptions for Cabinet X-ray Systems. (1) The use of a certified or certifiable cabinet x-ray system shall be exempt from the requirements of this administrative regulation, except for the following:

(a) For certified and certifiable cabinet x-ray systems, including those designed to allow admittance of individuals:

1. A registrant shall not permit an individual to operate a cabinet x-ray system until the individual has received a copy of and instruction in the operating procedures for the unit.

2. A test for proper operation of interlocks shall be conducted and recorded at intervals not to exceed six (6) months.

3. A registrant shall perform an evaluation of the radiation dose limits to determine compliance with 902 KAR 100:019, Section 10,

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and 21 C.F.R. [C.F.R.] 1020.40, Cabinet X-ray Systems, 39 Federal Register 12986, April 10, 1974, at intervals not to exceed one (1) year.

4. Records shall be maintained demonstrating compliance with subsections (1)(a)1 and 2 of this section until disposal is authorized by the cabinet.

5. Records of the evaluation required by subparagraph 3 of this paragraph shall be maintained for two (2) years after the evaluation is performed.

(b)1. Certified cabinet x-ray systems shall be maintained in compliance with 21 C.F.R. [C.F.R.] 1020.40, Cabinet X-ray Systems, 39 Federal Register 12986, April 10, 1974.

2. A modification shall not be made to the system unless prior cabinet approval has been granted.

(2) An industrial use of a hand-held light intensified imaging device shall be exempt from the requirements of this administrative regulation if the dose rate eighteen (18) inches from the source of radiation to any individual does not exceed two (2) millirem per hour. A device exceeding this limit shall meet the applicable requirements of this administrative regulation and the licensing or registration requirements of 902 KAR 100:040 and [902 KAR] 100:110, as applicable.

Section 22. Radiation Surveys and Survey Records. (1) A radiographic operation shall not be conducted unless calibrated and operable radiation survey instrumentation, as described in Section 5 of this administrative regulation, is available and used at a location of radiographic operations.

(2) A survey with a radiation survey instrument shall be made after a radiographic exposure[.] of the radiographic exposure device and the guide tube[.] if approaching the device or guide tube to determine that the sealed source has been returned to its shielded position before exchanging films, repositioning the exposure head, or dismantling equipment.

(3) A survey shall be conducted of the radiographic exposure device with a calibrated radiation survey instrument if the source is exchanged and if a radiographic exposure device is placed in a storage area, to ensure that the source is in its shielded position.

(4) A physical radiation survey shall be made after a radiographic exposure using radiographic machines to determine that the machine is "off." [.]

(5) Records shall be kept of the exposure device survey conducted before the device is placed in storage as specified in subsection (3) of this section[.] if that survey is the last one performed in the workday. The records shall be maintained for inspection by the cabinet for three (3) years after it is made.

Section 23. Supervision of Radiographer's Assistant. (1) If a radiographer's assistant uses radiographic exposure devices, associated equipment, sealed sources, or conducts radiation surveys required by Section 22 of this administrative regulation to determine that the sealed source has returned to the shielded position after an exposure or the radiation machine is off, the radiographer's assistant shall be under the personal supervision of a radiographer.

(2) The radiographer shall:

(a)[(1)] Be physically present at the site where a source of radiation and associated equipment is being used;

(b)[(2)] Watch, by direct visual observation, the performance of the operations performed by the radiographer's assistant[.] referred to in this section; and

(c)[(3)] Be in close proximity so that immediate assistance shall be given if required.

Section 24. Reporting Requirements. (1) In addition to the reporting requirements specified in 902 KAR 100:040, Section 15[8], and in accordance with other sections of this administrative regulation, a licensee or registrant shall provide a written report to the

Cabinet for Health and Family Services, Radiation Health [and Toxic Agents] Branch within thirty (30) days of the occurrence of the following incidents involving radiographic equipment:

(a) Unintentional disconnection of the source assembly from

the control cable;

(b) Inability to retract the source assembly to its fully shielded position and secure it in this position;

(c) Failure of a component, critical to safe operation of the device, to properly perform its intended function; [or]

(d) Failure of an indicator on a radiation machine to show that radiation is being produced;

(e) Failure of an exposure switch to terminate production of radiation if turned to the off position; or

(f) Failure of a safety interlock to terminate x-ray production.

(2) The licensee or registrant shall include the following information in a report submitted in accordance with subsection (1) of this section:

(a) A description of the equipment problem;

(b) Cause of an incident, if known;

(c) Manufacturer and model number of equipment involved in the incident;

(d) Place, time, and date of the incident;

(e) Actions taken to establish normal operations;

(f) Corrective actions taken or planned to prevent recurrence; and

(g) Qualifications of personnel involved in the incident.

(3) A report of an overexposure submitted under 902 KAR 100:019, Section 40, involving failure of a safety component of radiography equipment shall include the information specified in subsection (2) of this section.

(4) A licensee shall notify the cabinet if conducting radiographic operations or storing radioactive material at a location not listed on the license for a period in excess of 180 days in a calendar year.

Section 25. Incorporation by Reference. (1) The American National Standard Institute (ANSI) N432-1980, "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography", published in NBS Handbook 136, issued January 1981, is incorporated by reference.

(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. until 4:30 p.m.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2011, at 9:00 a.m. in the Conference Suite A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 2011, five (5) work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: It requires the personal dosimeters used by industrial radiographers and their assistants be processed and evaluated by an accredited National

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Voluntary Laboratory Accreditation Program (NVLAP) processor. This makes radiography dosimetry requirements consistent with the general dosimetry requirements found in 902 KAR 100:019 Section 12(3). It also updates the proper names of the Branch (Radiation Health Branch) and the Cabinet (Cabinet for Health and Family Services).

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:100 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will clarify dosimetry requirements for industrial radiographers and their assistants.

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

(a) How the amendment will change this existing administrative regulation: It adds language to section 16 regarding dosimetry processing. It also updates the proper names of the Branch (Radiation Health Branch) and the Cabinet (Cabinet for Health and Family Services).

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. This amendment updates the requirement for measuring radioactivity to conform to federal regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make the federal and state regulations consistent with one another thus making it easier to enforce compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 11 industrial radiographers licensed by the Kentucky Radiation Health Branch who actively conduct business 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: No additional action by the regulated is necessary. They are all already in compliance with the requirements of 902 KAR 100:019.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost of compliance is involved. They are already in compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have

increased assurance of regulatory compliance with both federal and state regulations.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds are used to support this program. No fund increase is required by this regulation 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 fees or funding will not be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All parts of the state and local governments where these licenses operate are impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:100 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not increase program cost the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not increase program cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Developmental Health, Developmental and Intellectual Disabilities Division of Behavioral Health (Amendment)

908 KAR 1:310. Certification standards and administrative procedures for driving under the influence programs.

RELATES TO: KRS 189A.010, 189A.040, 189A.045, 189A.070, 222.003, 222.005, 222.221, 222.231, 222.271, 222.990
STATUTORY AUTHORITY: KRS 189A.040(6), 194A.030 (5), 194A.050 (1), EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Behavioral Health, Developmental and Intellectual Disabilities [Mental Health and Mental Retardation] within the cabinet. KRS 189A.040(6) requires the Cabinet to promulgate administrative regulations to prescribe standards for the licensing and operation of the alcohol and other drug education and treatment facilities and programs that provide assessment, education, and treatment services to offenders convicted of driving under the influence pursuant to KRS 189A.010. This administrative regulation establishes certification requirements and minimum standards for an individual or other entity operating a DUI program.

Section 1. Definitions. (1) "Accredited college or university" means an institution listed in the most recent College Handbook published by College Board Publications, P.O. Box 886, New York, New York 10023-0886.

(2) "Affidavit of indigency" is defined in KRS 31.120(6).

(3) "Alcohol and other drug-free work place" means a program's policy to prohibit the unlawful manufacture, distribution, possession or use of a controlled substance and to establish the disciplinary action to be taken if the policy is violated.

(4) "Assessment" means a procedure administered to an individual convicted of DUI that includes the administration of the PC-based or the online Kentucky DUI [a computerized] Assessment instrument, a clinical interview, a determination by the assessor of a client's needs, a discussion of available options and referral to services that provide an appropriate level of care in relation to the client's needs.

(5) "Cabinet" is defined in KRS 222.005(3) and means the Office of Inspector General, Division of Licensing and Regulation, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

(6) "Case coordination" means the monitoring of a client's progress, including consultation with other service providers and the court to ensure the coordination of a client's services from assessment to completion, and which was formerly referred to as case management.

(7) "Certification" means the process by which the division recognizes and authorizes a program, assessor, or instructor to provide services to a client convicted of DUI.

(8) "Certified alcohol and drug counselor" is defined in KRS 309.080(2).

(9) "Certified assessor" means an individual who has been trained and approved by the division to evaluate the needs of a client and to recommend appropriate services by conducting assessments in a DUI program.

(10) "Certified instructor" means an individual who has been trained and approved by the division to provide education services in a DUI program.

(11) "Certified program" means a public or private entity approved by the division to deliver assessment, education or treatment services to a client convicted of DUI.

(12) "Client" means an individual who receives services in a

DUI program.

(13) "Clinical services supervisor" means an individual responsible for monitoring and directing assessment and treatment services and providing consultation and instruction to clinical staff.

(14) "Conflict of interest" means a private relationship exists between a client and a program, that will result in a conflict between the program's interests and the interests of the client, or a situation will be created where a program's personal or financial interest conflicts with professional responsibility.

(15) "Court" means the court in which the client was convicted of DUI.

(16) "Courtney disposition system" means a statewide database maintained by the Kentucky Administrative Office of the Courts that contains criminal conviction data from both state and local law enforcement agencies in Kentucky.

(17) "Detoxification" means a twenty-four (24) hour medical or nonmedical program providing:

(a) Supervised management of physical and psychological withdrawal symptoms from a substance to which an individual has been addicted or abusing; and

(b) An assessment of the individual's need for further care or referral to appropriate resources.

(18) "Diagnostic and Statistical Manual of Mental Disorders (DSM)" is published by the American Psychiatric Association and provides a common language and standard criteria for the classification of mental disorders.

(19) "Division" means the Division of Behavioral Health [Substance Abuse], Department for Behavioral Health, Developmental and Intellectual Disabilities, [Mental Health and Mental Retardation Services], Cabinet for Health and Family Services, 100 Fair Oaks Lane, 4E-D, Frankfort, Kentucky 40621-0001.

(20) "DUI" means driving under the influence of alcohol or other drugs in violation of KRS 189A.010.

(21) "DUI services" means assessment, education, or treatment services provided to a client convicted pursuant to KRS 189A.010.

(22) "Education" means a curriculum approved by the division that provides information about the risks of alcohol and other drugs.

(23) "Education agreement" means a written plan outlining what a client referred for education is required to complete to satisfy the program's requirements.

(24) "Enrollment" means the act of registering at a certified DUI program and receiving an assessment.

(25) "Facility" means the physical area including the grounds and building in which a program delivers services.

(26) "Fee agreement" means a written statement of charges to a client for services delivered by a program that specifies the arrangements for payment of the fees.

(27) "First offender" means a person who was convicted of a first offense under KRS 189A.010(4)(a).

(28) "Immediate danger" means a condition in the program which could or has caused death or serious physical injury.

(29) "Indigent person" is defined in KRS 31.100(3).

(30) "Inpatient" means a hospital-based residential service provided postwithdrawal, to an individual with a primary or secondary diagnosis of alcohol or other drug abuse or dependency that is designed to reduce or eliminate alcohol or other drug abuse behavior and dependency.

(31) "Intensive outpatient" means a structured comprehensive program of individual and group therapeutic activities delivered in a nonresidential setting, where a client is assisted in recovery from alcohol or other drug abuse on a scheduled and intense basis.

(32) "Location code" means a six (6) digit number issued by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration to each of a program's facilities.

(33) "Means test" means an objective method used by a program to determine a client's income and resources to evaluate his ability to pay for services received.

(34) "Memorandum of understanding" means a written agreement between two (2) programs that outlines the duties and responsibilities of a program regarding a client referral that remains in effect until one (1) of the programs terminates the agreement in

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writing.

(35) "Multiple offender" means a person who was convicted of a second, third or subsequent offense under KRS 189A.010.

(36) "Off the grounds" means a facility is separated from another facility by a public road.

(37) "Outpatient" means individual and group therapeutic activities assisting a client in recovery from alcohol or other drug abuse, provided in a nonresidential setting on a scheduled and unscheduled basis.

(38) "Plan of correction" means a program's written plan, including the planned correction and a date when a correction will be made, that is submitted to the division by a program if deficiencies are cited by the division in a program review.

(39) "Program administrator" means an individual, or the designee of the individual, in charge of the operation of a program who is responsible for the services provided in a program and who has responsibility for determining if a client satisfactorily completes the required services.

(40) "Program code" means an alphanumeric identifier that is issued to a program by the division at the time a program is certified.

(41) "Progress note" means a written entry in a client's record to document client contacts, the delivery of services, and how the goals of a client's treatment plan are being addressed.

(42) "Regional program manager" means an individual responsible for the management of a program's county offices if a program operating statewide has multiple county locations.

(43) "Residential transitional living" means a therapeutic group setting, where counseling is provided either on site by staff or off site, and where a client resides twenty-four (24) hours a day, and makes a social and vocational adjustment prior to returning to family or independent living in the community.

(44) "Residential" means a set of organized and intensive individual and group therapeutic activities, provided in a twenty-four (24) hour setting, which assists a client in recovering from alcohol or other drug abuse.

(45) "Revocation" means withdrawal by the division of a program's or an individual's right to deliver services to a client convicted of DUI.

(46) "Self-help group" means activities provided in a self-directed peer group setting, for a person recovering from alcohol or other drug abuse or the effects of another person's alcohol or other drug abuse, where support and direction in achieving or maintaining an alcohol and drug-free lifestyle or in learning to cope with a problem related to another person's alcohol or other drug abuse is provided.

(47) "Sliding fee scale" means a program's formula for providing a service to a client at a rate lower than the program's maximum published fee.

(48) "Treatment" is defined in KRS 222.005(13).

(49) "Treatment plan" means the written product of the process by which a client and a clinician identify and rank a client's problems needing resolution, establish agreed-upon immediate and long-term specific and measurable goals and decide on a treatment process and the resources to be utilized.

(50) "Twenty (20) hour education" means an education curriculum:

(a) For first offenders assessed as low risk, that do not have an alcohol or other drug problem requiring treatment; or

(b) As a supplement to treatment for a first or multiple offender assessed as needing treatment.

(51) "Uniform citation" is defined in KRS 431.450.

Section 2. Licensing Requirements. (1) An individual or other entity shall not provide DUI assessment, education or treatment services unless the service is in a program or facility:

(a) Licensed by the cabinet in accordance with 902 KAR 1:370;

(b) Conducted in a licensed federal hospital subject to federal licensure and regulatory requirements pursuant to 38 U.S.C. 301, 38 U.S.C. 1720A, 38 U.S.C. 7333, or 38 U.S.C. 7334; or

(c) Conducted on the grounds of a hospital licensed by the cabinet pursuant to 902 KAR 20:160 or 902 KAR 20:180.

(2) A hospital licensed by the cabinet pursuant to 902 KAR 20:160 or 902 KAR 20:180 that operates a DUI program in a facility

off the grounds of the hospital shall have the separate facility where a DUI program is located licensed by the cabinet in accordance with subsection (1) of this section.

(3) A DUI program established, conducted, and maintained in a jail, prison, or correctional facility shall be licensed by the cabinet in accordance with subsection (1) of this section.

Section 3. Program Certification Requirements. (1) General requirements.

(a) A licensed entity desiring to provide DUI assessment or education services shall be certified by the division as a DUI program before providing a service at any location.

(b) A certified DUI program may deliver assessment, education or treatment services statewide if the program is licensed in accordance with Section 2 of this administrative regulation and is certified by the division at each service location.

(c) A program may be certified to provide only assessment or only education services or both assessment and education services at a location.

(d) The division shall not certify a program desiring to provide only education at all locations.

(e) A treatment program or facility licensed by the cabinet to provide treatment pursuant to 902 KAR 20:160, 902 KAR 20:180, or 902 KAR 1:370, an out-of-state treatment facility licensed by the state where the facility is located, or a federally-licensed hospital may provide treatment services to a client referred by a certified DUI program without receiving DUI program certification from the division.

(f) The division shall notify a program, in writing, if certification is issued, renewed or revoked.

(g) The division shall notify the Transportation Cabinet, in writing, if an action is taken to revoke a DUI program's certification or if an action by the division is appealed by a program.

(h) If more than one (1) certified DUI program is operated at the same location, each program shall maintain a separate organizational identity by:

1. Conspicuously posting in a public area:

a. Each program's license;

b. Each program's Program Certification Certificate; and

c. A sign showing the name of each program;

2. Using a separate logo or letterhead on written materials;

3. Maintaining client records in a separate and secure cabinet;

and

4. Conducting DUI services separate from another DUI program located at the same location.

(i) A certified DUI program shall conspicuously post, in a public area of each facility where DUI services are delivered by the program, its license and Program Certification Certificate.

(j) A certified DUI program shall:

1. Deliver education and treatment services in a facility that provides at least seven (7) square feet of individual space for a client while he is receiving a service;

2. Maintain an alcohol and other drug-free work place;

3. Obtain a criminal background check from the Administrative Office of the Court's Courtnet Disposition System for the administrator, and all clinical and certified staff, that begin working in the program after the effective date of this administrative regulation;

4. Ensure that an owner, program administrator, and all clinical and certified staff that begin working in a program after the effective date of this administrative regulation have not been released from incarceration or probation or parole for the conviction of a violent crime, hate crime, or sex crime within two (2) years from his date of employment with the program; and

5. Maintain professional malpractice insurance to cover all clinical and certified staff in the minimum amount of \$100,000 per occurrence.

(2) Staffing requirements.

(a) General requirements.

1. A program shall have staff certified by the division in accordance with Section 4 of this administrative regulation to deliver assessment and education services.

2. Certified, clinical or administrative staff shall not currently be employed as:

a. A law enforcement officer;

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- b. A correctional officer, other than in a certified DUI program that is located in a jail, prison or correctional facility;
- c. A probation and parole officer;
- d. An attorney;
- e. An employee of the Administrative Office of the Courts;
- f. An employee of the division; or
- g. A judge.

(b) Program administrator.

1. A program administrator shall be responsible for the services delivered in a program and knowledgeable of:

- a. The requirements established in this administrative regulation, KRS 189A.040 and 189A.045;
- b. In a federally assisted program, the requirements for confidentiality established in 908 KAR 1:320; and
- c. In a nonfederally assisted program, the requirements for confidentiality established in KRS 222.271(1).

2. A program administrator shall ensure:

a. A program implements and complies with all applicable regulations and statutes;

b. Staff having primary responsibility for delivering DUI services, including regional program managers, comply with:

(i) The requirements established in this administrative regulation, KRS 189A.040 and 189A.045;

(ii) In a federally assisted program, the requirements for confidentiality established in 908 KAR 1:320; and

(iii) In a nonfederally assisted program, the requirements for confidentiality established in KRS 222.271(1);

c. An individual involved in the operation of the program or in the delivery of client services engages in ethical practices and abides by the Code of Ethics contained on the Application for Program Certification or the Application for Program Recertification, whichever is applicable;

d. A program shall not accept a client if a conflict of interest exists between the program and the client;

e. Staff providing assessment and education services are certified by the division and that they complete training required by the division; and

f. Attendance by a client is documented in the client's record.

3. A program administrator shall:

a. Investigate a complaint received from the division and shall, upon request, provide the division with records pertaining to the complaint; and

b. Personally attend, or have a representative of his program attend, at least one (1) statewide DUI meeting annually. The division shall conduct statewide DUI meetings on a semiannual basis.

c. Maintain a written record of quarterly face to face meetings with the clinical services supervisor to document review of the clinical supervision notes.

(c) Clinical services supervisor. There shall be clinical supervision provided at all locations by a clinical services supervisor who meets the requirements established in paragraph (d) or (f) of this subsection.

(d) Except as provided in paragraph (f) of this subsection, the clinical services supervisor shall be:

1. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089, who has 4000 hours of clinical work experience postcertification; or

2. An individual who is licensed or certified as one (1) of the following and who meets the requirements of paragraph (e) of this subsection:

a. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

b. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

c. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

d. Certified psychologist with autonomous functioning certified to function without supervision, in an area specified by the Ken-

tucky Board of Examiners of Psychology in accordance with KRS 319.056;

e. Certified psychologist, with 6000 hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology in accordance with the requirements and limitations established in KRS 319.056;

f. Psychological associate with 6000 hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology in accordance with the requirements and limitations established in KRS 319.064;

g. Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Social Work in accordance with KRS 335.100;

h. Certified social worker with 6000 hours of postcertification clinical practice in psychiatric social work licensed by the Kentucky Board of Social Work in accordance with KRS 335.080;

i. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university and 6000 hours of clinical experience in psychiatric nursing;

j. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a bachelor's degree in nursing from an accredited college or university who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has 6000 hours of clinical experience in psychiatric nursing;

k. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS Chapter 335;

l. Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335; or

m. Certified professional art therapist certified by the Kentucky Board of Certification for Professional Art Therapists in accordance with the provisions of KRS 309.130.

(e) A certified or licensed professional meeting the requirements established in paragraph (d)2 of this subsection shall have:

1. Completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to the date of assuming responsibility as a clinical services supervisor in a DUI program or within two (2) years immediately after assuming responsibility as a clinical services supervisor in a DUI program; and

2. 4000 hours of work experience in the alcohol and other drug treatment field postdegree.

(f) A person shall qualify as a clinical services supervisor under this administrative regulation if, on the effective date of this administrative regulation, the person:

1. Met the requirements for clinical services supervisor as established in 908 KAR 1:050 and 908 KAR 1:190;

2. Had been a clinical services supervisor for at least five (5) years; and

3. Was employed as a clinical services supervisor in a DUI program certified by the division.

(g) A clinical services supervisor shall complete:

1. A division approved twelve (12) hour training in clinical supervision, within six (6) months of assuming responsibility as the clinical services supervisor in a DUI program, or within one (1) year of the effective date of this administrative regulation, whichever is later; and

2. Twenty (20) hours of training in alcohol and other drug abuse treatment annually.

(h) A clinical services supervisor shall assist a program administrator in the investigation of a complaint against a program if a complaint concerns an assessment, education, or treatment service;

Provide clinical supervision to no more than six (6) staff delivering assessment and treatment services to clients convicted of DUI;

(i) Maintain clinical supervision notes to document each supervisory session including the length of the session, content of the session, all observations of assessment and treatment services and recommendations for improvement of knowledge base and facilitation skills.

(3) Application for program certification.

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(a) An individual or other entity seeking DUI program certification shall:

1. Submit a completed Application for Program Certification to the division;

2. Submit a Program Survey Form for each location where the applicant desires to provide DUI assessment, education or treatment services and all documentation required by the division; and

3. Sign the application, with his signature certifying compliance with:

a. The Code of Ethics contained on the Application for Program Certification;

b. The requirements established in this administrative regulation, KRS 189A.040, and 189A.045; and

c. The requirements for confidentiality established in:

(i) 908 KAR 1:320 for a federally-assisted program; or

(ii) KRS 222.271(1) for a nonfederally-assisted program.

(b) A Program Survey Form shall be completed for each location:

1. At the time of application for program certification or recertification; or

2. If a program opens a new location.

(c) A Program Survey Form shall contain:

1. Type of services provided;

2. Maximum fee for a service;

3. Name of the curriculum delivered at the location;

4. Name and telephone number of the contact person for the location;

5. Hours of operation when an office is staffed;

6. Address of the office where the client files for the location are maintained and stored;

7. Name and title of each certified staff person providing assessment or education services at the location; and

8. Name of the clinical services supervisor for the location.

(d) The division shall review an application, verify the information and certify a program if the program:

1. Submits a completed Application for Program Certification to the division;

2. Is a licensed entity in accordance with Section 2 of this administrative regulation; and

3. Has staff certified by the division to deliver the required services.

(e) The division shall assign a program code and issue a letter and Program Certification Certificate if a program is certified. The program code shall be used for verification of program certification on correspondence to the court, the Transportation Cabinet, and the division.

(f) Each program location shall have an additional location code issued by the division that shall be used in conjunction with a program code to identify a program and the exact location where a service is delivered.

(g) Program certification shall be issued by the division for a period of two (2) years, and shall be renewable unless previously revoked.

(h) Program certification shall not be transferred and shall apply to the individual or other entity named in the Application for Program Certification or the Application for Program Recertification, whichever is applicable, approved by the division.

(i) If there is a change of ownership, the new owner shall apply for program certification in accordance with the requirements established in this subsection.

(4) Application for program recertification.

(a) A program administrator shall request program recertification on a completed Application for Program Recertification at least thirty (30) calendar days prior to the expiration of his program's certification.

(b) If program certification expires, a program administrator shall submit a completed Application for Program Recertification within sixty (60) calendar days of the expiration date. The program shall be considered a new applicant if the Application for Program Recertification is not made within sixty (60) calendar days of the expiration date.

(c) If program certification lapses for sixty (60) calendar days or more, the division shall notify a program administrator, in writing, that the program is not eligible to deliver DUI services and the

program shall:

1. Notify active clients in writing;

2. Refer a client and transfer case coordination responsibility of a client's case to a program of his choice; and

3. Submit to the division a list of active clients with a copy of each client's referral form stating the name of the program to which a client is referred.

(d) A program administrator shall meet the requirements established in subsection (2)(b)3b of this section before a program is recertified.

(5) Denial of program certification and recertification. The division shall deny a program's application for certification or recertification if:

(a) A program fails to meet certification requirements;

(b) Program certification has been denied or revoked by the division within the last three (3) years;

(c) A current owner, program administrator, clinical services supervisor, or other principal had his assessor, ~~or~~ instructor or program administrator certification revoked by the division within the last three (3) years; or

(d) The division is in the administrative hearing process to revoke the assessor, ~~or~~ instructor or program administrator certification of a current owner, program administrator, or clinical services supervisor.

(6) Program changes.

(a) A program administrator shall notify the division and the cabinet, in writing, if there is a change in ownership, program name, or program location.

(b) A program administrator shall notify the division, in writing, on a Report of Change Form if there is a change at a location in:

1. Services delivered;

2. Maximum fee charged for a service;

3. Hours of operation when an office is staffed;

4. Location of client records;

5. Scheduling telephone number;

6. Contact person;

7. Clinical services supervisor; or

8. Other program information printed in the DUI directory.

(7) Records.

(a) General requirements.

1. A program shall designate on a Program Survey Form, at the time of application for program certification, where the client records for each location and the administrative records for the program will be maintained and stored.

2. A program administrator shall notify the division, in writing, on a Report of Change Form, if the program changes the location where client or administrative records are maintained and stored.

3. A program administrator shall ensure that written and electronic client and administrative records are:

a. Stored in a locked cabinet or computer only accessible to authorized staff;

b. Kept confidential:

(i) In a federally assisted program pursuant to 908 KAR 1:320; and

(ii) In a nonfederally assisted program pursuant to KRS 222.271(1);

c. Retained for at least five (5) years from the last date of service or action taken; and

d. If destroyed after a five (5) year period of retention, either burned, shredded or deleted electronically in a manner that is unrecoverable.

4. A program shall maintain a record of fees paid by a client.

(b) Administrative records. A program shall maintain administrative records that include:

1. Policy and procedure manual;

2. Copies of curricula, handouts, and videos;

3. Hours of operation for each location;

4. Fee schedule and means test for determining indigency;

5. Cabinet report from most recent licensure inspection;

6. Memoranda of understanding;

7. Copies of the division's certification letters for assessors, ~~and~~ instructors, and program administrators on staff;

8. Complaint file; and

9. Assessment, education, and treatment rosters or sign in

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sheets;

10. Clinical Supervision notes.

(c) Client records.

1. A program shall release a client's record or disclose confidential information about the client in accordance with the client's written permission through a signed authorization for release of information.

2. A program shall release a client's record, with the client's written authorization for release of information, if:

a. The division or its designee request[s] release of a record; or

b. A client is referred to another program for education or treatment services.

3. A program shall release a client's record upon receipt of a court order.

4. A program shall open a separate written or electronic record for a client at the time of assessment, or upon enrollment in education or admission to treatment, if the client is referred to another program after receiving an assessment.

5. Client records shall include the following forms signed by the client:

a. Client rights statement;

b. Client notice of confidentiality and confidentiality agreement;

c. Fee agreement;

d. Authorization for release or disclosure of information; and

e. As applicable, the information required by subparagraphs 6, 7, or 8 of this paragraph.

6. If a client receives an assessment, his record shall include:

a. The items required by subparagraph 5 of this paragraph;

b. An AOC 494 form (Notice to Attend Alcohol Driver Education Program) or a court order;

c. Uniform citation;

d. Kentucky DUI Assessment Instrument printout;

e. Clinical interview and interview notes;

f. Freedom of choice statement;

g. Confirmation and acceptance of assessment statement;

h. Referral agreement, if applicable;

i. Certificate of enrollment;

j. Case coordination contacts; and

k. Certificate of completion or notice of noncompliance.

7. If a client receives education, his record shall include:

a. The items required by subparagraph 5 of this paragraph;

b. An education agreement signed by the client; and

c. A record of attendance.

8. If a client receives treatment, his record shall include:

a. The items required by subparagraph 5 of this paragraph;

b. A treatment plan signed by the client and his clinician and treatment plan reviews signed by his clinician;

c. Progress notes signed and dated by his clinician, recorded after each client contact documenting the type of contact or service provided, and the client's participation; and

d. A discharge summary documenting completion or noncompliance signed and dated by his clinician.

(8) Fees.

(a) The fee for assessment, education, or treatment shall be established by a program and paid by a client pursuant to KRS 189A.040 in accordance with the following:

(i) A fee for assessment shall include all fees associated with screening, intake, clinical interview, client transfers, monitoring of client progress, and all other case coordination activities including exit or discharge interviews;

(ii) A fee for education shall include only those costs associated with the delivery of a twenty (20) hour curriculum approved by the Division including any cost for participant manuals;

(iii) A fee for treatment shall include only those costs involved in delivering individual or group counseling and shall also include the fee for treatment plan reviews, but shall not include a separate fee for case coordination activities; and

(iv) A DUI program shall not charge a fee for group outpatient sessions not attended.

(b) The fee schedule published in the DUI directory shall be posted in a public area of each facility visible to a client.

(c) The fee a client is charged shall not exceed a program's maximum published fee.

(d) A program shall explain the program's fee and payment

requirements to the client at the time of his assessment or upon enrollment in education or admission to treatment, if the client is referred to another program after receiving an assessment.

(e) A program shall not charge a client a fee unless the client has signed a fee agreement.

(f) A program's sliding fee scale shall be based on a means test and applied objectively to a client to determine a client's ability to pay.

(g) If a client states that he is an indigent person, a program shall refer him to the court to have an affidavit of indigency executed by the court. A program shall:

1. Accept a client determined indigent by the court; and

2. Deliver services free of charge or for the amount specified by the court.

(9) DUI directory.

(a) The division shall:

1. Publish annually on July 1, of each year, a directory of all certified DUI programs; and

2. Issue additions, revisions, and corrections quarterly on October 1, January 1, and April 1, of each year as changes occur.

(b) The directory shall include DUI programs certified to provide DUI assessments and shall be distributed ~~to~~ upon request to the following:

1. District court judges;

2. Circuit clerks;

3. Certified DUI programs; and

4. The public ~~upon request~~.

(c) The directory shall have a county section that includes:

1. The location of each program having an assessment center in a county;

2. The services provided at each program location;

3. The maximum fee for a service; and

4. Specific terms and conditions related to DUI services that are required by a program.

(d) A program administrator shall report changes for the directory to the division, on a Report of Change Form, at least thirty (30) calendar days prior to the publication dates established in paragraph (a) of this subsection. If the division does not receive a Report of Change Form by the deadline date, the division shall hold a change until the next scheduled publication of the directory.

Section 4. Assessor, ~~and~~ Instructor, and Program Administrator Certification Requirements. (1) General requirements.

(a) Only an individual holding valid certification from the division shall provide DUI assessment or education services. An individual certified by the division shall not provide DUI assessment or education services except in a program that is certified by the division.

(b) An individual desiring to provide assessment ~~or~~ program administration or education services shall apply for certification to the division. To be certified, an individual shall:

1. Meet the requirements for certification established in this section; and

2. Complete the training required by subsection (3) of this section.

(c) 1. Certification for an assessor, program administrator, or instructor shall be for a period of five (5) years from the date of an individual's initial certification as an assessor or instructor.

2. An assessor, program administrator or instructor shall renew his certification in accordance with subsection (4) of this section every five (5) years.

3. Certification that is not renewed or revoked prior to the end of the five (5) year period shall automatically expire at the end of that time period.

(2) Credentials for assessors, program administrators, and instructors.

(a) Assessors. An individual desiring certification as an assessor shall complete twenty (20) hours of training in alcohol and other drug abuse counseling annually and, except as provided in paragraph (c) of this subsection, shall be:

1. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089;

2. An individual who is licensed or certified as one (1) of the following and who meets the requirements of paragraph (b) of this

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subsection:

a. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

b. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

c. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

d. Certified psychologist with autonomous functioning certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

e. Certified psychologist certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

f. Psychological associate certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.064;

g. Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Social Work in accordance with KRS 335.100;

h. Certified social worker certified by the Kentucky Board of Social Work in accordance with KRS 335.080;

i. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in nursing from an accredited college or university;

j. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with one (1) of the following combinations of education and work experience:

(i) Bachelor of science in nursing from a four (4) year program from an accredited college or university and 2000 hours of clinical work experience in the substance abuse or mental health field;

(ii) Diploma graduate in nursing from a three (3) year program and 4000 hours of clinical work experience in the substance abuse or mental health field; or

(iii) Associate degree in nursing from a two (2) year program from an accredited college or university and 6000 hours of clinical work experience in the substance abuse or mental health field;

k. Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing in accordance with KRS 314.042;

l. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS Chapter 335;

m. Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335; or

n. Certified professional art therapist certified by the Kentucky Board of Certification for Professional Art Therapists in accordance with the provisions of KRS 309.130; or

3. An individual who will meet the requirements of a licensed or certified professional established in subparagraph 1 or 2 of this paragraph within three (3) years of the date of his application for certification as a DUI assessor or the effective date of this administrative regulation, whichever is later, and who has:

a. A masters degree from an accredited college or university in a program that required completion of a clinical practicum; or

b. A bachelors degree or greater from an accredited college or university, plus one (1) year full-time supervised clinical work experience in the licensed treatment program where the individual is currently employed.

(b) A certified or licensed professional meeting the requirements established in paragraph (a)2 of this subsection shall have completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to the date of his application for DUI assessor certification.

(c) A person shall qualify as a DUI assessor under this administrative regulation if, on the effective date of this administrative regulation, the person:

1. Met the requirements for a certified DUI assessor established in this administrative regulation as those requirements existed on January 1, 2000;

2. Had been a certified DUI assessor for at least five (5) years;

and

3. Was employed as a certified assessor in a DUI program certified by the division.

(d) Instructors. An individual desiring certification as an instructor shall meet one (1) of the following requirements:

1. Have a bachelors degree or greater from an accredited college or university;

2. Have an associate degree from an accredited college or university, with 4000 hours of supervised work experience in direct client services in the substance abuse field;

3. Have a high school diploma or a general education development equivalency certificate from a state board of education, with 8000 hours of supervised work experience in direct client services in the substance abuse field;

4. Meet the requirements for a certified assessor established in paragraph (a) or (c) of this subsection; or

5. Meet the requirements for a clinical services supervisor established in Section 3(2)(d) or (f) of this administrative regulation.

(e) Program Administrator: An individual applying for certification as a Program Administrator shall meet one (1) or more of the following requirements:

1. Have a bachelors degree or greater from an accredited college or university with 2000 hours of work experience in the alcohol and other drug treatment field;

2. Have an associate degree from an accredited college or university with 4000 hours of supervised work experience in the direct client services in the alcohol and other drug treatment field;

3. Have a high school diploma or a general education development equivalency certificate from a state board of education with 8000 hours of supervised work experience in direct client services in the alcohol and other drug treatment field;

4. Meet the requirements for a certified DUI assessor established in paragraph (a) of this subsection;

5. Be an individual who on the effective date of this regulation:

a. Had been a Program Administrator for at least five (5) years; and

b. Was employed as a Program Administrator in a DUI program certified by the Division.

(3) Assessor, [and] instructor, and Program Administrator certification and recertification training.

(a) General training requirements.

1. Only training approved by the division shall suffice as acceptable training for DUI assessor, [or] instructor, and program administrator certification or recertification.

2. An individual desiring certification or recertification as an assessor or instructor, or program administrator shall submit a completed DUI Assessor Certification Application, DUI Assessor Recertification Application, DUI Instructor Certification Application, or DUI Instructor Recertification Application, Program Administrator Certification Application, or Program Administrator Recertification Application whichever is applicable, to the division no later than the deadline date indicated on the training announcement issued by the division.

3. The application shall be accompanied by a copy of the following:

a. Official transcripts;

b. Diplomas;

c. Certificates;

d. Documentation of certification or licensure; and

e. Documentation of work experience.

4. Assessor, [or] instructor or Program Administrator certification or recertification shall not be issued by the division until the fee for training is paid in full.

5. If an individual making application for an assessor, [or] instructor or Program Administrator certification or recertification training fails to meet the established requirements, the division shall deny the application and notify the applicant, in writing, of the reason for the denial.

6. Within thirty (30) calendar days after completion of an assessor or instructor training, the division shall notify the program and the individual, in writing:

a. That the individual has:

(i) Satisfactorily completed a training;

(ii) Met the requirements for certification or recertification; and

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- (iii) Been certified or recertified; or
- b.(i) Of an observed deficiency as it relates to assessor or instructor certification; and
- (ii) The reason for withholding certification or recertification. [; and

(iii) The required corrective plan of action.]

(b) Training requirements for assessors. An individual desiring certification as an assessor who has the necessary education and work experience shall successfully complete the following requirements:

1. Attend and participate in all sessions of an assessor certification training;
2. Obtain an overall score of eighty (80) percent or better on performance in each of the following areas:
 - a. A written posttest on general course content;
 - b. A written posttest on the Kentucky DUI Assessment Instrument; and
 - c. A demonstration of ability to make an appropriate client referral based on a written case study;
3. Receive a written recommendation from both the trainer and the division representative; and
4. Sign the application, with his signature certifying compliance with:

- a. The Code of Ethics contained on the application; and
- b. The requirements established in this administrative regulation.

(c) Training requirements for instructors. An individual desiring certification as an instructor who has the necessary education and work experience shall successfully complete the following training requirements:

1. Attend and participate in all sessions of a division approved instructor certification training;
2. Complete training ~~in one (1) or more of~~ in the curriculum ~~[curricula]~~ approved by the division;
3. Obtain a score of eighty (80) percent or better on a written posttest;
4. Demonstrate ability to make an oral presentation of assigned material;
5. Receive a written recommendation from both the trainer and the division representative; and
6. Sign the application, with his signature certifying compliance with:
 - a. The Code of Ethics contained on the application; and
 - b. The requirements established in this administrative regulation.

(d) Training requirements for Program Administrator Certification. An individual applying for initial certification as a Program Administrator, who has the necessary education and work experience in accordance to subsection (2) (a) of this Section, shall successfully complete the following requirements:

1. Sign an Applicant's Statement signifying compliance with the requirements contained on the form, which includes a Code of Ethics, contained in the Application for DUI Program Certification, signifying compliance with the requirements in this administrative regulation; and
2. Complete six (6) hour training conducted by the Division within one (1) year of signing the Applicant's Statement.

(4) Assessor, [and] instructor, and Program Administrator recertification.

(a) An individual desiring recertification as an assessor shall:

1. Meet the requirements for a DUI assessor established in subsection (2)(a) or (c) of this section, on the date of his application for assessor recertification; and
2. Submit to the division a DUI Assessor Recertification Application and other required forms by October 1 of the calendar year in which his certification expires.

(b) An individual desiring recertification as an instructor shall:

1. Meet the requirements for a DUI instructor established in subsection (2)(d) of this section;
2. Submit to the division a DUI Instructor Recertification Application and all other required forms by October 1 of the calendar year in which his certification expires; and
3. Complete a training authorized by the division.

(c) An individual desiring recertification as a Program Adminis-

trator shall:

1. Meet the education, work experience, and credentialing requirements in accordance with subsection (2) paragraph (e) of this section; and

2. Submit to the Division a completed Program Administrator recertification application and all other forms required, by October 1, of the calendar year in which his certification expires.

(d) If an individual's assessor, [or] instructor, or program administrator certification lapses for sixty (60) days ~~[one (1) year]~~ or more, the individual's application for assessor, [or] instructor, or program administrator recertification shall be processed as a new application and the individual shall complete the requirements for initial certification established in subsections (2) and (3) of this section.

(e) If an individual does not meet the requirements for an assessor, [or] instructor, or program administrator at the time of his application for recertification:

1. The division shall deny his application for recertification and notify the individual and the program, in writing, of the reason for denial; and
2. The individual's currently held certification shall expire pursuant to subsection (1)(c)3 of this section.

(5) Revocation of assessor, ~~[and]~~ instructor, and program administrator certification.

(a) The division shall revoke assessor, [or] instructor, and program administrator certification if an individual:

1. Fails to comply with the requirements established in this administrative regulation;
2. Violates the Code of Ethics contained on the application for assessor, [or] instructor, or program administrator certification;
3. Is convicted while holding certification from the division of a violent crime, hate crime, or sex crime; [or]
4. Falsifies information on an application for DUI certification or recertification; or
5. Engages in inappropriate behavior that would lead the Division to determine that the safety of a client is threatened.

(b) The revocation of an individual's assessor, [or] instructor, or program administrator certification shall be for a period of three (3) years and shall be effective on the date stated in the notice sent to an individual assessor or instructor by the division.

Section 5. Certified Program, Assessor and Instructor Complaints and Program Monitoring. (1) Complaints.

(a) An individual may submit a complaint related to a certified program, a certified assessor, [or] a certified instructor, or a program administrator that is not resolved by a program through its grievance procedure to the division.

(b) A program shall be responsive and make an effort to resolve a client's complaint through its grievance procedure.

(c) A complaint shall be submitted to the division, in writing, on a Complaint Form or in a letter.

(d) The division shall investigate a complaint, notify the complainant and the program, in writing, of the results of the investigation and take any necessary action.

(e) The division shall notify a professional licensing or certification board, in writing, at the conclusion of an investigation of the results of the investigation if a complaint is related to a violation of a standard established by a professional board.

(2) Program reviews.

(a) The division shall conduct periodic program reviews to determine if a program is in compliance with the requirements established in this administrative regulation, KRS 189A.040 and 189A.045.

(b) A program review shall consist of one (1) or more of the following:

1. An interview with either a program administrator or a clinical services supervisor;
2. Completion of a Program Review Form;
3. A review of administrative records;
4. A review of client records;
5. Off site monitoring by division staff of assessment ~~[completion]~~ records submitted by a program;
6. Observation of an assessment, education, or treatment service;

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7. Client interviews;
 8. The review of other materials necessary to determine compliance with this administrative regulation, KRS 189A.040 and 189A.045; or
 9. Physical inspection of a program's facility.
- (c) The division shall notify a program, in writing, at least two (2) weeks prior to the date of an announced program review.
- (d) A program review may be made at any of a program's locations and may be unannounced.
- (e) A program shall:
1. Allow a division representative access to a facility;
 2. Provide a copy of records and materials requested; and
 3. Allow a division representative to attend and observe an assessment, education class, or treatment session conducted by the program.
- (f) The division shall issue a written report of findings and provide a copy of the results of its program review to the program within ninety (90) calendar days after completion of a program review.
- (3) Plan of correction.
- (a) The division shall require a program that is not in compliance with the requirements established in this administrative regulation, KRS 189A.040 or 189A.045 to submit an acceptable plan of correction to the division within thirty (30) calendar days from the date a program receives a report of findings from the division.
- (b) Be developed with participation of the program administrator, the clinical services supervisor, and any staff responsible for the implementation of the corrective action for the deficiencies noted in the program review;
- (c) Contain a descriptive plan of action including a time schedule for achieving implementation of the corrective actions for the deficiencies;
- (d) Be accompanied by copies of any forms developed and utilized to bring the program into compliance;
- (e) Be signed by the DUI Program Administrator and any staff involved in the development of the plan of correction and for the implementation of the corrective action for the deficiencies; and
- (f) ~~[If a plan of correction is acceptable,]~~ [t] The division may conduct a follow-up program review to ensure:
1. The plan of correction has been implemented; and
 2. The program is in compliance with this administrative regulation, KRS 189A.040 and 189A.045.
- (c) If the division conducts a follow-up program review, a copy of the Site Visit Follow-up Compliance Review form shall be issued to the program within ninety (90) calendar days of the completion of the follow-up program review.
- (d) If a plan of correction ~~[is not acceptable,]~~ has not been implemented, the division shall take action to revoke program certification.
- (4) Voluntary closure.
- (a) A program desiring to close voluntarily shall:
1. Notify the division, in writing, that it will voluntarily surrender its program certification by mailing to the division its Program Certification Certificate;
 2. Stop accepting client referrals;
 3. Notify active clients in writing;
 4. Refer a client and transfer case coordination responsibility of a client's case to a program of his choice; and
 5. Submit to the division, within ten (10) calendar days of the notification made under subparagraph 1 of this paragraph, a list of active clients and a copy of the following information for each client:
 - a. Name, address and telephone number;
 - b. Date of birth and either the client's Social Security or driver's license number;
 - c. DUI conviction number;
 - d. Date of assessment and referral information including level of care and agency to which a client is referred;
 - e. Number of sessions completed;
 - f. Date of last attendance; and
 - g. Reason for noncompliance if a client is noncompliant.
- (b)1. A program that voluntarily surrenders its certification in compliance with the requirements established in paragraph (a) of

this subsection may reapply for program certification at any time.

2. The division shall revoke the program certification of a program that voluntarily surrenders its certification if the program fails to comply with the requirements established in paragraph (a) of this subsection. The revocation shall be in accordance with the requirements established in subsection (5)(c) of this section.

3. If a program voluntarily surrenders its certification following an action by the division to revoke the program's certification, revocation shall be in accordance with subsection (5)(c) of this section.

(5) Revocation of program certification.

(a) The division shall revoke the certification of a program that is not in compliance with the requirements established in this administrative regulation, KRS 189A.040 or 189A.045.

(b) The division shall immediately revoke a program's certification if it determines there is an immediate danger to clients.

(c) The division shall revoke the certification of a program that has failed to implement the plan of correction submitted to the Division as a result of a program review;

(d) The revocation of program certification shall be:

1. For a period of three (3) years; and

2. Effective on the date stated in the notice sent to the program by the division.

(d) If the division revokes program certification, a program shall:

1. Stop providing DUI services;

2. Stop accepting client referrals;

3. Notify active clients in writing;

4. Refer a client and transfer case coordination responsibility of a client's case to a program of his choice; and

5. Submit to the division, within ten (10) calendar days of the notification from the division, a list of active clients and a copy of the following information for each client:

a. Name, address and telephone number;

b. Date of birth and either the client's Social Security or driver's license number;

c. DUI conviction number;

d. Date of assessment and referral information including level of care and the name of the program to which a client is referred;

e. Number of sessions completed;

f. Date of last attendance; and

g. Reason for noncompliance if a client is noncompliant.

Section 6. Assessment Requirements. (1) Assessment process.

(a)1. Except as provided in subparagraph 2 of this paragraph, a program providing assessment services shall administer the Kentucky DUI Assessment Instrument to a client receiving a DUI assessment. A program may use supplemental assessments in addition to the Kentucky DUI Assessment Instrument.

2. A program shall have six (6) months from the effective date of this administrative regulation to comply with the requirement that the Kentucky DUI Assessment Instrument shall be administered in every DUI assessment. During this six (6) month transitional period, a program shall meet the requirements for a DUI assessment established in:

a. This administrative regulation as those requirements existed on January 1, 2000; or

b. Subparagraph 1 of this paragraph.

3. For users of the PC-based Kentucky DUI assessment instrument: The Kentucky DUI assessment instrument records and the completion and non-compliance reports are electronically downloaded and sent either on removable computer media, or via email to the Division, or its designee on a monthly basis. Written notification shall be sent to the Division or its designee, in lieu of electronic records in the event that no records or reports are available for download;

4. For users of the web-based Kentucky DUI Assessment Instrument: New assessment records are entered via the internet within three (3) business days of the assessment. Completion and non-compliance information shall be entered within three (3) business days of a client's completion or non-compliance.

(b) The Kentucky DUI Assessment Instrument printout generated at a client's assessment shall:

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1. Be signed and dated by the assessor and client;
2. Contain comments by the assessor explaining the referral decision; and

3. Be placed in the client's file at least thirty (30) calendar days after the client's assessment.

(c) An assessment shall be conducted:

1. At a program's certified location; or
2. If a court orders an assessment of an individual that is incarcerated, in a jail or a prison.

(d) A DUI assessment shall be conducted in person, and shall include:

1. Administration of the Kentucky DUI Assessment Instrument;
2. A private face-to-face clinical interview conducted by a certified DUI assessor, using [either] the assessor's own clinical interview [or the structured interview provided in the Kentucky DUI Assessment Instrument,] with the findings of the interview recorded on the check list provided in the Kentucky DUI Assessment Instrument;

3. Consideration of referral options and the client's resources that are documented in the Kentucky DUI Assessment Instrument;

4. A determination of the severity of the client's problem;

5. Referral to a program of the client's choice that offers a service at the level of care appropriate to the severity of the client's problem; and

6. The cosigning by the client and assessor of the following forms:

- a. Fee agreement;
- b. Client rights statement;
- c. Confidentiality statement;
- d. Freedom of choice statement and a referral agreement;
- e. Confirmation that a client received an assessment statement;
- f. Authorization for release of information;
- g. Certificate of enrollment; and
- h. Kentucky DUI Assessment Instrument printout.

(e)1. Except as provided in subparagraph 2 of this paragraph, a DUI assessment shall be conducted by an assessor holding valid certification from the division.

2. The screening instrument portion of the Kentucky DUI Assessment Instrument shall be either self-administered via a hard copy of the paper and pencil version of the AUDIT/DAST or administered by a certified or noncertified individual.

(f) The screening instrument portion of the Kentucky DUI Assessment Instrument shall be administered individually or in a group.

(g) A program shall maintain a Roster of Assessments that includes:

1. Client name, date of birth and Social Security or driver's license number;
2. Assessment date; and
3. Type of referral and referral program.

(h) A certified DUI assessor shall demonstrate knowledge, skills, and competence in the following essential clinical areas:

1. DSM or other accepted criteria for substance abuse disorders;

2. Progression and characteristic of substance abuse disorder;

3. Range of life areas to be assessed and the effects of substance use on those areas;

4. Continuum of care, the available range of treatment modalities, and referral resources;

5. Administration and interpretation of screening instruments;

6. Assessment of clients readiness and motivation to take responsibility and address substance abuse issues; and

7. Communication of recommendations to the client and accurate documentation of the referral process.

(2) Client referrals. A DUI program shall accept a client referral from another program or a court.

(a) Court referral of DUI offenders.

1. An individual convicted of DUI in Kentucky shall obtain an assessment at a certified program of his choice listed in a directory published by the division.

2. Before accepting a client for an assessment, a program shall:

- a. Obtain an AOC 494 form or a court order; or

b. Document the client's file to show the reason one (1) of these forms could not be obtained.

3. If a client has received an assessment for his conviction at another DUI program, a program shall not conduct a subsequent assessment for the client without obtaining a new court order.

(b) Program referral of DUI offenders.

1. A program desiring to make or receive a client referral shall execute a written Memorandum of Understanding with the in-state or out-of-state programs, with which it will make or receive referrals.

2. A memorandum of understanding shall include:

a. Name of both programs;

b. Date it is executed;

c. Duties and responsibilities of each program to include the requirements for case coordination contacts between the programs;

d. Purpose of the agreement;

e. Terms for termination of the agreement; and

f. Signatures of each program's program administrator.

3. A program may refuse a client referral because of:

a. Inadequate staff;

b. Lack of an appropriate service;

c. A client waiting list; or

d. A program's previous unsuccessful attempt to treat a client.

4. A program shall not accept a client referral from another program without first obtaining a copy of the client's assessment and other available records pertinent to the client's assessment, education, or treatment.

5. A program shall inform a client at the time of his assessment that if he fails to disclose all of his outstanding DUI convictions, the services he receives will not meet the requirements for reinstatement of his driver's license.

6. A program shall refer a client to a program of the client's choice, at an appropriate level of care based on the client's assessment. A program shall have a client sign a referral agreement stating he has been given freedom of choice in the selection of a program.

7. A program shall:

a. Allow a client freedom of choice in the selection of a program where he will receive education or treatment services; and

b. Not allow a client to select the level of care or type of service, which shall be based on the results of his assessment and the availability of services.

8. A program shall transfer a client's assessment results and the referral form generated by the Kentucky DUI Assessment Instrument to a program of the client's choice offering service at the level of care needed by the client.

(3) Case coordination requirements.

(a) General requirements.

1. A program that conducts a client's assessment shall be responsible for case coordination whether the client receives education or treatment services at the program that conducted his assessment or at another program.

2. To determine if a client is compliant or noncompliant, case coordination shall be conducted and include:

a. Having regular contact with the program receiving a client referral to determine a client's compliance with the recommended education or treatment;

b. Documentation in an assessment record of actions and contacts related to follow up on a client;

c. Sending a certificate of enrollment to the court after a client is assessed pursuant to KRS 189A.045;

d. Providing information on a client's progress to the court upon request;

e. Notifying the circuit clerk of the court within three (3) working days after making a determination or receiving notice that a client is noncompliant of the need to schedule a show-cause hearing;

f. Sending a completion report to the Transportation Cabinet and the court within three (3) working days after making a determination or receiving notice that a client is compliant;

g. Providing a certificate of completion to a client if he satisfactorily completes the required services; and

h. Sending completed Kentucky DUI Assessment Instrument records on a monthly basis to the Division or its designee on re-

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~~movable computer media or via online submission.[Downloading on a computer diskette Kentucky DUI Assessment Instrument records and completion and noncompliance reports and sending the diskette on a monthly basis to the division or its designee.]~~

3. A program administrator shall notify the court within three (3) working days of the date specified in the client's fee agreement, if a client fails to pay for an assessment within the time stated in his fee agreement.

(1) Out of State Clients and Program: Any non-Kentucky licensee convicted of DUI in Kentucky may attend an out of state program without referral. Notification to or approval by the Division is not required. The client bears the burden of demonstrating to the satisfaction of the court and Kentucky Transportation Cabinet that the out-of-state program:

(a) Is licensed or otherwise authorized to provide DUI services;

(b) Complies at a minimum, with the requirement of this administrative regulation; and

(c) Satisfies the requirements of KRS 189A.

(2) When a client receives an assessment from the Kentucky Certified DUI Program and chooses education or treatment services in another state, the Kentucky Certified DUI Program shall:

(a) Locate an out-of-state program;

(b) Contact the out of state program to arrange client's enrollment;

(c) Send the program receiving the referral a DUI Referral Report Form and a Case Coordination Form; and

(d) Provide case coordination.

(3) A Kentucky licensed driver and resident convicted of DUI pursuant to KRS 189A.010 (a)-(f) must receive a DUI assessment in Kentucky. Referral to an out of state program may be allowed if the program is licensed to provide services at the level of care necessary to satisfy Kentucky's requirements.

(4) When a non-Kentucky licensee with an out of state conviction attends a Kentucky Certified DUI Program, compliance reporting and case coordination shall be in accordance with the requirements of the convicting state.[-] (b) Out-of-state clients and programs.

1. A program administrator shall notify the state of conviction, in writing, on an Interstate Transfer Form, if a client that is satisfying a DUI conviction from another state enrolls in a certified DUI program.

2. A Kentucky licensed driver or an individual who is not a Kentucky licensed driver convicted of DUI pursuant to KRS 189A.010(a) through (d) may be referred by a program after a DUI assessment to an out-of-state program for education or treatment if the program is licensed to provide services at the level of care necessary to satisfy his DUI in Kentucky. The referring program shall provide case coordination for the client.

3. A Kentucky licensed driver or an individual who is not a Kentucky licensed driver convicted of DUI pursuant to KRS 189A.010(a) through (d), who has not received an assessment in Kentucky, may receive assessment, education, or treatment services at an out-of-state program if he first receives approval from the division. The division shall:

a. Approve the out-of-state program if the program:

(i) Is licensed or certified by the state in which it is located;

(ii) Provides assessments; and

(iii) Offers alcohol and other drug education or treatment services; and

b. Provide case coordination for the client.[-]

(c) Clients with special needs.

1. If a client is identified as having a special need at the time of his assessment a program shall provide services either directly or through referral according to the following:

a. Questions and instructions shall be read orally to a client who is unable to read and responses shall be recorded for a client who is unable to write;

b. A qualified interpreter shall be provided for a deaf client;

c. Reasonable accommodations shall be made for a client who is unable to communicate in English; and

d. A pregnant client shall be referred for prenatal care.

2. A program shall document in a client's record special needs services the client receives.

3. Responsibility for payment of a special need service shall be

according to the following:

a. A program shall be responsible for payment of interpreter services pursuant to KRS 30A.415; and

b. A client shall be responsible for payment of other services required because of a special need pursuant to KRS 189A.040.

4. A program shall comply with the rules of confidentiality established in:

a. 908 KAR 1:320 if providing interpreter services to a client in a federally-assisted program; or

b. KRS 222.271(1) if providing interpreter services to a client in a nonfederally-assisted program.

(d) A client that receives treatment before an assessment. If a client receives treatment after being charged with DUI, without first receiving an assessment, a program shall:

1. Obtain a copy of a court order from the court and a copy of the client's uniform citation;

2. Conduct an assessment and case coordination in accordance with subsections (1) and (3) of this section; and

3. Give the client credit for treatment he received since his DUI arrest if it can be documented that the treatment was at the level of care needed by the client based on the assessment conducted pursuant to subparagraph 2 of this paragraph.

(e) A client with multiple DUI convictions. If a client presents for an assessment with multiple unresolved DUI convictions, a program shall:

1. Obtain a copy of the client's uniform citation and an AOC 494 form or court order for each conviction;

2. Conduct one (1) assessment and case coordination in accordance with subsections (1) and (3) of this section;

3. Refer the client to treatment at a level of care appropriate to satisfy the client's clinical needs and all of his DUI convictions; and

4. Complete a separate completion report for each of the client's convictions.

(f) A client convicted of DUI while enrolled in a program. If a client receives a subsequent conviction for DUI while enrolled in an education or treatment program, a program shall:

1. Obtain a copy of the client's uniform citation and an AOC 494 form or court order for the subsequent conviction;

2. Conduct another assessment and case coordination in accordance with subsections (1) and (3) of this section;

3. Refer the client to a level of care appropriate to satisfy the client's clinical needs and all of his DUI convictions;

4. Document the client's file to show that the client's admission to treatment began at the time he was reassessed; and

5. Complete a separate completion report for each of the client's convictions. [(g) Reenrollment of a client. If a client requests reenrollment after he stops attending education or treatment, a program shall:

1. Reenroll the client and allow him to resume the education or treatment service at the point where he last attended if he has not been reported noncompliant to the court; or

2. Refer the client back to the court for a new court order before conducting a new assessment and starting the education or treatment service over if he has been reported as noncompliant to the court.](g) Prior services received by a client: If a client requests services after being reported non-compliant, a program shall:

1. Refer a client back to the court for a new court order;

2. Conduct a DUI assessment; and

3. Give the client credit for prior services if it can be documented that:

(i) The services were at the level of care indicated by the assessment;

(ii) The services were received within the last six (6) months; and

(iii) The client is progressing in accordance with the completion requirements.

(h) Early release of a second offender. If the program responsible for a client's case coordination determines a second offender, who has completed at least six (6) months of the treatment that was recommended based on the client's assessment, has completed a program prior to the end of the one (1) year period ordered by the court, the administrator of the program shall send a written report notifying the court that the client has completed the program.

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(i) A client under twenty-one (21) years of age. If a client is under twenty-one (21) years of age, a program shall deliver services:

1. In accordance with the requirements established in this administrative regulation if the client is convicted of DUI pursuant to KRS 189A.010(1)(a) through (d); or

2. In accordance with a court order, not subject to the requirements established in this administrative regulation, if the client is convicted pursuant to KRS 189A.010(1)(e).

(j) Early release of a first offender referred to treatment. A first offender referred to treatment may be deemed appropriate for release prior to the expiration of the ninety (90) day requirement in accordance with the following: Has achieved all goals and objectives stated in the treatment plan; Has completed a minimum of two (2) months in treatment; Has received the recommendation of the assessor providing case coordination; and Has met all completion requirements.

(k) Clients under the influence of alcohol or other drugs: If a client presents for services under the influence of alcohol or other drugs:

1. The DUI Program staff shall protect the safety and welfare of all clients by arranging for the impaired client's removal from the facility;

2. The DUI Program Administrator or the clinical services supervisor shall contact the case coordinator; and

3. The case coordinator shall re-evaluate the level of care appropriate to address the client's problem.

Section 7. Education Requirements. (1) Approved curricula.

(a) A DUI program desiring to provide education services shall ensure that:

1. The education delivered within the program is the twenty (20) hour curriculum approved by the division, the PRIME for Life Risk Reduction Program (PRI); [That, except as provided in paragraph (c) of this subsection, within six (6) months of the effective date of this administrative regulation, the education delivered within the program is one (1) of the following twenty (20) hour curricula approved by the division:

a. Kentucky Alcohol and Other Drugs Education Program (KAO-DEP) Twenty (20) Hour; and

b. Prime for Life Risk Reduction Program (PRI) Twenty (20) Hour; and]

2. Instruction is provided in person by an instructor holding valid DUI instructor certification from the division for the particular education session to be delivered; and

3. A certified instructor delivers a curriculum in accordance with the curriculum delivery standards established by subsection (2) of this section and taught at a DUI instructor certification training conducted by the [division or] Prevention Research Institute, Inc.

4. A certified DUI instructor demonstrates knowledge, communication, and facilitation skills as evidenced by:

a. Delivery of key supporting points of the curriculum;
b. Exhibiting skill in processing curriculum and participant journal activities;

c. Exhibiting fluency with curriculum content;

d. Ability to maintain class focus on subject of session;

e. Ability to engage each participant in discussions;

f. Ability to manage client defense and resistance;

g. Exhibiting sensitivity to individual client learning styles; and

h. Communicate a belief in the accuracy and importance of the curriculum.

5. A certified DUI instructor who is observed to lack the necessary skills outlined in subsection (1)(a)4 of this section shall receive additional instructor development to elevate his or her skill level to the extent necessary to perform as required by subsection (1)(a)4 of this section.

(b) [A DUI program may provide either or both of the twenty (20) hour curricula at a certified location.

(e)] During the six (6) month transitional period established by paragraph (a)1 of this subsection, a program shall meet the requirements for a twenty (20) hour curriculum established in:

1. This administrative regulation as those requirements existed on January 1, 2000; or

2. Paragraph (a)1 of this subsection.

(2) Delivery standards.

(a) The twenty (20) hour curriculum shall:

1. Be for a first offender assessed as needing only education or as a supplement to treatment if delivered to a first or multiple offender assessed as needing treatment;

2. Consist of twenty (20) hours of instruction and group interaction that increases a client's awareness and knowledge about the risks of alcohol and other drug use and helps develop skills to change a client's attitude and behavior in relation to alcohol and other drug abuse; and

3. Be delivered no more than:

a. Three (3) hours per day; and

b. Three (3) times per week.

(b) A program may enroll first offenders and multiple offenders in the same session.

(c) A program administrator shall ensure:

1. There are no more than twenty (20) [twenty-five (25)] and no less than two (2) clients in a session;

2. A curriculum is delivered in accordance with the delivery standards established in this subsection;

3. Required manuals for a curriculum are distributed to and used by a client;

4. A client is given the manual for his personal use after completion of an education service;

5. Videos required in a curriculum are shown to a client; and

6. Supplemental videos and speakers that are not approved as part of a curriculum are not used for an education service.

7. Evaluation of DUI educational classes are completed by the participants and submitted to the division at the conclusion of each twenty (20) hour education course.

(3) Documentation and completion requirements for education sessions.

(a) A program shall maintain a sign-in sheet for an education session that includes:

1. Name of the curriculum;

2. Title and number of the session;

3. Date, time, location, and name of the instructor; and

4. Client name and signature.

(b) A program shall require a client to:

1. Attend and participate in each session of a curriculum;

2.a. If the client is a first offender, attend each session of the curriculum in any order; or

b. If the client is a multiple offender, except as provided by paragraph (c) of this subsection, attend sessions in sequence beginning with chapter 1;

3. Comply with a program's rules of conduct; and

4. Pay required fees.

(c) If a client who is a multiple offender cannot attend a session, due to an emergency, a program shall allow the client to attend a session out of sequence the next time the chapter is presented by a program. Documentation of the emergency shall be maintained in the client's file.

(d) If a client is receiving education at a program other than the program where he received his assessment, the program administrator shall notify the individual responsible for the client's case coordination if the client:

1. Demonstrates a need for service at a different level of care;

2. Satisfactorily completes education; or

3. Is noncompliant.

(e) If a client is receiving education at the program where he received his assessment, the program administrator shall:

1. Determine if the client has satisfactorily completed the DUI education service; and

2. Report compliance or noncompliance in accordance with Section 6(3)(a)2 of this administrative regulation.

(f) A program administrator shall ensure that a client's record contains documentation showing compliance with the requirements established in this subsection.

Section 8. Treatment Requirements. (1) General requirements.

(a) A DUI program desiring to provide treatment services shall: Comply with the licensing requirements established in Section 2 of this administrative regulation; [and]

2. Employ treatment staff who meet the requirements estab-

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lished in 908 KAR 1:370, Section 8; and

3. Ensure that all treatment staff have knowledge, skill, and abilities demonstrating competence as evidenced by:

a. Communicating in a non-judgmental and respectful attitude toward clients;

b. Engaging clients in the treatment process;

c. Ability to facilitate group interaction;

d. Demonstrating knowledge of substance abuse related life issues;

e. Demonstrating knowledge of the signs and symptoms of relapse;

f. Utilizing techniques to assist clients in meeting goals;

g. Ability to deal effectively with resistance;

h. Ability to address individual client differences and needs;

i. Demonstrating knowledge of the physical and psychological complications of alcohol and other drug abuse; and

j. Demonstrating the ability to develop treatment plans and document progress notes in accordance with the standards established in subsection (2) of this section. [2. Employ qualified staff that have training and experience in dealing with the physical and psychological complications of alcohol and other drug abuse;]

(b) A program shall ensure that the treatment a client receives is based on his assessment. A client may be referred to outpatient, intensive outpatient, inpatient, residential, residential transitional living, or detoxification treatment services in a licensed treatment program in state or out of state pursuant to the requirements established in this administrative regulation.

(c) A program shall deliver treatment services in person according to the following:

1. A client shall receive individual or group treatment;

2. A treatment group may include first and multiple offenders in the same session;

3. A sign in sheet shall be maintained which contains the date and location of the services and the signature of each client in attendance.

4. [3] The maximum number of clients in a treatment group shall not exceed fifteen (15);

5. [4] A client may be referred to a self-help group to supplement but not to replace treatment services;

6. [5] A client referred to outpatient treatment shall receive at least one (1) hour of individual or one and one-half (1 1/2) hours of group treatment each week;

7. [6] A client referred to intensive outpatient treatment shall receive at least six (6) hours of treatment over a period of two (2) or more days weekly in a program licensed for intensive outpatient treatment;

8. [7] If a client receives treatment less often than the requirements established in subparagraphs 5 and 6 of this paragraph, to meet his individual clinical needs, a clinical rationale shall be documented in the client's record; and

9. [8] A client referred for inpatient or residential treatment shall receive this treatment in a program licensed for inpatient or residential treatment.

(2) Treatment plan.

(a) A clinician or treatment planning team shall be responsible for developing a treatment plan for a client accepted for treatment services by the client's fourth session.

(b) A treatment plan shall:

1. Be developed with a client's participation and be individualized for the needs of the client;

2. Include a written statement of the client's problem with alcohol and other drugs and any other problem that contributes to or is related to the client's use of alcohol and other drugs;

3. Include a written statement of treatment goals and measurable objectives with a time schedule for achieving the goals and a written statement of whether the client agrees with the treatment plan;

4. Be signed by the client and the clinician if there is a change documented in the client's treatment plan; and

5. ~~Be reviewed by the clinician and the client at least once every 180 calendar days or if there is a change documented in the client's treatment plan.~~

5. Be reviewed and signed by the clinician at least every:

a. Forty-five (45) calendar days for a first offender attending

treatment;

b. 180 days for a multiple offender attending treatment;

c. Thirty (30) days for a client receiving intensive outpatient treatment; or

d. If there is a change documented in the client's treatment plan, be reviewed and signed by the clinician and the client.

(c) A client's progress toward meeting the goals stated in his treatment plan shall be documented in the client's record by a clinician at least weekly.

(d) If the twenty (20) hour education curriculum is delivered as a supplement to treatment to a first or multiple offender assessed as needing treatment, it shall be included in a client's treatment plan.

(3) Completion requirements.

(a) To complete a treatment service, a client shall:

1. Comply with all attendance requirements;

2. Achieve the goals stated in his treatment plan;

3. Comply with a program's rules of conduct; and

4. Pay required fees.

(b) If a client is receiving treatment at a program other than the program where he received his assessment, the program administrator of the treatment program shall notify the individual responsible for the client's case coordination if a client:

1. Demonstrates a need for service at a different level of care;

2. Satisfactorily completes treatment; or

3. Is noncompliant.

(c) If a client is receiving treatment at the program where he received his assessment, the program administrator shall be responsible for:

1. Final approval that the client has satisfactorily completed a treatment service; and

2. Reporting compliance or noncompliance in accordance with Section 6(3)(a)2 of this administrative regulation.

(d) A program administrator shall ensure that a client's record contains documentation showing compliance with the requirements established in this subsection.

Section 9. Administrative Hearing Requirements. (1) If the division takes action to deny or revoke a DUI program's certification or an individual's assessor, [or] instructor, or program administrator certification, the division shall notify the program or individual assessor, [or] instructor, or program administrator in writing, state [stating] a reason for the adverse action and notify [notifying] the program or individual assessor, [or] instructor, or program administrator of the right to appeal the action pursuant to KRS Chapter 13B.

(2) A program or individual assessor or instructor shall appeal a negative certification action taken by the division by notifying the division, in writing, postmarked within twenty (20) calendar days from the date of notice of action from the division.

(3) Upon receipt of an appeal, the secretary or his designee shall give notice of the hearing to a program or an individual assessor, [or] instructor, or program administrator in writing, not less than twenty (20) calendar days in advance of the date set for the hearing and the notice shall be sent in accordance with KRS Chapter 13B.

(4) The secretary, or his designee, shall appoint a hearing officer to conduct a hearing and the hearing shall be conducted pursuant to KRS Chapter 13B.

(5) The division shall retain all records related to a hearing for a period of at least five (5) years.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference: [(a) AOC 494 form (Rev. 5-96) Notice to Attend Alcohol Driver Education Program (revised 5/96);]

(a) [(b)] Application for DUI Program Certification Form, DUI Form 01 [(revised 3/2000)];

(b) [(e)] Application for DUI Program Recertification Form, DUI Form 02 [06 (revised 3/2000)];

(c) [(d)] Assessment Observation Form, DUI Form 03; [Complaint Form DUI Form 05 (revised 10/01/98);]

(d) [(e)] Client Evaluation of Assessment Program, DUI Form 04; [DUI Assessor Certification Application DUI Form 10 (revised 3/2000);]

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(e) [(f)] Client Evaluation of Treatment Program, DUI Form 05; [DUI Assessor Recertification Application-DUI Form 11 (revised 3/2000);]

(f) [(g)] Client Record Review, DUI Form 06; [Instructor Certification Application-DUI Form 12 (revised 3/2000);]

(g) [(h)] Comprehensive DUI Program Review Form, DUI Form 07; [DUI Instructor Recertification Application-DUI Form 13 (revised 3/2000);]

(h) DUI Complaint Form, DUI Form 08;

(i) DUI Assessor Certification Application, DUI Form 09; [Inter-state Transfer Form-DUI Form 08 (10/01/98);]

(j) DUI Assessor Recertification Application, DUI Form 10; [DUI Kentucky Alcohol and Other Drugs Education Program (KAODEP) Twenty (20) Hour (1998);]

(k) DUI Program Certification Certificate, DUI Form 11; [Kentucky-DUI Assessment Instrument (10/01/98);]

(l) DUI Instructor Certification Application, DUI Form 12; [Memorandum of Understanding-DUI Form 07 (revised 10/01/98);]

(m) DUI Instructor Recertification Application, DUI Form 13; [Prime For Life Risk Reduction Program (PRI) Twenty (20) Hour (1998);]

(n) DUI Program Administrator Certification Application, DUI Form 14; [Program Certification Certificate-DUI Form 15 (10/01/98);]

(o) DUI Program Administrator Recertification Application, DUI Form 15; [Program Review Form-DUI Form 04 (revised 3/2000);]

(p) Education Observation Form, DUI Form 16; [Program Survey Form-DUI Form 02 (revised 10/01/98);]

(q) Follow-up DUI Program Review Form, DUI Form 17; [Report of Change Form-DUI Form 03 (revised 10/01/98);]

(r) PRI Client's Evaluation of Education Services Received; DUI Form 18; [Roster of Assessments-DUI Form 09 (10/01/98);]

(s) Program Survey Form, DUI Form 19; [Site Visit Follow-up Compliance Review Form-DUI Form 14 (revised 3/2000);]

(t) Report of Change Form, DUI Form 20; and

(u) Treatment Observation Form, DUI 21.

(2) This material may be inspected, copied, or obtained at the Department for Behavioral Health, Developmental and Intellectual Disabilities [Mental Health and Mental Retardation Services], Division of Behavioral Health [Substance Abuse], 100 Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHEN HALL, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if request, be held on August 22, 2011, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing August 15, 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 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 until the close of business August 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, Cabinet for Health and Family Services, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lee Etta Cummings

(1) Provide a brief summary of: Certification standards and administrative procedures for driving under the influence programs.

(a) What this administrative regulation does: Prescribes certification standards for individuals and programs that provide assessment, education and treatment services to offenders convicted of driving under the influence pursuant to KRS 189A. This administrative regulation establishes certification requirements and minimum standards for an individual or other entity operating a certified DUI program in Kentucky.

(b) The necessity of this administrative regulation: Required by KRS 189A.040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 189A.040(6), requires the Cabinet for Health Services to promulgate administrative regulations for the licensure of education and treatment facilities and programs for offenders receiving education or treatment under this section.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes certification standards for DUI instructors that deliver the education services to DUI offenders and prescribes the manner of assessment by prescribing a certification process for DUI assessors.

(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: Establishes monitoring protocols and quality assurance measures including best practice standards to be followed when delivering DUI assessment, education and treatment services. These knowledge, skills and attitudes of professional practice were identified by the Substance Abuse and Mental Health Services Administration and published in the technical assistance publication series 21.

(b) The necessity of the amendment to this administrative regulation: It is essential, since DUI services are mandated by KRS 189A, that clients receiving those mandatory services are entitled to receive an effective intervention/quality DUI assessment, education and or treatment service.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 189A.040(6) requires the Cabinet for Health Services to promulgate administrative regulations for licensure of education and treatment facilities and programs for offenders receiving education or treatment under this section. In addition the statute states, "The criteria developed by the Cabinet for Health Services shall include: (a) Manner of assessment; (b) Appropriate education and treatment plans; and (c) Referrals to other treatment providers."

(d) How the amendment will assist in the effective administration of the statutes: This amendment will require DUI assessors, instructors and clinicians to employ best practice standards when delivering services to DUI offenders in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 117 certified DUI programs that deliver DUI assessment, education and treatment services to the estimated 33,000 DUI offenders convicted annually 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: No required action for the DUI offender; however, the certified DUI programs will be required to ensure staff delivering the DUI assessment, education and treatment service receive required oversight by the clinical services supervisor and DUI program administrator. It is estimated this change would require an additional one (1) to two (2) of hours of oversight/supervision monthly by the program administrator/clinical services supervisor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The additional responsibilities will result to additional cost that will be passed along to the client, since this a client self pay services. No additional cost will be incurred by the Department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The DUI programs will improve

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the quality of DUI services delivered statewide to DUI offenders mandated to receive the service.

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

(a) Initially: No additional expense as this is a currently operating program

(b) On a continuing basis: There will be no additional expense as this is a currently operational program..

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency and state funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None – The amendment to this administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? No. This regulation treats all providers 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 Transportation Cabinet, The Court, All Substance Abuse Program Facilities, Office of Inspector General (OIG), Other states where a Kentucky licensee is convicted of DUI.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.010, 189A.040, 189A.045, 189A.070, 194A.030, 194A.050, 222.003, 222.005, 222.221, 222.231, 222.271, and 222.990

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

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

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

(c) How much will it cost to administer this program for the first year? Annually \$497,699 to pay the staff salaries of the Division of Behavioral Health employees that provide the oversight to the currently 117 certified DUI programs statewide. This is a currently operating program.

(d) How much will it cost to administer this program for subsequent years? Annually \$497,699 to pay the staff salaries of the Division of Behavioral Health employees that provide the oversight to the currently 117 certified DUI programs statewide. This is a currently operating program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Mental Health and Mental Retardation Services Division of Administration and Financial Management (Amendment)

908 KAR 3:060. "Means test" for determining patient liability.

RELATES TO: KRS 210.710, 210.720, and 210.730

STATUTORY AUTHORITY: KRS 194A.050, 210.710(4), 210.720(3), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.710(4) and 210.720(3) require the Secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the Cabinet for Health and Family Services, for the mentally ill or mentally retarded. This administrative regulation establishes the "Means test" for making that determination.

Section 1. Definitions. (1) "Allowed deduction" means an amount disregarded or deducted from income and assets for the purpose of determining the ability to pay for services rendered by a facility.

(2) "Available assets" means resources of the patient or person responsible for the patient in accordance with KRS 210.720(3), less the applicable protections specified in Section 2(7) of this administrative regulation.

(3) "Deductible" means an amount that a patient or person responsible for the patient is expected to pay toward their care by a third-party payor such as Medicare or a private insurance company.

(4) "Facility" is defined in KRS 210.710(2).

(5) "Income" means funds received by the patient or person responsible for the patient and includes the following:

(a) Salaries;

(b) Wages;

(c) Self-employed gross revenues, less operating expenses;

(d) Benefit payments, except for Supplemental Security Income payments;

(e) Social Security payments;

(f) Rents;

(g) Royalties;

(h) Pensions;

(i) Retirement payments;

(j) Veteran's Administration payments;

(k) Black lung benefits;

(l) Railroad retirement benefits;

(m) Gifts;

(n) Settlements;

(o) Trust receipts;

(p) Alimony, but does not include child support payments;

(q) Interest income; and

(r) Income from investments.

(6) "Patient" means a person admitted to a facility.

(7) "Person responsible for the patient" is defined in KRS 210.710(5).

(8) "Personal Needs Allowance" means an amount of resources deducted from income for the patient's personal needs, including clothing and other miscellaneous items required by the patient.

(9) "Poverty Guidelines" means the latest federal poverty measurement guidelines issued by the United States Department of Health and Human Services and published annually in the Federal Register, under the authority of 42 U.S.C. 9902(2).

Section 2. Determination of the Ability to Pay for Services Rendered at Facilities. (1) The facility shall apply the means test to each patient who is admitted to the facility for treatment.

(2) The means test shall include a determination of the responsible party or parties to pay for the patient's care, which shall be documented using the "PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD" form. This form shall be explained to the patient or person responsible for the patient and signed by all par-

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ties. If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form along with the date the form was discussed. Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(3) The amount a patient or person responsible for the patient is required to pay for services shall be the lesser of:

(a) The cost per patient day in accordance with 908 KAR 3:050, less any amount paid by Medicare, Medicaid, and other third-party payment sources; or

(b) The amount the patient is deemed able to pay in accordance with this administrative regulation.

(4) The facility shall determine the financial resources available to the patient or person responsible for the patient including:

(a) Insurance and third-party payors;

(b) Income received or expected to be received during the period of hospitalization; and

(c) Available assets.

(5) The following shall be allowed deductions from income:

(a) Federal income taxes;

(b) State income taxes;

(c) Social security taxes;

(d) Normal retirement contributions;

(e) Unpaid medical and dental bills;

(f) Health insurance premiums;

(g) Medicare Part B insurance premiums;

(h) Long-Term Care insurance premiums;

(i) A personal needs allowance of forty (40) dollars per month;

(j) Student loan payments;

(k) Bed-hold reservation costs at another facility for up to fourteen (14) days as long as the patient's stay is expected to be shorter than the reservation period;

(l) Child support payments;

(m) Life insurance premiums if the patient's estate or a funeral home is the named beneficiary on the policy; and

(n) A basic maintenance allowance, derived from the Poverty Guidelines, as contained in the Basic Maintenance Allowance Table of Section 3(7) of this administrative regulation for the size of the patient's family if the following conditions are met:

1. The patient was maintaining a residence immediately prior to admission;

2. The residence will continue to be maintained during the period of hospitalization and resources of the patient are needed for this effort;

3. Facility staff expects the patient's hospital stay to be three (3) months or less in duration; and

4. Dependents used in the calculation of the basic maintenance allowance shall include a legally-recognized spouse and each individual less than eighteen (18) years of age and in the patient's care.

(6) An estimated income tax related deduction of twenty-five (25) percent of total income shall be allowed in lieu of the actual wage taxes contained in subsection (5) of this section. A patient or person responsible for the patient may request that actual tax amounts be used instead of the estimated deduction if they can substantiate the actual tax amounts.

(7) The following shall be excluded from the calculation of available assets:

(a) Prepaid burial plans of up to \$1,500 per family member;

(b) Automobiles;

(c) Housing structures;

(d) Land;

(e) Retirement accounts;

(f) Pension funds;

(g) Trust funds that cannot be accessed;

(h) The applicable amount contained in the Ability To Pay Assets Table of Section 3(7) of this administrative regulation for the size of the patient's family using the dependent counting guidelines contained in subsection (5)(n)4 of this section; and

(i) Other assets that are exempted under state law, if any.

Section 3. Calculation of the Amount the Patient or Person Responsible for the Patient is Able to Pay. (1) The facility shall calculate the ability to pay amount utilizing either the "ABILITY TO

PAY WORKSHEET" or the "DEDUCTIBLE ABILITY TO PAY WORKSHEET" as appropriate:

(a) Determine the total amount of income of the patient or person responsible for the patient;

(b) Determine the amount of allowed deductions from income in accordance with Section 2(5) of this administrative regulation;

(c) Subtract the allowed deductions from income; and

(d) The remaining available income shall be divided by 365 to obtain the average daily income of the patient or person responsible for the patient.

(2) If the patient or person responsible for the patient has available assets, the facility shall:

(a) Determine the amount of available assets in accordance with Section 2(7) of this administrative regulation; and

(b) Include available assets that remain after the deduction in the patient or person responsible for the patient's ability to pay amount.

(3) Payments to be made on behalf of the patient by a third-party, such as Medicare, Medicaid, or private insurance companies, shall be subtracted from the facility's per diem rate as contained in 908 KAR 3:050. Any remaining liability shall be satisfied as follows with the exception of ability to pay amounts arising from deductibles:

(a) The available income of the patient or person responsible for the patient shall first be applied to the patient's liability for services;

(b) Any liability that remains after application of the average available income shall be satisfied by available assets; and

(c) The applicable average income per day and available asset amount per day shall be combined to determine the ability to pay amount. The ability to pay amount shall be charged for each day the patient is in the facility.

(4) Ability to pay liabilities arising from deductibles shall first be applied to available assets of the patient or person responsible for the patient with any remaining liability being satisfied with available income.

(5) If the Department for Medicaid Services performs an income assessment for a Medicaid patient residing in a nursing facility, intermediate care facility for the mentally retarded, or psychiatric hospital in accordance with 907 KAR 1:655, that Medicaid income assessment shall be relied upon in lieu of the ability to pay provisions established in this administrative regulation.

(6) After the ability to pay is determined for the patient or person responsible for the patient, a "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form shall be completed. This form shall be explained to the patient or person responsible for the patient and signed by all parties. If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form including the date the form was discussed. Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(7) The patient liability shall be calculated based on the United States Department of Health and Human Services poverty threshold guidelines established in this subsection:

(a) The poverty guidelines effective July 31, 2009 [through the effective date of this administrative regulation] shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	\$10,830 [\$10,400]
2	\$14,570 [\$14,000]
3	\$18,310 [\$17,600]
4	\$22,050 [\$21,200]
5	\$25,790 [\$24,800]
6	\$29,530 [\$28,400]
7	\$33,270 [\$32,000]
8	\$37,010 [\$35,600]

*For each additional dependent, add \$3,740 [\$3,600] dollars.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	\$2,000

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2	\$4,000
3	\$4,050
4	\$4,100

*For each additional dependent, add fifty (50) dollars

(b) The poverty guidelines effective the effective date of this administrative regulation [July 1, 2009] shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	\$10,890 [\$10,830]
2	\$14,710 [\$14,570]
3	\$18,530 [\$18,340]
4	\$22,350 [\$22,050]
5	\$26,170 [\$25,790]
6	\$29,990 [\$29,530]
7	\$33,810 [\$33,270]
8	\$37,630 [\$37,040]

*For each additional dependent, add \$3,820 [\$3,740] dollars.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	\$2,000
2	\$4,000
3	\$4,050
4	\$4,100

*For each additional dependent, add fifty (50) dollars

Section 4. Revisions to Ability to Pay Amounts. (1) Facility staff shall update a patient's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:

- (a) Income revisions;
- (b) Asset revisions including exhaustion of available assets;
- (c) Change in allowed deductions;
- (d) Change in a dependent of the patient or person responsible for the patient; or
- (e) Change regarding the status of the person responsible for the patient.

(2) Upon a change to the ability to pay information, a revised "ABILITY TO PAY WORKSHEET" or "DEDUCTIBLE ABILITY TO PAY WORKSHEET" shall be prepared along with a revised "PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD" form and a revised "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form. The revised forms shall be presented to the patient or person responsible for the patient in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) If the patient or person responsible for the patient fails to or will not provide the information necessary to calculate the ability to pay amount, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

(2) If the patient or person responsible for the patient fails to sign the assignment provision contained in the "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

Section 6. Payment Hardship, Appeal and Waiver Procedures.

(1) Payment hardships.

(a) If the patient or person responsible for the patient believes that payment of the ability to pay amount results in a financial hardship, the patient or person responsible for the patient may request to make installment payments.

(b) This request shall be made in writing to the facility's patient billing supervisor and shall include documentation to support the claimed hardship.

(c) The patient billing supervisor shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request.

(2) Appeals.

(a) If the patient or person responsible for the patient is aggrieved by the facility charges or a payment plan determined in

accordance with this administrative regulation, that person may appeal the determination to the facility director or the facility director's designee for informal resolution within thirty (30) days of the ability to pay amount or payment plan being calculated.

(b) The facility director or the facility director's designee shall review the appeal and issue a determination within thirty (30) days of receipt.

(c) If the patient or person responsible for the patient is dissatisfied with the informal resolution, that person may file an appeal within thirty (30) days of the facility's response to the Director of the Division of Administration and Financial Management, Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40621-0001. The director shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(d) The appeal request shall fully explain the patient's or person responsible for the patient's position and include all necessary supporting documentation.

(3) Waivers.

(a) The director of each facility may waive payment of his or her facility's charges under this administrative regulation if waiver is deemed to be in the best interest of all parties.

(b) The Director of the Division of Administration and Financial Management shall have the authority to waive payment at any facility within the department if waiver is deemed to be in the best interest of all parties.

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

(a) "MHMR 3:060-1 ABILITY TO PAY WORKSHEET", June 2008;

(b) "MHMR 3:060-2 DEDUCTIBLE ABILITY TO PAY WORKSHEET", June 2008;

(c) "MHMR 3:060-3 PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT", August 2004; and

(d) "MHMR 3:060-4 PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD", March 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, Frankfort, Kentucky 40621-0001, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHEN HALL, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if request, be held on August 22, 2011, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 2011, five work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 until the close of business August 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, Cabinet for Health and Family Services, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Ky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Glenn Bryant or Ijeoma Eneje

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-

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tive regulation requires the Secretary of the Cabinet for Health and Family Services to adopt a "means test" for determining the ability of the patient or person responsible for the patient to pay for board, maintenance and treatment at a facility operated or utilized by the cabinet for the mentally ill or mentally retarded.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary in order to establish a homogeneous methodology to determine the ability of a patient or person responsible for the patient to pay for services received at a facility operated or utilized by the cabinet for the mentally ill or mentally retarded.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.710 to KRS 210.760 requires the cabinet to adopt a "means test" to determine the ability of a patient to pay who receives services at a facility for the mentally ill or mentally retarded operated or utilized by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the cabinet in determining the entire financial resources available to a patient or person responsible for the patient.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to update the Basic Maintenance Allowances table based on the most recent version of the Federal poverty guideline allowance amounts.

(b) The amendment to this administrative regulation is necessary to: revise tables related to benefit and support limits based on Federal poverty guidelines in order to accurately determine the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet for the mentally ill or mentally retarded.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.710 to KRS 210.760 requires the cabinet to adopt a "means test" to determine the ability of a patient to pay who receives services at a facility for the mentally ill or mentally retarded operated or utilized by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720 requires the cabinet to adopt a "means test" to determine the ability to pay of a patient. This amendment to 908 KAR 3:060 allows the Cabinet to more accurately assess the entire financial resources available to a patient or person responsible for the patient.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are sixteen (16) state operated facilities affected by this administrative regulation. This amendment will primarily affect patients admitted to facilities operated by the Cabinet.

(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: This administrative regulation will assure that state operated facilities equitably charge patients served. Increase in poverty guidelines factor into patient's liability to their benefit in allowable deductions.

(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: Facility staff will be required to assess the financial resources of the clients or clients' financially responsible party.

(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 comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows facilities to assess and recoup costs associated with treatment and services. No resident presented for admission shall be denied treatment due to their inability to pay.

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

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

(b) On a continuing basis: There is no cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is not an additional cost 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: This administrative regulation will not generate any increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not increase fees to a patient or to the cabinet.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because the "Means Test" to determine ability to pay apply equally to all patients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The sixteen (16) state operated facilities are 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 210.710, 210.728

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 allows facilities to assess and recoup costs associated with treatment and services

(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 is no cost to administer this administrative regulation

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

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

Revenues (+/-): This administrative regulation will not generate any revenue.

Expenditures (+/-): This administrative regulation uses the federal poverty guideline to determine a client's ability to pay for services provided.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

921 KAR 2:040. Procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.010, 205.200, 205.245, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative

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regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the ~~[following public assistance programs:]~~ Kentucky Transitional Assistance Program (K-TAP) and ~~the~~ State Supplementation Program (SSP). KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with Title IV-A of the Social Security Act, 42 U.S.C. 601-619, and federal regulations. This administrative regulation establishes the procedures used to determine initial and continuing eligibility for assistance under these programs.

Section 1. Eligibility Determination Process. (1) A household shall, for the month payment is intended to cover the household, meet the eligibility criteria in:

- (a) 921 KAR 2:006 and 921 KAR 2:016 for K-TAP; or
- (b) 921 KAR 2:015 for SSP.

(2) A household shall not receive assistance ~~[-~~ ~~(a) Assistance~~ until approval of the application for benefits ~~[-~~ or ~~(b) Benefits prior to application~~.

(3) Each decision regarding eligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record.

(4) The applicant or recipient shall be the primary source of information and shall be required to:

- (a) Furnish verification of:

1. Income;
2. Resources; and
3. Technical eligibility; and

(b) Give written consent to contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(5) If informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information when requested shall be considered a failure to present adequate proof of eligibility.

(6)(a) An application shall be considered filed if a PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance), or a PA-100, Application/Recertification for K-TAP, Kinship Care, and Family/AFDC Related MA ~~[KIM-100, KAMES Application]~~, containing the name, address, and signature of the applicant is received by a DCBS office.

(b) An application shall be processed after the:

1. Applicant or representative is interviewed;
2. Required information and verification for the application is provided to the Department for Community Based Services (DCBS) office; and
3. Application and related documents are received by the DCBS office.

(c) If an electronic form is not used, the cabinet shall record information for recertification to determine continuing eligibility for K-TAP by using form PA-100 ~~[PR-1, Program Recertification]~~.

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting, within ten (10) calendar days, any change in circumstances which may affect eligibility or the amount of payment.

(2) Eligibility shall be redetermined:

- (a) If a report is received or information is obtained about changes in circumstances;
- (b) Every twenty-four (24) months for SSP cases; and
- (c) Every twelve (12) months for K-TAP cases.

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

- (a) ~~["KIM-100, KAMES Application", edition 8/40;~~
- (b) ~~"PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance)", edition 11/11 [8/40]; and~~
- (b) "PA-100, Application/ Recertification for K-TAP, Kinship Care, and Family/AFDC Related MA", edition 11/11. ~~[(e) "PR-1, Program Recertification", edition 1/03.]~~

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

ject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 14, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2011 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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 August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

What this administrative regulation does: This administrative regulation establishes the procedures used to determine initial and continuing eligibility for the Kentucky Transitional Assistance Program (K-TAP) and the State Supplementation Program (SSP) public assistance programs.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish the process for eligibility determination and redetermination for individuals in K-TAP and SSP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the eligibility determination processes for initial applicants and redetermination for recipients in K-TAP and SSP.

(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 setting forth the procedures used to determine initial and ongoing eligibility for K-TAP and SSP.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to incorporate by reference form PA-100, Application/Recertification for K-TAP, Kinship Care, and Family/AFDC Related MA. This form is replacing forms KIM-100, KAMES Application; and PR-1, Program Recertification, both of which will become obsolete. The amendment also revises form PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance), to comply with agency requirements of electronic forms and makes other technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to streamline eligibility processes used by agency staff and customers in K-TAP and SSP by creating one form for both initial application and recertification of eligibility. In addition, the amendment to this administrative regulation amends incorporated materials to ensure their conformity with agency requirements concerning electronic forms.

(c) How the amendment conforms to the content of the autho-

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rizing statutes: The amendment conforms to the content of the authorizing statutes through its technical corrections and revisions to existing forms used for K-TAP and SSP eligibility determinations in an effort to make the initial and ongoing eligibility determination processes more efficient.

(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 making necessary technical corrections to the administrative regulation and revising incorporated materials for greater efficiencies and clarity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving or are applying for assistance from K-TAP, SSP, Kinship Care, and Medicaid. In May 2011, there were 3,879 K-TAP; 367 Kinship Care; 180 SSP; and 29,907 Medicaid applications taken.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no cost to impacted entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The affected entities will accrue no new public assistance benefits as a result of the amendment to this administrative regulation, though they will likely benefit from the efficiencies of one form, rather than two forms, that will be used for initial and ongoing eligibility determination processes.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have an initial fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a continuing fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds support SSP, a requirement of the state's eligibility for the federal Medicaid Program. Title IV-A or federal TANF funds and state general funds used for Maintenance of Effort are resources used for K-TAP, KWP, and Kinship Care.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.200(2)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

sibilities or requirements. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 205.010, 205.200, 205.245, 42 U.S.C. 601-619.

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

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

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

(c) How much will it cost to administer this program for the first year? The K-TAP program has been operational since October 1996. The State Supplementation program has been operational since December 1973. This administrative regulation will not require any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? The K-TAP program has been operational since October 1996. The State Supplementation program has been operational since December 1973. This amendment will not require any additional costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:-

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

921 KAR 2:050. Time and manner of payments.

RELATES TO: KRS 205.220, 205.245, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.220, 205.245, 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.220 prescribes who is eligible for public assistance and requires the cabinet to prescribe by administrative regulation the time and manner of payments of public assistance grants for eligible individuals. KRS 205.245 provides for a money payment to the needy aged, needy blind, and needy permanently and totally disabled. This administrative regulation establishes the time and manner of payments for the Kentucky Transitional Assistance Program (K-TAP) and the

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Kentucky Works Program (KWP) in conformity with the Social Security Act, 42 U.S.C. 601 - 619, and federal regulations. It also establishes the time and manner of State Supplementation Program (SSP) payments and Mental Illness or Mental Retardation (MIMR) Supplement Program payments.

Section 1. Authorization of ~~K-TAP [Kentucky Transitional Assistance Program]~~ Payments. (1) Method of payment.

(a) A payment may be issued monthly by:

1. Check;

2. Electronic benefit transfer (EBT); or

3. Direct deposit into a recipient's checking account upon completion by the recipient of the Direct Deposit Authorization, Form PA-63; and

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) A ~~K-TAP [Kentucky Transitional Assistance Program]~~ approval shall not be made for a period prior to the date of application.

(b) The effective date of an initial payment for a ~~K-TAP [Kentucky Transitional Assistance Program]~~ approval shall be the date an application is filed if eligibility factors are met as of that date.

(c) If eligibility factors are not met as of the day of application, the approval shall be effective the date on which all factors are met.

(3) Subsequent and special payment.

(a) Except in a situation pursuant to paragraph (b) of this subsection, a subsequent ~~K-TAP [Kentucky Transitional Assistance Program]~~ payment shall be made for an entire month in which technical eligibility factors are met as of the first day of the month.

(b) A special payment shall be issued:

1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of payment.

(a) A ~~K-TAP [Kentucky Transitional Assistance Program]~~ payment shall be unconditional and exempt from a remedy for the collection of a debt, lien or encumbrance from an individual or agency other than the Cabinet for Health and Family Services.

(b) The Cabinet for Health and Family Services may initiate recoupment to recover overpayment of benefits pursuant to 921 KAR 2:016.

(c) The Cabinet for Health and Family Services shall make adjustments to an EBT account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error [as defined in 921 KAR 2:016].

(5) EBT Account Inactivity.

(a) If an EBT account has not been debited in 365 days, the cabinet shall:

1. Expunge a monthly benefit on a monthly basis as each individual benefit month reaches a date that is 365 days in the past; and

2. Notify the household in writing:

a. That the household's EBT account has not been debited in the last 365 days; and

b. Of the amount of EBT benefits that have been expunged.

(b) If a recipient debits the EBT account, the expungement process shall cease.

(6) Eligible payee.

(a) A money payment shall [usually] be issued in the name of the approved [eligible] applicant [; except as provided in paragraph (b) of this subsection].

(b) [A protective payment may be made to a third party payee if a determination has been made by the Cabinet for Health and Family Services, based on evidence that poor money management is contributing to the unsuitability of the home for a needy child.

(c) The Department for Community Based Services may request an accounting from a third party payee in which the use of Kentucky Transitional Assistance Program funds shall be described pursuant to PA-148, Protective Payee Agreement.

(d) A ~~K-TAP [Kentucky Transitional Assistance Program]~~

payment for the month of death may be reissued to the:

1. Widow or widower;

2. Parent;

3. Guardian; or

4. Executor or administrator of the estate.

(c) [(e)] If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification. [(7) A Kentucky Transitional Assistance Program payment shall not be issued to an eligible Kentucky Transitional Assistance Program recipient who is a wage supplementation participant pursuant to 921 KAR 2:370, Section 2(2)(e)11. The amount of the eligible Kentucky Transitional Assistance Program payment for the benefit group containing a wage supplementation participant may be diverted to the contracted employer of the wage supplementation participant.]

Section 2. Supportive Services for ~~KWP [Kentucky Works]~~ Participants. A supportive services payment for a ~~KWP [Kentucky Works]~~ participant shall be made according to the type of service provided, as follows:

(1) A child care payment shall be issued pursuant to 922 KAR 2:160.

(2) [Transportation.

(a) A transportation payment shall be made prospectively for an anticipated transportation cost.

(b) A transportation payment pursuant to 921 KAR 2:017 may be made directly to the ~~K-TAP [Kentucky Transitional Assistance Program]~~ recipient.

(3) Other approved supportive services payments shall be made:

(a) Directly to the provider; and

(b) Within thirty (30) days of receipt of appropriate verification of service delivery of billing, pursuant to 921 KAR 2:017.

Section 3. Authorization of a SSP payment [State Supplementation Payment]. (1) Method of payment.

(a) A payment shall be issued monthly by:

1. Check; or

2. Direct deposit into a recipient's checking account upon completion by the recipient of the PA-63, Direct Deposit Authorization form; and

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) The effective date for ~~SSP [State Supplementation Program]~~ approval shall be the first day of the month in which:

1. An application is filed; and

2. Eligibility factors are met.

(b) A SSP payment [State Supplementation Program approval] shall be made for the entire month of which eligibility factors are met.

(3) Subsequent and special payment.

(a) A subsequent ~~SSP [State Supplementation Program]~~ payment shall be made for an entire month in which eligibility factors are met as of the first day of the month.

(b) A special payment shall be made:

1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of a payment.

(a) A ~~SSP [State Supplementation Program]~~ money payment shall be unconditional and is exempt from a remedy for the collection of a debt, lien, or encumbrance from an individual or agency other than the Cabinet for Health and Family Services.

(b) The Cabinet for Health and Family Services shall initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall be issued in the name of the eligible applicant except as provided in paragraph (b) of the subsection.

(b) A money payment may be issued to the:

1. Legally appointed committee or guardian; or

2. Person serving as the representative payee for another

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statutory benefit such as Supplemental Security Income [SSI].

(c) A SSP [State Supplementation Program] payment for the month of death may be reissued to the:

1. Widow or widower;
2. Parent;
3. Guardian; or
4. Executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

Section 4. Authorization of Persons With ~~[Mental Illness or Mental Retardation-]~~ MIMR ~~[y]~~ Supplement Program Payment. (1) Method of payment.

(a) The MIMR supplement payment shall be made:

1. Quarterly; ~~and~~

2. By the last day of the month following the month that the certified quarter ends; and

3. Following receipt of appropriate documentation, pursuant to 921 KAR 2:015.

(b) The training reimbursement payment for the MIMR Supplement Program shall be made; [issued within thirty (30) days of]

1. Quarterly;

2. By the last day of the month following the month that the certified quarter ends; and

3. Following receipt of appropriate documentation, pursuant to 921 KAR 2:015.

(2) Initial payment.

(a) Following the notification to ~~[of]~~ the Cabinet for Health and Family Services by the personal care home (PCH) of its intent to participate, the effective date of the MIMR supplement shall be the first day of a month ~~[quarter]~~ that certification requirements pursuant to 921 KAR 2:015 are met.

(b) If a Type A citation issued from the Office of Inspector General occurs, payment shall be made only for eligible months pursuant to 921 KAR 2:015.

(3) A subsequent payment shall be made for a month within a quarter in which eligibility factors are met.

(4) Eligible payee.

(a) Payment for the MIMR supplement shall be made to the participating PCH, meeting MIMR certification requirements, for an eligible calendar quarter, pursuant to 921 KAR 2:015.

(b) Payment for the MIMR training reimbursement shall be made to the participating PCH.

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

(a) "PA-63, Direct Deposit Authorization", edition 11/11, is incorporated by reference ~~[12/07; and~~

(b) "PA-148, Protective Payee Agreement", edition 12/07.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2011 at 9:00 a.m. in the Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 2011, five (5) work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 August 31, 2011. Send written

notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the time and manner in which a payment is made to Kentucky Transitional Assistance Program (K-TAP) recipients, Kentucky Works Program (KWP) participants for supportive services, and State Supplementation Program (SSP) recipients.

(b) The necessity of this administrative regulation: This administrative regulation is needed to set forth the time and manner in which payments are issued.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the time at which the K-TAP, KWP supportive services, and SSP payments are made, and the methods in which these payments are distributed. KWP is the work program under K-TAP, Kentucky's Temporary Assistance for Needy Families (TANF), funded by Title IV-A of the Social Security Act and authorized by 42 U.S.C. 601-619. This administrative regulation sets forth these standards in conformity with the Title IV-A TANF State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing uniform time and manner requirements for supplementation and public assistance grant payments, including supportive services payments.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation is technical and conforming in nature. The amendment removes reference to 921 KAR 2:016, provisions governing protective payees, language concerning the wage supplementation program, and language related to issuing transportation supports prospectively. In addition, the amendment clarifies the MIMR supplement's effective date and streamlines the payment process for MIMR Supplement Program by issuing training reimbursements quarterly consistent with the supplement payments to providers. The amendment revises material incorporated by reference, form PA-33, Direct Deposit Authorization, to allow for its use in other programs governed by this administrative regulation in addition to K-TAP and updates the form to comply with new agency requirements for electronic forms. The amendment makes other technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to remove regulatory language that is no longer applicable for consistency with other related administrative regulations, programmatic developments, practice expectations, and public needs. In addition, the amendment clarifies the effective date of the MIMR supplement and streamlines payment processes for the MIMR Supplement Program to the benefit of the administering agency and provider community. The amendment revises incorporated materials to provide for greater utilization of the form for other public assistance programs governed by this administrative regulation and to conform to agency requirements concerning electronic forms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to authorizing statutes by clarifying and making technical corrections to the time and manner of public assistance, supportive services, and supplementary payments.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its clarifications concerning the

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various payment types governed by this administrative regulation and its technical corrections to ensure conformity and uniformity with governing statutes, related administrative regulations, agency practice, and public needs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP (which includes KWP participants), Kinship Care, and the SSP programs. As of May 2011, there were 23,812 K-TAP families, 6,899 Kinship Care families, and 3,905 SSP recipients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require a new action on the part of affected entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will not result in any additional public assistance benefits to the entities identified in question (3); however, the entities should benefit from enhanced understanding of the programs as a result of the clarity and technical corrections made through the amendment. In addition, SSP recipients and their providers will benefit from the streamline payment process for the MIMR Supplement Program.

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

(a) Initially: The amendment to this administrative regulation will not result in an initial cost to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in a cost to the administrative body on a continuous basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds support SSP, a requirement of the Medicaid Program. Title IV-A or federal TANF funds and state general funds used for Maintenance of Effort are resources used for K-TAP, KWP, and Kinship Care.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 601 to 619.

2. State compliance standards. KRS 194A.050(1), 205.220, 205.245.

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 205.220, KRS 205.245, 42 U.S.C. 601 to 619.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not require any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require any additional costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Family Support

(Amendment)

921 KAR 3:090. Simplified assistance for the elderly program or "SAFE".

RELATES TO: 7 C.F.R. 273.1, 273.2, 273.9, 273.10, 273.12, 273.14

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 delegates the administration of the Supplemental Nutrition Assistance Program (SNAP) [~~Food Stamp Program~~] to the state agency. This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program, a demonstration project administered by the cabinet to improve access to SNAP [~~the Food Stamp Program~~] for elderly and disabled individuals.

Section 1. Definitions. (1) "Regular SNAP [~~Food Stamp Program~~] benefits" means SNAP [~~food stamp~~] benefits received in accordance with the procedures specified in:

(a) 921 KAR 3:020, Financial Requirements;

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- (b) 921 KAR 3:025, Technical Requirements;
- (c) 921 KAR 3:030, Application Process; and
- (d) 921 KAR 3:035, Certification Process.

(2) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.

(3) "Simplified Assistance for the Elderly" or "SAFE" means an optional SNAP [food stamp] program for SSI participants who are age sixty (60) or older.

(4) "State Data Exchange" or "SDX" means files administered by the Social Security Administration that provide states with eligibility and demographic data relating to SSI applicants and participants.

Section 2. SAFE Program Procedures. Unless a different procedure or process for a SNAP [food stamp program] requirement is specified in this administrative regulation, all SNAP [food stamp program] requirements specified in 921 KAR Chapter 3 shall apply to SAFE, including the process for:

- (1) A fair hearing;
- (2) An administrative disqualification hearing;
- (3) An appeal;
- (4) A disqualification;
- (5) A claim and collection of a claim; and
- (6) EBT issuance.

Section 3. Eligibility for SAFE. (1) An individual may qualify for SAFE benefits if the individual:

- (a) Is a Kentucky resident;
- (b) Is:
 - 1. A current SSI recipient; or
 - 2. SSI eligible, but SSI benefits are currently in suspense;
- (c) Is age sixty (60) or older;
- (d) Is not institutionalized;
- (e) Is:

1. Single, widowed, divorced, or separated; or
2. Married and living with a spouse who meets the criteria specified in (a) through (f) of this subsection; and
(f) Purchases and prepares food separately from another individual who shares the same residence, but is not a member of the applicant's household as defined in 921 KAR 3:010.

(2) The cabinet shall use SDX to verify an applicant's marital and institutional status.

(3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:

- (a) Shall not be eligible for SAFE; and
- (b) May apply for regular SNAP [Food Stamp Program] benefits in accordance in 921 KAR 3:030.

(4) An individual who meets the criteria of subsection (1) of this section may apply for regular SNAP [Food Stamp Program] benefits instead of SAFE benefits.

(5) An individual shall not receive SAFE benefits and regular SNAP [Food Stamp Program] benefits at the same time.

Section 4. SAFE Application Process. (1) Through use of the SDX files, the cabinet shall:

- (a) Identify SSI participants who are potentially eligible for SAFE; and
 - (b) Mail each identified SSI household a SF-1, Simplified Assistance for the Elderly (SAFE) Application, and a return envelope.
- (2) A SAFE application shall be considered filed if the SF-1 is:
- (a) Signed; and
 - (b) Received at the Department for Community Based Services, Division of Family Support.

(3) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) days of the date the application is filed.

Section 5. SAFE Certification Process. (1) The cabinet shall process a SAFE application without requiring an interview.

(2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the information provided by the applicant on the SF-1 or the SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form.

(3) The cabinet shall certify an eligible household for SAFE

benefits for up to thirty-six (36) months.

(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.

(5) The cabinet shall send a SF-2 to a SAFE household in the month preceding the last month of the household's certification period.

Section 6. SAFE Benefits. (1) The cabinet shall provide a SAFE household a standard monthly benefit amount approved by the U.S. Department of Agriculture's Food and Nutrition Service.

(2) The standard SAFE benefit amounts shall be based on:

- (a) Shelter costs;
- (b) Household size; and

(c) The average benefits received by a similar household in the regular SNAP [Food Stamp Program].

Section 7. Changes in Household Circumstances. (1) A household receiving SAFE benefits shall not be required to report any changes during the certification period.

(2) The cabinet shall process changes in household circumstances based on information received from SDX.

(3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member's:

- (a) Name;
- (b) Date of birth; or
- (c) Address.

(4) Unless a change in household circumstance results in a change in benefits, the cabinet shall not provide a SAFE household with notification of a change being made in household circumstances.

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

(a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", edition 07/11 [4/1/09]; and

(b) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", edition 07/11 [4/1/09].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: June 28, 2011

FILED WITH LRC: June 30, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2011 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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 August 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, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-

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tive regulation establishes the requirements for the Simplified Assistance for the Elderly Program (SAFE), a demonstration project administered by the Cabinet, to improve access to the Supplemental Nutrition Assistance Program (SNAP) for elderly and disabled individuals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for SAFE.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under 7 C.F.R. 271.4 to administer the SNAP program which includes the SAFE demonstration project.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for SAFE.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will change the monthly allotments received by recipients which are contained on the forms, SF-1 Simplified Assistance for the Elderly (SAFE) Application and SF-2 Simplified Assistance for the Elderly (SAFE) Recertification. The forms are incorporated by reference and used in the application and recertification process. Also, each reference to the Food Stamp Program will be changed to meet the current title of SNAP.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will change the monthly allotment received by recipients and the forms used in administering the SAFE program. The changes are being made to comply with federal requirements to maintain cost neutrality within the demonstration project.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by implementing the application requirements of 7 C.F.R. 273.2.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by adjusting the monthly benefit amounts to meet the federal requirements of cost neutrality within the demonstration project.

(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 13,251 households that are currently participating in SAFE. All SAFE recipients and potential applicants are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions on the part of SAFE program applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to the administrative regulation will not create a cost to SAFE participants or applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will increase the monthly allotment for households which contain two (2) household members and will reduce the monthly allotment for households which contain one (1) household member. The changes in the monthly allotment are required by the United States Department of Agriculture, Food and Nutrition Service to maintain cost neutrality and to continue operating the demonstration project which simplifies the application and recertification process for elderly recipients that receive Supplemental Security Income.

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

(a) Initially: No additional funding is required.

(b) On a continuing basis: No additional funding is required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.2

2. State compliance standards. KRS 194.050(1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.2

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.2.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JULY 15, 2011

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Repealer)

201 KAR 9:091. Repeal of 201 KAR 9:090.

RELATES TO: KRS 311.530-311.620, 311.990
STATUTORY AUTHORITY: KRS 311.565(1)(a), (b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.615 enacted by the 1952 General Assembly of Kentucky authorized the State Board of Health to continue in effect any licenses previously issued by it relating to a limited school or system of healing. This administrative regulation acts specifically to repeal 201 KAR 9:090, Physiotherapeutics' practice, as there are no such licenses in existence.

Section 1. 201 KAR 9:090, Physiotherapeutics' practice, is hereby repealed.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: June 28, 2011

FILED WITH LRC: July 7, 2011 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2011 at 10 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22, 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 August 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: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7158.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 9:090, Physiotherapeutics' practice.

(b) The necessity of this administrative regulation: It is necessary to repeal 201 KAR 9:090 because no such licenses exist.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to repeal 201 KAR 9:090 Physiotherapeutics' practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to repeal 201 KAR 9:090 Physiotherapeutics' practice.

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

(a) How the amendment will change this existing administrative regulation; This administrative regulation acts specifically to repeal 201 KAR 9:090 Physiotherapeutics' practice.

(b) The necessity of the amendment to this administrative regulation; This administrative regulation acts specifically to repeal 201 KAR 9:090 Physiotherapeutics' practice.

(c) How the amendment conforms to the content of the authorizing statutes; This administrative regulation acts specifically to repeal 201 KAR 9:090 Physiotherapeutics' practice.

(d) How the amendment will assist in the effective administration of the statutes. This administrative regulation acts specifically to repeal 201 KAR 9:090 Physiotherapeutics' practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that acts specifically to repeal 201 KAR 9:090 Physiotherapeutics' practice, because no such licenses exist.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The repeal of 201 KAR 9:090 will eliminate licenses for physiotherapeutics' practice.

(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 funding to be used for the implementation and enforcement of this administrative regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals 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? None

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), (b)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

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Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (New Administrative Regulation)

201 KAR 30:310. Fees for registration of appraisal management companies.

RELATES TO: KRS 324A.152(4)(b), (7), 324A.154(1)
STATUTORY AUTHORITY: KRS 324A.152(8), 324A.154(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.154(1) requires the board to establish by administrative regulation the fees for registration of appraisal management companies. This administrative regulation establishes the fees for registration of appraisal management companies and renewal of the registration.

Section 1. Fee schedule. (1) The initial application fee shall be \$3,500.

(2) An annual renewal fee shall be \$3,500.

(3) A reinstatement fee shall be \$3,500 in addition to the penalty provided for in KRS 324A.152(7).

(4) Any dishonored or returned check shall incur the cost of collection plus twenty-five (25) dollars.

(5) An Appraisal Subcommittee annual fee of twenty-five (25) dollars each year for each Kentucky licensed and certified appraiser listed on the company register.

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: July 15, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2011 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry Disney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for application for registration as an appraisal management company.

(b) The necessity of this administrative regulation: This administrative is necessary to set the fees for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321A.154(1) requires the board to promulgate administrative regulations establishing reasonable fees for the registration of appraisal management companies. This administrative regulation establishes those fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the fees required for registration with the board.

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board does not know the number of person who will seek registration from the board at this time. Generally, states with similar characteristics to Kentucky have fifty to seventy-five applicants.

(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 administrative regulation requires applicants to pay the fee for registration by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees are set forth in the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will have their applications reviewed by the board.

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

(a) Initially: The 2011 General Assembly passed HB 288 which provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(b) On a continuing basis: The 2011 General Assembly passed HB 288 which provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does directly establish fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.154(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

(b) How much revenue will this administrative regulation gen-

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erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (New Administrative Regulation)

201 KAR 30:320. Surety bond.

RELATES TO: KRS 324A.152(4)(c), 324A.154

STATUTORY AUTHORITY: KRS 324A.152(8), 324A.154(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.154(2) requires the board to establish by administrative regulation the terms required for a surety bond to be provided by an appraisal management company. This administrative regulation establishes the terms of the surety bond for registration of an appraisal management company.

Section 1. (1) The surety bond required by KRS 324A.154(2) shall be filed on the AMC Surety Bond Form.

(2) A registrant shall maintain a valid surety bond, as specified in KRS 324A.154, in the amount of \$500,000.

(3) (a) The surety bond shall indemnify the Kentucky Real Estate Appraisers Board, its roster of approved appraisers, and public claimants.

(b) The bond is subject to claims by the board for failure to pay any amount required pursuant to the statutes and rules governing appraisal management companies and by any person who is damaged by the failure of the registrant to provide appraisal management services, in accordance with KRS Chapter 324A and 201 KAR Chapter 30.

(4) The surety bond shall be maintained for at least one (1) year after an Appraisal Management Company's registration is terminated, revoked or otherwise loses its authority to operate.

(5)(a) Upon receipt by the board of notice of intent to cancel a surety bond by a corporate surety, the board shall immediately notify the principal of the bond of the effective date of the cancellation and that the principal shall furnish a like bond before the cancellation date or within thirty (30) days after the date of mailing the notice by the board.

(b) Failure to furnish the new surety bond in accordance with this administrative regulation shall cause the registration to be terminated until the new surety bond is furnished.

Section 2. Incorporation by Reference. (1) "AMC Surety Bond Form, 6/11 edition", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: July 15, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2011 at 1 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry Disney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the surety bond required for registration as an appraisal management company.

(b) The necessity of this administrative regulation: This administrative is necessary to establish the surety bond for registration as an appraisal management company.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.152(8) authorizes the board to promulgate administrative regulations to implement the provisions of the Kentucky Appraisal Management Company Registration Act. KRS 324A.154(2) requires the board to establish by administrative regulation the amount of the surety bond. This administrative regulation establishes the amount of the surety bond.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the amount of the surety bond required for registration by the board.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board does not know the number of person who will seek registration from the board at this time. Other states with demographics similar to Kentucky's have fifty to seventy-five registrants.

(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 administrative regulation requires applicants to obtain a surety bond in the amount of \$500,000 in order to be registered by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of obtaining the surety bond will vary by applicant and cannot be predicted by the board. However, bonds of this nature are not uncommon in the industry.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for registration will know the amount of the surety bond required for registration.

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

(a) Initially: The 2011 General Assembly passed HB 288 which provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

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(b) On a continuing basis: The 2011 General Assembly passed HB 288 which provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the registrants and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does directly establish fees.

(9) TIERING: Is tiering applied? No, this administrative regulation does not utilize tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.152(8), KRS 324A.154(2).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (New Administrative Regulation)

201 KAR 30:330. Application for registration.

RELATES TO: KRS 324A.152(2), (3), (4), 324A.154

STATUTORY AUTHORITY: KRS 324A.152(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.152(2) requires the board to establish by administrative regulation the application process for appraisal management companies. This administrative regulation establishes the application process for registration of appraisal management companies.

Section 1. (1) A person required to be registered under KRS 324A.152 shall apply by submitting AMC Registration KREAB Form to the board along with the certifications required by KRS 324A.152(2)(e) and (f).

(2) A registration application shall include the following:

(a) A business email address for the applicant and for any managing principal, controlling person, and for any person who owns ten (10) percent or more of the appraisal management company;

(b) Proof of valid and sufficient surety bond required by 201 KAR 30:020; and

(c) All required fees.

(3) When information required or requested by the board, through application or otherwise, becomes inaccurate the registrant shall file with the board an amendment correcting that information within ten (10) business days.

Section 2. Incorporation by Reference. (1) "AMC Registration KREAB Form APP 6/11", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: July 15, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2011 at 1 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry Disney, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for application for registration by an appraisal management company.

(b) The necessity of this administrative regulation: This administrative is necessary to set the process for registration as an appraisal management company by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.152 requires persons seeking registration as an appraisal management company to make a written application to the board. This administrative regulation establishes the requirements for application for registration as an appraisal management company.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the requirements and the process involved in obtaining registration from the board.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

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tion of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board does not know the number of person who will seek registration from the board at this time. Other states with demographics similar to Kentucky's have fifty to seventy-five registrants.

(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 administrative regulation requires applicants to file the completed application setting forth how the individual meets the qualifications for registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees for applying will be established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for registration will have their applications reviewed by the board.

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

(a) Initially: Exact figures are difficult to estimate until the number of applicants is ascertained. However, the board anticipates that additional costs could be substantial in the implementation of the administrative regulations. Initial estimates exceed \$200,000 per year.

(b) On a continuing basis: The board estimates that the costs identified in (5)(a) will continue enforces and administers the requirements of KRS 324A.150 et seq.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the registrants and applicants.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation does not utilize tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.152; KRS 324A.154.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

(d) How much will it cost to administer this program for subse-

quent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (New Administrative Regulation)

201 KAR 30:360. Operation of an appraisal management company.

RELATES TO: KRS 324A.150 - 324A.164

STATUTORY AUTHORITY: KRS 324A.152(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.154(2) requires the board to establish by administrative regulation rules governing the operation of an appraisal management company. This administrative regulation establishes requirements for operating an appraisal management company.

Section 1. Performance Obligation. (1) A registrant shall disclose to its client the actual fees paid to an appraiser for appraisal services, separately from any other fees or charges for appraisal management services and, upon written request, shall make that information available to the Board.

(2) A registrant shall disclose to each appraiser that it engages for appraisal services verification of its State Registration.

(3) A registrant shall not attempt to directly or indirectly coerce an appraiser to accept an assignment if the appraiser indicates that he/she lacks competency or sufficient experience to complete the assignment and the registrant shall not penalize the appraiser by reducing the number of assignments made to that appraiser, refusing to pay fees owed or otherwise.

(4) A registrant shall not provide an appraiser with or request that an appraiser reach an anticipated, estimated, encouraged or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transaction may be provided.

(5) A registrant shall not withhold or threaten to withhold future business or assignments from an appraiser because of the appraiser's failure to concede to improper or illegal requests, demands or coercion. This prohibition shall include any express or implicit promise of future business, assignments, promotions, or increased compensation for an appraiser in exchange for the appraiser's agreement to concede to improper or illegal requests, demands or coercion.

(6) A registrant shall not require an appraiser to sign an indemnification agreement that would require the appraiser to defend and hold harmless the registrant or any of its agents or employees for any liability, damage, losses, or claims arising out of the services performed by the registrant or its agents, employees, or independent contractors.

(7) A registrant shall not use an appraiser directly selected or referred by any member of a loan production staff of a client.

(8) A registrant shall not request that a broker price opinion be used as the primary basis for developing and reporting an appraisal for the purpose of loan origination of a residential mortgage loan secured by any one (1) to four (4) unit residential property.

(9) A registrant shall not participate in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(10) A registrant may not remove an appraiser from its appraisal panel without prior written notice to the appraiser. An appraiser may file a complaint with the Kentucky Real Estate Appraisers Board to review the decision of the registrant for removal from its appraisal panel for reasons other than those allowed by KRS 324A158(2)(d).

(11) A registrant shall require that if an appraisal report prepared by a Kentucky licensed or certified real property appraiser is reviewed by a state licensed or certified real property appraiser,

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the review appraiser shall also be certified by the Kentucky Real Estate Appraisers Board.

(12) A registrant shall not prohibit communication between a Kentucky licensed or certified real property appraiser and any person from whom the appraiser believes the information is relevant in the performance of an appraisal assignment.

(13) A registrant shall not require a Kentucky licensed or certified residential real property appraiser to sign a non-compete agreement that violates Kentucky law.

(14) A registrant may not permit an employee, agent, or third party to engage in any activity, which the registrant is prohibited from engaging in directly.

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: July 15, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2011 at 1 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry Disney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the operation of an appraisal management company.

(b) The necessity of this administrative regulation: This administrative is necessary to set standards for the operation of an appraisal management company.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321A.154(2) requires the board to promulgate administrative regulations establishing standards for the operation of an appraisal management company.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the appraisal management company of the standards required in their operation.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board does not know the number of person who will seek registration from the board at this time. Generally, states with similar characteristics to Kentucky have fifty to seventy-five registrants.

(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 administrative regulation requires AMCs to comply with the standards set forth in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs will vary depending upon the efficiency of the company.

(c) As a result of compliance, what benefits will accrue to the entities identified in

question (3): Registrants will know the requirements for operation.

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

(a) Initially: The 2011 General Assembly passed HB 288 which provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(b) On a continuing basis: The 2011 General Assembly passed HB 288 which provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does directly establish fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.154(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (New Administrative Regulation)

201 KAR 30:370. Fees paid to appraisers.

RELATES TO: KRS 324A.150-324A.164

STATUTORY AUTHORITY: KRS 324A.152(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.154(2) requires the board to establish by administrative regulation rules governing the operation of an appraisal management company. This administrative regulation establishes requirements for operating an appraisal management company.

Section 1. (1) A registrant shall make payment to an engaged appraiser for the completion of an appraisal within forty-five days after the date on which the appraisal is transmitted or otherwise completed.

(2) Subsequent requests by a registrant to the appraiser for additional support of valuation or correction of factual and objective data shall not extend the payment date beyond the original 45 days from first receipt of appraisal.

(3) An appraiser shall comply with a registrant's request for additional data support of estimate of value or correction of factual and objective data errors within 10 days of request or be subject to complaint process to the Board by the registrant.

(4) A registrant shall compensate a Kentucky credentialed appraiser at a rate that is mutually agreed to between the Appraiser and the registrant provided the fee is equal to or greater than the fee schedule of the U.S. Department of Veterans Affairs for similar properties in the same geographic areas of the Kentucky.

(5) An appraiser shall not be prohibited from including within each appraisal report the compensation received from the Appraisal Management Company for each appraisal assignment completed.

Section 2. Incorporation by Reference. (1) The U.S. Department of Veterans Affairs Fee Schedule is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: July 15, 2011

FILED WITH LRC: July 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2011 at 1 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry Disney, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for that appraisal management companies shall paid for appraisal services.

(b) The necessity of this administrative regulation: This administrative is necessary to set the fees for appraisal services in the operation of an appraisal management company.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.154(2) requires the board to establish by administrative regulation rules governing the operation of an appraisal management company. This administrative regulation establishes the fees paid to appraisers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the AMC of the fees required to pay appraisers for services rendered.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board does not know the number of person who will seek registration from the board at this time. Generally, states with similar characteristics to Kentucky have fifty to seventy-five AMCs registered.

(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 administrative regulation requires to follow the federal guidelines in establishing payments for services performed by an appraiser.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees are well established and promulgated by.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Appraisal Management Companies will know the amount required to be paid to appraisers for services.

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

(a) Initially: The 2011 General Assembly passed HB 288 which provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(b) On a continuing basis: The 2011 General Assembly passed HB 288 which provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does directly establish fees.

(9) TIERING: Is tiering applied? No

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,

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service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.154(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters (New Administrative Regulation)

201 KAR 44:010. Fees.

RELATES TO: KRS 319B.030

STATUTORY AUTHORITY: KRS 319B.030(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1)(f) requires the board to promulgate administrative regulations to carry out the provisions of KRS Chapter 319B. KRS 319B.030(1)(f) requires fees for applications, renewals and reinstatements, late renewals and applications for continuing education course approvals and duplicate licenses or replacements. This administrative regulation establishes those fees.

Section 1. Application Fees. The following fees shall be paid for applications for the following licenses issued by the board:

(1) The fee for an application as an Prosthetist and Orthotist, and dual licensure of Orthotist and Prosthetist, shall be a \$100, nonrefundable application fee and \$250 for the initial license fee; and

(2) The fee for application as a Pedorthist shall a \$100 nonrefundable application fee and \$200 for the initial license fee; and

(3) The fee for application as a Certified Fitter shall be a \$100 nonrefundable application fee and \$150 for the initial license fee.

(4) The board shall refund the initial license fee to an applicant who does not qualify or has been denied a license.

Section 2. Renewal and Reinstatement. The following fees shall be paid for renewals and reinstatements for licenses issued by the board:

(1) The renewal fee on or before July 1 for licensure as Prosthetist and Orthotist, and dual licensure of Orthotist and Prosthetist shall be \$250;

(2) The renewal fee on or before July 1 for licensure as Pedorthist shall be \$200 dollars; and

(3) The renewal fee on or before July 1 for licensure as a Certified Fitter shall be \$150.

(4) The late renewal fee for all licenses during the grace period starting July 1 and ending January 1 shall be \$500, in addition to

the initial license fee as set forth in Section 1 of this administrative regulation.

(5) The reinstatement fee after January 1 of a license suspended or revoked or for failure to submit the statement of compliance for the current year shall be \$100 in addition to the late renewal fee as set forth in subsection (4) above and in addition to the initial license fee in Section 1 of this administrative regulation.

Section 3. Duplicate or Replacement License Fee. The fee for a duplicate license shall be ten (10) dollars.

Section 4. Application for Continuing Education Course Approval. The application fee for continuing education course approval shall be fifty (50) dollars per event.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: July 12, 2011

FILED WITH LRC: July 14, 2011 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 25, 2011, at 1:30 p.m., local time, at the Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters, 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business Wednesday, August 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: Carolyn Benedict, Board Administrator, Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carolyn Benedict, Board Administrator

(1) Provide a brief summary of: Requirements for applications, renewals, and reinstatements, late renewals, and applications for continuing education course approvals and duplicate licenses or replacements.

(a) What this administrative regulation does: Sets what fees shall be paid for applications for the Prosthetists, Orthotists, Prosthetist-Orthotists, Pedorthist, and Certified Fitters.

(b) The necessity of this administrative regulation: This administrative is necessary to set the fees for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319B.030 (1)(f) requires the board to promulgate administrative regulations to carry out the provisions of KRS Chapter 319B, which requires fees for applications, renewals, and reinstatements, late renewals and applications for continuing education course approvals, and duplicate licenses or replacements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the requirements for the fees for the application, license, renewals and reinstatements, late renewals, and applications for continuing education course approvals and duplicate licenses or replacements.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

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(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 150 persons are expected to seek licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires the fee for the application set forth for the individual licenses, renewals and reinstatements, late renewals, and applications for continuing education course approvals and duplicate licenses or replacements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(i) Application as Prosthetist and Orthotist, and dual license for Orthotist and Prosthetist shall be \$100, non-refundable applications fee and \$250 for the initial licensure fee.

(ii) Application as a Pedorthist shall be \$100 non-refundable applications fee and \$200 for the initial licensure fee.

(iii) Application as a Certified Fitter shall be \$100 non-refundable applications fee and \$150 for the initial licensure fee.

(iv) Renewal on or before July 1 for licensure as Prosthetist and Orthotist, and dual license for Orthotist and Prosthetist shall be \$250 for the licensure fee.

(v.) Renewal on or before July 1 for licensure as Pedorthist shall be \$200 for the licensure fee.

(vi.) Renewal on or before July 1 for licensure as a Certified Fitter \$150 for the licensure fee.

(vii.) Late renewal for all licenses during the grace period starting July 1 and ending January 1 shall be \$500 in addition to the initial license fee.

(viii) Reinstatement fee after the January 1 of a license suspended or revoked shall be \$100 in addition in the late renewal fee and initial license fee.

(ix.) Duplicate or Replacement license fee shall be \$10.

(x.) Application for Continuing Education Course Approval shall be \$50 per event.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will have their applications reviewed by the board.

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

(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: The board's operation is funded by fees paid by the licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation is the initial fee regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation is the initial fee regulation.

(9) TIERING: Is tiering applied? Yes. The fees are different for the levels of licensure based on the levels of education and scope of practice seeking to be licensed for. The fee is higher for the greater level of education and the larger the scope of practice per 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? Kentucky Board of Prosthetics, Orthotics and Pedorthics Licensing Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.030 (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. None.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters. (New Administrative Regulation)

201 KAR 44:020. Requirements for licensure as an Orthotist, Prosthetist, Orthotist/Prosthetist, Pedorthist, or Orthotic Fitter prior to January 1, 2013.

RELATES TO: KRS 319B.060(2)(a), (3)a, (5)(a)

STATUTORY AUTHORITY: KRS 319B.060(2)(a), (3)(a), and (5)(a), 319B.030(1)(a), and (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319B requires the board to establish a procedure for the licensure of persons who wish to practice in this state as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter. This administrative regulation sets forth the procedure by which those applicants shall apply for a license under the provisions of KAR Chapter 201.

Section 1. Licensure of an Orthotist, Prosthetist or Orthotist/Prosthetist. An applicant for licensure as an Orthotist, Prosthetist, or Orthotist/Prosthetist shall meet the following requirements:

(1) Submit a completed "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011";

(2) Submit a copy of the current certificate issued by:

(a) American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC), with the title of:

1. Certified Orthotist (CO)

2. Certified Prosthetist (CP), or

3. Certified Prosthetist/Orthotist (CPO);

(b) Board of Certification/Accreditation, International (BOC) with the title of:

1. Board of Certification-Orthotist (BOCO),

2. Board of Certification-Prosthetist (BOCP),

3. Board of Certification-Prosthetist/Orthotist (BOCPO); or

(c) Similar certifications from other accrediting bodies with equivalent educational requirements and examination standards.

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010.

(4) Submit detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

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Section 2. Licensure of a Pedorthist. An applicant for licensure as a Pedorthist shall meet the following requirements:

(1) Submit a completed "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011";

(2) Submit a copy of the current certificate issued by:

(a) American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC), with the title of:

1. Certified Orthotist (CO), or
2. Certified Prosthetist (CP), or
3. Certified Prosthetist/Orthotist (CPO).

(b) Board of Certification/Accreditation, International (BOC) with the title of:

1. Board of Certification-Orthotist (BOCO),
2. Board of Certification-Prosthetist (BOCP),
3. Board of Certification-Prosthetist/Orthotist (BOCPO); or

(c) Similar certifications from other accrediting bodies with equivalent educational requirements and examination standards.

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010.

(4) Submit detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

Section 3. Licensure of an Orthotic Fitter. An applicant for licensure as an Orthotic Fitter shall meet the following requirements:

(1) Submit a completed "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011";

(2) Submit a copy of the current certificate issued by:

(a) American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC), with the title of:

1. Certified Orthotist (CO)
2. Certified Prosthetist (CP), or
3. Certified Prosthetist/Orthotist (CPO);

(b) Board of Certification/Accreditation, International (BOC) with the title of:

1. Board of Certification-Orthotist (BOCO),
2. Board of Certification-Prosthetist (BOCP),
3. Board of Certification-Prosthetist/Orthotist (BOCPO); or

(c) Similar certifications from other accrediting bodies with equivalent educational requirements and examination standards.

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010.

(4) Submit detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

(5) Submit a current copy of the certificate issued by the NBCOT stating that the applicant meets the requirements of certification as a COTA; and

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

(a) Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: July 12, 2011

FILED WITH LRC: July 14, 2011 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 25, 2011, at 1:30 p.m., local time, at the Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a

transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business Wednesday, August 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: Carolyn Benedict, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carolyn Benedict, Board Administrator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the licensure of persons who wish to practice in the state as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter.

(b) The necessity of this administrative regulation: This administrative is necessary to set the process for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 319B requires the board to establish a procedure for the licensure of persons who wish to practice in the state as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter. This administrative regulation establishes the requirements for applicants for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the requirements for the process involved in obtaining licensure from the board.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 50 persons are expected to seek licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires applicants to file the completed application setting forth how the individual meets the qualifications for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying will be established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will have their applications reviewed by the board.

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

(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: The board's operation is funded by fees paid by the licensees and applicants.

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

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tion, if new, or by the change if it is an amendment: This administrative regulation is the initial fee regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation is the initial fee regulation.

(9) TIERING: Is tiering applied? No, The regulation requires the same documentation to be provided with each type of application to apply to the board in the state as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

Kentucky Board of Prosthetics, Orthotics and Pedorthics Licensing Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.060.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET.

Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters. (New Administrative Regulation)

201 KAR 44:030. Alternative Mechanism Requirements for licensure as an Orthotist, Prosthetist, Orthotist/Prosthetist, Pedorthist, or Orthotic Fitter prior to January 1, 2013 for applicants in practice who are not currently certified.

RELATES TO: KRS 319B.060(4), (6)

STATUTORY AUTHORITY: KRS 319B.060(4), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319B requires the board to establish a procedure for the licensure of persons who wish to practice in this state as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter. This administrative regulation sets forth the procedure by which those applicants shall apply for a license under the provisions of KAR Chapter 201.

Section 1. Licensure of an Orthotist. An applicant for licensure as an Orthotist shall meet the following requirements:

(1) Submit a completed "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011";

(2) Submit independently verifiable proof of having practiced full-time for a minimum of the past four (4) years in a Prosthetic/Orthotic/Pedorthic facility as an Orthotist;

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010.

(4) Submit detailed work history, including scope of practice, covering the four year period prior to the date of application.

(5) Submit twenty (20) written patient case studies in Orthotics in relation to upper, lower and spinal custom fabricated and fitted devices, and treatment modalities to include;

(a) Written Prescription for the orthotic or prosthetic device from a health care practitioner or provider authorized by law to write such a prescription.

(b) Documented L Coding for prescribed orthotic or prosthetic device.

(c) Billing, fee, and insurance arrangements.

(d) Biomechanical Rationale and design characteristics of prescribed device.

(e) Patient Clinical Records, with documentation of Subjective, Objective, Assessment and Plan, including applicable documentation to support treatment modality.

(6) Three (3) letters of recommendation by:

(a) Licensed healthcare professionals authorized by law to prescribe, measure or fit devices, and;

(b) Who have been or are referral sources for the applicant.

Section 2. Licensure of a Prosthetist. An applicant for licensure as a Prosthetist shall meet the following requirements:

(1) Submit a completed "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-011 06/2011";

(2) Submit independently verifiable proof of having practiced full-time for a minimum of the past four (4) years in a Prosthetic/Orthotic/Pedorthic facility as a Prosthetist;

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010.

(4) Submit detailed work history, including scope of practice, covering the four year period prior to the date of application.

(5) Submit twenty (20) written patient case studies in Prosthetics in relation to upper and lower custom fabricated devices, and treatment modalities to include:

(a) Written Prescription for the orthotic or prosthetic device from a health care practitioner or provider authorized by law to write such a prescription;

(b) Documented L Coding for prescribed orthotic or prosthetic device;

(c) Billing, fee, and insurance arrangements;

(d) Biomechanical Rationale and design characteristics of prescribed device, and;

(e) Patient Clinical Records, with documentation of Subjective, Objective, Assessment and Plan, including applicable documentation to support treatment modality.

(6) Three (3) letters of recommendation by:

(a) Licensed healthcare professionals authorized by law to prescribe, measure or fit devices, and;

(b) Who have been or are referral sources for the applicant.

Section 3. Licensure of a Pedorthist. An applicant for licensure as a Pedorthist shall meet the following requirements:

(1) Submit a completed "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011";

(2) Submit independently verifiable proof of having practiced full-time for a minimum of the past four (4) years in a Prosthetic/Orthotic/Pedorthic facility as a Pedorthist;

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010.

(4) Submit detailed work history, including scope of practice, covering the four year period prior to the date of application.

(5) Submit twenty (20) written patient case studies in Pedorthics in relation to foot and ankle custom fabricated and fitted devices, and treatment modalities to include:

(a) Written Prescription for the orthotic or prosthetic device from a health care practitioner or provider authorized by law to write such a prescription;

(b) Documented L Coding for prescribed orthotic or prosthetic device;

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- (c) Billing, fee, and insurance arrangements;
- (d) Biomechanical Rationale and design characteristics of prescribed device, and;
- (e) Patient Clinical Records, with documentation of Subjective, Objective, Assessment and Plan, including applicable documentation to support treatment modality.
- (6) Three (3) letters of recommendation by:
 - (a) Licensed healthcare professionals authorized by law to prescribe, measure or fit devices, and;
 - (b) Who have been or are referral sources for the applicant.

Section 4. Licensure of an Orthotic Fitter. An applicant for licensure as an Orthotic Fitter shall meet the following requirements:

- (1) Submit a completed "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011";
- (2) Submit independently verifiable proof of having practiced full-time for a minimum of the past four (4) years in a Prosthetic/Orthotic/Pedorthic facility as an Orthotic Fitter;
- (3) Submit the appropriate fee for licensure as required by 201 KAR 44:010.
- (4) Submit detailed work history, including scope of practice, covering the four year period prior to the date of application.
- (5) Submit twenty (20) written patient case studies in Orthotic Fitting in relation to the following non custom orthotic devices set forth in KRS 319B.010(6)(a)-(e) to include:
 - (a) Written Prescription for the orthotic or prosthetic device from a health care practitioner or provider authorized by law to write such a prescription, and;
 - (b) Patient Clinical Records, with documentation of Subjective, Objective, Assessment and Plan, including applicable documentation to support treatment modality.
- (6) Three (3) letters of recommendation by:
 - (a) Licensed healthcare professionals authorized by law to prescribe, measure or fit devices, and;
 - (b) Who have been or are referral sources for the applicant.

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

- (a) Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: July 12, 2011

FILED WITH LRC: July 14, 2011 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 25, 2011, at 1:30 p.m., local time, at the Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business Wednesday, August 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: Carolyn Benedict, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carolyn Benedict, Board Administrator

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a procedure for the licensure of persons who wish to practice in this state as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter. This administrative is necessary to set forth a procedure by which an alternative mechanism for licensure is established.

(b) The necessity of this administrative regulation: This administrative is necessary to set the process for and alternative mechanism process for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319B.060 (4) and (6) requires the board to promulgate administrative regulations establishing the requirements for an alternative mechanism for an applicant for licensure as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the requirements for and the process involved in obtaining licensure from the board under an alternative mechanism of requirements.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 50 persons are expected to seek licensure from the board under the alternative mechanism requirements.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires applicants to file the completed application setting forth how the individual meets the qualifications for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees for applying will be established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will have their applications reviewed by the board.

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

- (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: The board's operation is funded by fees paid by the licensees and applicants. This administrative regulation is the initial regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation is the initial regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation is the initial regulation.

(9) TIERING: Is tiering applied? Yes. The fees are different for based on scope of practice seeking to be licensed for. The fee is

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higher for the greater scope of practice per 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? Kentucky Board of Prosthetics, Orthotics and Pedorthics Licensing Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.060 (4) and (6).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters. (New Administrative Regulation)

201 KAR 44:040. Professional Conduct and Code of Ethics

RELATES TO: KRS 319B.030, 319B.140

STATUTORY AUTHORITY: KRS 319B.030 (1)(b), 319B.140 (1)(b), (d)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation defines unprofessional conduct and sets forth a code of ethics for persons licensed under KRS Chapter 319B.

Section 1. Failure to comply with any of the provisions in this section shall constitute unprofessional conduct in the practice of Licensed Prosthetist, Licensed Orthotist, Licensed Prosthetist/Orthotist, Licensed Pedorthist, or Licensed Orthotic Fitter.

Section 2. Responsibilities to Other Licensed Healthcare Practitioner or Provider. (1) The Licensee shall:

(a) Receive and document a prescription or other valid referral, authorization, hospital or skilled nursing facility order from a licensed healthcare practitioner or provider who is:

1. authorized by law to provide such prescriptions and;

2. which is consistent with the standards of the healthcare practitioner or provider;

(b) Consult and coordinate with the licensed healthcare practitioner or provider to determine and to document the medical appropriateness of the orthotic, prosthetic, or pedorthic device.

(c) Notify the licensed healthcare practitioner or provider of changes in the patient's condition that may affect the patient's orthotic, prosthetic or pedorthic treatment plan.

(d) Notify and obtain authorization from the licensed healthcare practitioner or provider prior to repair or adjustment of an orthotic, prosthetic, or pedorthic device when:

1. Such repairs or adjustments do not conform to the original prescription, or:

2. Such repairs or adjustments substantially alter the design or function of the originally prescribed device.

Section 3. Responsibilities to the Patient. (1) The licensee shall:

(a) Monitor and observe the patient's physical condition regarding the orthotic, prosthetic, or pedorthic care and the prescribed device;

(b) Ensure the orthotic, prosthetic, or pedorthic device is functioning appropriately to implement the patient's treatment plan.

(c) Maintain as confidential all information relating to a patient's identity, background, condition, treatment or management plan, or any other private information relating to the patient.

(d) Not communicate any confidential information to any person or entity who is not providing direct medical care to the patient:

1. Without the prior written consent of the patient or patient's legal guardian, or:

2. In accord with a court order or other applicable legal requirements.

(e) Comply with KRS 422.317.

(f) Complete all patient care documentation within a reasonable time from date of service.

(g) Submit all insurance requirements necessary for billing within a reasonable time from date of service.

(h) Accept a patient regardless of race, gender, color, religion or national origin or on any basis that would constitute illegal discrimination under state or federal law.

(i) Refer a patient to another licensed healthcare practitioner or provider when the nature and extent of a problem of the patient exceeds the scope of competence of the licensee.

(j) Inform the patient of the patient's right to seek orthotic, prosthetic, or pedorthic services from any qualified healthcare practitioner or provider.

(k) Consult the patient's parent, legal guardian, or other third party who has decision-making authority for the patient when the patient's personal judgment to make decisions concerning the device or services being offered may be impaired.

(2) The licensee shall not:

(a) Engage in false, misleading, or deceptive acts related to the cost of the services provided or recommended.

(b) Utilize or continue orthotic, prosthetic or pedorthic services beyond the point of reasonable benefit or by providing services more frequently than medically necessary unless consented to in writing by the patient.

(c) Submit false, misleading, or deceptive information regarding payment or reimbursement.

(d) Engage in the excessive use of alcoholic beverages or the abusive use of controlled substances.

(e) Verbally or physically abuse a client.

(f) Delegate to an unlicensed employee or person a service which requires the skill, knowledge, or judgment of a licensee under KRS Chapter 319B.

(g) Aid or abet an unlicensed person to practice when a license is required.

(h) Exercise undue influence in such a manner as to exploit the patient for financial or other personal advantage to the licensee or a third party.

Section 4. Patient Documentation. (1) A licensee shall complete and document:

(a) A patient assessment to include:

1. The documentation required by Section 2(1)(a) of this administrative regulation;

2. Physical evaluation and;

3. Patient's written and informed consent

(b) Treatment plan to include:

1. Documentation of Subjective, Objective, Assessment, and Plan of Care, and;

2. Applicable documentation to support treatment modality, and;

3. Follow-up and evaluation of clinical outcomes.

(c) Practice management to include:

1. documented L coding for prescribed orthotic or prosthetic device, and;

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2. billing, fee, and insurance arrangements, and;

Section 5. Responsibilities to Research Subjects. (1) The licensee, when engaged in a research project or study, shall:

(a) Ensure that all patients affiliated with such projects or studies consent in writing to the use of the results of the study.

(b) Maintain as confidential all information relating to a patient's identity, background, condition, treatment or management plan, or any other information relating to the patient.

(c) Maintain patient dignity and well-being.

(d) Ensure the research is conducted in accord with all federal and state law.

(e) Take reasonable steps to prevent false, misleading, or deceptive acts and practices relating to the research project or study.

(f) Report, immediately in writing, unethical or illegal conduct to the board or appropriate law enforcement authority, when the licensee has reason to believe that such unethical or illegal conduct has occurred or is likely to occur.

Section 6. Responsibilities to the Kentucky Board of Prosthetics, Orthotics and Pedorthics. (1) The licensee shall:

(a) Comply with the reporting requirements of KRS 319B.050(1) and (4).

(b) Notify the board, in writing, within thirty (30) days after the date upon which:

1. A payment is made by the licensee, or on the licensee's behalf, to settle a claim of professional negligence;

2. Conviction of a felony in any court;

3. A disciplinary action against the licensee by any other governmental licensing authority of this state or any other state;

4. Suspension or cessation of participation of any federal or state reimbursement program.

(c) File an initiating complaint with the board when the licensee has actual knowledge, which may be inferred from the circumstances that another licensee has committed a violation of KRS Chapter 319B or the administrative regulations there under.

(d) Use the correct designation following the licensee's name on any patient record or advertising as follows:

1. If the licensee is an Orthotist: "LO"

2. If the licensee is a Prosthetist: "LP"

3. If the licensee is a Prosthetist/Orthotist: "LPO"

4. If the licensee is a Pedorthist: "LPed"

5. If the licensee is an Orthotic Fitter: "LOF" and:

6. Appropriate designations for advanced academic degrees or bona fide certifications, if any, following the above designations.

(2) The licensee shall not:

(a) Fail to cooperate with the board by:

1. Not furnishing any papers or documents requested by the board;

2. Not furnishing in writing a complete explanation covering the matter contained in a complaint filed with the board;

3. Not appearing before the board at a time and place designated or;

4. Not properly responding to subpoenas issued by the board.

(b) Pay any financial interest, compensation or other value to be received by a referral source:

1. For services provided by the licensee;

2. For prosthetic, orthotic, pedorthic devices, or;

3. For other services the licensee may recommend for the patient.

(c) Have, or attempt to have, sexual relations with:

1. An active patient of record, unless a consensual sexual relationship existed between them before the licensee-patient relationship commenced, or;

2. A patient of record for a period of ninety (90) days from the last date of service rendered to the patient, or;

3. A parent, legal guardian, or other third party, who has decision-making authority for:

a. An active patient of record, or;

b. For a period of ninety (90) days from the last date of service rendered to the patient whichever is longer.

(d) Use any advertising material, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other

representation however disseminated or published which is false, misleading, deceptive, or untruthful.

(e) Commit or attempt to commit any unfair, false, misleading, or deceptive act or practice.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: July 12, 2011

FILED WITH LRC: July 14, 2011 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 25, 2011, at 1:30 p.m., local time, at the Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business Wednesday, August 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: Carolyn Benedict, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carolyn Benedict, Board Administrator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation delineates the unprofessional conduct and standards of practice for persons licensed under KRS Chapter 319B.

(b) The necessity of this administrative regulation: This administrative is necessary set the professional conduct and standards of practice for the licensed Prosthetists, Orthotists, Prosthetist-Orthotists, Pedorthist, and Certified Fitters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319B.030 (1)(b), KRS 319B.040 (1)(b) and (d) requires the board to promulgate administrative regulations establishing the professional conduct and standards of practice for the licensed Prosthetists, Orthotists, Prosthetist-Orthotists, Pedorthist, and Certified Fitters.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the licensees of the established professional conduct and standards of practice requirements.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 150 persons are expected to obtain licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

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regulation or amendment: This administrative regulation requires the compliance of an individual to the professional conduct and standards of practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees for licensees will be establishes in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will continue to hold a license in good standing during the current licensure period.

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

(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: The board's operation is funded by fees paid by the licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation is the initial regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation is the initial regulation.

(9) TIERING: Is tiering applied? No, The regulation requires the same adherence to the conduct of conduct and standard of practice be provided with each type license; Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Prosthetics, Orthotics and Pedorthics Licensing Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.030, KRS 319B.040.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET.

**Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters.
(New Administrative Regulation)**

201 KAR 44:050. Per diem of board members.

RELATES TO: KRS 319B.020(6)

STATUTORY AUTHORITY: KRS 319B.020(6), 319B.030(2)

and 12.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.020(6) authorizes board members to receive a per diem reimbursement of reasonable expenses for each day actually engaged in the duties of the office. KRS 12.070(5) authorizes the board members to receive reimbursement for their actual and necessary expenses. This administrative regulation sets the per diem amount board members receive when actually engaged in the duties of the office and provides for reimbursement for their actual and necessary expenses.

Section 1. Each member of the board shall receive:

(a) A per diem of \$100 when actually engaged in the duties of the office, and;

(b) Reimbursement for their actual and necessary expenses.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: July 12, 2011

FILED WITH LRC: July 14, 2011 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 25, 2011, at 1:30 p.m., local time, at the Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business Wednesday, August 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: Carolyn Benedict, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carolyn Benedict, Board Administrator

(1) Provide a brief summary of:

(a) What this administrative regulation does: Authorizes board members to receive a per diem reimbursement of reasonable expenses for each day actually engaged in the duties of the office.

(b) The necessity of this administrative regulation: This administrative is necessary to set the per diem reimbursement of board members.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS319B.020(6) requires the board to promulgate administrative regulations establishing per diem reimbursement of reasonable expenses for board members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the per diem reimbursement of board members actually engaged in the duties of the office and reimbursement of their actual and necessary expenses.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organi-

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zations, or state and local governments affected by this administrative regulation: 5 board members.

(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 administrative regulation authorizes the board members to receive a per diem reimbursement of reasonable expenses for each day actually engaged in the duties of the office.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost to the board member.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The reimbursement of per diem of \$100 for duties of the office and reimbursement of actual and necessary expenses.

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

(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: The board's operation is funded by fees paid by the licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation is the initial regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation is the initial regulation.

(9) TIERING: Is tiering applied? No, the regulation is equal to all board members who are actually engaged in the duties of the office.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Prosthetics, Orthotics and Pedorthics Licensing Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.020(6).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (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, big-head carp, black carp, or grass carp.

(2) "By-catch" means any fish that is not an Asian carp.

(3) "Program participant" means a commercial fisherman who is:

(a) Enrolled in the Asian Carp Harvest Program; and
(b) Fishing in restricted water.

(4) "Restricted water" means those areas, pursuant to 301 KAR 1:140, 1:150, and 1:155, where:(a) Commercial fishing is prohibited; or

(b) Commercial fishing with gill or trammel nets is prohibited.

(5) "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 at least three (3) consecutive years; and

(4) Have reported a harvest of at least 10,000 pounds of fish per year for a three (3) consecutive year period.

Section 3. Program Participant Requirements. A program participant shall:

(1) Obtain an agreement with a fish buyer to deliver a requested poundage of Asian carp;

(2) Call the department at 800-858-1549 at least forty-eight (48) hours in advance of the requested fishing date and provide the following information:

(a) The participant's name;

(b) The fish buyer's name and phone number;

(c) Date requested;

(d) The restricted water to be fished; and

(e) The total poundage of the Asian carp requested by the fish buyer.

(3) Only harvest Asian carp;

(4) Only fish:

(a) On dates approved by the department;

(b) At a location approved by the department; and

(c) When a department observer is present;

(5) Only use a whip net set with a minimum bar mesh size of four and one-half (4.5) inches;

(6) Sign a Daily Harvest and Release Summary Card immediately after each day's fishing;

(7) Be allowed to sell all harvested Asian carp;

(8) Immediately release all by-catch; and

(9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, pursuant to the requirements of 301 KAR 1:155.

Section 4. Department Requirements. (1) The department shall:

(a) Maintain a list of program participants and their contact information which shall be:

1. Provided to known fish buyers; and

2. Updated at least weekly.

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(b) Review all restricted water fishing requests pursuant to the requirements of Section 3 of this administrative regulation;

(2) The department shall approve a qualified fishing request by assigning:

(a) A department observer to each program participant;

(b) A fishing location for a program participant and department observer, except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and

(c) The time period when fishing may occur, not to exceed a three (3) consecutive day period; and

(3) A department observer shall:

(a) Contact the program participant for an arranged meeting time and location;

(b) Be present during each approved fishing period by either:

1. Traveling in the participant's boat, if allowed; or

2. Following the participant in a department boat;

(c) Monitor Asian carp harvest and release of by-catch during each approved fishing period; and

(d) Complete a Daily Harvest and Release Summary Card.

(4) The department shall not approve a fishing request for the following reasons:

(a) Higher than normal by-catch is likely to occur at that location and time;

(b) Two (2) program participants have already been approved for the same one-half (1/2) mile section of water at the same time;

(c) A requested date falls on:

1. Memorial Day;

2. Labor Day;

3. July 4; or

4. A Saturday or Sunday from April 1 through September 30; or

(d) A department observer is unavailable on the requested date.

Section 5. Program disqualification. A program participant whose commercial fishing license becomes revoked or suspended pursuant to 301 KAR 1:155 shall be disqualified from participating in the Asian carp harvest program while that license is revoked or suspended.

Section 6. Incorporation by Reference. (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.

(2) The Daily Harvest and Release Summary Card may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: July 14, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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 administrative 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 meet the minimum qualifications for participating in this program, and 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 having access to waters normally closed to commercial fishing and where Asian carp are more plentiful and 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

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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:

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Code Enforcement (New Administrative Regulation)

815 KAR 4:030. Elevator contractor licensing requirement.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4011, 198B.4023, 198B.4025, 198B.4027

STATUTORY AUTHORITY: KRS 198B.4011, 198B.4009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement the provisions of KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator contractors to be licensed and KRS 198B.4011 provides the eligibility requirements to be met for issuance of an elevator contractor's license. KRS 198B.4023 authorizes the Department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education requirements for elevator licensee renewals. KRS 198B.4027 provides the minimum insurance requirements for elevator contractor licensees. This administrative regulation establishes the licensure requirements for elevator contractors.

Section 1. General Requirements. (1) Supervision. The elevator contractor shall supervise generally, and be primarily responsible for, all elevator work performed by the mechanics, employees and subcontractors of the license.

(2) Company license. A licensee who is an employee of a company and whose license represents the company shall notify the Department, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on that license and paying the change of information fee listed in Section 6(5) of this administrative regulation.

Section 2. Initial Application Requirements. (1) Filing the application.

(a) An applicant seeking an elevator contractor license shall submit to the department:

1. A completed Elevator Contractor License Application on Form EV-3;

2. An initial license application fee of \$240 for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;

3. Proof of applicant's experience as required by KRS 198B.4011 and this administrative regulation;

4. A recent passport-sized color photograph of the applicant; and

5. Proof of insurance as required by KRS 198B.4027.

(b) If the applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted.

(b) At the end of one (1) year, the application shall be void.

Section 3. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform elevator contracting work while the license is inactive.

(2) An elevator contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.4027 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) A certified elevator inspector may be licensed as an elevator contractor, but shall place the license in inactive status while having an active elevator inspector certification.

(4) Performing elevator contracting work while holding an inactive

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tive license shall be grounds for revocation or suspension of all elevator licenses and certifications held by the licensee.

Section 4. Experience Requirements. An applicant for licensure shall meet the experience requirements of this section.

(1) Minimum experience. An applicant shall have the experience required by KRS 198B.4011.

(2) Records of experience. An applicant's experience shall be listed on the application form or included with submission of application form to the department.

(a) Proof of listed experience shall be provided by W-2s.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient, falsified or nonexistent.

Section 5. Renewal and Reactivation Requirements and Procedures. (1) Filing for renewal. Licenses shall be renewed each year. To renew a license, an elevator contractor shall submit to the department:

(a) A completed renewal application;

(b) A renewal fee of \$240 made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing provider evaluation forms for each continuing education class attended.

(2) Except for a license placed in inactive status in accordance with subsection (6) of this section, application for license renewal shall be filed by each licensee no later than the last day of the licensee's birth month.

(3) Renewal applications filed late, but no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section 7(1) of this administrative regulation, shall be added to the annual renewal fee.

(4) Failure to renew within sixty (60) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 2 of this administrative regulation for reinstatement. A reinstatement fee, in accordance with Section 7(2) of this administrative regulation, shall be added to the annual renewal fee.

(5) Inactive elevator contractor status and renewal requirements.

(a) To place the elevator contractor's license in inactive status, an elevator contractor shall pay annually an inactive status fee of \$120.

(b) An inactive elevator contractor shall not secure an elevator permit, advertise, or represent himself as a qualified elevator contractor.

(c) To reactivate an elevator contractor license, the inactive elevator contractor shall pay the annual renewal fee, an additional \$120, and comply with the continuing education requirements established in 815 KAR 4:050.

(6) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(7) Continuing education requirements shall not be required for renewal provided the initial license was issued within twelve (12) months of renewal.

(8) The application for renewal or reactivation of a licensed elevator contractor shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal, reactivation, and restoration, if applicable;

(b) Comply with elevator contractor continuing education requirements; or

(c) Provide the current insurance certificates required by KRS 198B.4027.

Section 6. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses

shall be fifty (50) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be one hundred (100) dollars.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be \$120.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

(5) Change of information fee. The fee for the change of information required by Section 1(2) of this administrative regulation shall be fifteen (15) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 7. Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the department for any of the reasons stated in KRS 198B.4033.

Section 8. Incorporation by Reference. (1) Form EV-3, Elevator Contractor License Application, July 2011 is herein incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY T. LUNS福德, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2011, at 11:30 am, EDT, 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 August 15, 2011 (five 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 August 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 licensure requirements and fees for elevator contractors.

(b) The necessity of this administrative regulation: This amendment is necessary to implement the elevator licensure program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4009 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540 governing the safety and inspection of elevators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures, fees and requirements for application and maintenance of an elevator contractor license.

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

(a) How the amendment will change this existing administrative

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regulation: N/A This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Codes Enforcement, Elevator Section, and elevator contractors.

(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, Division and Section will implement the elevator licensure program and ensure compliance with licensure requirements while carrying out inspection duties.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees established approximate and are anticipated to offset the expenditures to the Department, Division and Section for ensuring compliance with licensure laws.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By implementing the elevator licensure program, citizens in the state will be assured that those performing elevator work have met experience standards and requirements necessary for licensure. As a result, elevator safety within the Commonwealth will be heightened.

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

(a) Initially: For implementation and enforcement the initial year, the agency anticipates revenues of an estimated \$9,600 to be offset by administration costs of the program.

(b) On a continuing basis: The agency anticipates that this program's revenues and expenditures will remain relatively consistent annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds for the Division of Building Codes Enforcement, Elevator Section.

(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 spending authority currently granted to the elevator section will necessarily need to be increased so that funds received for contractor licenses can be used to offset the administrative and compliance costs with implementation of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation establishes fees for the newly legislated program requiring all elevator contractors working within the Commonwealth to be licensed by the Department of Housing, Buildings and Construction.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevators contractors are treated equally under the provisions of 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 Building Code Enforcement, and Elevator Section 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 198B.4009 and 198B.4011.

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 revenues for contractor licensing which are estimated to offset expenditures for implementing and enforcement of the contractor licensing program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. Based upon the estimation that the Department will license 40 elevator contractors in the first year of the program, the estimated revenues for this program are \$9,600.

(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 Department anticipates that renewals and new applications will approximately mirror the first year of implementation of the elevator contractor licensing applications, therefore revenues will remain relatively constant for subsequent years.

(c) How much will it cost to administer this program for the first year? The agency estimates the newly created elevator contractor licensing program's expenditures to approximate the revenues annually.

(d) How much will it cost to administer this program for subsequent years? The costs of administering the elevator contractor licensing program are anticipated to remain relatively constant after the first year of implementation.

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

Revenues (+/-): Increase due to new program implementation.

Expenditures (+/-): Increase to administer and enforce new licensure program.

Other Explanation:

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (New Administrative Regulation)

815 KAR 4:040. Elevator mechanic licensing requirements.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4013, 198B.4023, 198B.4025

STATUTORY AUTHORITY: KRS 198B.4013, 198B.4009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement the provisions of KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator mechanics to be licensed and KRS 198B.4013 provides the eligibility requirements to be met for issuance of an elevator mechanic's license. KRS 198B.4023 authorizes the Department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education requirements for elevator licensee renewals. This administrative regulation establishes the licensure requirements for elevator mechanics.

Section 1. Initial Application Requirements. (1) Filing the application.

(a) An applicant seeking an elevator mechanic license shall submit to the department:

1. A completed Elevator Mechanic License Application on Form EV-4;

2. An initial license application fee of ninety-six (96) dollars for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18)

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months and shall expire on the final day of the applicant's birth month;

3. Proof of the applicant's experience as required by KRS 198B.4013 and this administrative regulation; and

4. A recent passport-sized color photograph of the applicant.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted.

(b) At the end of one (1) year, the application shall be void.

Section 2. Examination Requirements. If an applicant applies for licensure under the provisions of KRS 198B.4013(2)(a), the applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's basic knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of elevators and elevator systems.

(2) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

(3) Except as provided by subsection (7) of this section, an applicant shall successfully complete with a passing score of at least seventy (70) percent the examination known as the "Kentucky Elevator Mechanic Examination", which is developed, administered, and scored by the department or its designee.

(4)(a) A request to sit for the examination shall be made directly to the testing facilities approved by the department.

(b) A list of facilities and contact information shall be provided to applicants following receipt of the examination application.

(5) The cost shall not exceed \$100 for the Kentucky Elevator Mechanic Examination.

(6) A passing score on the examination shall be valid for a period of two (2) years.

(7) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the board if the person or group submitting the examination demonstrates that the examinations cover the same material and require the same level of knowledge as the department's examinations.

Section 3. Experience Requirements. An applicant for licensure shall meet the experience requirements of this section.

(1) Minimum experience. An applicant shall have the experience required by KRS 198B.4013(2).

(2) Records of experience.

(a) Proof of listed experience shall be provided by W-2s or an affidavit from a licensed elevator contractor or the equivalent.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

Section 4. Renewal Requirements and Procedures. (1) Filing for renewal. Licenses shall be renewed each year. To renew a license, an elevator mechanic shall submit to the department:

(a) A completed renewal application;

(b) A renewal fee of ninety-six (96) dollars made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing provider evaluation forms for each continuing education class attended.

(2) Except for a license placed in inactive status in accordance with subsection (6) of this section, application for license renewal shall be filed by each licensee no later than the last day of the licensee's birth month.

(3) A renewal fee of ninety-six (96) dollars shall be paid prior to renewal. The department shall send a renewal application to each licensee each year to be returned with the required fee.

(4) Renewal applications filed late, but no more than sixty (60) days after the last day of the licensee's birth month, shall be ac-

cepted, but a restoration fee, in accordance with Section 5(1) of this administrative regulation, shall be added to the annual renewal fee.

(5) Failure to renew sixty-one (61) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 1 of this administrative regulation for reinstatement and a reinstatement fee, in accordance with Section 5(1) of this administrative regulation, shall be added to the annual renewal fee.

(6) Inactive elevator mechanic renewal.

(a) To place the elevator mechanic's license in inactive status, an elevator mechanic shall pay annually an inactive fee of forty-eight (48) dollars.

(b) An inactive elevator mechanic shall not perform work within the Commonwealth requiring a mechanic's license.

(c) To reactivate an elevator mechanic license, the inactive elevator mechanic shall pay the annual renewal fee, an additional forty-eight (48) dollars, and comply with the continuing education requirements established in 815 KAR 4:050.

(7) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(8) Continuing education requirements shall not be required for renewal provided the initial license was issued within twelve (12) months of renewal.

(9) The application for renewal or reactivation of a licensed elevator mechanic shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal and restoration, if applicable; or

(b) Comply with elevator mechanic continuing education requirements.

Section 5. Special Services and Fees. In addition to the other fees required by this administrative regulation, the following special fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be twenty-five (25) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be twenty-five (25) dollars.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be forty-eight (48) dollars.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

Section 6. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.4033.

Section 7. Incorporation by Reference. (1) Form EV-4, Elevator Mechanic License Application, July 2011 is herein incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator Section, 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: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2011, at 1:00 pm, EDT, 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 August 15, 2011 (five 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

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comments on the proposed administrative regulation. Written comments shall be accepted until August 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 licensure requirements and fees for elevator mechanics.

(b) The necessity of this administrative regulation: This amendment is necessary to implement the elevator licensure program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4009 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540 governing the safety and inspection of elevators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures, fees and requirements for application and maintenance of an elevator mechanic license.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Codes Enforcement, Elevator Section, and elevator mechanics.

(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, Division and Section will implement the elevator licensure program and ensure compliance with licensure requirements while carrying out inspection duties.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees established approximate and are anticipated to offset the expenditures to the Department, Division and Section for ensuring compliance with licensure laws.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By implementing the elevator licensure program, citizens in the state will be assured that those performing elevator work have met experience standards and requirements necessary for licensure. As a result, elevator safety within the Commonwealth will be heightened.

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

(a) Initially: For implementation and enforcement the initial year, the agency anticipates revenues of an estimated \$28,800 to be offset by administration costs of the program.

(b) On a continuing basis: The agency anticipates that this program's revenues and expenditures will remain relatively consistent annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds for the Division of Building Codes Enforcement, Elevator Section.

(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 spending authority currently granted to the elevator section will necessarily need to be increased so that funds received for mechanics licenses can be used to offset the administrative and compliance costs with implementation of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation establishes fees for the newly legislated program requiring all elevator mechanics working within the Commonwealth to be licensed by the Department of Housing, Buildings and Construction.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevators mechanics are treated equally under the provisions of 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 Building Code Enforcement, and Elevator Section 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 198B.4009 and 198B.4013.

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 revenues for elevator mechanic licensing which are estimated to offset expenditures for implementing and enforcement of the contractor licensing program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. Based upon the estimation that the Department will license 300 elevator mechanics in the first year of the program, the estimated revenues for this program are \$28,800.

(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 Department anticipates that renewals and new applications will approximately mirror the first year of implementation of the elevator mechanic licensing applications, therefore revenues will remain relatively constant for subsequent years.

(c) How much will it cost to administer this program for the first year? The agency estimates the newly created elevator mechanic licensing program's expenditures to approximate the revenues annually.

(d) How much will it cost to administer this program for subsequent years? The costs of administering the elevator mechanic licensing program are anticipated to remain relatively constant after the first year of implementation.

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

Revenues (+/-): Increase due to new program implementation.

Expenditures (+/-): Increase to administer and enforce new licensure program.

Other Explanation:

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PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (New Administrative Regulation)

815 KAR 4:050. Continuing education requirements for elevator contractors and elevator mechanics.

RELATES TO: KRS 198B.030, 198B.4009, 198B.4011, 198B.4013, 198B.4023, 198B.4025

STATUTORY AUTHORITY: KRS 198B.4009(3), 198B.4023(7), 198B.4025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4023 and 198B.4025 authorize the Department of Housing, Buildings and Construction to promulgate administrative regulations, after review by the Elevator Advisory Committee, establishing continuing education requirements for elevator contractor and elevator mechanic licensees. This administrative regulation establishes requirements for continuing education for elevator contractor and mechanic licensees.

Section 1. Elevator Contractors. (1) Each elevator contractor shall provide proof of completion of eight (8) hours of continuing education prior to annual license renewal. The required continuing education shall be attended and completed within twelve (12) months prior to renewal except as provided in subsection (3) of this section.

(2) Continuing education courses shall relate to one (1) or more of the following:

- (a) Business;
- (b) Job safety;
- (c) Kentucky adopted codes related to elevators; or
- (d) Items directly related to the elevator trade.

(3) A licensed elevator contractor who accumulates more than the eight (8) hours of continuing education required annually, may carry forward the excess credit hours into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those two (2) years.

(a) Carry forward credits shall be limited to a total of twelve (12) hours.

(b) All excess credits above the total of twelve (12) hours shall remain on the licensed elevator contractor's records but shall not be carried forward.

(4) A licensed elevator contractor teaching or participating as a panel member in an approved continuing education course for elevators shall be granted one (1) credit hour for each fifty (50) minutes of actual instruction time. If the elevator contractor teaches the same class on multiple occasions, credit shall only be granted for one presentation of the class.

(5) Elevator contractor licensees that are a partnership, domestic corporation, or corporation other than a domestic corporation, shall designate an authorized agent to complete the licensee's annual continuing education requirements for purposes of license renewal. Written confirmation and designation of the licensee's authorized agent shall be provided to the Department with application renewal.

Section 2. Elevator Mechanics. (1) Each elevator mechanic shall provide proof of completion of eight (8) hours of continuing education prior to license renewal. The required continuing education shall be attended and completed within twelve (12) months prior to renewal except as provided in subsection (3) of this section.

(2) Continuing education courses shall consist of a minimum of two (2) hours on job safety. The other six (6) hours shall consist of:

- (a) Kentucky adopted codes related to elevators;
- (b) Job safety; or
- (c) Items directly related to the elevator trade.

(3) A licensed elevator mechanic who accumulates more than the eight (8) hours of continuing education required annually, may carry forward the excess credit hours into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those two (2) years.

(a) Carry forward credits shall be limited to a total of twelve

(12) hours.

(b) All excess credits above the total of twelve (12) hours shall remain on the licensed elevator mechanic's records but shall not be carried forward.

(4) A licensed elevator mechanic teaching or participating as a panel member in an approved continuing education course for elevators shall be granted one (1) credit hour for each fifty (50) minutes of actual instruction time. If the elevator mechanic teaches the same class on multiple occasions, credit shall only be granted for one presentation of the class.

Section 3. Combined Elevator Contractor and Elevator Mechanic Licenses. An individual who is a holder of both an elevator contractor and elevator mechanic license shall meet the continuing education requirements of Section 1 of this administrative regulation.

Section 4. Inactive Licenses. (1) An inactive elevator contractor or elevator mechanic shall not be required to complete continuing education to maintain inactive status.

(2) If the inactive licensed elevator contractor or elevator mechanic wishes to activate his or her license to the status of an active licensee, he or she shall meet the requirements of Section 1 of this administrative regulation.

(3) Excess continuing education credit hours that an elevator contractor or elevator mechanic licensee may be carrying forward shall not count towards continuing education requirements for reactivation of an inactive license.

Section 5. Terminated Licenses. (1) Except as provided in subsection (2) of this section prior to reinstatement, an individual whose contractor or mechanic license is terminated for three (3) years or less shall complete the total number of continuing education hours per year that the license has been terminated.

(2) The number of continuing education hours necessary for reinstatement shall not exceed twenty-four (24) hours.

Section 6. Continuing Education Courses. (1) All continuing education shall be completed in one (1) or more courses provided by the National Elevator Industry Educational Program, the National Association of Elevator Contractors, or approved by the department and the Elevator Advisory Committee for elevator contractors and elevator mechanics pursuant to 815 KAR 4:060.

(2) Continuing education courses shall be offered only by the National Elevator Industry Educational Program, the National Association of Elevator Contractors, or providers approved by the department and the Elevator Advisory Committee pursuant to 815 KAR 4:060.

JERRY T. LUNSFORD, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2011, at 12:00 pm, EDT, 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 August 15, 2011 (five 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 August 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.

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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 continuing education requirements for renewal, reinstatement, and reactivation of elevator licenses.

(b) The necessity of this administrative regulation: This amendment is necessary to implement the elevator licensure program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4023 and 198B.4025 authorize the Department of Housing, Buildings and Construction to promulgate administrative regulations governing continuing education requirements for elevator licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the continuing education requirements for renewal, reinstatement, and reactivation of elevator licenses.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Codes Enforcement, Elevator Section, and elevator licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department, Division and Section will administer the elevator licensing program, confirming statutory continuing education requirements for licensees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administration costs to confirm compliance with continuing education requirements will be minimal and included within normal operational costs of the section.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By implementing the elevator licensure program, citizens in the state will be assured that those performing elevator work have met experience standards and continue to be educated about elevator codes, elevator safety, elevator related issues. As a result, elevator safety within the Commonwealth will be heightened.

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

(a) Initially: Administrative costs will be negligible.

(b) On a continuing basis: Administrative costs are anticipated to remain stable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds for the Division of Building Codes Enforcement, Elevator Section.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees associated with the continuing education requirements for elevator licensees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation establishes no fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all licensees are treated equally in accordance with statutory mandate.

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 Building Code Enforcement, and Elevator Section 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 198B.4009, 198B.4023 and 198B.4025.

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 result in no revenues.

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

(c) How much will it cost to administer this program for the first year? The administration costs to confirm compliance with continuing education requirements will be minimal and included within normal operational costs of the section.

(d) How much will it cost to administer this program for subsequent years? The costs of administering the elevator contractor licensing program are anticipated to remain relatively constant after the first year of implementation.

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

Revenues (+/-): N/A

Expenditures (+/-): Minimal and included within the administration costs of the elevator licensure program.

Other Explanation:

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction Division of Building Codes Enforcement (New Administrative Regulation)

815 KAR 4:060. Requirements for approval of continuing education courses and providers.

RELATES TO: KRS 198B.030, 198B.4009, 198B.4011, 198B.4013, 198B.4023, 198B.4025

STATUTORY AUTHORITY: 198B.030, 198B.4009, 198B.4025
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement the provisions of KRS 198B.400 to 198B.540. KRS 198B.4025 authorizes the Department to promulgate an administrative regulation to establish requirements for approval of continuing education programs. This administrative regulation establishes the requirements for approval of continuing education programs in addition to those approved statutorily.

Section 1. Requirements for Continuing Educational Provider Approval. (1) For a Continuing Education Provider to be approved by the Department, the applicant shall either be a:

- (a) Trade Association with affiliation to the Elevator Trade;
- (b) Trade school;

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(c) College;

(d) Technical school;

(e) Business dedicated solely to providing continuing education and that provides at least one (1) course in each of the congressional districts quarterly;

(f) Elevator Company that employs full-time training personnel to conduct continuing education programs providing continuing education for elevator mechanics only; or

(g) Elevator manufacturer or distributor that employs a full time training personnel to conduct continuing education programs providing continuing education for elevator mechanics only.

(2)(a) Each continuing education course provider shall register with the department as required by subsection (3) of this section before submitting course materials for department approval.

(b) Registration shall be valid for two (2) years from the date of issuance.

(3) Course providers shall register on Form EV-5, Application for Approval as a Continuing Education Course Provider for Elevator Licensure and shall include the following:

(a) Company name;

(b) Contact person;

(c) Mailing address;

(d) Email address;

(e) Telephone number; and

(f) Fax number.

(4) The department shall maintain a list of approved continuing education course providers.

(5) Each course provider shall report to the department any change to the information submitted in the initial application within thirty (30) days after the change takes effect.

(6) For each course approved, the provider shall distribute a questionnaire in the format provided by the department to each applicant in attendance for the purpose of rating the course.

Section 2. Continuing Education Course Approval. (1) A separate application for approval shall be submitted to the department on Form EV-6, Application for Continuing Education Course for Elevator Licensure, for each course offered by the course provider.

(2)(a) An Application for Approval as a Continuing Education Course Provider for Elevator Licensure shall be submitted only by an approved provider registered with the department.

(b) An application shall be submitted at least sixty (60) days prior to the course's offering.

(3) A continuing education course shall provide instruction in at least one (1) of the subject areas specified in 815 KAR 4:050, Section 1(2)(a) through (d) and Section 2(2)(a) through (c).

(4) The course application shall include the following:

(a) Name of the course;

(b) Name and registration number of the provider;

(c) A course syllabus;

(d) Name of the instructor or presenter along with his or her qualifications;

(e) The amount of actual time needed to present the course;

(f) The objectives of the course; and

(g) A statement of the practicality of the course to the elevator trade.

(5) Content changes made to the course shall require a subsequent submission to the department for review and approval.

(6) Course approval shall be valid for two (2) years from the date of department approval.

(7)(a) The department shall issue a course number for each approved course.

(b) The course number and the provider's number shall appear on all advertisements and certificates for the course.

(8) A provider shall submit to the department a quarterly schedule including dates and locations of courses by January 1, April 1, July 1, and October 1 annually.

(9) The department shall receive notification of scheduling changes at least ten (10) working days prior to the originally scheduled course date by fax or e-mail to the Elevator Section.

(10) Cancellations.

(a) The provider shall give notice of cancellation no less than five (5) working days prior to scheduled classes unless the governor declares a state of emergency or other conditions exist that

would preclude a five (5) day notification of cancellation.

(b) If a scheduled class is cancelled, the registrant shall have the option to attend a rescheduled class or receive a full refund for the cancelled class from the provider.

(c) A registrant who notifies a provider of registration cancellation prior to five (5) working days of a scheduled course may choose either a full refund or to attend a subsequent course.

(d) A provider shall not cancel a course with ten (10) or more registrants, unless it is the result of an emergency.

Section 3. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain for three (3) years the following records for each approved course:

(a) Certificates of completion as provided in subsection (2) of this section;

(b) An attendance sign-in and sign-out sheet; and

(c) A course syllabus.

(2) Certificates of completion.

(a) Each registered course provider shall issue a certificate of completion for each participant who enrolled and completed an approved continuing education course.

(b) A certificate of completion shall contain the following information about the individual participant:

1. Name;

2. Address;

3. License number;

4. Date of attendance; and

5. Course completed.

(c) One (1) copy of the certificate of completion shall be:

1. Sent to the department electronically;

2. Retained on file by the provider in compliance with subsection (1) of this section of this section; and

3. Given to the participant upon completion of the course.

Section 4. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) days of the requesting date.

(2) Representatives of the department shall not be prohibited from attending an approved continuing education course to ensure that:

(a) The course meets the stated objectives; and

(b) Applicable requirements are being met.

Section 5. Disciplinary Action. Provider approval shall be revoked if the provider:

(1) Obtains, or attempts to obtain, registration or course approval through fraud, false statements, or misrepresentation;

(2) Does not provide complete and accurate information in either the initial registration or in notification of changes to the information;

(3) Advertises a course as being approved by the department prior to receiving approval; or

(4) Fails to comply with the requirements of this administrative regulation.

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

(a) Form EV-5, Application for Approval as a Continuing Education Course Provider for Elevator Licensure, July 2011; and

(b) Form EV-6, Application for Continuing Education Course for Elevator Licensure, July 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY T. LUNS福德, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2011, at 12:30 pm, EDT, at the Department of Housing,

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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 August 15, 2011 (five 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 August 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 licensure requirements for elevator continuing education programs.

(b) The necessity of this administrative regulation: This amendment is necessary to implement the elevator licensure program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4025 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish the requirements for approval of elevator continuing education programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements and procedures for becoming an approved elevator continuing education provider and course for elevator licensees.

(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 This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Codes Enforcement, Elevator Section, and elevator continuing education providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department will utilize the criteria established in approving elevator continuing education providers and classes. The Division and Section will confirm that continuing education classes taken by licensees are approved programs in compliance with statutory mandate of KRS 198B.4025.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are minimal administrative costs associated with the implementation of continuing education program approvals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By having established criteria for approval as an elevator continuing education provider, elevator licensees should receive continuing education that educates on applicable codes, safety and the elevator trade.

(5) Provide an estimate of how much it will cost the administra-

tive body to implement this administrative regulation:

(a) Initially: Administrative costs are anticipated to be negligible.

(b) On a continuing basis: Administrative costs are anticipated to remain stable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds for the Division of Building Codes Enforcement, Elevator Section.

(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 elevator section anticipates no need for an increase in fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative establishes no fees nor increases any existing fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevators continuing education providers and courses are treated equally under the provisions of 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 Building Code Enforcement, and Elevator Section 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 198B.030, 198B.4009 and 198B.4025.

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 generate no revenues.

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

(c) How much will it cost to administer this program for the first year? The administration costs to approve continuing education programs will be minimal and included within normal operational costs of the section.

(d) How much will it cost to administer this program for subsequent years? The administration costs to approve continuing education programs will be minimal and included within normal operational costs of the section.

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 (+/-): Minimal and included within the administration costs of the elevator licensure program.

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(New Administrative Regulation)

815 KAR 4:070. Fees and refunds.

RELATES TO: KRS 198B.4005(6), 198B.4009(3), 198B.4011,

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198B.4013, 198B.4017, 198B.4019, 198B.4021, 198B.4023, 198B.480, 198B.520.

STATUTORY AUTHORITY: KRS 198B.4009(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400-198B.540, the Kentucky Elevator Safety Act. This administrative regulation establishes procedures pertaining to fee payments and refunds.

Section 1. A fee submitted to the Division of Building Codes Enforcement, Elevator Section, shall be made payable to the Kentucky State Treasurer.

Section 2. (1) If a fee is returned to the Elevator Section for nonpayment or insufficient funds, the payor shall pay thirty-five (35) dollars, unless proof of financial institution error is provided.

(2) If a company or individual submits a check returned to the division for insufficient funds, the payor shall not, for a period of at least six (6) months, make a payment to the Elevator Section by personal check.

Section 3. A refund for an installation permit shall be given if:

(1) The refund request is made within six (6) months of purchase; and

(2) Work has not begun on the project for which the permit was issued.

JERRY T. LUNSFORD, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 8, 2011

FILED WITH LRC: July 8, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2011, at 10:00 am, EDT, 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 August 15, 2011 (five 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 August 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 manner in which fees are paid to the department. The regulation also establishes the charge for non-payment of fees, as well as the requirements to receive a refund for elevator installation/alteration permits.

(b) The necessity of this administrative regulation: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction, after review and comments by the Elevator Advisory Committee, to promulgate administrative regulations necessary to implement the Kentucky Elevator Safety Act (KRS 198B.400-198B.540).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the method of acceptable payments of fees, provides a mechanism for refund of installation permit fees and allows the department to recoup expenses incurred for returned fee and permit

payments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the accepted methods of payment for Elevator licenses and permits, as well as the procedure for receiving refund for unused installation permits.

(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: The Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section; elevator contractor licensees; elevator journeyman licensees; inactive elevator licensees; elevator owners; and installation permit holders.

(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: 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: Licensing and permitting fees are to be submitted in the accepted forms of payment specified in this regulation. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulation results in no additional or new costs unless payment is returned to the division for insufficient funds. If payment is returned, the submitting party is subject to a thirty-five (35) dollars return charge. As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include clarification as to the approved methods of payment for license applications, license renewals and installation permits.

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

(a) Initially: There are no additional or new costs associated with the implementation of this administrative regulation.

(b) On a continuing basis: There are no additional or new costs associated with implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing elevator funds will be utilized for the administration of receiving and processing licensing and installation fees, as well as refunds.

(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. Implementation of this administrative regulation will not necessitate an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a thirty-five dollar (\$35) fee for payments returned to the division due to insufficient funds.

(9) TIERING: Is tiering applied?. Tiering is not applied to this administrative regulation. All parties are treated equally under the provisions of 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 Building Codes Enforcement, Elevator Section will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation

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that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.4009 which grants the Department of Housing, Buildings and Construction the ability to promulgate administrative regulations necessary for the implementation of the Kentucky Elevator Safety Act (KRS 198B.400-198B.540).

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 created no new expenditures and establishes a fee for returned payments.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. This regulatory amendment will result in negligible revenues from returned payments and creates no new expenditures.

(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? Negligible.

(c) How much will it cost to administer this program for the first year? N/A

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: There is no fiscal impact from this administrative regulation to state or local government.

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of July 12, 2011**

Call to Order and Roll Call

The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 12, 2011, at 1 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 June 2011 meeting were approved.

Present were:

Members: Senators Joe Bowen, David Givens, and Joey Pendleton, and Representative Johnny Bell, Robert Damron and Jimmie Lee.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, Betsy Cupp and Laura Napier.

Guests: Nathan Goldman, Board of Nursing; Mark Mangeot, Karen Waldrop, Department of Fish and Wildlife; Sean Alter, Laura Lund, Andrea Smith, Division of Air Quality; Steve Lynn, Justice and Public Safety Cabinet; Melissa Beasley, Kate Houghlin, Department of Unemployment Insurance; Clay Lamb, Education and Workforce Development Cabinet; David Hurt, DJ Wasson, Malinda Shepherd; Cecelia Webber, Department of Insurance; Dawn M. Bellis, William Swope, Jerry Lunsford, George Mann, Department for Housing, Buildings and Construction; Rosie Miklavicic, Mike Tuggle; Department for Public Health.

The Administrative Regulation Review Subcommittee met on Tuesday, July 12, 2011, and submits this report:

GENERAL GOVERNMENT CABINET: Board of Nursing: Board

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization. Nathan Goldman, general counsel, represented the board.

A motion was made and seconded to approve the following amendment: to amend Section 1 to include a reference to Section 2, which was omitted. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.

201 KAR 20:070. Licensure by examination.

201 KAR 20:110. Licensure by endorsement.

201 KAR 20:215. Continuing competency requirements.

201 KAR 20:225. Reinstatement of license.

201 KAR 20:240. Fees for applications and for services.

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

201 KAR 20:411. Sexual assault nurse examiner program standards and credential requirements.

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

A motion was made and seconded to approve the following amendments: to correct a formatting error and to change appropriate cross-references. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:095. Importation of cervid carcasses and parts. Mark Mangeot, legislative liaison, and Karen Waldrop, Wildlife Division Director, represented the department.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Air Quality: Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:052 & E. Review of new sources in or impacting upon nonattainment areas. Sean Alteri, assistant director, and Andrea Smith, branch manager, represented the division.

In response to questions by Representative Damron, Mr. Alteri stated that a stationary air pollution source included, for example, an industrial facility that emits pollution. It did not include a city burning debris after storm damage.

In response to a question by Co-Chair Bowen, Mr. Alteri stated that this administrative regulation pertained to an area that is already a nonattainment zone, meaning not in compliance with U.S. EPA air quality standards. A shutdown or curtailment of one stationary air pollution source may allow a new facility to operate in a nonattainment zone.

In response to questions by Senator Givens, Ms. Smith stated that Jefferson County included an area that would probably soon be classified as nonattainment for sulfur dioxide. Additionally, there were three (3) areas in Kentucky currently classified as nonattainment that were being considered by U.S. EPA for reclassification. If approved, the areas would no longer be classified as nonattainment areas. Mr. Alteri stated that U.S. EPA determined what constituted an area based on metropolitan zones, rather than counties.

JUSTICE AND PUBLIC SAFETY CABINET: Office of the Secretary: Breath Analysis Operators

500 KAR 8:010. Certification of breath alcohol analysis instrument operators. Steve Lynn, assistant general counsel, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to add citations; and (2) to amend Sections 2 and 5 for clarity. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office of Employment and Training: Unemployment Insurance

787 KAR 1:070. Reasonable time for protesting claim. Melissa Beasley, assistant director; Katie Houghlin, assistant director; and Clay Lamb, staff attorney, represented the office.

In response to questions by Senator Givens, Ms. Lamb stated that these administrative regulations were the result of the Workforce Investment Task Force. The current debt level was \$948,000,000, and the office had not borrowed any more this year. Ms. Beasley stated that the office was discussing repayment options. The federal government had not charged interest yet, but the charges were expected and interest was being accrued. The fund could not currently pay the interest. Ms. Houghlin stated that the office was working to reduce abuse of the fund and to increase the number of job placements.

787 KAR 1:210. Employer contribution rates.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend the form incorporated by reference to align the definitions provided on the form with the provisions of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Financial Standards and Examination Division: Authorization of Insurers and General Requirements

806 KAR 3:170. Annual audited financial reports. David Hurt, chief financial examiner; D. J. Wasson, staff assistant; and Malinda Shepherd, program manager, represented the division.

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Health and Life Division: Trade Practices and Fraud

806 KAR 12:120. Suitability in annuity transactions.

In response to questions by Representative Damron, Ms. Shepherd stated that this administrative regulation applied to both fixed and variable annuities. The division established standards in this administrative regulation that were stronger than those proposed by the National Association of Insurance Commissioners to include both types of annuities. Ms. Wasson stated that a stronger level of regulation was established in this administrative regulation. She also stated that the administrative regulation was reviewed by the Department of Financial Institutions, and that agency did not have any reservations about this administrative regulation.

Department of Housing, Buildings and Construction: Division of Fire Prevention: Standards of safety

815 KAR 10:070 & E. Consumer fireworks retailer registration and fees. Dawn M. Bellis, general counsel; George Mann, deputy commissioner; and William Swope, state fire marshal, represented the division.

In response to a question by Senator Pendleton, Mr. Swope stated that preliminary reports showed that there were not significant problems with accidents during the July 4 firework season now that requirements pertaining to fireworks had changed. There had been twelve (12) or thirteen (13) minor injuries reported, but nothing serious.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add and correct citations; (2) to amend Section 3 to state that if a fee is returned for nonpayment or insufficient funds, the fire marshal may revoke registration of the site in accordance with KRS 227.715(10), unless proof of financial institution error is provided; and (3) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and 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.

Electrical Inspectors

815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 8 and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 35:100. Electrical continuing education procedure.

In response to a question by Senator Givens, Ms. Bellis stated that, prior to this proposed amendment, once a continuing education provider was approved, there was not a process for revoking that approval if necessary. This amendment provided for revocation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 3 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Administration and Financial Management: Local Health Departments

902 KAR 8:160. Local health department operations requirements. Rosie Miklavcic, division director, and Mike Tuggle, assistant division director, represented the division.

Senator Pendleton thanked the local health departments for a good job, but stated that enforcement needed to be more practical. For example, a small food vendor that periodically provided food for special events was being required to get a permanent food vendor license.

In response to a question by Representative Damron, Mr. Tuggle stated that certain administrative authorities were better served at the local health department level with oversight by the division. For example, travel decisions did not need to go through the department for initial approval.

Representative Damron stated that consistency throughout the state was

important.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 4, 5, 8, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment were approved.

902 KAR 8:165. Local health department accounting/auditing requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to incorporate material by reference; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8:170. Local health department financial management requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4 to 8, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Senator Pendleton asked that staff draft and send a memo to the Transportation Cabinet to request expedited amendment of 601 KAR 1:018, Special overweight or overdimensional motor vehicle load permits. The concern was that requirements in this administrative regulation were confusing and burdensome, especially to the agricultural community. If an amended version of this administrative regulation was not effective by the 2012 legislative session, a bill may be proposed to revise applicable statutes to clarify requirements for overweight or overdimensional motor vehicle load permits.

The following administrative regulations were deferred to the August 15, 2011, meeting of the Subcommittee:

PERSONNEL CABINET: Classified

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

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

Unclassified

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

GENERAL GOVERNMENT CABINET: Board of Auctioneers: Board

201 KAR 3:045. Recordkeeping and accounting.

201 KAR 3:081. Repeal of 201 KAR 3:015 and 3:080.

201 KAR 3:090. Administrative fees for applications and services.

Board of Dentistry: Board

201 KAR 8:008E. Repeal of 201 KAR 8:390.

Board of Interpreters for the Deaf and Hard of Hearing: Board

201 KAR 39:010. Definitions.

201 KAR 39:030. Application; qualifications for licensure; and certification levels.

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

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action.

201 KAR 39:070. Application and qualifications for temporary licensure.

201 KAR 39:080. Reciprocity.

201 KAR 39:090. Continuing education requirements.

201 KAR 39:100. Complaint procedure.

201 KAR 39:120. Code of ethics.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Class D and Class C Felons

501 KAR 2:020. Definitions for 501 KAR Chapter 2.

501 KAR 2:040. Waivers.

501 KAR 2:050. Transfer requests.

501 KAR 2:060. Procedures for housing of Class D and Class C felons.

501 KAR 2:070. Work release.

Jail Standards for Full-Service Facilities

501 KAR 3:010. Definitions for 501 KAR Chapter 3.

501 KAR 3:020. Administration; management.

501 KAR 3:030. Fiscal management.

501 KAR 3:060. Security; control.

501 KAR 3:070. Safety; emergency procedures.

501 KAR 3:080. Sanitation; hygiene.

501 KAR 3:090. Medical services.

501 KAR 3:100. Food Services.

501 KAR 3:110. Classification.

501 KAR 3:120. Admission; searches and release.

501 KAR 3:130. Prison programs; services.

501 KAR 3:150. Hearings, procedures, disposition.

501 KAR 3:160. Training.

501 KAR 3:170. Classifications.

Jail Standards for Restricted Custody Center Facilities

501 KAR 7:010. Definitions for 501 KAR Chapter 7.

501 KAR 7:020. Administration; management.

501 KAR 7:030. Fiscal management.

501 KAR 7:040. Personnel.

501 KAR 7:060. Security; control.

501 KAR 7:070. Safety; emergency procedures.

501 KAR 7:080. Sanitation; hygiene

501 KAR 7:090. Medical services.

501 KAR 7:100. Food services.

501 KAR 7:110. Classification.

501 KAR 7:120. Admission; searches and release.

501 KAR 7:130. Prisoner programs; services.

501 KAR 7:150. Training.

Jail Standards for Life Safety Facilities

501 KAR 13:010. Life safety issues

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office of Employment and Training: Unemployment Insurance

787 KAR 1:090. Unemployed worker's reporting requirements.

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 1:50 p.m. until August 15, 2011.

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OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON EDUCATION Meeting of June 13, 2011

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of June 13, 2011, having been referred to the Committee on June 1, 2011, pursuant to KRS 13A.290(6):

702 KAR 7:065

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 13, 2011 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE HEALTH AND WELFARE Meeting of June 15, 2011

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of June 15, 2011, having been referred to the Committee on June 1, 2011, pursuant to KRS 13A.290(6):

201 KAR 20:490

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 15, 2011 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON EDUCATION Meeting of July 11, 2011

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of July 11, 2011, having been referred to the Committee on July 6, 2011, pursuant to KRS 13A.290(6):

16 KAR 6:030

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 11, 2011 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

B - 2

The Locator Index lists all administrative regulations published in VOLUME 38 of the Administrative Register from July 2011 through June 2012. 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 37 are those administrative regulations that were originally published in VOLUME 37 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2011 bound Volumes were published.

KRS Index

B - 8

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 38 of the Administrative Register.

Technical Amendment Index

B - 12

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2011 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

B - 13

The Subject Index is a general index of administrative regulations published in VOLUME 38 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
VOLUME 37					
The administrative regulations listed under VOLUME 37 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 2011 bound Volumes were published.					
EMERGENCY ADMINISTRATIVE REGULATIONS:			As Amended	2556	
(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.)			103 KAR 3:050		
			Amended	760	
			103 KAR 15:195	2769	(See 38 Ky.R.)
			201 KAR 3:045		
			Amended	2891	
31 KAR 5:010E	2128	2-1-11	201 KAR 3:081(r)	3020	
31 KAR 6:030E	2352	3-10-11	201 KAR 3:090	3021	
Replaced	2828	7-1-11	201 KAR 8:532	3022	
32 KAR 1:030E	1381	11-2-10	201 KAR 8:550	2308	
32 KAR 1:190E	1382	11-2-10	Amended	2876	
32 KAR 2:130E	2130	2-7-11	201 KAR 8:560	626	
101 KAR 2:095E	2522	3-31-11	201 KAR 8:562	3027	
101 KAR 2:102E	2525	3-31-11	201 KAR 12:083		
101 KAR 3:015E	2530	3-31-11	Amended	2282	
103 KAR 15:195E	2535	4-1-11	As Amended	2829	7-1-11
201 KAR 8:008E	2807	4-21-11	201 KAR 20:056		
201 KAR 8:532E	2808	4-21-11	Amended	2892	(See 38 Ky.R.)
201 KAR 8:550E	2143	2-2-11	201 KAR 20:059		
201 KAR 8:562E	2812	4-21-11	Amended	2046	
201 KAR 43:010E	2817	4-29-11	201 KAR 20:062	637	
201 KAR 43:020E	2818	4-29-11	Amended	2895	
201 KAR 43:030E	2820	4-29-11	201 KAR 20:070		
201 KAR 43:040E	2821	4-29-11	Amended	2900	
401 KAR 51:052E	2352	3-14-11	201 KAR 20:110		
815 KAR 10:070E	2824	5-10-11	Amended	2902	
922 KAR 1:420E	1960	1-3-11	201 KAR 20:215		
Expired	****	7-2-11	Amended	2905	
			201 KAR 20:225		
ORDINARY ADMINISTRATIVE REGULATIONS:			Amended	2907	
13 KAR 2:060			201 KAR 20:240		
Amended	2250		Amended	2909	
As Amended	2539		201 KAR 20:310		
16 KAR 3:050			Amended	2911	
Amended	1500		201 KAR 20:411		
As Amended	1963		Amended	2913	
16 KAR 6:030			201 KAR 20:470		
Amended	2665		Amended	2915	(See 38 Ky.R.)
31 KAR 5:010			201 KAR 26:115		
Amended	2254		Amended	1511	
As Amended	2542	6-3-11	As Amended	1976	
31 KAR 6:030			201 KAR 26:121		
Amended	2443		Amended	1513	
As Amended	2828	7-1-11	201 KAR 26:125		
32 KAR 1:030			Amended	1514	
Amended	1502		As Amended	1977	
32 KAR 1:190			201 KAR 26:130		
Amended	1504		Amended	1516	
32 KAR 2:130			As Amended	1977	
Amended	2256		201 KAR 26:155		
101 KAR 1:325			Amended	1518	
Amended	2666		As Amended	1978	
101 KAR 2:095			201 KAR 26:171		
Amended	2669		Amended	1520	
101 KAR 2:102			As Amended	1979	
Amended	2672		201 KAR 26:175		
101 KAR 3:015			Amended	1523	
Amended	2677		201 KAR 26:180		
102 KAR 1:178	2303		Amended	1526	
103 KAR 3:010			201 KAR 26:185		
Amended	2258		Amended	1527	
As Amended	2543		As Amended	1982	
103 KAR 3:030			201 KAR 26:190		
Amended	2263		Amended	1529	
As Amended	2547		As Amended	1983	
103 KAR 3:040			201 KAR 26:200		
Amended	2273		Amended	1532	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
As Amended	1984		201 KAR 43:020	3032	
201 KAR 26:215			201 KAR 43:030	3034	
Amended	1533		201 KAR 43:040	3035	
201 KAR 26:230			301 KAR 1:152	2772	
Amended	1535		Withdrawn		7-8-11
As Amended	1985		301 KAR 1:155		
201 KAR 26:270			Amended	2056	
Amended	1537		Amended	2430	
201 KAR 26:290			As Amended	2565	
Amended	1539		301 KAR 2:049		
201 KAR 26:310	1597		Amended	228	
As Amended	1987		301 KAR 2:095		
201 KAR 30:040			Amended	2682	
Amended	101		301 KAR 2:178		
201 KAR 39:010	2507		Amended	2065	
201 KAR 39:030			As Amended	2568	
Amended	2451		301 KAR 2:300		(See 38 Ky.R.)
201 KAR 39:040			Amended	2683	
Amended	2453		400 KAR 2:090		
201 KAR 39:060			Amended	2920	
Amended	2457		401 KAR 5:006		
201 KAR 39:070			Amended	1757	
Amended	2459		Amended	2434	
201 KAR 39:080			401 KAR 8:020		
Amended	2460		Amendment	2924	
201 KAR 39:090			401 KAR 10:030		
Amended	2461		Amended	2071	
201 KAR 39:100			Amended	2655	
Amended	2464		401 KAR 42:005		
201 KAR 39:120			Amended	2686	
Amended	2466		401 KAR 42:011		
201 KAR 41:100	1112		Amended	2691	
As Amended	1987		401 KAR 42:020		
201 KAR 42:010			Amended	2693	
Amended	1009		401 KAR 42:030		
Amended	1695		Amended	2696	
As Amended	1988		401 KAR 42:040		
201 KAR 42:020			Amended	2700	
Amended	1011		401 KAR 42:045	2773	
Amended	1696		401 KAR 42:050		
As Amended	1989		Amended	2702	
201 KAR 42:030			401 KAR 42:060		
Amended	1012		Amended	2704	
As Amended	1989		401 KAR 42:070		
201 KAR 42:035			Amended	2706	
Amended	1013		401 KAR 42:080		
Amended	1697		Amended	2709	
As Amended	1990		401 KAR 42:090		
201 KAR 42:040			Amended	2711	
Amended	1015		401 KAR 42:095	2775	
Amended	1699		401 KAR 42:200		
As Amended	1991		Amended	2713	
201 KAR 42:050			401 KAR 42:250		
Amended	1016		Amended	2715	
Amended	1700		401 KAR 42:290		
As Amended	1992		Amended	2726	
201 KAR 42:060			401 KAR 42:300		
Amended	1018		Amended	2729	
Amended	1702		401 KAR 42:315	2777	
As Amended	1993		401 KAR 42:316		
201 KAR 42:070			Amended	2731	
Amended	1020		401 KAR 42:320		
Amended	1704		Amended	2733	
As Amended	1993		401 KAR 42:330		
201 KAR 42:080	1113		Amended	2735	
Amended	1705		401 KAR 42:335		
As Amended	1994		Amended	2738	
201 KAR 42:040	2700		401 KAR 42:340		
201 KAR 42:110			Amended	2739	
Amended	1022		401 KAR 47:205	2778	
As Amended	1996		401 KAR 47:207	2781	
201 KAR 43:010	3031		401 KAR 48:205	2784	

LOCATOR INDEX - EFFECTIVE DATES

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501 KAR 3:060			Amended	2996	
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808 KAR 10:410			Amended	2759	
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As Amended	2845	7-1-11	Amended	3000	(See 38 Ky.R.)
808 KAR 10:440			815 KAR 35:100		
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808 KAR 10:450			Amended	3005	
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811 KAR 1:125			As Amended	2607	
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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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EMERGENCY ADMINISTRATIVE REGULATIONS:

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