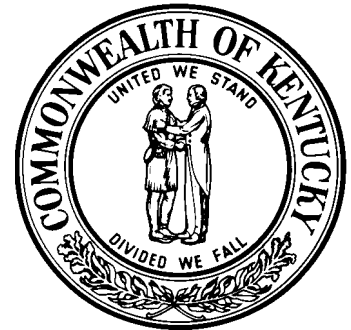


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 38, NUMBER 3
THURSDAY, SEPTEMBER 1, 2011

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet September 13, 2011 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 451-453 of this Administrative Register.

EARRS MEETING NOTICE

The Education Assessment and Accountability Review Subcommittee is tentatively scheduled to meet at 11:30 a.m., Tuesday, September 13, 2011 in room 149, Capitol Annex, Frankfort, Kentucky.

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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VOLUME 38, NUMBER 3 – SEPTEMBER 1, 2011

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, SEPTEMBER 13, 2011, at 1:30 p.m., Room 149 Capitol Annex**

**DEPARTMENT OF STATE
Kentucky Registry of Election Finance**

Reports and Forms

- 32 KAR 1:050 & E. Political committee registration. ("E" expires 12/28/2011)
- 32 KAR 1:070 & E. Waiver from filing candidate election finance statement. ("E" expires 12/28/2011)

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue**

Ad Valorem Tax; State Assessment

- 103 KAR 8:010. Watercraft allocation. (Not Amended After Comments)

**GENERAL GOVERNMENT CABINET
Board of Auctioneers**

Board

- 201 KAR 3:045. Recordkeeping and accounting. (Deferred from July)
- 201 KAR 3:081. Repeal of 201 KAR 3:015 and 3:080. (Deferred from July)
- 201 KAR 3:090. Administrative fees for applications and services. (Deferred from July)

Board of Optometric Examiners

Board

- 201 KAR 5:110. Expanded therapeutic procedures. (Amended After Comments)

Board of Medical Licensure

Board

- 201 KAR 9:091. Repeal of 201 KAR 9:090.

Board of Nursing

Board

- 201 KAR 20:161. Investigation and disposition of complaints.
- 201 KAR 20:370. Applications for licensure.

Board of Physical Therapy

Board

- 201 KAR 22:045. Continued competency requirements and procedures. (Deferred from August)
- 201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants. (Deferred from August)

Board of Respiratory Care

Board

- 201 KAR 29:050. Continuing education requirements.

Real Estate Appraisers Board

Board

- 201 KAR 30:310 & E. Fees for registration of appraisal management companies. ("E" expires 1/11/2012)
- 201 KAR 30:320 & E. Surety bond. ("E" expires 1/11/2012)
- 201 KAR 30:330 & E. Application for registration. ("E" expires 1/11/2012)
- 201 KAR 30:360. Operation of an appraisal management company.

Board of Licensure for Massage Therapy

Board

- 201 KAR 42:035. Application process, exam, and curriculum requirement

Kentucky Applied Behavior Analysis Licensing Board

Board

- 201 KAR 43:010 & E. Licensed behavior analyst or licensed assistant behavior analyst: application procedures. ("E" expires 11/26/2011) (Not Amended After Comments)
- 201 KAR 43:020 & E. Temporary licensed behavior analyst or temporary licensed assistant behavior analyst: application procedures. ("E" expires 11/26/2011) (Not Amended After Comments)
- 201 KAR 43:030 & E. Fees. ("E" expires 11/26/2011) (Not Amended After Comments)
- 201 KAR 43:040 & E. Code of ethical standards and standards of practice. ("E" expires 10/26/11)(Deferred from July)

Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters

Board

- 201 KAR 44:010. Fees.
- 201 KAR 44:020. Requirements for licensure as an Orthotist, Prosthetist, Orthotist/Prosthetist, Pedorthist, or Orthotic Fitter prior to January 1, 2013.
- 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.
- 201 KAR 44:040. Professional Conduct and Code of Ethics.
- 201 KAR 44:050. Per diem of board members.

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

Fish

- 301 KAR 1:015. Boats and motor restrictions.
- 301 KAR 1:152. Asian Carp Harvest Program.
- 301 KAR 1:201. Recreational fishing limits.

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**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

Underground Storage Tanks

- 401 KAR 42:005. Definitions related to 401 KAR Chapter 42. (Amended After Comments)
- 401 KAR 42:011. Scope of underground storage tank program. (Deferred from June)
- 401 KAR 42:020. UST systems: design, construction, installation, and registration. (Amended After Comments)
- 401 KAR 42:030. UST system general operating requirements. (Amended After Comments)
- 401 KAR 42:040. UST system release detection. (Amended After Comments)
- 401 KAR 42:045. Delivery prohibition. (Not Amended After Comments)
- 401 KAR 42:050. UST system release reporting, investigation, and confirmation. (Deferred from June)
- 401 KAR 42:060. UST system release response and corrective action for UST systems containing petroleum or hazardous substances. (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. (Amended After Comments)
- 401 KAR 42:080. Classification of UST systems containing petroleum and listing of associated cleanup levels. (Amended After Comments)
- 401 KAR 42:090. Financial responsibility. (Deferred from June)
- 401 KAR 42:095. Lender liability. (Deferred from June)
- 401 KAR 42:200. Annual fee for underground storage tanks. (Deferred from June)
- 401 KAR 42:250. Petroleum storage tank environmental assurance fund reimbursement procedures. (Amended After Comments)
- 401 KAR 42:290. Ranking system. (Deferred from June)
- 401 KAR 42:300. Third-party claims. (Deferred from June)
- 401 KAR 42:315. Repeal of 401 KAR 42:314. (Deferred from June)
- 401 KAR 42:316. Petroleum storage tank environmental assurance fund eligibility criteria for contracting companies and partnerships. (Not Amended After Comments)
- 401 KAR 42:320. Hearings. (Deferred from June)
- 401 KAR 42:330. Small owners tank removal account. (Amended After Comments)
- 401 KAR 42:335. Financial audits. (Deferred from June)
- 401 KAR 42:340. Laboratory certification. (Deferred from June)

Solid Waste Facilities

- 401 KAR 47:205. Contents of the application for petroleum contaminated soil treatment facilities. (Amended After Comments)
- 401 KAR 47:207. Public information procedures for petroleum contaminated soil treatment facilities. (Not Amended After Comments)

Standards for Solid Waste Facilities

- 401 KAR 48:205. Technical requirements for petroleum contaminated soil treatment facilities. (Not Amended After Comments)
- 401 KAR 48:206. Petroleum contaminated soil treatment facility liner soil layer quality assurance and quality control. (Not Amended After Comments)
- 401 KAR 48:207. Petroleum contaminated soil treatment facility liner geosynthetic quality assurance and quality control. (Not Amended After Comments)
- 401 KAR 48:208. Petroleum contaminated soil treatment facility liner high-permeability layer quality assurance and quality control. (Not Amended After Comments)

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections**

Jail Standards for Full-Service Facilities

- 501 KAR 3:040. Personnel. (Not Amended After Comments)
- 501 KAR 3:050. Physical plant. (Not Amended After Comments) (Deferred from August)
- 501 KAR 3:090. Medical services. (Deferred from July) (Deferred from August)
- 501 KAR 3:140. Prisoner rights. (Not Amended After Comments) (Deferred from August)

Office of the Secretary

- 501 KAR 6:060. Northpoint Training Center.

Jail Standards for Restricted Custody Center Facilities

- 501 KAR 7:050. Physical plant. (Not Amended After Comments) (Deferred from August)
- 501 KAR 7:140. Prisoner rights. (Not Amended After Comments) (Deferred from August)

**TRANSPORTATION CABINET
Office of Transportation Delivery**

Mass Transportation

- 603 KAR 7:080. Human service transportation delivery.

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

Office of Instruction

- 704 KAR 3:341. Repeal of 704 KAR 3:340. (Not Amended After Comments)

**Department of Workforce Investment
Office of Employment and Training**

Unemployment Insurance

- 787 KAR 1:010. Application for employer account; reports.

**PUBLIC PROTECTION CABINET
Department of Insurance
Agency Licensing Division**

Agents, Consultants, Solicitors, and Adjusters

- 806 KAR 9:020. False or deceptive names, titles, prohibited.

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Health and Life Division

Trade Practices and Frauds

- 806 KAR 12:150. Annuity disclosures.
- 806 KAR 12:170. Life insurance disclosures.

**ENERGY AND ENVIRONMENT CABINET
Public Service Commission**

Utilities

- 807 KAR 5:076. Alternative rate adjustment procedure for small utilities. (Amended After Comments)

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission**

Thoroughbred Racing

- 810 KAR 1:027. Entries, subscriptions, and declarations.
- 810 KAR 1:070. Kentucky Thoroughbred Breeders' Incentive Fund. (Not Amended After Comments)
- 810 KAR 1:145. Advance deposit account wagering. (Not Amended After Comments)

Harness Racing

- 811 KAR 1:285. Advance deposit account wagering. (Not Amended After Comments)

Quarter Horse, Appaloosa, and Arabian Racing

- 811 KAR 2:185. Advance deposit account wagering. (Not Amended After Comments)

**Department of Housing, Buildings and Construction
Division of Building Codes Enforcement**

Elevator Safety

- 815 KAR 4:010 & E. Annual inspection of elevators. ("E" expires 1/4/2012)
- 815 KAR 4:025 & E. Permit fees for new and altered elevators. ("E" expires 1/4/2012)
- 815 KAR 4:030 & E. Elevator contractor licensing requirements. ("E" expires 1/4/2012)
- 815 KAR 4:040 & E. Elevator mechanic licensing requirements. ("E" expires 1/4/2012)
- 815 KAR 4:050 & E. Continuing education requirements for elevator contractors and elevator mechanics. ("E" expires 1/4/2012)
- 815 KAR 4:060 & E. Requirements for approval of continuing education courses and providers. ("E" expires 1/4/2012)
- 815 KAR 4:070 & E. Fees and refunds. ("E" expires 1/4/2012)

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy**

State Health Plan

- 900 KAR 5:020 & E. State health plan for facilities and services. ("E" expires 11/2/2011) (Not Amended After Comments)

Certificate of Need

- 900 KAR 6:075. Certificate of Need nonsubstantive review.
- 900 KAR 6:080. Certificate of Need emergency circumstances.

**Department for Public Health
Division of Public Health Protection and Safety**

Mobile Homes and Recreational Vehicles Parks; Facilities Standards

- 902 KAR 15:020 & E. Recreational vehicles. ("E" expires 12/27/2011)

Radiology

- 902 KAR 100:019. Standards for protection against radiation.
- 902 KAR 100:022. Licensing requirements for land disposal of radioactive waste.
- 902 KAR 100:040. General provisions for specific licenses.
- 902 KAR 100:042. Decommissioning and financial surety.
- 902 KAR 100:100. Industrial radiography.

**Department for Developmental Health, Developmental and Intellectual Disabilities
Division of Behavioral Health**

Substance Abuse

- 908 KAR 1:310. Certification standards and administrative procedures for driving under the influence programs.

**Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management**

Institutional Care

- 908 KAR 3:060. "Means test" for determining patient liability.

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

K-TAP, Kentucky Works, Welfare to work, State Supplementation

- 921 KAR 2:040. Procedures for determining initial and continuing eligibility.
- 921 KAR 2:050. Time and manner of payments.

Food Stamp Program

- 921 KAR 3:090 & E. Simplified assistance for the Elderly Program or "SAFE". ("E" expires 12/27/2011)

Division of Protection and Permanency

Child Welfare

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

REMOVED FROM SEPTEMBER 2011 AGENDA

**GENERAL GOVERNMENT CABINET
Real Estate Appraisers Board**

Board

- 201 KAR 30:370. Fees paid to appraisers. (Withdrawn by agency, 8/3/2011)

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Board of Interpreters for the Deaf and Hard of Hearing

Board

- 201 KAR 39:010. Definitions. (Deferred from May)
- 201 KAR 39:030. Application; qualifications for licensure; and certification levels. (Deferred from May)
- 201 KAR 39:040. Fees. (Deferred from May)
- 201 KAR 39:050. Renewal of licenses and extension of temporary licenses. (Deferred from May)
- 201 KAR 39:060. Reinstatement of license subject to disciplinary action. (Deferred from May)
- 201 KAR 39:070. Application and qualifications for temporary licensure. (Deferred from May)
- 201 KAR 39:080. Reciprocity. (Deferred from May)
- 201 KAR 39:090. Continuing education requirements. (Deferred from May)
- 201 KAR 39:100. Complaint procedure. (Deferred from May)
- 201 KAR 39:120. Code of ethics. (Deferred from May)

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

Game

- 301 KAR 2:228. Sandhill crane hunting requirements. (Comments Received, SOC ext.)

ENERGY AND ENVIRONMENT CABINET Office of the Secretary Kentucky State Nature Preserves Commission

Commission

- 400 KAR 2:090. Management, use, and protection of nature preserves. (Amended After Comments)

Public Service Commission

Utilities

- 807 KAR 5:100. Board application fees. (Withdrawn, SOC not filed by deadline.)
- 807 KAR 5:110. Board proceedings. (Withdrawn, SOC not filed by deadline.)

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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, AUGUST 15, 2011

STATEMENT OF EMERGENCY
302 KAR 45:010E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to delay the ginseng harvest season in the Commonwealth. It is necessary to promulgate this administrative regulation on an emergency basis to protect the environment, as the necessity of viable ginseng seeds is necessary to allow for future generations of the species. This emergency administrative regulation will be replaced by an ordinary administrative regulation, identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
RICHIE FARMER, Commissioner

GENERAL GOVERNMENT
Department of Agriculture
Division of Agriculture Marketing
(Emergency Amendment)

302 KAR 45:010E. Ginseng, general provisions.

RELATES TO: KRS 246.650, 246.660, 246.990(9), 50 C.F.R. Part 23.51

STATUTORY AUTHORITY: KRS 246.660

EFFECTIVE: August 2, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 246.660 requires the Department of Agriculture to promulgate administrative regulations relating to the administration of a program for American Ginseng. This administrative regulation establishes general provisions which apply in this chapter with regard to definitions, harvest season, and cooperative agreements.

Section 1. Definitions. (1) "Ginseng" means American ginseng (Panax quinquefolius).

(a) "Artificially Propagated" means grown from seeds or rootlets that are either exempt from the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or have been derived from cultivated parental stock, and grown as either

(1) "Woodsgrown" means grown under natural canopy and has been purposefully managed or

(2) "Cultivated" means grown under artificial shade and in tilled soil.

(b) "Wild Simulated" means ginseng grown from seed not as required in Section 3 of this administrative regulation, with minimal interference by humans, under natural canopy.

(c) "Wild" means growing with minimal interference by humans, under natural canopy in forest or woodlands. If seeds of wild ginseng are planted as required by Section 3 of this administrative regulation, those mature plants shall be considered wild.

(2) "Dealer" means any person or agent of an entity buying ginseng for resale or export.

(3) "Certified ginseng" means ginseng that has been issued an American Ginseng Export Certificate by the department or other governmental certifying organization.

(4) "Uncertified ginseng" means ginseng that has been harvested, but has not been issued a certificate for export.

(5) "Harvest" means to take any part of the ginseng plant while the plant is living.

(6) "Purchase" means to take possession of ginseng in exchange for cash, cash equivalents, or barter.

(7) "Sell" means to transfer possession of ginseng to another person or entity in exchange for cash, cash equivalents, or barter.

(8) "Department" means the Kentucky Department of Agriculture.

(9) "Green ginseng" means ginseng roots retaining moisture, not dried.

(10) "Dry ginseng" means ginseng roots that have been dried to remove moisture.

(11) "Export" means to transport, ship, carry, haul, take or otherwise move ginseng collected in Kentucky outside of Kentucky.

Section 2. Dealer License Requirements. No person shall purchase uncertified ginseng for resale or export unless they possess a ginseng dealers license.

(1) Annual application. All persons or agents of entities purchasing uncertified ginseng in any amount at any time shall be required to file a complete application for a Ginseng Dealers License.

(2) Fee. An annual fee of seventy-five (75) dollars for Kentucky residents or \$150 for non-residents shall be submitted to the Department prior to issuance of a Ginseng Dealers License. Residency will be determined by the state of issuance of a driver's license or other government issued identification.

(3) Licensing Period. The Ginseng Dealer License shall be valid from September 1 until August 31 of the following calendar year. The Department shall not issue a license if an applicant has outstanding penalties due under Section (9) of this regulation.

Section 3. Record Keeping. (1) Purchase and sale of ginseng. Ginseng dealers shall document all purchases and sales of ginseng on forms to be provided by the Department. The forms shall be legible and completed in their entirety by the dealer, other than the seller's signature or mark, in the presence of the seller and include:

(a) Printed name, signature or mark and address of the seller;

(b) Month purchased;

(c) Month harvested;

(d) County where harvested;

(e) Weight of purchase or sale;

(f) Designation of ginseng as cultivated, woodsgrown, wild, or wild simulated and whether dried or green at the time of the transaction; and

(2) Records of sales between dealers. Ginseng dealers purchasing ginseng from other dealers shall complete a Dealer to Dealer Transaction Form to document the purchase and submit the documents to Department along with the Ginseng Purchase Form obtained from the dealer of origin. The form for sales between dealers shall include:

(a) The month of purchase from a dealer;

(b) The weight of the ginseng purchased at the time of the transaction;

(c) The signature and registration number of the dealer from whom the purchase is made; and

(d) The designation of ginseng as artificially propagated, wild, or wild simulated and whether dried or green at the time of the transaction.

(3) Dealers shall record identification numbers from the Purchase Record Form used to export certified ginseng from the state.

(4) It is unlawful for anyone to include false information on any certificate or form required to be completed or maintained by this section.

(5) It is unlawful to sell or purchase ginseng without accurately documenting the information required in subsection (1) of this section on a Ginseng Purchase Form.

(6) Ginseng shall not be certified until the purchase forms are filed with the department.

(7) Retention. A person required to maintain records under this section shall retain the forms for a period of three (3) years from the end of that year's growing season.

(8) Availability. Records required to be maintained under this section shall be made available to the department upon request.

Section 4. Harvest. (1) Ginseng shall only be harvested between September 1 and December 1 of each year.

(2) It is unlawful to harvest ginseng which is less than five (5) years old or has less than three (3) five (5) leafed prongs.

(3) Seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger.

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Section 5. Sale of Ginseng. (1) Uncertified Ginseng may only be sold between September 1 for green ginseng and September 15 for dry ginseng of each year until March 31 of the following year.

(2) Ginseng Dealers may obtain American Ginseng Export Certificates from department during the ginseng selling season.

(3) A ginseng dealer may sell certified ginseng at any time.

Section 6. Unsold Ginseng. (1) Uncertified ginseng not sold by March 31 of the year after harvest shall be weighed and issued a weight receipt, or reported on an export certificate.

(2) Possession of undocumented ginseng (documented by either an export certificate or a weight receipt) by a ginseng dealer, is unlawful from April 1 to September 14.

(3) Uncertified weighed ginseng shall not be sold until the following season selling period.

Section 7. Certification of Ginseng. (1) Ginseng dealers holding Kentucky Ginseng Dealer's License shall obtain an American Ginseng Export Certificate issued by the department after filing of associated purchase forms and undergoing random sample inspection of roots by an official of the department.

(2) The certificate shall include the following information:

(a) State of origin;

(b) Serial number of certificate;

(c) Dealer's state license number;

(d) Dealer's shipment number for the harvest season;

(e) Year of harvest;

(f) Designation as dried or green ginseng;

(g) Designation as cultivated, woodsgrown, wild or wild simulated;

(h) Weight of ginseng;

(i) Statement of state or tribal certifying official that the ginseng was obtained in that state or on those tribal lands in accordance with all relevant laws for that harvest year; and

(j) Name and title of state or tribal certifying official.

(3) A copy of certification shall be enclosed with the shipment subject of the certification. A copy of a certificate shall be retained for a minimum of three (3) years by the licensed ginseng dealer and a copy of the certificate shall be retained by the certifying agent of the department for seven (7) years.

(4) At the time of issuance of the certificate, the department official shall receive from the ginseng dealer copies of all Ginseng Purchase Forms covering the amount of ginseng certified. The Ginseng Purchase Form for ginseng purchased from other dealers and accompanying Dealer to Dealer forms shall be submitted the department prior to a certificate being issued.

(5) The fee for certification and processing by the department shall be two (2) dollars per pound. Payment shall be made prior to the release of the certification of the ginseng to the dealer, and shall be tendered by check or money orders only. Cash shall not be accepted.

(6) The department may obtain samples of roots in order to obtain a root count.

Section 8. Prohibition on Uncertified Non-Kentucky Grown Ginseng. Ginseng that is harvested outside the border of Kentucky and not certified in its state of origin shall not be allowed to enter Kentucky.

Section 9. Violations and Penalties. (1) The following acts shall be considered a violation of this administrative regulation, and shall carry an administrative penalty of \$100 to \$1,000 dollars:

(a) Harvesting ginseng out of season;

(b) Selling uncertified ginseng out of season;

(c) Possessing underage ginseng;

(d) Seed Collection, not relocating within fifty (50) feet of parent;

(e) Purchasing uncertified ginseng out of season;

(f) Falsification of records, applications or contents thereof; and

(g) Reselling or exporting ginseng without a license.

(h) Failure of dealers to certify or obtain weight receipt of ginseng at the end of the uncertified ginseng selling season.

(i) Transporting or exporting of uncertified ginseng in or out of

Kentucky

(i) Possession of uncertified ginseng by a ginseng dealer between April 1 and September 14.

(2) Persons who commit the same violation within thirty (30) days of being cited for the first violation shall be assessed up to double the civil penalty assessed in Section 9(1) of this administrative regulation, not to exceed \$1,000.

(3) Persons who commit a third same violation within sixty (60) days of being cited for the first violation shall be assessed up to triple the civil penalty assessed in Section 9(1) of this administrative regulation, not to exceed \$1,000.

(4) This section shall not prohibit the department from suspending or revoking a license or certificate at any time in accordance with KRS 246.650.

Section 10. Ginseng Dealer License Suspension or Revocation. (1) A ginseng dealer shall have ten (10) days upon the receipt of the notification of a proposed suspension or revocation to request a hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

(2) If a hearing is not requested as provided for in subsection (1) of this section, the department may suspend or revoke the license once the ten (10) day hearing request filing period has passed.

(3) The department may suspend a license for up to one calendar year, or revoke a dealer license after the provisions of part one (1) and two (2) of the section have been satisfied.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Ginseng Dealer Application" (Revised 7/13/2011);

(b) "American Ginseng Export Certificate" (Revised 7/13/2011);

(c) Dealer to Dealer Transaction Form (Revised 7/13/2011); and

(d) Ginseng Purchase Form (Revised 7/13/2011).

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Value-Added Foods, 100 Fair Oaks, Suite 252, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Section 1. Definitions. (1) "Ginseng dealer" means a person engaged in the business of buying ginseng roots from ginseng collectors, ginseng cultivators, and other ginseng dealers for resale to ginseng exporters or to other ginseng dealers or any person who sells ginseng in a form in interstate commerce.

(2) "Commissioner" is defined at KRS 246.010(2).

(3) "Department" is defined at KRS 246.010(2).

(4) "State" means the Commonwealth of Kentucky.

Section 2. Registration. (1) A person shall complete a "Kentucky Ginseng Dealer Application" and return it to the Department prior to June 30 of each year.

(2) An applicant for renewal of a certificate of registration shall meet the department's recordkeeping and reporting requirements.

(3) Certificates of registration shall be issued for a period of one (1) year and shall expire on April 30 of each year.

Section 3. Recordkeeping. (1)(a) Purchase and sale of ginseng. Ginseng dealers shall keep records on forms furnished by the department of purchases and sales of ginseng. The records shall include:

1. Month purchased;

2. Month dug;

3. County where dug;

4. Weight of purchase; and

5. Signature and address of digger or seller.

(b) Records of sales between dealers. Ginseng dealers shall keep records of purchases from other dealers. Records of sales between dealers shall include:

1. The month of purchase from a dealer;

2. The weight of the ginseng purchase; and

3. The signature and registration number of the dealer from whom the purchase is made.

(c) All purchase records shall be submitted to the department on a monthly basis.

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(d) No ginseng shall be certified until the purchase records are recorded by the department.

(2) Retention. A person required to maintain records under this section shall retain the records for a period of three (3) years.

(3) Availability. Records required under this section shall be made available to the department upon request.

Section 4. Annual Report. A ginseng dealer shall file an annual report with the department by April 30th. The annual report shall include the listing of each purchase and sale of ginseng made by the dealer since July 1 the previous year.

Section 5. Reporting Ginseng Originating Outside of Kentucky. A ginseng dealer shall file a report with the department at least every calendar year quarter if the dealer has any commerce in ginseng originating from any state other than Kentucky. The report shall be sent within fifteen (15) days of the end of any calendar year quarter and shall list each purchase and sale of out-of-state ginseng made by the dealer during that quarter.

Section 6. Harvest Season. Beginning September 1, 1988 and each year thereafter, wild ginseng shall only be dug between August 15 and December 1 of each year. Seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger. Ginseng growers will not longer be able to harvest the ginseng until it is five (5) years old or has three (3) prongs.

Section 7. Certification for Sale. Sales of ginseng by dealers shall be certified for sale during the ginseng selling season beginning September 1 of each year and extending until March 31 of the following year.

Section 8. Unsold Ginseng. Ginseng unsold by March 31 of the year after harvest shall be weighed by the department and the dealer given a weight receipt. A future export certification of this stock shall only be issued against the weight receipt.

Section 9. Exportation of Ginseng. (1) Ginseng dealers holding a certificate of registration shall obtain a certificate of legal taking issued by the department after inspection by an official of the department identifying the origin, year of taking, and weight of a shipment of ginseng to a destination outside the Commonwealth of Kentucky. The certificate shall also state whether the ginseng is Wild American Ginseng or whether the ginseng has been cultivated or propagated by a grower. Certification shall be issued to the dealer on triplicate forms issued by the department. A copy of certification shall be enclosed with the shipment subject of the certification. A copy of a certificate shall be retained for a minimum of three (3) years by the licensed ginseng dealer and a copy of the certificate shall be retained by the certifying agent of the department.

(2) At the time of issuance of the certificate, the department official shall receive from the ginseng dealer copies of all purchase records covering the amount of ginseng certified. Records of ginseng purchased from other dealers shall be recorded with the department prior to a certificate being issued.

Section 10. Ginseng dug outside the borders of Kentucky and not certified in its state of origin shall not be allowed to enter Kentucky.

Section 11. (1) Protection of Species, Violation of Law. Ginseng which is obtained in contravention of laws for the protection of the species or in violation of any other law shall not be purchased, sold, shipped, or transported within the Commonwealth of Kentucky.

(2) The Kentucky Department of Agriculture may enforce the provisions of Section 11 of this administrative regulation herein as provided in KRS 260.030.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "2000-20001 Kentucky Ginseng Dealer Application" (2000-2001 edition);

(b) "American Ginseng Export Certificate" (December 2000);

(c) Dealer Transaction Log - Sales (December 2000);

(d) Ginseng Dealer Purchase Record (December 2000); and

(e) Wild Ginseng Purchase Record (December 2000).

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Value-Added Foods, 400 Fair Oaks, Suite 252, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHEL FARMER, Commissioner of Agriculture

APPROVED BY AGENCY: August 1, 2011

FILED WITH LRC: August 2, 2011 at noon

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the licensing requirements for dealers of ginseng, and modifies the harvesting season.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate to establish licensing requirements. Additionally, the change in harvesting season is need to provide the ginseng plants in the commonwealth more time to mature and produce viable seeds prior to harvest.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 246.660 establishing the licensing requirements for dealers of ginseng, and modifies the harvesting season.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with the statutory mandate to establish licensing requirements. Additionally, the change in harvesting season is need to provide the ginseng plants in the commonwealth more time to mature and produce viable seeds prior to harvest.

(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 amends dealer requirements to make the business of dealing in ginseng more understandable. The regulation details exactly what records are needed to document transactions. Additionally, the amendment adds detail to the definitions sections, which allows dealers to clearly define what products they are purchasing and in what amounts.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary change the harvest date to allow the plants to produce more viable seeds for future reproduction. Additionally, the records that will be kept are necessary for the Commonwealth to be able to document harvest or a natural crop the Federal government has expressed interest in regulating further.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 246.660 by amending dealer requirements to make the business of dealing in ginseng more understandable. The regulation details exactly what records are needed to document transactions. Additionally, the amendment adds detail to the definitions sections, which allows dealers to clearly define what products they are purchasing and in what amounts.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation is necessary to alter the harvesting period and records needed for sales or ginseng.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture has approximately 160 licensed dealers. The KDA estimate that approximately eight to ten thousand (8000-10000) persons harvest gin-

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seng in the Commonwealth annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Ginseng Dealers will be required to keep modified records and to pay a certification fee for each pound of ginseng. Dealers will be required to pay a fee 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 a dealers license is seventy five dollars (\$75) for dealers located in Kentucky, and one hundred fifty dollars (\$150) for all others. Additionally, the fee to certify ginseng is two dollars (\$2) per pound.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The continuation of the ginseng certification program will be vastly improved by providing a dedicated funding source to offset part of the cost the KDA. The certification and monitoring portions of the program are critical for federal reporting requirements.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees collected from dealer licensure and certification of ginseng will provide partial funding for the staff required to administer the program. The portion not covered by fees will be supplied by the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The funding increase from licenses and certification fees are necessary to allow the KDA to have a sustainable program that provided timely response to the ginseng industry. Timely federal reporting requirements must be met to allow Kentucky to export ginseng under 50 C.F.R. 23.68.

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture will be impacted as the KDA will be administering the program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 246.660 requires the KDA to promulgate this regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The program is projected to generate approximately \$48,000 each 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? The program is projected to generate approximately \$48,000 each fiscal year.

(c) How much will it cost to administer this program for the first

year? The program will cost approximately \$100,000 annually to operate.

(d) How much will it cost to administer this program for subsequent years? The program will cost approximately \$100,000 annually to operate.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 907 KAR 1:595E

This emergency administrative regulation is being promulgated to authorize private duty nursing agencies to provide Model Waiver II services to Medicaid recipients. This action must be implemented on an emergency basis to ensure that an adequate base of providers is available to serve Medicaid Model Waiver II service recipients in order to ensure the health, safety, and welfare of Medicaid recipients eligible for Model Waiver II services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Community Alternatives (Emergency Amendment)

907 KAR 1:595E. Model Waiver II service coverage and reimbursement[services and payments].

RELATES TO: KRS 314.011, 42 C.F.R. 440.70, 440.185, 42 U.S.C. 1396

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1315[~~EO-2004-726~~]

EFFECTIVE: July 21, 2011

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~]The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions relating to Model Waiver II services provided to a Medicaid-eligible recipient. These services are provided pursuant to a waiver granted by the U. S. Department for Health and Human Services in accordance with 42 U.S.C. 1396n(c).

Section 1. Definitions. (1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "Department" means the Department for Medicaid Services or its designee.

(3)[~~and its designated agent or representative.~~]

(2)] "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081;

(b) Medicare certified; and

(c) Medicaid certified.

(4) "Licensed practical nurse" is defined by KRS 314.011(9).

(5)[~~a facility licensed by the Office of the Inspector General to provide home health services.~~]

(3)] "Model Waiver II services" means 1915(c) home and

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community based waiver program[community-based waiver] in-home ventilator services provided to a Medicaid-eligible recipient who:

- (a) Is dependent on a ventilator; and
- (b) Would otherwise require a nursing facility (NF) level of care in a hospital based NF which will accept a recipient who is dependent on a ventilator.
- (6) "Private duty nursing agency" means a facility licensed to provide private duty nursing services:
 - (a) By the Cabinet for Health and Family Services Office of Inspector General; and
 - (b) Pursuant to 902 KAR 20:370.
- (7) "Recipient" is defined by KRS 205.8451(9).
- (8)[(4)] "Registered nurse" [(RN)] is defined by [in] KRS 314.011(5).
- (9) "Registered respiratory therapist" is defined by KRS 31A.010(3).
- (10) "Ventilator" means a respiration stimulating mechanism.
- (11)[(5)] "Licensed practical nurse" (LPN) is defined in KRS 314.011.
- (6) "Respiratory therapist" (RT) is defined by KRS 314A.010(3)(a).
- (7) "Ventilator dependent" means the condition or state of an individual who requires the aid of a ventilator [(respiration stimulating mechanism)] for respiratory function and meets the high intensity nursing facility patient status criteria established in 907 KAR 1:022, Section 4.

Section 2. Model Waiver II Recipient Eligibility and Related Policies. (1) To be eligible to receive Model Waiver II services, an individual shall:

- (a) Be eligible for Medicaid pursuant to 907 KAR 1:605;
- (b) Require ventilator support for at least twelve (12) hours per day;
- (c) Meet ventilator dependent patient status requirements established in 907 KAR 1:022;
- (d) Submit an application packet to the department which shall contain:
 - 1. A MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form;
 - 2. A MAP-351A, Medicaid Waiver Assessment Form; and
 - 3. A MAP109 -MWII, Plan of Care/Prior Authorization for Model Waiver II Services, which shall be signed and dated by a physician; and
- (e) Receive notification of an admission packet approval from the department.
- (2) To remain eligible for Model Waiver II services:
 - (a) An individual shall:
 - 1. Maintain Medicaid eligibility requirements established in 907 KAR 1:605; and
 - 2. Remain ventilator dependent pursuant to 907 KAR 1:022;
 - (b) A Model Waiver II level of care determination confirming that the individual qualifies shall be performed and submitted to the department every six (6) months; and
 - (c) A MAP 109, Plan of Care/Prior Authorization for Model Waiver II Services shall be:
 - 1. Signed and dated by a physician every sixty (60) days on behalf of the individual; and
 - 2. Submitted to the department, after being signed and dated in accordance with subparagraph 1 of this paragraph, every sixty (60) days.
 - (d) A Model Waiver II service shall not be provided to a recipient who is:
 - (a) Receiving a service in another 1915(c) home and community based waiver program; or
 - (b) Is an inpatient of a:
 - 1. Nursing facility;
 - 2. Intermediate care facility for individuals with mental retardation or a developmental disability; or
 - 3. Other facility.
 - (5) The department shall not authorize a Model Waiver II service unless it has ensured that:
 - (a) Ventilator-dependent status has been met;
 - (b) The service is:

- 1. Available to the recipient; and
- 2. Will meet the need of the recipient; and
- 3. Does not exceed the cost of traditional institutional ventilator care.

Section 3. Provider Participation Requirements. To participate in the Model Waiver II program, a:

- (1) Home health agency shall:
 - (a) Be:
 - 1. Licensed in accordance with 902 KAR 20:081;
 - 2. Medicare and Medicaid certified;
 - 3. A currently participating Medicaid provider in accordance with 907 KAR 1:671;
 - 4. Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
 - (b) Meet the home and community based waiver service provider requirements established in 907 KAR 1:160;
- (2) Private duty nursing agency shall:
 - (a) Be:
 - 1. Licensed in accordance with 902 KAR 20:370;
 - 2. Medicare and Medicaid certified;
 - 3. A currently participating Medicaid provider in accordance with 907 KAR 1:671; and
 - 4. Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
 - (b) Meet the home and community based waiver service provider requirements established in 907 KAR 1:160. General Coverage Provisions. (1) A service shall be provided to a Medicaid eligible recipient:
 - (a) Who meets the NF level-of-care determination for ventilator dependency; and
 - (b) For whom the cost of Model Waiver II services does not exceed the cost of traditional institutional ventilator care.
 - (2) The department shall make the level-of-care determination.
 - (3) A Medicaid eligible recipient may choose Model Waiver II services as an alternative to traditional institutional services. (4) A Medicaid eligible recipient Requesting to receive Model Waiver II services shall choose a qualified home health agency which has obtained a valid provider number for provision of services pursuant to 907 KAR 1:672.

Section 3. Provider Participation. a home health agency participating in the Model Waiver II program shall meet the applicable certification requirements for providing home- and community-based waiver services in accordance with 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:675 and 907 KAR 1:030.]

Section 4. Covered Services. (1) The following shall be covered Model Waiver II services:

- (a) Skilled nursing provided by:
 - 1. A registered nurse[(RN)]; or
 - 2. A licensed practical nurse[(LPN)]; or
- (b) Respiratory therapy[(RT)].
- (2) Model Waiver II services shall be provided by an[a-qualified] individual employed by or under contract through a private duty nursing agency or [the]home health agency as a:
 - (a) A registered nurse[(RN)]; or
 - (b) A licensed practical nurse[(LPN)]; or
 - (c) Registered respiratory therapist. [Section 5. Prior Authorization for a Service. (1) Prior to authorizing a Model Waiver II service, the department shall ensure that:
 - (a) Client ventilator-dependent status is met;
 - (b) Service is available to meet the need of a recipient; and
 - (c) The service does not exceed the cost of traditional institutional ventilator care.
 - (2) A physician shall:
 - (a) Evaluate the need for continuation of service; and
 - (b) Submit a completed MAP-9, Prior Authorization for Health Services, and a signed plan of treatment at least once every sixty (60) days.]

Section 6. Payment for Services. The department shall reimburse a participating home health agency or private duty nursing agency for the provision of covered Model Waiver II services as follows:

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(1) Reimbursement shall be based on a fixed fee for a unit of service provided for each covered service ~~referenced~~defined in Section 4 of this administrative regulation with one (1) hour equal to one (1) unit of service.

(2) The fixed fee for skilled nursing services provided by:

(a) A registered nurse [(RN)] shall be thirty-one (31) dollars and ninety-eight (98) cents for each unit of service.

(b) A licensed practical nurse [(LPN)] shall be twenty-nine (29) [(20)] dollars and ten (10) cents for each unit of service.

(c) A registered respiratory therapist [(RT)] shall be twenty-seven (27) dollars and forty-two (42) cents for each unit of service.

(3) Reimbursement shall not exceed sixteen (16) units of service per day.

(4) Payment shall not be made for a service to an individual for whom it can reasonably be expected that the cost of the 1915(c) home and community based waiver program [home- and community-based] service furnished under this administrative regulation would exceed the cost of the service if provided in a hospital-based NF.

Section 7. Maintenance of Records. (1) A Model Waiver II service provider shall maintain:

(a) A clinical record for each HCB recipient which contain the following:

1. Pertinent medical, nursing, and social history;

2. A comprehensive assessment entered on a MAP-351A, Medicaid Waiver Assessment Form and signed by the:

a. Assessment team; and

b. Department;

3. A completed MAP109 -MWII, Plan of Care/Prior Authorization for Model Waiver II Services;

4. A copy of the MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form signed by the recipient or his legal representative at the time of application or reapplication and each recertification thereafter;

5. Documentation of all level of care determinations;

6. All documentation related to prior authorizations including requests, approvals, and denials;

7. Documentation that the recipient or legal representative was informed of the procedure for reporting complaints; and

8. Documentation of each service provided that shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the recipient's home;

d. Progress notes which shall include documentation of changes, responses, and treatments utilized to evaluate the recipient's needs; and

e. The signature of the service provider; and

(b) Service records or incident reports regarding services provided.

(2) A service record or incident report shall be retained:

(a) For at least six (6) years from the date that a covered service is provided; or

(b) For a minor, at least for three (3) years after the recipient reaches the age of majority under state law, whichever is longest.

(2) Upon request, an HCB provider shall make information regarding service and financial records available to the:

(a) Department;

(b) Cabinet for Health and Family Services, Office of Inspector General or its designee;

(c) United States Department for Health and Human Services or its designee;

(d) General Accounting Office or its designee;

(e) Office of the Auditor of Public Accounts or its designee; or

(f) Office of the Attorney General or its designee.

Section 8. Incident Reporting. A Model Waiver II service provider shall:

(1) Implement a procedure or procedures to ensure that the following is reported:

(a) Abuse, neglect, or exploitation of a Model Waiver II recipient in accordance with KRS Chapters 209 or 620;

(b) A slip or fall;

(c) A transportation incident;

(d) Improper administration of medication;

(e) A medical complication; or

(f) An incident caused by the recipient, including:

1. Verbal or physical abuse of staff or other recipients;

2. Destruction or damage of property; or

3. Recipient self-abuse.

(2) Ensure that a copy of each incident reported in this subsection is maintained in a central file subject to review by the department; and

(3) Implement a process for communicating the incident, the outcome, and the prevention plan to:

1. The Model Waiver II service recipient involved, his or her family member, or his or her responsible party; and

2. The attending physician, physician assistant, or advanced practice registered nurse.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A Model Waiver II service provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, and contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his responsibility in allowing the use of the electronic signature; and

(c) Provide the department with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature immediately upon request.

Section 10.[Section 7.] Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be appealed in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding a Medicaid beneficiary's eligibility shall be appealed in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be appealed in accordance with 907 KAR 1:671.

Section 11.[8.] Incorporation by Reference. (1) The following material is incorporated by reference into this administrative regulation:

(a) A "MAP109 -MWII, Plan of Care/Prior Authorization for Model Waiver II Services", April 2004 edition;

(b) A "MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition; and

(c) A "MAP-351A, Medicaid Waiver Assessment Form", June 15, 2002 edition.

(2) The material referenced in subsection (1) of this section ["MAP-9, Prior Authorization for Health Services", December 1995 edition, is incorporated by reference.

(2)-H] may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

NEVILLE WISE, Acting Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 18, 2011

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Martin, Ellenore Callan or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service coverage and reimbursement policies for the Medicaid Model Waiver II services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the service coverage and reimbursement policies for the Medicaid Model Waiver II services.

(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 service coverage and reimbursement policies for the Medicaid Model Waiver II services.

(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 service coverage and reimbursement policies for the Medicaid Model Waiver II services.

(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 primary amendment authorizes private duty nursing agencies to provide Model Waiver II services. Additional amendments establish maintenance record requirements, incident reporting requirements and electronic signature usage requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that an adequate base of providers of Model Waiver II services exists and to ensure that the regulation is consistent with the version of the corresponding "waiver" approved by the Centers for Medicare and Medicaid Services.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by expanding the type of providers authorized to provide Model Waiver II services in order to ensure that recipients have adequate access to the services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by expanding the type of providers authorized to provide Model Waiver II services in order to ensure that recipients have adequate access to the services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Model Waiver II service recipients will be affected by the amendment and private duty nursing agencies who wish to provide Model Waiver II services will be affected by the amendment. The Department for Medicaid Services (DMS) anticipates that approximately ten (10) private duty nursing agencies may qualify to provide Model Waiver II services to Medicaid 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: A private duty nursing agency which wishes to become a Model Waiver II service provider will have to enroll as a Medicaid provider and meet the home and community based waiver provider requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Private duty nursing agencies wishing to provide Model Waiver II services may experience some administrative cost associated with becoming a provider.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Private duty nursing agencies who become Model Waiver II service providers will be able to be

reimbursed by DMS for providing services. Model Waiver II service recipients will be expected to benefit by the increased number of Model Waiver II service providers available to provide services.

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

(a) Initially: DMS anticipates the net result will no increase in cost because individuals who might be unable to receive Model Waiver II services, due to lack of access to providers, could have to be admitted to a nursing facility or intermediate care facility for individuals with mental retardation or a developmental disability (ICF MR DD.) Model Waiver II services cost less than institutional care; thus, authorizing private duty nursing agencies to provide Model Waiver II services helps prevent DMS from experiencing more institutional care cost.

(b) On a continuing basis: DMS anticipates the net result will no increase in cost because individuals who might be unable to receive Model Waiver II services, due to lack of access to providers, could have to be admitted to a nursing facility or intermediate care facility for individuals with mental retardation or a developmental disability (ICF MR DD.) Model Waiver II services cost less than institutional care; thus, authorizing private duty nursing agencies to provide Model Waiver II services helps prevent DMS from experiencing more institutional care cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds of general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the requirements apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Model Waiver II services are not federally mandated.

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

3. Minimum or uniform standards contained in the federal mandate. Model Waiver II services are not federally mandated.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This

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administrative regulation authorizes the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS anticipates no increased cost will result from the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no increased cost will result from the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, August 15, 2011)

11 KAR 3:100. Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (20), 164.753(2), 34 C.F.R. 682.410(b)(9), 20 U.S.C. 1071-1087-2, 1095a

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(2), 20 U.S.C. 1095a

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.744(1) and 164.748(2), the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with 20 U.S.C. 1071 through 1087-2. 20 U.S.C. 1095a permits a student loan guarantee agency to garnish the disposable pay of a borrower to recover a loan guaranteed pursuant to 20 U.S.C. 1071 through 1087-2, notwithstanding a provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. KRS 164.748(10) authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation, and KRS 164.748(20) authorizes the authority to conduct administrative hearings, exempt from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation establishes the procedures for implementing wage garnishment in accordance with requirements of the federal act.

Section 1. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, which order shall conform to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.

(3) An order for withholding of disposable pay shall not be issued under this section nor become effective less than thirty (30) days after the authority provides a written notice to the debtor by personal service or mail, addressed to the debtor at the residence or employment location last known to the authority. The notice shall include at least the following information:

(a) The name and address of the debtor;

(b) The amount of the debt determined by the authority to be due;

(c) Information sufficient to identify the basis for the debt;

(d) A statement of the intention of the authority to issue an order for withholding of disposable pay;

(e) A statement of the right to dispute the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);

(f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;

(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;

(h) A statement that, unless there is good cause determined by the authority that the debtor's failure to timely request a hearing, the debtor's acquiescence to the withholding of disposable pay shall be presumed; and

(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay.

(4) An amount shall not be withheld from the disposable pay of

an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(5) Establishment of a written repayment schedule in accordance with subsection (3)(g) of this section shall be deemed, for purposes of subsection (3)(e) of this section, conclusive acknowledgment by the debtor of the existence and amount of debt agreed to be paid.

(6) Service of the notice required by subsection (3) of this section shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice shall otherwise be evidenced by affidavit of a person executing personal service or a delivery receipt.

Section 2. (1)(a) A hearing shall be provided if the debtor, on or before the 15th day following the date of service of the notice required by Section 1(3) of this administrative regulation, files with the authority a written request for a hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing.

(c) A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the board other than an administrative law judge), shall conduct the hearing.

(d) The hearing shall be held during regular business hours: Monday through Friday between the hours of 9 a.m. and 4 p.m. Eastern Standard Time.

(e) [(e)] A hearing officer shall voluntarily disqualify himself and withdraw from a case in which he cannot afford a fair and impartial hearing or consideration.

1. A party shall request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

2. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

3. Grounds for disqualification of a hearing officer shall include the following:

a. Participating in an ex parte communication which would prejudice the proceedings;

b. Having a pecuniary interest in the outcome of the proceeding; or

c. Having a personal bias toward a party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

(f) [(e)] A dispute hearing shall be conducted in Franklin County or another location agreed to by the parties.

(g) [(f)] In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(h) [(g)] Unless required for the disposition of an ex parte matter specifically authorized by this administrative regulation, a hearing officer shall not communicate off the record with a party to the hearing concerning a substantive issue, while the proceeding is pending.

(2)(a) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's liability, if any, for repayment of the debt and the amount to be

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withheld from the debtor's disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer's decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor's disposable pay.

(c) A person, upon request, shall receive a copy of the official record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:

1. All notices, pleadings, motions, and intermediate rulings;
2. Any prehearing order;
3. Evidence received and considered;
4. A statement of matters officially noticed;
5. Proffers of proof and objections and rulings thereon;
6. Ex parte communications placed upon the record by the hearing officer;
7. A recording or transcript of the proceedings; and

8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3)(a) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer's decision. A petition for review of the hearing officer's decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer's decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer's decision shall not stay a final order pending the outcome of the review. If the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer's decision. If the debtor petitions the board to review the hearing officer's decision and obtains reversal, modification, or remand of the hearing officer's decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition for review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer's decision shall contain the following information:

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying, or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;
2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying, or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and
3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer's decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer's decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer's decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:

1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and
- 2.a. Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;

b. Reject or modify, in whole or in part, the hearing officer's decision; or

c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:

- (i) In violation of constitutional or statutory provisions;
- (ii) In excess of the statutory authority of the agency;
- (iii) Without support of substantial evidence on the whole record;
- (iv) Arbitrary, capricious, or characterized by abuse of discretion; or
- (v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law.

(4) The remedies provided in this section shall not:

- (a) Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and
- (b) Be construed to stay the use of another remedy.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2)(a) Upon request of a party, the hearing officer may issue a subpoena for the production of a document or attendance of a witness.

(b)1. Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.

2. Not less than fifteen (15) business days prior to the hearing, the parties shall:

- a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;
- b. Discuss the possibility of informal resolution of the dispute;
- c. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and
- d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

3.a. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority shall serve upon the debtor proposed stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue not identified in the proposed stipulation of issues.

b. If the debtor is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

4. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

5. Additional time for compliance with the requirements of this paragraph may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed in this subsection.

6. If the debtor requests a hearing, but the debtor's written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 5 of this administrative regulation.

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(c) Facts recited in the authority's notice pursuant to Section 1(3) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(d)1. Either party, without leave of the hearing officer, may depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or request for admissions.

2. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days.

3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) Sufficient grounds for entry of an appropriate order by the hearing officer, including postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay, shall exist if there is:

1. Noncompliance with this subsection;

2. Failure of the authority to:

a. Timely appoint a hearing officer; or

b. Respond to a request for inspection of records; or

3. Failure of the debtor to submit information in accordance with paragraph (b) of this subsection.

(3) Order of proceeding.

(a) The hearing officer shall:

1. Convene an in-person or telephonic hearing;

2. Identify the parties to the action and the persons participating;

3. Admit into evidence the notice required by Section 1(3) of this administrative regulation and the debtor's statement and the stipulations required by subsection (2)(b)1 and 2 of this section;

4. Solicit from the parties and dispose of any objections or motions;

5. Accept into evidence any documentary evidence not objected to;

6. Solicit opening statements; and

7. Proceed with the taking of proof.

(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence.

(a) All testimony shall be made under oath or affirmation.

1. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the Commonwealth.

2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.

3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.

4. A copy of a document shall be admissible if:

a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or

b. It is admitted without objection.

5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

(b) An objection to an evidentiary offer may be made by any party and shall be noted in the record.

(c) The hearing officer:

1. May take official notice of:

a. Statutes and administrative regulations;

b. Facts which are not in dispute; and

c. Generally-recognized technical or scientific facts;

2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and

3. Shall give each party an opportunity to contest facts officially noticed.

(d) At the discretion of the hearing officer, the parties may be

allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(5) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

(6) Burden of proof.

(a) The authority shall have the burden to establish the existence and amount of the debt.

(b) The debtor shall have the burden to establish an affirmative defense.

(c) The party with the burden of proof on an issue shall have the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontroverted facts or, if relevant facts are disputed, a preponderance of evidence in the record.

(d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party trier of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.

(3) If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer:

(a) Shall:

1. Consider the matter; and

2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and

(b) May reverse the prior decision if the debtor presents evidence that:

1. Circumstances have changed or new information is available; or

2. The prior decision:

a. Substantially disregarded or ignored the defense; or

b. Was arbitrary, capricious, not supported by the facts, or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 523(a)(8), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy

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case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or

(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the [following] presumptions **established in this paragraph**.

1. Withholding of an amount of disposable pay shall constitute an extreme financial hardship if:

a. The debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	\$10,890
2	\$14,710
3	\$18,530
4	\$22,350
5	\$26,170
6	\$29,990
7	\$33,810
8	\$37,630
Each additional person	Add \$3,820

Size of family unit	Poverty guideline
1	\$10,830
2	\$14,570
3	\$18,310
4	\$22,050
5	\$25,790
6	\$29,530
7	\$33,270
8	\$37,010
Each additional person	Add \$3,740

2.a. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	2,181	1,342	1,876	2,306	3,505	4,333	5,364	7,139	13,755
Rented dwelling	4,503	3,649	3,877	3,930	3,697	3,616	3,599	3,963	2,384
Other lodging	259	48	127	201	394	368	439	815	2,004
Utilities, fuels, and public services	1,843	2,129	2,207	2,669	3,264	3,536	3,818	4,099	5,584
Household operations	322	371	386	384	855	600	822	856	2,102

b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guidelines
1	\$13,600
2	\$18,380
3	\$23,160
4	\$27,940
5	\$32,720
6	\$37,500
7	\$42,280
8	\$47,060
Each additional person	Add \$4,780

Size of family unit	Poverty guidelines
1	\$13,530
2	\$18,210
3	\$22,890
4	\$27,570
5	\$32,250
6	\$36,930
7	\$41,610
8	\$46,290
Each additional person	Add \$4,680

c. The debtor resides in Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guidelines
1	\$12,540
2	\$16,930
3	\$21,320
4	\$25,710
5	\$30,100
6	\$34,490
7	\$38,880
8	\$43,270
Each additional person	Add \$4,390

Size of family unit	Poverty guidelines
1	\$12,460
2	\$16,760
3	\$21,060
4	\$25,360
5	\$29,660
6	\$33,960
7	\$38,260
8	\$42,560
Each additional person	Add \$4,300

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Housekeeping and miscellaneous supplies	<u>321</u>	<u>253</u>	<u>274</u>	<u>385</u>	<u>436</u>	<u>458</u>	<u>684</u>	<u>667</u>	<u>943</u>
Household furnishings and equipment	<u>492</u>	<u>503</u>	<u>485</u>	<u>698</u>	<u>671</u>	<u>974</u>	<u>1,173</u>	<u>1,359</u>	<u>2,553</u>
Vehicle purchases (net outlay)	<u>778</u>	<u>538</u>	<u>131</u>	<u>1,310</u>	<u>2,003</u>	<u>1,556</u>	<u>2,197</u>	<u>2,604</u>	<u>4,542</u>
Gasoline and motor oil	<u>764</u>	<u>746</u>	<u>684</u>	<u>922</u>	<u>1,231</u>	<u>1,566</u>	<u>2,002</u>	<u>2,197</u>	<u>3,165</u>
Vehicle maintenance and repairs	<u>162</u>	<u>353</u>	<u>251</u>	<u>352</u>	<u>370</u>	<u>568</u>	<u>605</u>	<u>827</u>	<u>1,247</u>
Vehicle insurance	<u>835</u>	<u>428</u>	<u>224</u>	<u>923</u>	<u>965</u>	<u>1,061</u>	<u>861</u>	<u>1,952</u>	<u>1,752</u>
Vehicle rental, lease, license and other charges	<u>171</u>	<u>125</u>	<u>137</u>	<u>176</u>	<u>277</u>	<u>311</u>	<u>354</u>	<u>503</u>	<u>1,274</u>
Public transportation	<u>521</u>	<u>166</u>	<u>246</u>	<u>257</u>	<u>351</u>	<u>399</u>	<u>476</u>	<u>631</u>	<u>1,260</u>

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,958	1,214	1,927	2,316	3,143	4,123	5,607	6,880	14,405
Rented dwelling	3,932	3,546	3,562	4,059	3,776	3,602	3,856	3,445	1,926
Other lodging	215	90	105	150	250	526	348	882	2,140
Utilities, fuels, and public services	1,666	1,805	2,210	2,569	3,061	3,342	3,647	4,046	5,551
Household operations	214	237	385	376	552	555	840	885	1,996
Housekeeping and miscellaneous supplies	297	270	245	310	423	426	544	669	936
Household furnishings and equipment	407	636	535	601	760	1,105	1,654	1,485	3,144
Vehicle purchases (net outlay)	303	384	656	1,316	2,203	1,285	1,481	3,080	4,264
Gasoline and motor oil	786	684	694	947	1,341	1,757	2,099	2,480	3,420
Vehicle maintenance and repairs	252	299	232	342	381	580	617	778	1,217
Vehicle insurance	693	70	379	919	999	779	1,141	1,512	1,706
Vehicle rental, lease, license and other charges	207	103	172	155	282	287	379	483	1,295
Public transportation	534	166	195	277	358	409	475	516	1,423]

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	New York	Philadelphia	Boston
Owned dwellings	<u>9,449</u>	<u>9,319</u>	<u>8,403</u>
Rented dwellings	<u>4,859</u>	<u>2,965</u>	<u>3,372</u>
Other lodging	<u>1,173</u>	<u>1,313</u>	<u>1,081</u>
Utilities, fuels, and public services	<u>4,309</u>	<u>4,444</u>	<u>4,248</u>
Household operations	<u>1,584</u>	<u>1,021</u>	<u>1,460</u>
Housekeeping and miscellaneous supplies	<u>643</u>	<u>694</u>	<u>598</u>
Household furnishings and equipment	<u>1,642</u>	<u>1,379</u>	<u>1,639</u>
Vehicle purchases (net outlay)	<u>2,321</u>	<u>2,037</u>	<u>2,818</u>
Gasoline and motor oil	<u>1,943</u>	<u>2,240</u>	<u>2,125</u>
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	<u>3,137</u>	<u>3,156</u>	<u>2,913</u>
Public transportation	<u>1,093</u>	<u>769</u>	<u>735</u>

	New York	Philadelphia	Boston
Owned dwellings	<u>9,760</u>	<u>8,790</u>	<u>8,804</u>

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Rented dwellings	4,387	2,721	3,155
Other lodging	1,325	1,126	1,092
Utilities, fuels, and public services	4,146	4,356	4,067
Household operations	1,365	1,131	1,215
Housekeeping and miscellaneous supplies	610	701	527
Household furnishings and equipment	1,848	2,044	1,817
Vehicle purchases (net outlay)	2,102	2,455	2,572
Gasoline and motor oil	2,051	2,447	2,224
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,928	2,977	2,615
Public transportation	1,168	779	657]

3.a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,611	1,187	1,676	2,019	3,113	3,990	5,260	6,905	11,358
Rented dwellings	2,719	3,153	2,898	2,955	2,544	2,514	2,294	1,717	975
Other lodging	285	192	148	225	263	238	361	476	1,393
Utilities, fuels and public services	1,446	1,648	2,196	2,464	2,966	3,258	3,466	3,888	4,623
Household operations	216	212	302	405	441	501	532	844	1,534
Housekeeping and miscellaneous supplies	244	291	373	397	557	541	513	620	1,083
Household furnishings and equipment	433	518	605	570	895	1,051	1,117	1,467	2,729
Vehicle purchases (net outlay)	457	1,118	475	1,165	1,477	2,566	1,879	2,955	5,346
Gasoline and motor oil	926	886	991	1,220	1,592	1,952	2,218	2,689	3,453
Vehicle maintenance and repairs	250	248	261	434	472	570	583	746	1,116
Vehicle insurance	246	353	487	351	673	718	831	870	1,650
Vehicle lease, license, and other charges	146	183	139	173	277	348	377	533	864
Public transportation	122	132	186	215	175	231	172	354	849

[Debtor's Available Resources]	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,260	994	1,465	1,916	2,901	3,852	4,954	6,829	11,817
Rented dwellings	2,679	2,862	2,914	2,950	2,547	2,560	2,448	1,634	864
Other lodging	227	165	139	196	221	218	369	478	1,549
Utilities, fuels and public services	1,312	1,497	2,231	2,481	2,872	3,131	3,330	3,778	4,636
Household operations	148	173	310	357	483	444	556	813	1,680
Housekeeping and miscellaneous supplies	229	217	318	346	476	580	506	582	1,051
Household furnishings and equipment	415	643	584	656	806	987	1,180	2,024	2,874
Vehicle purchases (net outlay)	628	896	747	1,515	1,824	2,762	1,679	2,969	5,806
Gasoline and motor oil	938	956	1,101	1,365	1,709	2,068	2,439	2,960	3,824
Vehicle maintenance and repairs	260	207	256	398	495	532	571	749	1,116
Vehicle insurance	373	282	413	454	779	645	881	988	1,466
Vehicle lease, license, and other charges	120	194	172	165	270	307	406	581	949
Public transportation	146	114	203	266	162	222	214	388	860]

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

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	<u>Chicago</u>	<u>Detroit</u>	<u>Minneapolis St. Paul</u>	<u>Cleveland</u>
<u>Owned dwelling</u>	<u>9,379</u>	<u>6,658</u>	<u>8,555</u>	<u>5,716</u>
<u>Rented dwelling</u>	<u>2,771</u>	<u>2,200</u>	<u>2,557</u>	<u>2,286</u>
<u>Other lodging</u>	<u>966</u>	<u>777</u>	<u>740</u>	<u>818</u>
<u>Utilities, fuels, and public services</u>	<u>4,052</u>	<u>3,791</u>	<u>3,513</u>	<u>3,837</u>
<u>Household operations</u>	<u>1,133</u>	<u>933</u>	<u>965</u>	<u>796</u>
<u>Housekeeping and miscellaneous supplies</u>	<u>624</u>	<u>597</u>	<u>730</u>	<u>658</u>
<u>Household furnishings and equipment</u>	<u>1,695</u>	<u>1,388</u>	<u>2,104</u>	<u>1,372</u>
<u>Vehicle purchases (net outlay)</u>	<u>3,101</u>	<u>2,793</u>	<u>2,911</u>	<u>2,098</u>
<u>Gasoline and motor oil</u>	<u>2,364</u>	<u>2,624</u>	<u>2,350</u>	<u>2,049</u>
<u>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</u>	<u>2,636</u>	<u>3,674</u>	<u>2,973</u>	<u>2,409</u>
<u>Public transportation</u>	<u>739</u>	<u>373</u>	<u>598</u>	<u>454</u>

	<u>[Chicago</u>	<u>Detroit</u>	<u>Minneapolis St. Paul</u>	<u>Cleveland</u>
<u>Owned dwelling</u>	<u>9,377</u>	<u>6,591</u>	<u>8,574</u>	<u>6,433</u>
<u>Rented dwelling</u>	<u>2,639</u>	<u>2,155</u>	<u>2,455</u>	<u>2,337</u>
<u>Other lodging</u>	<u>1,019</u>	<u>726</u>	<u>689</u>	<u>991</u>
<u>Utilities, fuels, and public services</u>	<u>4,062</u>	<u>3,654</u>	<u>3,482</u>	<u>3,839</u>
<u>Household operations</u>	<u>1,100</u>	<u>665</u>	<u>1,553</u>	<u>881</u>
<u>Housekeeping and miscellaneous supplies</u>	<u>621</u>	<u>632</u>	<u>670</u>	<u>651</u>
<u>Household furnishings and equipment</u>	<u>2,013</u>	<u>1,444</u>	<u>2,420</u>	<u>1,081</u>
<u>Vehicle purchases (net outlay)</u>	<u>3,075</u>	<u>2,242</u>	<u>3,950</u>	<u>2,995</u>
<u>Gasoline and motor oil</u>	<u>2,547</u>	<u>2,946</u>	<u>2,432</u>	<u>2,384</u>
<u>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</u>	<u>2,559</u>	<u>3,606</u>	<u>2,702</u>	<u>2,622</u>
<u>Public transportation</u>	<u>767</u>	<u>406</u>	<u>594</u>	<u>365]</u>

4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<u>Debtor's Available Resources</u>	<u>Less than \$5,000</u>	<u>\$5,000 to \$9,999</u>	<u>\$10,000 to \$14,999</u>	<u>\$15,000 to \$19,999</u>	<u>\$20,000 to \$29,999</u>	<u>\$30,000 to \$39,999</u>	<u>\$40,000 to \$49,999</u>	<u>\$50,000 to \$69,999</u>	<u>\$70,000 and over</u>
<u>Owned dwelling</u>	<u>2,189</u>	<u>1,190</u>	<u>1,575</u>	<u>2,338</u>	<u>2,564</u>	<u>3,507</u>	<u>4,435</u>	<u>5,756</u>	<u>11,255</u>
<u>Rented dwelling</u>	<u>2,670</u>	<u>2,323</u>	<u>2,789</u>	<u>2,673</u>	<u>2,769</u>	<u>2,781</u>	<u>2,860</u>	<u>2,320</u>	<u>1,518</u>
<u>Other lodging</u>	<u>135</u>	<u>29</u>	<u>117</u>	<u>95</u>	<u>158</u>	<u>235</u>	<u>266</u>	<u>460</u>	<u>1,349</u>
<u>Utilities, fuels, and other charges</u>	<u>2,245</u>	<u>2,238</u>	<u>2,620</u>	<u>2,899</u>	<u>3,144</u>	<u>3,344</u>	<u>3,574</u>	<u>4,020</u>	<u>4,865</u>
<u>Household operations</u>	<u>350</u>	<u>215</u>	<u>367</u>	<u>485</u>	<u>470</u>	<u>580</u>	<u>671</u>	<u>901</u>	<u>1,869</u>
<u>Housekeeping and miscellaneous supplies</u>	<u>314</u>	<u>252</u>	<u>392</u>	<u>401</u>	<u>437</u>	<u>526</u>	<u>499</u>	<u>614</u>	<u>1,106</u>
<u>Household furnishings and equipment</u>	<u>699</u>	<u>457</u>	<u>459</u>	<u>759</u>	<u>750</u>	<u>945</u>	<u>1,137</u>	<u>1,593</u>	<u>2,950</u>
<u>Vehicle purchases (net outlay)</u>	<u>742</u>	<u>581</u>	<u>932</u>	<u>1,192</u>	<u>1,176</u>	<u>1,856</u>	<u>2,339</u>	<u>3,046</u>	<u>4,993</u>
<u>Gasoline and motor oil</u>	<u>1,317</u>	<u>956</u>	<u>1,236</u>	<u>1,496</u>	<u>1,951</u>	<u>2,229</u>	<u>2,439</u>	<u>2,885</u>	<u>3,707</u>
<u>Vehicle maintenance and repairs</u>	<u>264</u>	<u>240</u>	<u>249</u>	<u>358</u>	<u>464</u>	<u>511</u>	<u>518</u>	<u>729</u>	<u>1,071</u>
<u>Vehicle insurance</u>	<u>627</u>	<u>342</u>	<u>615</u>	<u>720</u>	<u>797</u>	<u>1,125</u>	<u>1,077</u>	<u>1,265</u>	<u>1,642</u>
<u>Vehicle lease, license, and other charges</u>	<u>125</u>	<u>89</u>	<u>88</u>	<u>160</u>	<u>128</u>	<u>175</u>	<u>221</u>	<u>308</u>	<u>583</u>
<u>Public transportation</u>	<u>117</u>	<u>65</u>	<u>115</u>	<u>89</u>	<u>124</u>	<u>152</u>	<u>175</u>	<u>242</u>	<u>757</u>
<u>[Debtor's Available Resources</u>	<u>Less than \$5,000</u>	<u>\$5,000 to \$9,999</u>	<u>\$10,000 to \$14,999</u>	<u>\$15,000 to \$19,999</u>	<u>\$20,000 to \$29,999</u>	<u>\$30,000 to \$39,999</u>	<u>\$40,000 to \$49,999</u>	<u>\$50,000 to \$69,999</u>	<u>\$70,000 and over</u>

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					9				
Owned dwelling	2,228	1,166	1,448	2,473	2,779	3,189	4,246	5,774	11,518
Rented dwelling	2,580	2,319	2,691	2,449	2,669	2,865	2,651	2,252	1,220
Other lodging	163	49	85	117	164	196	274	415	1,180
Utilities, fuels, and other charges	2,281	2,242	2,574	2,738	2,997	3,267	3,484	3,872	4,774
Household operations	264	172	353	488	427	517	603	937	1,874
Housekeeping and miscellaneous supplies	271	277	388	369	419	454	526	607	1,022
Household furnishings and equipment	766	804	557	763	778	848	1,176	1,751	2,991
Vehicle purchases (net outlay)	737	532	959	1,626	1,534	2,091	2,587	3,398	5,401
Gasoline and motor oil	1,261	1,144	1,307	1,621	2,108	2,421	2,669	3,144	4,007
Vehicle maintenance and repairs	223	216	264	390	457	510	584	714	1,134
Vehicle insurance	602	445	693	658	887	878	1,135	1,330	1,543
Vehicle lease, license, and other charges	92	100	80	143	147	169	227	299	601
Public transportation	137	60	113	95	156	168	143	300	810]

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	<u>Washington, D.C.</u>	<u>Baltimore</u>	<u>Atlanta</u>	<u>Miami</u>	<u>Dallas Forth Worth</u>	<u>Houston</u>
<u>Owned dwelling</u>	<u>11,447</u>	<u>9,623</u>	<u>7,313</u>	<u>7,115</u>	<u>6,248</u>	<u>7,326</u>
<u>Rented dwelling</u>	<u>4,180</u>	<u>3,329</u>	<u>2,857</u>	<u>4,442</u>	<u>3,533</u>	<u>2,789</u>
<u>Other lodging</u>	<u>1,216</u>	<u>665</u>	<u>469</u>	<u>1,036</u>	<u>473</u>	<u>661</u>
<u>Utilities, fuels, and public services</u>	<u>3,977</u>	<u>4,209</u>	<u>3,899</u>	<u>3,740</u>	<u>4,275</u>	<u>4,505</u>
<u>Household operations</u>	<u>1,842</u>	<u>879</u>	<u>915</u>	<u>1,025</u>	<u>1,201</u>	<u>1,242</u>
<u>Housekeeping and miscellaneous supplies</u>	<u>767</u>	<u>860</u>	<u>522</u>	<u>558</u>	<u>719</u>	<u>634</u>
<u>Household furnishings and equipment</u>	<u>2,193</u>	<u>1,230</u>	<u>1,096</u>	<u>1,091</u>	<u>1,749</u>	<u>1,710</u>
<u>Vehicle purchases (net outlay)</u>	<u>3,028</u>	<u>1,452</u>	<u>1,597</u>	<u>2,921</u>	<u>2,877</u>	<u>3,874</u>
<u>Gasoline and motor oil</u>	<u>2,465</u>	<u>2,444</u>	<u>2,631</u>	<u>2,680</u>	<u>2,616</u>	<u>2,980</u>
<u>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</u>	<u>2,864</u>	<u>2,178</u>	<u>2,171</u>	<u>2,318</u>	<u>2,806</u>	<u>3,421</u>
<u>Public transportation</u>	<u>1,206</u>	<u>547</u>	<u>360</u>	<u>508</u>	<u>390</u>	<u>568</u>

	<u>[Washington, D.C.</u>	<u>Baltimore</u>	<u>Atlanta</u>	<u>Miami</u>	<u>Dallas Forth Worth</u>	<u>Houston</u>
<u>Owned dwelling</u>	<u>12,435</u>	<u>9,443</u>	<u>7,421</u>	<u>7,507</u>	<u>6,339</u>	<u>6,906</u>
<u>Rented dwelling</u>	<u>3,691</u>	<u>2,912</u>	<u>2,923</u>	<u>4,118</u>	<u>3,142</u>	<u>2,834</u>
<u>Other lodging</u>	<u>1,041</u>	<u>548</u>	<u>582</u>	<u>470</u>	<u>396</u>	<u>619</u>
<u>Utilities, fuels, and public services</u>	<u>4,001</u>	<u>4,170</u>	<u>3,811</u>	<u>3,576</u>	<u>4,307</u>	<u>4,332</u>
<u>Household operations</u>	<u>1,774</u>	<u>881</u>	<u>820</u>	<u>1,180</u>	<u>1,093</u>	<u>1,018</u>
<u>Housekeeping and miscellaneous supplies</u>	<u>752</u>	<u>822</u>	<u>447</u>	<u>587</u>	<u>695</u>	<u>677</u>
<u>Household furnishings and equipment</u>	<u>2,433</u>	<u>1,478</u>	<u>1,271</u>	<u>1,022</u>	<u>1,767</u>	<u>1,674</u>
<u>Vehicle purchases (net outlay)</u>	<u>3,492</u>	<u>2,396</u>	<u>2,101</u>	<u>3,049</u>	<u>4,196</u>	<u>4,070</u>
<u>Gasoline and motor oil</u>	<u>2,666</u>	<u>2,665</u>	<u>2,821</u>	<u>2,863</u>	<u>2,733</u>	<u>3,274</u>
<u>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</u>	<u>3,190</u>	<u>2,191</u>	<u>1,893</u>	<u>2,076</u>	<u>2,861</u>	<u>3,064</u>
<u>Public transportation</u>	<u>1,103</u>	<u>542</u>	<u>501</u>	<u>518</u>	<u>350</u>	<u>472]</u>

5.a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for a metropolitan area listed in clause b of this paragraph, actual annual expenditures by the

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debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	4,178	1,983	2,095	2,269	3,573	3,997	5,228	7,403	14,275
Rented dwelling	3,489	4,683	3,946	4,697	4,552	4,827	4,643	4,033	3,133
Other lodging	308	174	135	188	276	295	325	465	1,433
Utilities, fuels, and public services	2,077	1,764	1,955	2,244	2,564	2,903	3,143	3,514	4,452
Household operations	642	297	419	830	575	639	661	956	1,999
Housekeeping and miscellaneous supplies	416	335	519	357	470	462	519	640	885
Household furnishings and equipment	953	670	909	831	821	1,039	1,498	1,436	2,853
Vehicle purchases (net outlay)	895	697	751	934	1,679	2,487	1,833	2,920	3,845
Gasoline and motor oil	1,162	1,100	1,059	1,246	1,612	1,932	2,324	2,560	3,277
Vehicle maintenance and repairs	381	292	316	459	533	670	769	972	1,263
Vehicle insurance	106	133	577	827	556	949	843	1,279	1,224
Vehicle lease, license, and other charges	213	156	179	180	289	301	498	453	898
Public transportation	383	602	198	266	271	329	358	531	1,234

[Debtor's Available Resources]	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	3,481	1,631	1,982	2,039	3,404	4,048	5,225	8,082	14,856
Rented dwelling	3,831	4,309	3,641	5,019	4,744	4,838	4,344	3,967	2,833
Other lodging	238	173	139	177	241	332	366	523	1,608
Utilities, fuels, and public services	1,838	1,692	1,927	2,080	2,445	2,828	3,066	3,475	4,436
Household operations	334	447	417	550	481	568	592	1,003	2,140
Housekeeping and miscellaneous supplies	419	266	506	288	434	551	587	689	1,065
Household furnishings and equipment	744	690	715	733	1,175	1,093	1,609	1,531	3,247
Vehicle purchases (net outlay)	506	1,189	978	1,481	2,101	2,312	2,306	4,345	4,754
Gasoline and motor oil	1,298	1,040	1,044	1,357	1,699	2,066	2,474	2,800	3,557
Vehicle maintenance and repairs	297	253	317	390	554	696	706	901	1,325
Vehicle insurance	1,420	291	452	529	584	1,020	1,423	1,069	1,515
Vehicle lease, license, and other charges	231	136	171	141	252	321	424	445	979
Public transportation	258	650	214	299	244	428	536	497	1,306

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Los Angeles	San Francisco	San Diego	Seattle	Phoenix
Owned dwelling	8,271	11,227	7,741	8,727	7,695
Rented dwelling	6,086	6,508	6,973	4,069	2,981
Other lodging	580	1,361	432	1,033	573
Utilities, fuels, and public services	3,257	3,1239	2,989	3,554	3,892
Household operations	1,370	1,344	1,571	1,592	1,174
Housekeeping and miscellaneous supplies	643	585	678	741	633
Household furnishings and equipment	1,603	1,899	1,823	2,312	1,813
Vehicle purchases (net outlay)	2,513	2,748	1,941	3,395	2,887

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Gasoline and motor oil	2,667	2,235	2,412	2,454	2,658
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,989	3,252	2,373	2,589	3,275
Public transportation	615	1,300	445	943	509

	Los Angeles	San Francisco	San Diego	Seattle	Phoenix
Owned dwelling	9,077	11,238	8,903	8,883	7,806
Rented dwelling	5,857	6,208	6,432	3,950	3,204
Other lodging	587	1,355	426	1,057	705
Utilities, fuels, and public services	3,364	3,204	2,861	3,485	3,874
Household operations	1,343	1,567	1,581	1,103	1,362
Housekeeping and miscellaneous supplies	623	600	573	641	655
Household furnishings and equipment	1,794	1,939	1,787	2,396	1,889
Vehicle purchases (net outlay)	2,883	2,973	1,429	3,113	5,074
Gasoline and motor oil	2,913	2,589	2,593	2,608	2,957
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,826	3,550	2,020	2,816	2,998
Public transportation	604	1,479	514	1,107	602]

6. If the debtor is the only member of the household, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	2,807	2,459	2,739	2,649	3,009	3,592	4,032	4,455	6,371
Apparel	665	515	936	610	785	871	1,080	1,193	1,935
Health insurance	492	536	1,172	1,469	1,286	1,176	1,058	1,210	1,441
Medical services	185	205	297	347	373	483	502	674	767
Prescription drugs	151	196	223	426	387	366	340	279	363
Medical supplies	60	39	51	65	70	71	59	73	117
Personal care products and services	246	201	248	287	340	387	431	550	647
Education	1,196	848	430	258	337	592	426	377	732
Life and other personal insurance	59	52	105	82	88	112	110	150	288

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	2,488	2,269	2,573	2,562	2,990	3,654	4,204	4,609	6,282
Apparel	710	539	651	571	739	980	1,187	1,468	1,891
Health insurance	451	511	1,190	1,334	1,237	1,006	1,000	1,117	1,166
Medical services	146	169	234	346	370	472	419	737	748
Prescription drugs	164	208	244	429	372	312	280	343	392
Medical supplies	38	30	44	58	69	70	83	91	138
Personal care products and services	234	209	243	313	357	406	450	540	688
Education	1,495	1,019	459	309	413	390	506	379	926
Life and other personal insurance	31	53	94	108	187	123	111	158	263]

7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	4,521	4,284	4,228	3,444	4,724	5,112	5,305	6,088	6,595

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Apparel	837	1,033	1,056	840	895	1,301	949	1,522	2,587
Health insurance	1,424	1,286	1,370	1,633	2,256	2,431	2,461	2,274	2,459
Medical services	665	333	331	440	652	628	763	998	1,241
Prescription Drugs	525	276	364	516	708	698	767	722	714
Medical supplies	139	53	73	90	110	115	134	169	199
Personal care products and services	476	267	274	339	374	475	517	583	988
Education	636	251	393	310	320	349	419	548	1,613
Life and other personal insurance	252	149	133	129	193	255	270	360	696

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	4,514	3,814	4,204	3,496	4,492	4,954	5,199	6,113	8,640
Apparel	1,010	877	1,045	911	910	1,222	1,107	1,743	2,849
Health insurance	1,361	1,088	1,237	1,791	2,144	2,353	2,142	2,043	2,273
Medical services	565	292	413	377	783	658	827	921	1,232
Prescription Drugs	525	342	343	645	692	765	758	675	707
Medical supplies	145	43	68	65	108	122	150	147	200
Personal care products and services	389	294	306	285	364	452	531	601	999
Education	291	293	416	350	297	267	512	636	1,562
Life and other personal insurance	185	78	114	159	215	257	243	327	655]

8. If the debtor's household consists of three (3) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	5,108	3,844	4,780	4,551	4,819	5,440	6,415	7,218	9,895
Apparel	1,109	1,485	1,223	1,128	1,427	1,595	1,679	2,018	3,023
Health insurance	677	356	699	593	845	1,299	1,405	2,002	2,381
Medical services	269	95	177	197	386	476	426	704	1,199
Prescription drugs	236	238	211	215	301	389	447	508	600
Medical supplies	15	183	39	98	53	55	83	161	181
Personal care products and services	355	253	403	315	407	520	590	652	1,017
Education	273	474	335	171	242	687	549	891	2,745
Life and other personal insurance	98	29	74	76	143	170	234	310	687

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	5,223	3,822	4,343	4,575	4,980	5,647	6,425	6,787	9,557
Apparel	1,914	1,170	1,249	1,257	1,517	1,609	2,025	1,897	3,214
Health insurance	797	519	594	635	839	1,210	1,575	1,760	2,075
Medical services	191	133	163	202	312	426	535	764	1,039
Prescription drugs	238	232	174	228	291	329	583	478	617
Medical supplies	103	505	40	69	43	65	71	120	183
Personal care products and services	368	269	307	316	401	450	635	551	991
Education	530	536	201	211	356	385	509	705	2,524
Life and other personal insurance	88	85	135	57	151	143	264	288	681]

9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	5,648	5,066	4,855	5,595	6,555	6,148	7,305	11,358
Apparel	2,188	1,125	1,317	1,783	1,874	1,793	1,820	3,245

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Health insurance	893	366	417	648	1,233	1,355	1,714	2,253
Medical services	484	869	221	354	348	455	773	1,230
Prescription drugs	171	193	108	193	285	347	380	558
Medical supplies	29	72	25	63	65	74	87	163
Personal care products and services	566	312	330	362	550	427	555	1,091
Education	2,561	854	146	282	393	500	785	2,833
Life and other personal insurance	106	75	121	116	178	182	246	567

[Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	5,028	5,250	4,539	6,735	6,476	6,721	7,556	11,152
Apparel	2,128	1,625	1,275	2,086	2,220	1,508	1,828	3,463
Health insurance	712	425	476	698	1,058	1,424	1,631	2,168
Medical services	584	333	177	296	350	664	730	1,184
Prescription drugs	167	189	69	220	289	328	399	523
Medical supplies	28	56	25	73	64	95	99	158
Personal care products and services	361	264	283	377	534	399	617	1,066
Education	805	603	306	325	443	542	800	2,486
Life and other personal insurance	149	61	70	115	142	195	256	623]

10. If the debtor's household consists of five (5) or more persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	7,343	6,331	7,004	7,008	7,019	7,584	8,822	12,470
Apparel	2,250	1,897	1,935	2,386	1,934	2,048	2,275	3,549
Health insurance	1,076	367	383	572	932	1,179	1,577	2,182
Medical services	542	147	223	177	433	597	790	1,260
Prescription drugs	277	97	187	209	249	287	417	584
Medical supplies	27	22	48	51	54	83	121	172
Personal care products and services	423	285	403	539	416	479	590	1,033
Education	1,197	173	544	270	468	594	779	2,929
Life and other personal insurance	87	12	110	56	125	281	213	594

[Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	6,307	4,858	6,180	5,695	6,685	7,319	8,542	12,284
Apparel	2,129	2,467	1,434	1,783	1,773	1,810	2,295	3,792
Health insurance	608	308	313	586	826	1,174	1,411	2,099
Medical services	336	146	275	170	636	486	959	1,210
Prescription drugs	170	102	88	203	279	258	430	555
Medical supplies	35	14	31	66	104	59	123	166
Personal care products and services	329	359	378	342	419	473	614	1,078
Education	286	248	257	276	296	339	619	2,605
Life and other personal insurance	63	35	63	62	105	182	244	626]

Section 5. (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of not more than fifteen (15) percent of the debtor's disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in

full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for a lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order,

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plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) A withholding under this section shall not be grounds for discharge from employment, refusal to employ or disciplinary action against an employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 6. (1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, the service shall be made by:

(a) An officer authorized under KRS 454.140 to serve process; or

(b) A person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or another adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) For an administrative order to withhold disposable pay served upon an employer, receipt shall be rebuttably presumed if:

(a) The person to whom the order is directed signs or refuses to sign a receipt; or

(b) His employee or agent with apparent authority signs or refuses to sign a receipt.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: May 26, 2011

FILED WITH LRC: June 14, 2011

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-7293, phone (502) 696-7298, fax (502) 6960-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (As Amended at ARRS, August 15, 2011)

11 KAR 15:090. Kentucky educational excellence scholarship (KEES) program.

RELATES TO: KRS 154A.130(4), 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889

STATUTORY AUTHORITY: KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the Authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund [to administer the funds appropriated to the trust fund for the program]. KRS 164.7874(16) requires the Authority to determine the KEES curriculum's courses of study. KRS 164.7879(3)(d) requires the Authority to determine the eligibility of a noncertified, nonpublic high school graduate and of [for] a GED recipient for a supplemental award. KRS 164.7874(3) requires the Authority to establish a table to convert an SAT score to an ACT score[standard]. KRS 164.7881(6) requires the Authority to establish a five (5) year post-secondary education program standard. KRS 164.7881(4)(a) requires the Authority to establish overall award levels for the program. KRS 164.7879(2)(c) requires the Authority to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the Authority to identify equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and shall not in-

clude summer sessions.

(2) "Accredited out-of-state high school" means a high school that is:

(a) Located in a state other than Kentucky or in another country; and

(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky post-secondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" is defined by KRS 158.007(1).

(5) "Course" means [for purposes of the KEES curriculum] the equivalent of one (1) credit as determined by KDE in 704 KAR 3:305.

(6) [(5)] "Cumulative grade point average" means the total grade point average for a postsecondary education student as reported by the postsecondary education institution where the [a] student is currently enrolled.

(7) [(6)] "Department of Defense school" means a school operated by the U. S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(8) [(7)] "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that the [a] student is attending.

(9) [(8)] "Free and Reduced Price Lunch" means the National School Lunch program established by the United States Department of Agriculture to provide subsidized meals to lower income students.

(10) [(9)] "GED" means a general educational development diploma awarded to a student.

(11) [(10)] "International baccalaureate[course]" is defined by KRS 158.007(10).

(12) [(11)] "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156.010.

(13) [(12)] "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky post-secondary education institution; and

(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic year shall be calculated using each grade awarded for all courses taken during an academic year.

(2)(a) Except as provided in paragraph (b) of this subsection, an eligible high school student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A" and 0.0 is an "F";

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) For an eligible high school student taking an advanced placement or international baccalaureate course during the academic year, the grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A" and 1.0 is an "F".

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1)(a) For purpose of determining

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eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1a and b and shall submit the "Home of Record Certification" to the Authority.

(b) The Authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for:

1. Requesting grade and curriculum information from the local school; and

2. Requesting that the local school submit the information to the Authority using the "Curriculum Certification" Form and the "Data Submission" Form.

(b) ~~The Authority, upon~~ Upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, ~~the authority~~ shall:

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;

2. Verify that the out-of-state high school or Department of Defense school is an accredited ~~out-of-state~~ high school; and

3. Retain the "Curriculum Certification" on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

(a) Has earned a base scholarship award in high school;

(b) Has completed the KEES curriculum as set forth in subsection (2) of this section;

(c) Has graduated from a Kentucky high school except as provided in Section 2(4) or 3 of this administrative regulation; and

(d) Is enrolled in a participating institution in an eligible program.

(2) Except as provided in subsection (4) of this section, the KEES curriculum shall consist of the **curriculum standards established in 704 KAR 3:305**~~courses and electives required by this subsection.~~

(a) ~~For a student enrolled in high school who is required to meet the curriculum standards in 704 KAR 3:305; [Section 2.] [five (5) of the seven (7) electives required by 704 KAR 3:305; [Section 2] [shall be taken in the areas and according to the standards established in paragraph (b) of this subsection.~~

(b) ~~The following subject areas and standards shall be applicable for electives. [An elective in:] [1. A social] [Social] [studies, science, mathematics, English/language arts,] [or] [arts and humanities, physical education, or health elective] shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060. [2. Physical education or health shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060, and shall be limited to one-half (1/2) academic unit of credit for each area.] [2.] [3. [A foreign language elective] [Foreign languages] [shall be a course whose academic content includes teaching the spoken and written aspects of the language.~~

~~3.] [4. [An agriculture] [Agriculture], industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education or career pathways elective] shall be a course whose academic content is beyond the introductory level in the vocational education areas of study as established by 703 KAR 4:060.]~~

(3) A student who graduates from high school at the end of the

fall semester of his or her senior year and who meets the requirements of KRS 164.7874(7) shall be eligible to earn a KEES award for that year upon:

(a) Completion of no fewer than three (3) courses of study; and

(b) Satisfying the provisions of KRS 164.7879.

(4) **Except as provided in subsection (5) of this section,** a high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required **academic and career interest standards-based learning experience**~~elective~~ if:

(a) The course provides the same or greater academic rigor and the course covers ~~the minimum required content areas~~ or exceeds the minimum required content areas established in 703 KAR 4:060~~, and the document "Academic Expectations";~~ or

(b) The course is an honors course, cooperative education course, advanced placement course, international baccalaureate course, dual credit course, or a course taken at a postsecondary education institution.

~~(5) [As referenced in 4(b),] Beginning with the 2012-2013 academic year, only one cooperative education course per academic year shall count for purposes of satisfying KEES curriculum requirements.~~

~~(6) [(5)]~~ A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the Authority.

(2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board except as provided in subsection (4) of this section.

(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:

(a) Landscape architecture (04.0601); and

(b) For students that graduated from high school not later than the 2004-2005 academic year, engineering ~~if provided, however, that enrollment in the engineering program has been~~~~shall be~~ continuous (14.0101, 14.201, 14.0301, 14.401, 14.501, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1301, 14.1401, 14.1701, 14.1801, 14.1901, 14.2101, 14.2301, 14.2401, 14.2801, 14.9999.01, 14.3501).

(4) Pursuant to KRS 164.7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

(a) Has not received eight (8) semesters of a KEES award;

(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:

1. Pharm. D;

2. The optometry or veterinary medicine programs at an institution which is a part of the Kentucky Contract Spaces Program; or

3. A program contained on the Equivalent Undergraduate Programs List; and

(c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. **(1)** Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used **to convert scores for SAT exams taken prior to the 2011-2012 academic year:**

SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13

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1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT I V+M scores to ACT Composite scores.

The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).
January 1998

(2) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the 2011-2012 academic year. Only the scores from the critical reasoning and mathematics sections of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2

Concordance Between SAT I Recentered V+M Score and ACT Composite Score

SAT I V+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite
1600	36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	13
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	35	1320	29	1090	24	860	18	630	13
1540	35	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	12
1520	34	1290	29	1060	23	830	17	600	12
1510	34	1280	28	1050	23	820	17	590	12
1500	34	1270	28	1040	22	810	16	580	12
1490	34	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	27	1010	21	780	16	550	11
1460	33	1230	27	1000	21	770	16	540	11
1450	33	1220	27	990	21	760	15	530	11
1440	33	1210	27	980	21	750	15	520	11
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15		
1410	32	1180	26	950	20	720	15		
1400	32	1170	26	940	20	710	14		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT CR+M scores to ACT Composite scores.

The estimates are based on the test scores of 300,437 students who took both the ACT and the SAT CR+M between September 2004 and June 2006. Because the ACT and the SAT CR+M have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).
June, 2008

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

(a) The student is not a convicted felon;

(b) The date of the student's graduation is May 1999 or thereafter;

(c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and

(d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from

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either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
 - (b) The student's 18th birthday occurs on or after January 1, 1999;
 - (c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;
 - (d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
 - (e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.
- (3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:
- (a) The parents meet the provisions of KRS 164.7879(2)(c)1a and b;
 - (b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
 - (c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.
- (4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.
- (5)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.
- (b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the Authority of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. ~~[Section 9.]~~ Supplemental Award for Achievement on Examinations. (1) Pursuant to KRS 164.7879(3)(c), a supplemental award shall be provided for achievement on Advanced Placement (AP) or International Baccalaureate (IB) examinations ~~[as defined in KRS 158.007]~~ to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.

(2)(a) An eligible high school shall report the status of each student as eligible or ineligible for free and reduced price lunch to the Authority on an annual basis.

(b) In determining a high school student's free and reduced price lunch eligibility, the high school shall utilize the income eligibility guidelines published each year by the United ~~States~~State Department of Agriculture, Food and Nutrition Service.

Section 10. Administrative Responsibilities and Expenses of Program. (1) The Authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).

(2) The Authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The Authority shall develop an allotment schedule for the release of the administrative funds.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Home of Record Certification", June 2005;["]
 - (b) "Curriculum Certification", June 2005;["]
 - (c) "Data Submission", June 2005;["] and
 - (d) "Equivalent Undergraduate Programs List[-]", June 2005.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: May 10, 2011

FILED WITH LRC: June 14, 2011 at noon

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

EDUCATION PROFESSIONAL STANDARDS BOARD (As Amended at ARRS, August 15, 2011)

16 KAR 2:010. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028(1), 161.030
STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (f), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) requires the board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board under 16 KAR 5:010 for a specific certification or which has been approved for certification by the state education agency of another state.

(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 6:010.

(3) "Base certificate" means a stand-alone license to teach which encompasses authorization to teach introductory and interdisciplinary courses in related fields.

(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7:010.

(5) "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments, and experience as outlined in Section 5 of this administrative regulation.

(6) "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.

(7) "Kentucky teacher standards" means the standards established in 16 KAR 1:010 that identify what a Kentucky teacher shall know and be able to do.

(8) "Major" means an academic area of concentration consisting of at least thirty (30) hours of coursework.

(9) "Professional teaching certificate" means the document issued to:

(a) An individual upon successful completion of the beginning teacher internship; or

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area that can be taught under this limited certificate.

(12) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has submitted a completed TC-1 application form and has successfully completed:

- (a)1. At least a bachelor's degree with:

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a. A cumulative grade point average of 2.50 on a 4.0 scale; or
b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or

2. As required by Section 4(2)(g)6 ~~[or (4)(e)]~~ of this administrative regulation, a master's degree with:

a. A cumulative grade point average of 2.50 on a 4.0 scale; or
b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(b) An approved program of preparation; and

(c) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Professional Teaching Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent with:

(a) The Kentucky teacher standards established in 16 KAR 1:010; or

(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation in KAR Title 16.

(2) The first five (5) year renewal shall require:

(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Completion of the required components of the continuing education option for initial certificate renewal as established in 16 KAR 8:030.

(3) The second five (5) year renewal shall require:

(a) Completion of the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Successful completion of the continuing education option as established in 16 KAR 8:030.

(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:

(a) The Kentucky teacher standards established in 16 KAR 1:010;

(b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant national specialty program associations; and

(c) The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4:060.

(2) A base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Interdisciplinary early childhood education, birth to primary, established in 16 KAR 2:040;

(b) Elementary school: primary through grade 5 to include preparation in the academic disciplines taught in the elementary school.

1. The elementary certificate shall be valid for teaching grade 6 if grade 6 is taught in a self-contained classroom or in a school organization in which grade 6 is housed with grade 5 in the same building.

2. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.

(c)1. Middle school option 1: grades 5 through 9 with the equivalent of one (1) major to be selected from:

a. English and communications;

b. Mathematics;
c. Science; or
d. Social studies;

2. Middle school option 2: grades 5 through 9 with two (2) middle school teaching fields to be selected from:

a. English and communications;
b. Mathematics;
c. Science; or
d. Social studies;

3. The grades 5 through 9 mathematics certificate shall be valid for teaching Algebra I grades 10 and 11;[.]

4. A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under this subsection or subsection (3) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field;

(d) Secondary school: grades 8 through 12 with one (1) or more of the following majors:

1. English;
2. Mathematics;
3. Social studies;
4. Biology;
5. Chemistry;
6. Physics; or
7. Earth science;

(e) Grades 5 through 12 with one (1) or more of the following majors:

1. Agriculture;
2. Business and marketing education;
3. Family and consumer science;
4. Industrial education; or
5. Engineering and technology;

(f) All grade levels with one (1) or more of the following specialties:

1. Art;
2. A foreign language;
3. Health;
4. Physical education;
5. Integrated music;
6. Vocal music;
7. Instrumental music; or
8. School media librarian; or

(g) Grades primary through 12 for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

1. Learning and behavior disorders;
2. Moderate and severe disabilities;
3. Hearing impaired;
4. Hearing impaired with sign proficiency;
5. Visually impaired;

6. Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a master's degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 2; or

7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a baccalaureate degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 3.

(3) A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Psychology, grades 8-12;
(b) Sociology, grades 8 through 12;
(c) Journalism, grades 8 through 12;
(d) Speech/media communications, grades 8-12;
(e) Theater, primary through grade 12;
(f) Dance, primary through grade 12;
(g) Computer information systems, primary through grade 12;

or

(h) English as a second language, primary through grade 12.

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(4) An endorsement to certificates identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

- (a) Computer science, grades 8-12;
- (b) English as second language, primary through grade 12;
- (c) Gifted education, primary through grade 12;
- (d) Driver education, grades 8-12;
- (e) Literacy specialist, primary through grade 12~~[-which shall require a master's degree in reading or literacy];~~
- (f) Reading, primary through grade 12;
- (g) Instructional computer technology, primary through grade ~~12~~**twelve (12)**;
- (h) Teacher Leader, all grades;
- (i) Other instructional services - school safety, primary through grade 12;
- (j) Other instructional services - environmental education, primary through grade 12;
- (k) Other instructional services - elementary mathematics specialist, primary through grade 5;
- (l) Learning and behavior disorders, grades 8 through 12. ~~[4-]~~ This endorsement shall be issued;

1. Following completion of the requirements of Section 5(2) of this administrative regulation; and

2. ~~Only~~[This endorsement shall only be issued]**** to candidates with preparation and certification for a base or restricted base certificate for the secondary grades 8-12; or

(m) American Sign Language, primary through grade 12.

Section 5. Additional Certification. (1) A certificate extension may be issued for any base or restricted base certificate area offered in Section 4(2) or (3) of this administrative regulation and shall require:

- (a) A valid base or restricted base certificate, including a statement of eligibility;
- (b) Successful completion of the applicable assessments; and
- (c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(2) A certificate endorsement may be issued for any area listed in Section 4(4) of this administrative regulation and shall require:

- (a) A valid base or restricted base certificate, including a statement of eligibility;
- (b) Successful completion of the applicable assessments; and
- (c) Recommendation from an approved preparation program.

(3)(a) A professionally-certified teacher may add a certificate endorsement or extension if the teacher meets the requirements established in paragraph (b) of this subsection.

(b) A certificate extension or certificate endorsement shall be issued if an educator submits a completed TC-HQ application and:

- 1.** Holds a valid Kentucky professional teaching certificate;
- 2. ~~Submits proof that the educator has:~~**
 - a. Current employment in a certified position;
 - b. ~~[Has]~~ A bona fide offer of employment in a certified position in a Kentucky public school; or
 - c. Approval of the local district superintendent;
- 3.** Successfully completed the applicable content assessments; and
- 4.** Has either:
 - a. A declared major in the area of certification being sought; or
 - b. A combination of education, experience, professional development, awards and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points on the index contained within the application form, TC-HQ.

i. Points shall be granted only for experience, professional development, awards and achievements earned relative to the specific content area, student population taught, and grade range served.

ii. Coursework shall be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.

iii. Successful completion of the appropriate content assessment or assessments for the certificate area being added shall

count for forty-five (45) points.

(4) If a teacher currently holds a professional certificate in the secondary grades 8-12, and applies for a certificate extension or endorsement in the same content area for middle school grades 5-9, the teacher shall not be required to complete the content assessment.

(5) A certificate extension or endorsement issued under the requirements established in subsection (3)(b) of this section shall be permitted in the areas of English, mathematics, sciences, foreign languages, or social studies. Health and physical education areas shall be added only if the teacher holds the correlative certificate.

Section 6. A candidate pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 7. Application for certification or additional certification shall be made on Form TC-1 and shall be accompanied by the fees required by 16 KAR 4:040.

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

(a) "Form TC-1", [rev.] 10/05[4/2004]~~[-Education Professional Standards Board]~~; and

(b) "Form TC-HQ", [edition] 10/2009~~[-Education Professional Standards Board]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: May 16, 2011

FILED WITH LRC: June 1, 2011 at 11 a.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD (As Amended at ARRS, August 15, 2011)

16 KAR 4:060. Certificate renewals and successful teaching experience.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.020 provides that the validity and terms for the renewal of a certificate shall be determined by the laws and administrative regulations in effect at the time the certificate was issued. This administrative regulation establishes certificate renewal provisions and the requirements for successful teaching experience for certificate issuance and renewal.

Section 1. Certificate Renewals. (1) If the renewal of a teaching certificate requires the completion of additional academic course work in lieu of teaching experience, the credits shall be selected from the Planned Fifth-Year Program.

(2) Except as provided in KRS 161.030(3), a teaching certificate shall be issued for a duration period of five (5) years, with provision for subsequent five (5) year renewals.

(3)(a) A certificate shall be renewed for subsequent five (5) year periods upon the completion of:

1. Three (3) years of successful teaching experience as established in Section 2 of this administrative regulation; or

2. At least six (6) semester hours of credit or the equivalent in

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professional development defined in 16 KAR 8:020.

(b) The requirements of this subsection shall apply to teachers who have completed the Fifth Year Program renewal requirements established in 16 KAR 8:020 and 16 KAR 2:010, Section 3.

(4) The renewal requirements shall be completed by September 1 of the year of expiration of the certificate.

(5)(a) Upon expiration, a regular certificate shall be extended for one (1) time for the one (1) year period immediately following the expiration date if:

1. An application for the extension is submitted using Form TC-2;

2. The certificate holder has completed ~~[upon completion of]~~ at least one-third (1/3) of the renewal requirements; and

3. The extension is recommended ~~[upon recommendation]~~ by the employing school superintendent.

(b) If the requirements of paragraph (a) of this subsection are met, the remainder of the renewal requirements shall be completed within the one (1) year period of reinstatement. ~~[(b) Application for the extension shall be made on Form TC-2.]~~

(6)(a) Experience in the armed forces of the United States of America shall be accepted toward the renewal of a teaching certificate in lieu of required teaching experience as established in Section 2 of this administrative regulation, if the applicant held a valid certificate prior to entering military service.

(b) The validity period of a certificate held by a person at the time of entry into the armed forces of the United States of America shall be extended for the same period of time for which it was valid at the time of entry, beginning from the date of discharge.

(7) For a certificate requiring teaching experience for renewal, experience as a substitute teacher shall be accepted in lieu of required teaching experience as established in Section 2 of this administrative regulation if the holder of the certificate:

(a) Was employed officially by the local board of education;

(b) Was paid through the board of education; and

(c) Substituted in his certification area no less than thirty (30) teaching days per semester.

(8) Work experience at the Education Professional Standards Board, Kentucky Department of Education, or other state or federal educational agency with oversight for elementary and secondary education shall be accepted toward the renewal of a teaching certificate in lieu of teaching experience as established in Section 2 of this administrative regulation.

(9) Teaching experience at a regionally- or nationally-accredited institution of higher education in the academic subject area for which the teacher holds certification shall be accepted toward the renewal of a teaching certificate in lieu of teaching experience as established in Section 2 of this administrative regulation.

(10) Application for certification renewal shall be made on Form TC-2.

Section 2. Successful Teaching Experience for Certificate Issuance and Renewal. (1) Successful teaching experience shall be in a position directly corresponding to the type of teaching certificate for which the application is being made.

(2) A full year of experience shall include at least 140 teaching days of employment performed within the academic year.

(3) A half year of experience shall include at least seventy (70) teaching days of employment performed within an academic semester.

(4) The experience shall include employment on at least a half-time basis as defined in 16 KAR 7:010.

(5) The experience may include employment in either a public school or a regionally- or nationally-accredited nonpublic school.

(6) Experience as a home school teacher shall not be accepted as successful teaching experience.

(7) The superintendent of the employing district or chief school officer of the employing nonpublic school shall verify successful teaching experience on the certification application, Form TC-1, **which is incorporated by reference in 16 KAR 2:010, [U]** for initial certification or Form TC-2 for certificate renewal.

Section 3. Incorporation by Reference. (1) **"Form TC-2," rev.10/03, is [hereby] incorporated by reference.** ~~[The following~~

~~material is incorporated by reference:~~

~~(a) Form TC-1, rev. 9/2000, Education Professional Standards Board; and~~

~~(b) Form TC-2, rev. 9/2000, Education Professional Standards Board.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: May 16, 2011

FILED WITH LRC: June 1, 2011 at 11 a.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

PERSONNEL CABINET (As Amended at ARRS, August 15, 2011)

101 KAR 2:095. Classified service administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110

STATUTORY AUTHORITY: KRS 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate **comprehensive administrative regulations for the classified service. This administrative regulation establishes requirements for the classified service which govern the maintenance of employee and other records and reports in the cabinet and other conditions of employment** ~~[administrative regulations which govern the maintenance of employee records, the maintenance of other records and reports in the cabinet, and for other conditions of employment. This administrative regulation establishes those requirements].~~

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

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

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

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

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

(b) Have a substantial Kentucky presence.

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

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

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

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

(2) The normal work day shall be from:

(a) 8 a.m. to 4:30 p.m., local time, Monday through Friday, for a thirty-seven and one-half (37 1/2) hour work schedule; or

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(b) 8 a.m. to 5 p.m., local time, Monday through Friday, for a forty (40) hour work schedule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Secretary of the Personnel Cabinet shall determine which personnel actions warrant a Personnel Action Notification to the employee, in accordance with KRS 18A.020 and 18A.095.

(b) The secretary shall provide a Personnel Action Notification to the ~~eh~~ appointing authority.

(c) ~~Use the Request for Personnel Position Action Form P-1 to report a personnel action or status change. The secretary shall inform an appointing authority which personnel actions or status changes shall be reported.~~ The appointing authority shall provide a copy of a Personnel Action **Notification** ~~Form~~ to the employee affected by the action.

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

- (a) Annual leave earned, used, and unused;
- (b) Sick leave earned, used, and unused;
- (c) Compensatory leave earned, used, and unused; and
- (d) Special leave or other leave with or without pay.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Give recognition to state employee volunteers; and

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

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

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

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

(c) Services shall consist of:

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

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

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

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

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

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

(c) Proof of financial responsibility, including:

1. Adoption of a detailed annual budget;

2. Use of generally accepted accounting principles and procedures;

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

4. An annual financial audit;

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

(e) A written nondiscrimination policy;

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

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

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

(5) Authority of the Secretary of Personnel.

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

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

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

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

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

(a) Designation of a campaign administrator.

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

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

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

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

(d) The dates and duration of the campaign;

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

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

(7) Charitable federations to apply for statewide campaign.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

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

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

(d) Stalking;

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

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

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

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

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

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

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

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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: March 31, 2011

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

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

PERSONNEL CABINET (As Amended at ARRS, August 15, 2011)

101 KAR 2:102. Classified leave administrative regulations.

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

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

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

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

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

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year

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120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

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

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

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

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

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

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

(2) Use and retention of annual leave.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Annual leave on separation.

(a) 1. If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual[-] leave[remaining] after the payment of the maximum[provided] shall:

a. Not be paid to the employee or converted to sick leave; and

b. [shall] Be removed from the balance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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leave is requested. The appointing authority may also require an employee to produce a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work;

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

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

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

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

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

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

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

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

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

(3) Sick leave without pay.

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

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

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

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

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

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

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

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

1. Inform the employer; and

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

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

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

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

3. Is unable to return to his former position;

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

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

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

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

(4) Workers' compensation.

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

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

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

(5) Application for sick leave and supporting documentation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Court leave shall include necessary travel time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Reductions in compensatory leave balances.

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

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

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

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

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

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

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

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

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

1. Regular hourly rate of pay; or

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

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

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

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

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

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

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

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

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

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

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

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

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

(c) Constitute grounds for disciplinary action.

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

Section 11.[40-] Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

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

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

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

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

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

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

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

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

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

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Sec-

tion 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 12.[14-] Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

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

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

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

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

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

Section 13.[12-] Incorporation by Reference. (1) "Overtime Compensation Form", March 2011[September 1999], is incorporated by reference.

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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: March 31, 2011

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

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

PERSONNEL CABINET

(As Amended at ARRS, August 15, 2011)

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

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

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

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

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

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

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

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

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

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

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result

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of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

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

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

(2) Use and retention of annual leave.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Annual leave on separation.

(a) 1. If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave [remaining] after the payment of the maximum [provided] shall:

a. Not be paid to the employee or converted to sick leave; and
b. [shall] Be removed from the balance.

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

(c) An employee in the unclassified service who reverts to the

classified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

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

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

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

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit him with an equal amount of annual leave.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Is unable to work due to medical, dental, or optical examination or treatment;
2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested. The appointing authority may also require an employee to produce a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work;
3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member; or
4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others; or

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

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

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

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

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

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

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

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

(3) Sick leave without pay.

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

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

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

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

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

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

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

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

1. Inform the employer; and

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

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

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

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

3. Is unable to return to his former position;

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

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

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

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

(4) Workers' compensation.

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

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

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

(5) Application for sick leave and supporting documentation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Court leave shall include necessary travel time.

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

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

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

(a) An appointing authority shall comply with the overtime and

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compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

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

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

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

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

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

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

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

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

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

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

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

(2) Reductions in compensatory leave balances.

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

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

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

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

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

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

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

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

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

1. Regular hourly rate of pay; or

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

employment.

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

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

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

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

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

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

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

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

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

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

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

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

(c) Constitute grounds for disciplinary action.

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

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

(a) Charged to annual or compensatory leave;

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

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

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

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

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

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

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

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

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

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

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

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

as compensatory leave.

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

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

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

Section 13.[12:] Incorporation by Reference. (1) "Overtime Compensation Form", March 2011[September 1999], is incorporated by reference.

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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: March 31, 2011

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

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

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (As Amended at ARRS, August 15, 2011)

105 KAR 1:140. Employer's administrative duties[Contribution reporting].

RELATES TO: KRS 16.645(18), 18A.105, 61.546, 61.552(23), 61.565, 61.569, 61.637(17), 61.675, 61.685, 61.702, 78.545(33), (37), 78.616, 78.625, 78.652, 42 C.F.R. 423.504(b)(4)(vi), 45 C.F.R. 160, 162, 164, 26 U.S.C. 401(a)(17), 401(a)(31), 403(b), 408(a), (b) 414(g)(6), 457(b), Pub. L. 104-191, Pub. L. 111-5, Div., A Title XIII, Div. B, Title IV[18A.105, 61.546, 61.552(23), 61.569, 61.637(17), 61.675, 61.685, 61.702, 78.545(37), 78.616, 78.625, 200 KAR 12:030][16.505-16.652, 61.510-61.705, 78.510-78.852,][26 U.S.C. 401(a)(17), 26 U.S.C. 401(a)(17)(B), 26 U.S.C. 401(a)(31), 26 U.S.C. 403(b), 26 U.S.C. 408(a), (b), 26 U.S.C. 414(g)(6), 26 U.S.C. 457(b), 42 C.F.R. Section 423.504(b)(4)(vi), 45 C.F.R. Sections 160, 162, and 164, Pub. L. 104-191; Pub. L. 111-5, Div. A Title XIII and Div. B, Title IV.]

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required by KRS 16.645(18), 61.565, 61.675, 78.545(33), and 78.625 to make contributions to the retirement systems, to report creditable compensation [and contributions] to the retirement systems and other information that the Board of Trustees may require and perform other duties and responsibilities as participating employers. 26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made. This administrative regulation sets out the reporting requirements for all participating agencies.

Section 1. (1) Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site[website] by:

(a) The Enter Report Details Module; or

(b) Uploading an electronic file in the format specified in the Employer Contribution Record Layout[report the creditable compensation and contributions of its employees at least once per month on the Form 3, Summary of Wages Earned, or by diskette or tape in the electronic format "KRSPAY" or other electronic format acceptable to the retirement system. Each employer who reports on diskette or tape may report on a semimonthly basis. Each

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employer shall report only the creditable compensation earned during the period for which the report is prepared and shall report only the employee and employer contributions on the basis of this creditable compensation.]

(2) The retirement systems shall notify each employer of the Web address of the secure Kentucky Retirement Systems' Employer Self Service **Web site**[website] and shall notify each employer if the Web address of the secure Kentucky Retirement Systems' Employer Self Service **Web site**[website] changes.

(3)[(a)] Each employer shall submit the contributions required by[under] KRS 61.675 and KRS 78.625:

1. Electronically using the secure Kentucky Retirement Systems' Employer Self Service **Web site**[website];

2. By mailing or **hand delivering**[hand-delivering] a check;

3. By the eMARS system maintained by the Finance and Administration Cabinet; or

4. By wire transfer.

(4) The employer shall report all creditable compensation paid during a month by the **tenth**[40th] day of the following month.[:]

(a) The employer shall designate the month to which the creditable compensation should be applied if it is not the month for which the employer is reporting **if the month the creditable compensation was earned is the month in which the employee**[when]:

1. ~~[the month the creditable compensation was earned is the month in which the employee]~~Became employed;

2. ~~[the month the creditable compensation was earned is the month in which the employee]~~Became eligible to participate in one of the systems administered by Kentucky Retirement Systems;

3. ~~[the month the creditable compensation was earned is the month in which the employee]~~Was transferred to hazardous coverage from nonhazardous participation;

4. ~~[the month the creditable compensation was earned is the month in which the employee]~~Was transferred from hazardous coverage to nonhazardous participation;

5. ~~[the month the creditable compensation was earned is the month in which the employee]~~Terminated from employment; or

6. ~~[the month the creditable compensation was earned is the month in which the employee]~~Became ineligible to participate in one (1) of the systems administered by Kentucky Retirement Systems.[:]

(b) If the employee is paid creditable compensation in a lump-sum or nonrecurring payment, the employer shall designate the reason for the lump-sum or nonrecurring payment.[:]

1. If the lump-sum or nonrecurring payment was earned during a specific time period, the employer shall designate the time period during which the lump-sum or nonrecurring payment was earned.[:]

2. If the employer fails to designate a specific time period during which the lump-sum or non-recurring payment was earned, the retirement systems shall be considered a lump-sum bonus pursuant to KRS 16.505(8), 61.510(13), or 78.510(13).

(5) The provisions of **subsection (1)**[paragraph 4] of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet. [Creditable compensation for a lump-sum bonus, severance pay, or an employer-provided payment for purchase of service credit shall be made in accordance with the provisions of KRS 16.505(8), 61.510(13), or 78.510(13). Total service shall include all service credit earned as of the date of the report or purchase.]

(6)[(a)] An employer may request a waiver from the provisions of paragraph (1) of this section by filing the Form 7073, "KRS Electronic Reporting Waiver", if the employer does not have the computer equipment, technology, or internet access to report under the provisions of paragraph (1) of this section:

(b) A waiver granted under this paragraph shall last for a period of one (1) year. An employer may file a request for waiver each year after the expiration of the waiver from the previous year.

(c) An employer who is granted a waiver under this paragraph shall pay an administrative fee of \$150.00 per month; and

(d) An employer who is granted a waiver may begin electronic reporting under paragraph (1) before the expiration of the waiver.

(7) Each employer shall report [their]employees who are regular full-time employees as defined by KRS 61.510(21) and [KRS]

78.510(21) and shall remit employer and employee contributions for those employees.

(7)[(8)] Each employer shall report [their]employees who are not regular full-time employees as defined by KRS 61.510(21) and [KRS] 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6).

Section 2. (1) Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems' secure electronic mail server.

(2)(a) If an employer submits personal information about its employees to the retirement systems in an unsecure electronic format or submits personal information regarding its employees intended to be submitted to the retirement systems to another person or entity by **hand delivery**[hand-delivery], mail, fax, or in an electronic **format**[format]; the employer shall notify [its]affected employees in writing of the disclosure of [their]personal information and provide information regarding obtaining [their]credit reports.

(b) Personal information includes the member's first name or first initial and last name in combination with the member's:

1. Social Security number;

2. Driver's license number;

3. Personal Identification Number permitting access to the member's account; or

4. Medical Information.

(c) The retirement systems shall notify the employer of a disclosure upon discovery.[:]

(d) The employer shall notify the retirement systems of a disclosure upon discovery.[:]

(e) The employer shall submit a draft of the written notification to be made to [its]affected employees to the retirement systems for approval or denial.[:]

(f) The employer shall submit copies of the written notifications made to [its]affected employees to the retirement systems after the notifications have been made.[:]

(g) If the retirement systems is required by federal or state law to provide notification to [its]affected members about the employer's disclosure of [their]personal information or if the retirement systems determines that it should provide the notification to its affected members because of the nature or magnitude of the employer's disclosure, the employer shall reimburse the retirement systems for its costs in notifying [its]members affected by the employer's disclosure.[:]

(h) In transmitting any medically related personal information, the employer shall comply by all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 [("HIPAA")], Public Law 104-191 and the Health Information Technology for Economic and Clinical Health Act [("HITECH")], Public Law 111-5.

(i) Each employer shall execute a data use agreement with retirement systems.

Section 3. (1)(a) The retirement systems shall submit an invoice to employers for any payments owed to the retirement systems, which were not paid through the normal monthly reports.[:]

(b)The employer shall remit payment to the retirement systems by the due date provided on the invoice.[:]

(2) The retirement systems may offset funds owed by the employer to the retirement systems with funds owed to the employer by the retirement systems.

Section 4.[3:] (1) An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.

(2) The interest shall be assessed from the time period for which the creditable compensation has been reinstated.

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Section 5.[4-] If an employer refuses to provide the retirement systems access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information or records by the retirement systems, the retirement systems may, if appropriate:

(a) Hold all payments of any funds due to the employer; or

(b) Hold payments of refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement systems.

Section 6.[5-] (1)[(3)](a) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), \$150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the employee's creditable compensation but shall not report any further employer or employee contributions on the employee's creditable compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

(b) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.

(c) Effective with respect to plan years beginning on and after July 1, 2002, **a plan members annual compensation that**~~the annual compensation of a plan member which~~ exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B) shall not be taken into account in determining benefits or contributions due for any plan year. Annual compensation shall include compensation during the plan year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(d) A participating member may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if:

1. The member's creditable compensation has exceeded the maximum annual compensation limit contained in 25 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;

2. The member has filed a notification of retirement; and

3. The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003. Upon receipt of employee contributions, the retirement systems shall bill the employer for the employer contributions on the excess creditable compensation, and the employer shall remit the employer contributions to the retirement systems. The excess shall only be included in retirement calculations if both the employee and employer have paid their respective contributions.~~[Section 2- If creditable compensation in excess of actual compensation is reported, the employer shall request a refund of the excess employer and employee con-~~

~~tributions. The retirement system shall remit the excess employer and employee contributions to the employer in the form of checks made payable to the employer. The employer shall distribute the employee's contributions to the employee if the amount is due the employee after making payroll deductions in accordance with federal and state law.~~

~~Section 3- If creditable compensation is reported that is less than actual creditable compensation paid to the employee by the employer, the employer shall report the deficiency by pay period to the retirement system along with the employer and employee contributions owed as a result of the deficiency. The employer may report the additional creditable compensation by letter or other form which shall include:~~

~~(1) The Social Security number, name, and gross creditable compensation of the employee by pay period.~~

~~(2) The total employer and employee contributions required on the additional creditable compensation and the computation of both amounts.~~

~~(3) The signature of the individual authorized by the agency to report contributions to the retirement system.~~

~~Section 4- If an expense allowance is paid to a county official by the state, the state shall withhold the employee contributions applicable to the amount and remit it to the retirement system on behalf of the county. The county shall report the employer contributions on the Form 3-E, Expense Allowances Quarterly Report.~~

~~Section 5- An employer may change the name or address of an employee by submitting a letter or personnel document effecting the change signed by a personnel or payroll official.~~

~~Section 6- Upon request, each employer shall provide to the retirement system information relating to all employee wages, employment status, or other employment related information using Form 3, "Summary of Wages Earned" and Form 3-E, "Expense Allowances Quarterly Report. Upon request, each employer shall make all relevant records related to its employees available to the retirement system during regular working hours.]~~

~~[Section 5- Incorporation by Reference- (1) The following material is incorporated by reference:~~

~~(a) Form 7073, "KRS Electronic Reporting Waiver", May 2011; [Form 3, Summary of Wages Earned, June 1991", Kentucky Retirement Systems; and~~

~~(b) "Form 3-E, Expense Allowances Quarterly Report, July 1991", Kentucky Retirement Systems.]~~

~~[(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

JENNIFER L. ELLIOTT, Chair

APPROVED BY AGENCY: June 1, 2011

FILED WITH LRC: June 13, 2011 at 2 p.m.

CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8815.

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (As Amended at ARRS, August 15, 2011)

105 KAR 1:190. Qualified domestic relations orders.

RELATES TO: KRS 16.505(36), (37), (38), 16.576, 16.645(5), 61.510(37), (38), (39), 61.690, 78.510(34), (35), (36), 78.545(26), 205.712, 26 U.S.C. 414(p)

STATUTORY AUTHORITY: KRS 61.645(9)(g), 61.690

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.690 requires the retirement systems to promulgate an administrative regulation establishing the requirements, procedures, and forms

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necessary to administer qualified domestic relations orders (QDROs). This administrative regulation establishes the requirements, procedures, and forms necessary to administer QDROs.

Section 1. Definitions. (1) "Alternate payee" is defined by KRS 16.505(38), 61.510(39), and 78.510(36).

(2) "Qualified domestic relations order" is defined by KRS 16.505(37), 61.510(38), and 78.510(35).

(3) "Participant" is defined by KRS 16.505(36), 61.510(37), and 78.510(34).

Section 2. The provisions of this section shall only apply to QDROs that were approved by the retirement systems for enforcement prior to July 14, 2000. After the participant notifies the retirement system of the participant's requested effective retirement date, the retirement systems shall administer a QDRO that was entered prior to the participant's retirement as follows:

(1) The retirement systems shall send the participant and the alternate payee information regarding the amount of the benefits payable pursuant to the QDRO.

(2) The amount of the benefits payable pursuant to a QDRO approved for enforcement by the retirement systems prior to July 14, 2000, shall be calculated as follows:

(a) The alternate payee shall receive the amount computed by multiplying the basic option amount due the participant by the percentage allocated to the alternate payee by the terms of the QDRO multiplied by a fraction, the numerator of which shall be the period of service specified in the QDRO and the denominator of which shall be the participant's total service credit. The participant shall be paid all amounts in excess of the amounts paid to the alternate payee.

(b) If a lump sum payment equal to the balance of the participant's account is to be made, the percentage determined by this calculation shall be multiplied by the balance of the participant's account and the result paid to the alternate payee. The participant shall be paid all amounts in excess of the amounts paid the alternate payee.

(c) If a monthly benefit is paid, the options made available to the alternate payee shall be derived from the participant's basic option.

(d) Service added for disability under KRS 61.605 or [KRS]16.582 shall not be included in determining the amount payable to the alternate payee. Service credit purchased during the period of marriage shall be included in the calculation under this paragraph.

(e) The payment options offered to the alternate payee shall be based on the alternate payee's life expectancy. The alternate payee shall be offered the payment options described in KRS 61.635, which do not provide lifetime benefits to a beneficiary and, if the participant is eligible, the ten (10) year certain option as provided by KRS 16.576(5).

(f) If the alternate payee predeceases the participant after the participant's retirement, a lump sum, determined actuarially, of the payments remaining to the alternate payee, if any, shall be paid to the alternate payee's estate.

(g) The alternate payee of a QDRO approved for enforcement by the retirement systems prior to July 14, 2000, shall receive increases given recipients under KRS 61.691.

(3) If the participant dies prior to retirement and prior to the death of the alternate payee, the participant's account shall be divided in accordance with the QDRO between the alternate payee and the beneficiary.

(4) If the death benefit is a refund of the participant's accumulated contributions and interest, the alternate payee shall only be offered a lump sum payment representing a portion of the participant's account calculated in accordance with subsection (2) of this section.

(5) If the death benefit is calculated under KRS 16.578 or 61.640, the alternate payee shall be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment, or an actuarial lump sum payment.

(6) If the alternate payee dies prior to the participant's death, retirement, or withdrawal of account, payment shall not be made to the alternate payee.

(7) When benefits become payable to the alternate payee, the retirement system shall establish a separate account for the alternate payee, which shall consist of the alternate payee's pro rata share of the participant's contributions, service, and benefit. Once the alternate payee's account has been established, the alternate payee shall not be entitled to further benefits acquired by the participant.

Section 3. (1) All sections of this administrative regulation, except for Section 2, shall only apply to QDROs approved for enforcement by the retirement systems on or after July 15, 2010.

(2) A QDRO ~~may~~shall apply to ~~any~~any[all] retirement systems administered by the Kentucky Retirement Systems as established by KRS Chapters 16, 61, and 78 in which the participant is a member during the period of the marriage that is the subject of the QDRO and from which the participant will receive retirement benefits, except for the retirement systems established by KRS 16.568, 61.663, and 78.652.

(3) A QDRO shall contain the following information:

(a) The participant's name;

(b) The participant's mailing address;

(c) The participant's Kentucky Retirement Systems member identification number or the participant's Social Security number;

(d) The alternate payee's name;

(e) The alternate payee's mailing address;

(f) The system or systems to which the QDRO applies;

(g) The amount or percentage to be paid to the alternate payee;

(h) When payments under the QDRO are to end;

(i) How the cost of living increase provided in KRS 61.691 is to be administered, if administration is not otherwise provided for by KRS 61.690; and

(j) All information required on the form that applies to the subject matter of the order:

1. Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property;

2. Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property;

3. Form 6436, Qualified Domestic Relations Order for Child Support;

4. Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency; or

5. Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

Section 4. (1) The participant shall sign and submit a Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Order to obtain the information necessary for the Court to calculate the amount due to the alternate payee for purposes of the QDRO.

(a) The participant shall provide the retirement systems with the following information:

1. The participant's and the alternate payee's Social Security numbers;

2. The participant's and the alternate payee's dates of birth;

3. Date of marriage;

4. Date of divorce;

5. The participant's and the alternate payee's mailing addresses; and

6. The addresses of the participant's and the alternate payee's legal counsel, if any.

(2) If the participant has not yet retired, the retirement systems shall provide as of the date of the divorce, the participant's:

(a) Accumulated contributions and interest contributed and earned during the marriage in each system in which the participant has marital service;

(b) Total number of months of service credit earned and purchased ~~on file at the systems~~ as of the effective date of the divorce or~~and~~ upon the request in each system in which the participant has service;

(c) The number of months of service credit earned and purchased during the marriage in each system in which the participant has marital service;

(d) The hypothetical monthly retirement benefit pursuant to

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KRS 61.595 the participant would receive when the participant is eligible for an unreduced retirement benefit based on the final compensation and service credit as of the effective date of the divorce or upon the request in each system in which the participant has marital service; and

(e) The hypothetical actuarial refund payment option or lump-sum refund payment the participant would receive when the participant is eligible for an unreduced benefit based on the final compensation and service credit as of the effective date of the divorce or upon the request in each system in which the participant has marital service.

(3) The retirement systems shall use the participant's final compensation as of the date of the divorce or upon the request and the service credit accrued by the participant during the marriage or upon the request when calculating the participant's projected basic monthly retirement allowance and the projected actuarial refund or lump-sum refund payment.

(4) If the participant retired prior to the effective date of the divorce, the retirement systems shall provide the participant's:

(a) Current monthly retirement benefit in each system from which the participant is receiving a monthly retirement benefit;

(b) Total [The total] number of months of service credit earned and purchased during the marriage in each system from which the participant is receiving a monthly retirement benefit; and

(c) Total [The total] number of months of service credit in each system from which the participant is receiving a monthly retirement benefit.

(5) The alternate payee may request and obtain the information necessary for the court to calculate the amount due to the alternate payee for purposes of the QDRO by submitting a Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders, and an attached court issued subpoena or order compelling the release of the requested information.

(6) If information other than the information supplied by the retirement systems in accordance with subsections (2) through (4) of this section is required:

(a) [then] The participant shall submit to the systems an additional signed request for information in writing; or

(b) [send an additional signed request for information in writing.] The alternate payee shall submit to the systems an additional request and an attached court issued subpoena or order compelling the release of the requested information.

(c) Requests for information other than the information supplied by the retirement systems in accordance with subsections (2) through (4) of this section shall be answered pursuant to KRS 61.661. [(5) If information other than the information supplied by the retirement systems in accordance with subsections (2) through (4) of this section is required, then the participant shall send an additional request for information in writing or the court shall issue a subpoena or an order requesting the additional information.]

Section 5. (1) A QDRO shall be on the form incorporated by reference in this administrative regulation that applies to the subject matter of the order.

(2) A QDRO shall be signed by the judge of a court with jurisdiction over the case or by the head of the administrative agency, or their designee, with statutory authority to issue a QDRO.

(3) A QDRO shall be entered and certified by the Clerk of the Court or by the head of the administrative agency, or their designee, with statutory authority to issue a QDRO.

(4) The participant, alternate payee, or their legal counsel shall submit a copy of the entered and certified QDRO to the retirement systems. [A copy of the QDRO signed by the Judge and entered by the Clerk of the Court may be submitted if the copy is certified by the Clerk of the Court.]

(5)(a) The participant, alternate payee, or their legal counsel shall not submit a QDRO that is before an appellate court and is not final.

(b) The retirement systems shall not have [no] responsibility or liability for payments made pursuant to a QDRO [that was] submitted in violation of this subsection that was altered or dissolved by an order of an appellate court of competent jurisdiction.

(6) The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount of fifty (50) dollars made payable to the Kentucky State Treasurer as a nonrefundable processing fee with [for] the QDRO. The retirement systems shall not review the QDRO unless the fee is submitted with the QDRO.

(a) A QDRO shall provide who shall pay the fee, including if the fee is to be divided between the participant and the alternate payee. Only one (1) certified check or money order shall be submitted in payment of the fee.

(b) There shall not be a [be no] fee required for submission of a Form 6436, Qualified Domestic Relations Order for Child Support or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(c) If the dissolution of marriage action was filed in forma pauperis, then the retirement systems shall waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be submitted to the retirement systems [filed] with the entered and certified QDRO.

(7) If the retirement systems determines that the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation the participant, alternate payee, or their legal counsel shall have ninety (90) days from the date the retirement systems' notification of the deficiency was mailed as provided in Section 6(4) of this administrative regulation to submit a corrected QDRO. If a corrected QDRO is not submitted within ninety (90) days of the date of notification then the participant, alternate payee, or their legal counsel shall be required to submit an additional [a] nonrefundable fifty (50) dollar fee with a QDRO submitted after ninety (90) days.

Section 6. (1) The retirement systems shall determine if the QDRO is complete and qualifies as a QDRO pursuant to KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.

(a) A QDRO shall not be effective until the retirement systems has determined that it complies with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation and has approved the QDRO for enforcement.

(b) The retirement systems shall provide notification of its termination within ninety (90) days of the submission of the QDRO during the time period from July 15, 2010 until July 14, 2011.

(c) The retirement systems shall provide notification of its termination within forty-five (45) days of the submission of the QDRO after July 15, 2011.

(2) The retirement systems shall notify the participant; [the participant's legal counsel, if known;] the alternate payee; [the alternate payee's legal counsel, if known,] that the QDRO has been approved for enforcement.

(a) If the participant has not yet retired, the retirement systems shall place the QDRO on file until the participant files a notification of retirement or an application for refund.

(b) If the participant has retired, the retirement systems shall begin to enforce the QDRO the month after it is approved for enforcement by the retirement systems.

(3) The alternate payee shall submit a completed Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, prior to receiving payment under a QDRO. If the alternate payee has not submitted a completed Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, by the last day of the month before the first payment under the QDRO is due to be paid to the alternate payee, the retirement systems shall: [segregate and hold the alternate payee's payments until the alternate payee has submitted the required form.]

(a) Segregate and hold the alternate payee's payments;

(b) Hold the segregated amount for a period of no more than [the] eighteen (18) months, with the period beginning on the date the first payment was required by the QDRO approved for enforcement by the retirement systems;

(c) Pay the segregated amount to the alternate payee, if a valid Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, is submitted within the eighteen (18) month period;

(d) Pay the segregated amount to the participant, if a valid

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Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, is not submitted within the eighteen (18) month hold period; or

(e) Apply the QDRO prospectively, if after the eighteen (18) month hold period expires a valid Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, is submitted.;

~~(c) If a valid Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, is submitted within the eighteen (18) month hold period, pay the segregated amount to the alternate payee;~~

~~(d) If no valid Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, is submitted within the eighteen (18) month hold period, pay the segregated amount to the participant;~~

~~(e) If after the eighteen (18) month hold period expires a valid Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, is submitted the QDRO shall only be applied prospectively;~~

~~(f) The eighteen (18) month time period begins on the date the first payment was required by the QDRO approved for enforcement by the retirement systems.;~~

(4) If the retirement systems determines that the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation, the retirement systems shall notify the participant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, that:

(a) The retirement systems has determined the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation;

(b) The reason for the determination that the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation; and

(c) The changes necessary to make the QDRO in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.

Section 7. (1) If a QDRO approved for enforcement and on file at the retirement systems is amended or terminated, the participant, alternate payee, or their legal counsel shall submit the amended entered and certified QDRO or an entered and certified order terminating the QDRO to the retirement systems as provided in Section 5 of this administrative regulation.

(2) The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount of twenty-five (25) dollars made payable to the Kentucky State Treasurer as a nonrefundable processing fee for the amended QDRO or order terminating the QDRO. The retirement systems shall not review the amended QDRO or order terminating the QDRO unless the fee is submitted with the amended QDRO or order terminating the QDRO.

(a) If the dissolution of marriage action was filed in forma pauperis, then the retirement systems shall waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be submitted to the retirement systems [filed] with the entered and certified QDRO.

(b) There shall not be a [be no] fee required for submission of a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(3) The retirement systems shall review the amended QDRO using the same procedures found in Section 6 of this administrative regulation.

(4) If the retirement systems determines that the amended QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation or that the order terminating the QDRO is insufficient the participant, alternate payee, or their legal counsel shall have ninety (90) days from the date the retirement systems' notification of the deficiency was mailed as provided in Section 6(4) of this administrative regulation to submit a corrected amended QDRO or a corrected order terminating the QDRO. If a corrected amended QDRO or a corrected order terminating the QDRO is not submitted within ninety (90) days of the date of notification, then the participant, alternate payee, or their legal counsel

shall be required to submit an additional [a] nonrefundable twenty-five (25) dollar fee with an amended QDRO or order terminating the QDRO that is submitted after ninety (90) days.

(5) An amended QDRO or an order terminating a QDRO approved by the retirement systems shall only be administered prospectively.

Section 8. All fees collected pursuant to this administrative regulation shall be deposited in the Retirement Allowance Account established in KRS 61.580.

Section 9. (1) A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce entered prior to the participant's effective retirement date shall be submitted on the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, unless the QDRO is initially submitted following the participant's retirement date.

(2) The effective date of the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall be the participant's effective retirement date as provided in KRS 61.590[590] or, if the Form 6434 is approved following the participant's effective retirement date, the month following the month the Form 6434 was approved for enforcement by the retirement systems. If the participant receives a lump sum payment representing monthly retirement benefits paid retroactively to the participant's effective retirement date, the alternate payee shall receive a portion of the lump sum payment as provided in the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property. If the participant is not receiving a retirement benefit, then the alternate payee shall not receive ~~The alternate payee shall not receive a retirement benefit if the participant is not receiving]~~ a retirement benefit.

Section 10. The Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

(1) ~~A[As a]~~ monthly dollar amount if the participant elects a monthly retirement benefit or ~~[as]~~ a one (1) time lump sum dollar amount[payment] if the participant selects the actuarial refund payment option pursuant to KRS 61.635(11) at the participant's retirement, or ~~[as]~~ a lump sum dollar amount[payment] from participant's refund of contributions and interest if the participant elects to terminate his membership pursuant to KRS 61.625;~~[or]~~

(2) A percentage equal to one-half of the participant's basic monthly retirement benefit attributable to any service credit earned or purchased during the marriage pursuant to KRS 61.595 or 16.576, actuarial refund pursuant to KRS 61.635(11), or lump sum payment pursuant to KRS 61.625, which shall be determined as follows: [As a percentage of the participant's basic monthly retirement benefit pursuant to KRS 61.595 or 16.576, actuarial refund pursuant to KRS 61.635(11), or lump sum payment pursuant to KRS 61.625, which may be determined as follows:]

(a) The numerator of the fraction shall be the number of months during which the participant was both a contributing member of ~~[any of]~~ the retirement systems affected by the QDRO [administered by Kentucky Retirement Systems] and married to the alternate payee, including service purchased during the marriage. The retirement systems shall utilize the marital period as provided by the court in the QDRO;

(b) The denominator of the fraction, which shall be determined by the retirement system as of the participant's effective retirement date or the participant's termination date prior to the participant's filing of a request for a refund of contributions and interest, shall be the total number of months of service credit used to calculate the participant's retirement payment options or the total number of months of service credit the participant had at the time of the request for refund of contributions and interest; and

(c) The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee; or

(3) An alternative percentage of the participant's basic monthly retirement benefit pursuant to KRS 61.595 or 16.576, actuarial

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refund pursuant to KRS 61.635(11), or lump-sum payment pursuant to KRS 61.625, in the system or systems[system(s)] affected by the QDRO.

Section 11. (1) The provisions of this section shall only apply to participants who were participating [whose membership date is] prior to August 1, 2004. If a participant who was participating [whose membership date is] prior to August 1, 2004, and who has a QDRO on file at the retirement systems is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, or 61.621 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as follows:

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as provided in Section 10(1) of this administrative regulation, the retirement system shall pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit; or

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as provided in Section 10(2) and (3) of this administrative regulation, the retirement systems shall not use the service credit added to the participant's account pursuant to KRS 16.582(5)(a) or 61.605(1) when calculating the amount the alternate payee is due under the QDRO on file at the retirement systems.

(2)(a) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant is not eligible to receive early retirement benefits, the alternate payee's payment shall be discontinued.[:]

(b) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.[:]

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615, the alternate payee's payment shall be reinstated.[:]

(d) If the participant later begins receiving early retirement benefits while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

Section 12. (1) The provisions of this section shall only apply to participants whose participation began [membership date is] on or after August 1, 2004. If a participant whose participation began [membership date is] on or after August 1, 2004, and who has a QDRO on file at the retirement systems is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, or 61.621 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as follows: [provided in Section 11(1)(b) of this administrative regulation.]

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as provided in Section 10(1) of this administrative regulation, the retirement system shall pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit; or

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as provided in Section 10(2) and (3) of this administrative regulation, the retirement systems shall use the participant's benefit pursuant to KRS 16.582(5)(b) or 61.605(2) when calculating the amount the alternate payee is due under the QDRO on file at the retirement systems.

(2)(a) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant is not eligible to receive early retirement benefits, the alternate payee's payment shall be discontinued.[:]

(b) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.[:]

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615, the alternate payee's payment shall be reinstated.[:]

(d) If the participant later begins receiving early retirement benefits while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

Section 13. (1) A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce decree entered after the participant's effective retirement date, or initially submitted to the retirement system following the participant's effective retirement date, shall be submitted on the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property.

Section 14. (1) The Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee.

(2) The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

(a) As a monthly dollar amount;

(b) As a percentage of the participant's selected monthly retirement benefit, [pursuant to KRS 61.595,] which shall[may] be determined as follows:

1. The numerator of the fraction shall be the number of months during which the participant was both a contributing member of the retirement systems affected by the QDRO and married to the alternate payee, including service purchased during the marriage. The retirement systems shall utilize the marital period as provided by the court in the QDRO. [The numerator of the fraction shall be the number of months during which the participant was both a contributing member of any of the retirement systems administered by Kentucky Retirement Systems and married to the alternate payee, including service purchased during the marriage.]

2. The denominator of the fraction, shall be the total number of months of service credit used to calculate the participant's retirement payment option; and

3. The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee.[:]

(c) An alternative percentage of the participant's selected monthly retirement benefit in the system or systems[system(s)] affected by the QDRO.

Section 15. (1)(a) If the retirement systems determines that the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation, the retirement systems shall:

1. Segregate and hold the amount that would have been payable to the alternate payee if the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, had been in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation;

2. Hold the segregated amount for a period of no more than the eighteen (18) month hold period.[: (A)] The eighteen (18) month hold period begins on the date the first payment would be required by the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, that the retirement systems determined was not in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.[:]

3. If a Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation within the eighteen (18) month hold period, pay the segregated amount to the alternate payee;

4. If no subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation within the eighteen (18) month hold period, pay the segregated amount to the participant; or

5. If after the eighteen (18) month hold period a subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation, the Form

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6435, Post-Retirement Qualified Domestic Relations Order shall only be applied prospectively. ~~[(b) The eighteen(18) month time period begins on the date the first payment would be required by the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property that the retirement systems determined was not in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.]~~

(2) The effective date of the first payment to the alternate payee shall be the month following the month the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is approved for enforcement by the retirement systems.

Section 16. (1) A QDRO issued for purposes of payment of child support shall be submitted on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(2) The monthly dollar amount of child support to be paid by the participant shall be determined by a court of competent jurisdiction or an administrative agency with statutory authority to issue an order for child support in accordance with the laws governing child support.

(3) The retirement systems shall remit the payment for child support to the centralized registry established pursuant to KRS 205.712 and defined in 921 KAR 1:001, Section 1(5).

(a) The payment for child support shall be made payable to "Kentucky Child Support Enforcement".

(b) The participant's name and Social Security number shall be noted on the payment.

(4) An alternate payee listed on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency shall not be required to submit a Form 6130, Authorization for Deposit of Retirement Payment or a Form 6135, Payment of Retirement Payment by Check.

(5) The retirement systems shall not accept a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant has not retired and is not receiving a monthly retirement benefit.

Section 17. (1) A QDRO issued for purposes of payment of alimony or maintenance pursuant to KRS 403.200 shall be submitted on the Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

(2) The amount of alimony or maintenance to be paid by the participant shall be determined by a court of competent jurisdiction in accordance with the laws governing alimony or maintenance.

(3) The retirement systems shall not accept a Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance if the participant has not retired and is not receiving a monthly retirement benefit.

Section 18. (1) The participant shall be responsible for notifying the retirement systems in writing of an event that[which] causes payments to the alternate payee under a QDRO for Division of Marital Property or a QDRO for Alimony/Maintenance to end.

(2) The retirement systems shall hold any payments due the alternate payee pending submission of proof of the event that[which] causes payments to the alternate payee to end is provided by the participant beginning the month after the retirement systems' receipt of the participant's written notification.

(3) The participant shall submit a copy of the alternate payee's marriage certificate, the alternate payee's death certificate, or other reliable documentation as proof of the event that[which] causes the participant's alimony or maintenance to end.

(4) The participant shall submit a copy of the alternate payee's death certificate or other reliable documentation as proof of the event that[which] causes the participant's payments pursuant to the division of marital property to end.

(5) The participant shall not be required to submit written notification if the QDRO specifies the number of months of payments.

(6) If proof is not submitted within ninety (90) days of the writ-

ten notification to the retirement systems, the payments being held shall be released to the alternate payee.

(7) The retirement systems shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification and documentation of the event that causes payments to the alternate payee to end.

Section 19. (1) The participant shall be responsible for notifying the retirement systems in writing of an event that[which] causes payments to the alternate payee under a QDRO for Child Support to be amended or to end.

(2)(a) If an alternate payee is being paid child support pursuant to a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, the participant shall submit an entered and certified order from a court of competent jurisdiction or an administrative agency with statutory authority to order child support providing that payments under the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, shall end or be amended.

(b) The retirement systems shall segregate and hold the payments due to the alternate payee under a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant submits an order changing the custody of the child to someone other than the alternate payee, a copy of the child's marriage certificate, a letter from the child's high school indicating the child's graduation date, the child's birth certificate, an order of emancipation of the minor child, or the child's death certificate.

1. If the QDRO for child support is for the support of more than one (1) child, the retirement systems shall not segregate or hold payments due to the alternate payee.

(c) If the participant does not submit an entered and certified order amending or terminating the QDRO for child support from a court of competent jurisdiction or an administrative agency with statutory authority to order child support within ninety (90) days of the participant's submission as provided in paragraph (b) of this subsection, the payments being held shall be released to the alternate payee.

(3) The retirement systems shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification, documentation of the event, or the court order that causes payments to the alternate payee to end or be amended.

Section 20. (1) If there are multiple QDROs on file for a participant's account, the QDROs shall be administered in the following order:

(a) QDROs for the Division of Marital Property;

(b) QDROs for Child Support;

(c) QDROs for Alimony/Maintenance.

(2) If multiple QDROs for the Division of Marital Property are on file, they shall be administered in the order of approval by the retirement systems.

(3) If multiple QDROs for Child Support are on file, they shall be administered in the order of approval by the retirement systems.

(4) If multiple QDROs for Alimony/Maintenance are on file, they shall be administered in the order of approval by the retirement systems.

(5) If a QDRO for Child Support is submitted subsequent to the participant's retirement and subsequent to the administration of the QDROs on file at the time of the participant's retirement it shall be given priority over any QDROs for Alimony/Maintenance being administered.

(6)(a) The retirement systems shall not administer a QDRO if enforcement of the[such] QDRO would result in the total amount of payments due to the alternate payees to exceed the participant's monthly retirement benefit under the multiple QDROs approved for enforcement by the retirement systems. The retirement systems shall notify the participant and alternate payees if a QDRO cannot be administered due to the exhaustion of the participant's monthly retirement benefit. [If the total amount of the payments due to al-

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ternate payees under the QDROs being administered on the participant's account exceeds the amount of the participant's monthly retirement benefit, the retirement systems shall notify the participant and alternate payees under the QDROs that the QDROs cannot be administered due to the exhaustion of the participant's monthly retirement benefit.]

(b) The retirement systems shall recalculate the amounts due under the QDROs being administered by the retirement systems on a participant's account after the effective date of any cost of living increase provided pursuant to KRS 61.691.

Section 21. The alternate payee shall be responsible for notifying the retirement systems in writing of any change in mailing address. The retirement systems shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when a benefit subject to the QDRO becomes payable. The retirement systems shall not have a~~have no~~ duty or obligation to search for or locate an alternate payee.

Section 22. A QDRO shall not provide that the alternate payee be eligible to enroll in the health insurance plan administered by the retirement systems.

Section 23. (1) If the participant's retirement benefit is corrected pursuant to KRS 61.685, the alternate payee's payment shall also be corrected.

(2) If the alternate payee was overpaid because of the error that is being corrected pursuant to KRS 61.685, the retirement systems shall withhold the amount of the overpayment from the alternate payee's payment.

(3) If the alternate payee was underpaid because of the error that is being corrected pursuant to KRS 61.685, the retirement systems shall pay the alternate payee a lump sum payment of the additional funds due from the participant's payment.

Section 24. ~~[Any person who attempts to make the retirement systems a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the benefits payable to the participant pursuant to a QDRO may petition the court for payment of the retirement systems' costs and legal fees.]~~

[Section 25.] (1) Any person or party who attempts to make the retirement systems a party to a domestic relations action regarding a QDRO or who requests a subpoena be issued for the personal appearance of a representative of the retirement systems to appear at a deposition or in a court or administrative proceeding regarding a QDRO shall reimburse the retirement systems for the travel expenses and services of the retirement systems' representative, or representatives, and the retirement systems' legal counsel, as an administrative fee including:

(a) The Internal Revenue Service standard mileage rate;

(b) Parking and tolls;

(c) Meals if the retirement systems' personnel are required to travel and be away from the retirement office from 6:30 a.m. to 9 a.m., 11 a.m. to 2 p.m., or 5 p.m. to 9 p.m.;

(d) The wages earned by the retirement systems' employees during the time period they are away from the retirement office calculated by multiplying the hourly rate of each employee by the number of hours each employee was away from the office; ~~and~~

(e) The retirement systems costs and legal fees; and

(f)[e] Lodging expenses, if necessary.

(2) The retirement systems shall send an estimated amount owed for expenses to the person or party requesting the subpoena.

(a) The person or party shall remit payment for the estimated expenses before the date of appearance ordered in the subpoena.

(b) The retirement systems shall send an invoice for any additional expenses owed by the party or issue a refund for any amount over the cost of the expenses.

Section 26. Neither the retirement systems nor its trustees nor its employees shall have any liability for making or withholding payments in accordance with the provisions of this administrative regulation.

Section 27. Incorporation by Reference. (1) The following ma-

terial is incorporated by reference:

(a) Form 6015, "Estimate of a Monthly Retirement Allowance", July 2004;

(b) Form 6434, "Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property", May 2011 ~~[July 2010]~~;

(c) Form 6435, "Post-Retirement Qualified Domestic Relations Order for Division of Marital Property", May 2011 ~~[July 2010]~~;

(d) Form 6436, "Qualified Domestic Relations Order for Child Support", May 2011 ~~[August 2010]~~;

(e) Form 6437, "Qualified Domestic Relations Order for Child Support by an Administrative Agency", May 2011 ~~[August 2010]~~;;

(f) Form 6438, "Qualified Domestic Relations Order for Alimony/Maintenance", May 2011 ~~[July 2010]~~;

(g) Form 6130, "Authorization for Deposit of Retirement Payment", April 2010;

(h) Form 6135, "Payment of Retirement Payment by Check", February 2002; and

(i) Form 6433, "Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders", August 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

JENNIFER L. ELLIOTT, Chair

APPROVED BY AGENCY: June 1, 2011

FILED WITH LRC: June 13, 2011 at 2 p.m.

CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8815.

FINANCE AND ADMINISTRATION CABINET Office of Financial Management (As Amended at ARRS, August 15, 2011)

200 KAR 21:010. Procedure for prequalification of underwriters and bond counsel for state bond issues.

RELATES TO: KRS 11A.001-11A.990, 45A.485, 45A.853, 45A.863, 121.015-121.056, 121.150, 121.310, 121.320, 121.330

STATUTORY AUTHORITY: KRS 45A.879

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 45A.853(1)(a) provides that a firm shall not be considered for providing underwriting or bond counsel services to the Commonwealth unless the Office of Financial Management] [and Economic Analysis] [has qualified the firm prior to the issuance of the request for proposals.] KRS 45A.879 requires~~[authorizes] the Office of Financial Management ~~[and Economic Analysis]~~ to promulgate administrative regulations to carry out the provisions of KRS 45A.840 to 45A.879, pertaining to underwriter and bond counsel services. ~~[these requirements by January 1, 1995.]~~ This administrative regulation establishes the procedure for prequalifying underwriting and bond counsel firms.

Section 1. General Requirements for Prequalification of Underwriters and Bond Counsel. (1) The office shall determine, in consultation with each bond issuing agency, the need for issuing requests for proposals for underwriting and bond counsel services for bond issuing agencies.

(2) Based on the determination of need, the office shall draft a request for qualifications for underwriting and bond counsel services for a bond issuing agency which needs the services.

(3) A request for qualifications shall include the following:

(a) A description of the bond issuing agency for which the request for qualifications is being issued;

(b) A requirement that the firm disclose information which would impair the firm's ability to provide the level and type of services needed by the bond issuing agency;

(c) A requirement that the firm certify, by sworn statement, that the firm has complied with campaign finance laws established in KRS 121.015 to 121.056, 121.150, 121.310, 121.320, 121.330

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[and] [421A.050];

(d) A requirement that the firm certify that it has complied with and is not prohibited by the Executive Branch Code of Ethics, KRS 11A.001 to 11A.990, from entering into a contract with the Commonwealth of Kentucky;

(e) A requirement that the firm certify that it has complied with KRS 45A.485;

(f) A statement that the firm is not prohibited by KRS 45A.863 from entering into a contract with the Commonwealth of Kentucky;

(g) A statement that the Commonwealth shall not be liable for costs associated with a firm's preparation and submission of a response to a request for qualifications; and

(h) A description of the process by which a response to the request for qualifications shall be evaluated by the office.

Section 2. Request for Qualifications for Underwriter Services.

(1) If the nature of the requested underwriting services requires the inclusion of information in addition to the requirements established in Section 1 of this administrative regulation, the following elements shall be included:

(a) A description of the history and organization of the firm and its municipal finance department;

(b) If applicable, a summary of the relevant financial advisory experience of the firm;

(c) The audited financial statements of the firm for the previous fiscal year or years;

(d) A list of the relevant underwriter experience of the firm on negotiated municipal bond transactions of issuers of similar type as that of the state bond issuing agencies;

(e) A list of experience and qualifications of the firm representatives proposed to work on issues of the bond issuing agency;

(f) If applicable, a list of the relevant comanaging underwriter experience of the firm on negotiated municipal bond transactions;

(g) If applicable, identification of the lead banker or contact person at the firm and description of that individual's[his or her] experience and qualifications;

(h) Identification of the person in the firm proposed to perform cash flow and debt structuring analyses and a description of that individual's[his or her] experience and qualifications; and

(i) Specific references for the firm's experience and the lead or principal contact person.

(2) If a request for qualifications is for a Kentucky comanaging underwriter, the request for qualifications shall require the firm to:

(a) State the authority of the firm's office located in the Commonwealth to commit capital to an underwriting, independent of some other office of the firm, and the dollar limit, if any;

(b) Identify the firm's underwriter who has responsibility for competitive bond sales in the Commonwealth, and a description of that individual's[his or her] experience and qualifications;

(c) Specify[Specific] references for the firm's experience and the underwriter in the office located in the Commonwealth;

(d) Provide evidence that the firm has bid on twenty (20) percent of School Facilities Construction Commission supported debt issues and twenty (20) percent of the 100 percent locally-funded school bond issues, within the previous calendar year; and [-];

(e) Describe the emphasis the firm's office located in the Commonwealth places on selling the Commonwealth's bonds to retail buyers located in the Commonwealth.

Section 3. Request for Qualifications for Bond Counsel Services. If the nature of the requested bond counsel services requires the inclusion of information in addition to the requirements established in Section 1 of this administrative regulation, the following elements shall be included:

(1) A description of the history and organization of the firm and its municipal finance and tax law department;

(2) A statement of the relevant bond counsel experience of the firm in applicable areas of finance as required by the bond issuing agency for which the request for qualifications is being issued;

(3) A statement of the experience and qualifications of the firm's personnel proposed to work on bond issues of the bond issuing agency;

(4) Proof that the firm is listed as a "municipal bond attorney" in the most recently published edition of "The Bond Buyer's Municipal

Marketplace";

(5) A statement of professional liability insurance coverage showing the limits of the coverage; and [(6) A certification as to whether the firm's principal place of business is located in Kentucky as defined by KRS 45A.873(3); and]

[(6) [(7)] A statement of specific references for the experience of the firm and personnel proposed to work on the bond issues of the bond issuing agency.

Section 4. Advertisement and Mailing of Requests for Qualifications. (1) The office shall advertise the request for qualifications in a financial newspaper or financial publication with national circulation.

(2)(a) A request for qualifications shall be mailed to:

1. Firms that were prequalified during the prior period; and

2. Firms that have requested, in writing, a request for qualifications from the office.

(b) A firm shall notify the office of a change in mailing address.

(3) An interested firm shall file a written response to the request for qualifications prior to the deadline designated in the request for qualifications. A firm that fails to meet the deadline shall be prohibited from participating in the prequalification process for that qualification period.

(4) The office shall inform each responding firm, in writing, of the results of the prequalification process.

Section 5. Certification of Prequalification. (1) A master list of firms prequalified for providing underwriter and bond counsel services shall be certified and maintained by the office.

(2) The office shall conduct the prequalification process on at least a biennial basis.

(3) The office shall accept prequalification applications for consideration outside of the scheduled prequalification period from a firm that, since the last prequalification period:

(a) Has been newly incorporated; or

(b) Has opened a new office in the Commonwealth.

F. THOMAS HOWARD, Executive Director

APPROVED BY AGENCY: June 9, 2011

FILED WITH LRC: June 9, 2011 at 2 p.m.

CONTACT PERSON: DeVon Hankins, Policy Advisor, 392 Capital Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

GENERAL GOVERNMENT CABINET Board of Dentistry (As Amended at ARRS, August 15, 2011)

201 KAR 8:532. Licensure of dentists.

RELATES TO: KRS 39A.350 - 366, 214.615, 304.040 - 075, 313.010(9), 313.030, 313.035, 313.080, 313.130, 313.245

STATUTORY AUTHORITY: KRS 214.615(2), 313.020(2), 313.021(1)(a), (b), (c), 313.035(1), (3), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.035 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dentists. This administrative regulation establishes requirements and procedures for licensure of dentists.

Section 1. General Licensure Requirements. An applicant desiring dental licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(2) Submit a completed, signed, and notarized Application for Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

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

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(5) Provide proof of completion of the requirements of KRS 214.615(1);

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- (6) Complete and pass the board's jurisprudence exam;
- (7) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association;
- (8) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;
- (9) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;
- (10) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental school or college or dental department of a university;
- (11) Provide proof that the applicant has successfully completed Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and
- (12) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination. (1) Each individual desiring initial licensure as a dentist by examination shall complete all of the requirements listed in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dentist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of his application.

(a) Prior to July 15, 2013, the board shall accept the following regional clinical examinations:

1. The examination of the Council of Interstate Testing Agencies (CITA);
2. The examination of the Central Regional Dental Testing Service (CRDTS);
3. The examination of the North East Regional Board of Dental Examiners (NERB);
4. The examination of the Southern Regional Testing Agency (SRTA); and
5. The examination of the Western Regional Examining Board (WREB).

(b) After July 15, 2013, the board shall only accept a nationalized clinical examination.

(3) An individual desiring initial licensure as a dentist by examination more than two (2) years after fulfilling all of the requirements of his CODA accredited dental education shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan approved by the board.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dentist by credentials shall:

(1) Complete all of the requirements listed in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dentistry when he or she was legally authorized to practice dentistry in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. ~~Requirements for~~ Student Limited Licensure. (1)

Each individual desiring a student limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (10) and (11);

(b) Provide a letter from the dean or program director of a postgraduate, residency, or fellowship program in the Commonwealth of Kentucky stating that the applicant has been accepted into a program and the expected date of completion;

(c) Submit a signed Statement Regarding Student Licensure Limitations; and

(d) Submit an official final transcript of the applicant's dental coursework with degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a student and shall only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a student.

(4) A program enrolling an individual holding a student limited license shall notify the board in writing of the date the student graduates from or exits the program.

(5) Nothing in this section shall prohibit:

(a) A student from performing a dental operation under the supervision of a competent instructor within the dental school, college, or department of a university or private practice facility approved by the board. The board may authorize a student of any dental college, school, or department of a university to practice dentistry in any state or municipal institution or public school, or under the board of health, or in a public clinic or a charitable institution. A fee shall not be accepted by the student beyond the expenses provided by the stipend;

(b) A student limited license holder from working under the general supervision of a licensed dentist within the confines of the postgraduate training program; and

(c) A volunteer health practitioner from providing services under KRS 39A.350-366.

Section 5. ~~Requirements for~~ Faculty Limited Licensure. (1) Each individual desiring a faculty limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (10) and (11);

(b) Provide a letter from the dean or program director of the dental school showing a faculty appointment with one (1) of the Commonwealth's dental schools;

(c) Submit a signed Statement Regarding Faculty Licensure Limitations; and

(d) Submit an official final transcript of his dental coursework with degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a faculty member and shall only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a faculty member.

(4) A program employing an individual holding a faculty limited license shall notify the board in writing of the date the licensee exits the program.

Section 6. Requirements for Licensure of Foreign Trained Dentists. (1) Each individual desiring licensure as a dentist who is a graduate of a non-CODA accredited dental program shall successfully complete two (2) years of postgraduate training in a CODA accredited general dentistry program and shall:

(a) Provide proof of having passed the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service with a score of 650 on the paper-based examination or a score of 116 on the internet-based examination, if English is not the applicant's native language;

(b) Submit a completed, signed, and notarized Application for Dental Licensure with an email contact address and with an at-

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tached applicant photo taken within the past six (6) months;

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

(d) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(e) Provide proof of having completed the requirements of KRS 214.615(1);

(f) Complete and pass the board's jurisprudence exam;

(g) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines set forth by the American Heart Association;

(h) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(i) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(j) Provide proof of having successfully completed two (2) years postgraduate training in a CODA accredited general dentistry program;

(k) Submit one (1) letter of recommendation from the program director of each training site;

(l) Provide proof of successful completion of Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations within the five (5) years preceding application for licensure;

(m) Provide proof of successfully completing within the five (5) years prior to application a clinical examination approved in Section 2(2) of this administrative regulation; and

(n) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual desiring initial licensure as a dentist who is a graduate of a non-CODA accredited dental program and applies more than two (2) years after fulfilling all of the requirements of his post-graduate training in a CODA accredited general dentistry program shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

Section 7. Requirements for Charitable Limited Licensure. (1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed, signed, and notarized Application for Charitable Dental Licensure with an attached applicant photo taken within the past six (6) months;

(c) Not be subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(d) Have a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; and

(e) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services that have met the requirements of KRS 313.254 and 201 KAR 8:580;

(b) Only perform procedures allowed by KRS 313.010(9), which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured under KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual, and without payment or reimbursement by any governmental agency or insurer; and

(e) Have a charitable limited license that shall be valid for no

more than two (2) years and shall expire during the regular dental renewal cycle.

(f) Comply with reciprocity requirements if applicable.

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participating in a charitable clinic shall have a license to practice dentistry in the state in which the dentist practices.

Section 8. Requirements for Specialty Licensure. Each individual desiring initial licensure as a specialist as defined by KRS 313.010 shall:

(1) Submit a completed, signed, and notarized Application for Specialty Licensure with an attached applicant photo taken within the past six (6) months;

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

(3) Hold an active Kentucky license to practice general dentistry prior to being issued a specialty license; and

(4) Submit satisfactory evidence of completing a CODA accredited graduate or postgraduate specialty program after graduation from a dental school.

Section 9. Minimum Continuing Education Requirements. (1) Each individual desiring renewal of an active dental license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dentistry and would be useful to the licensee's practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Competence to diagnose oral pathology;

(d) Awareness of currently accepted methods of infection control;

(e) Knowledge of basic medical and scientific subjects including, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(f) Knowledge of clinical and technological subjects;

(g) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(h) Competency in assisting in mass casualty or mass immunization situations;

(i) Clinical skills through the volunteer of clinical charitable dentistry that meets the requirements of KRS 313.254;

(j) Knowledge of office business operations and best practices; or

(k) Participation in dental association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken that meet the requirements of subsection (2)(i) - (k) of this section.

(5) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of or verification by the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(6) It shall be the sole responsibility of the individual licensee to obtain documentation from the provider or sponsoring organization verifying participation as established in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(7) At license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

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(8) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 10. Requirements for Renewal of a Dental License. (1) Each individual desiring renewal of an active dental license shall:

(a) Submit a completed and signed, signed, and notarized Application for Renewal of Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

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

(c) Maintain with no more than a thirty (30) day lapse CPR certification that meets or exceeds the guidelines set forth by the American Heart Association unless a hardship waiver is submitted to and subsequently approved by the board;

(d) Meet the requirements of KRS 214.615(1) regarding HIV/AIDS education for healthcare providers; and

(e) Meet the continuing education requirements as outlined in Section 9 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the renewal biennium, in which case the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation; and

3. If the licensee graduated in the second year of the renewal biennium, in which case the licensee shall not be required to complete the continuing education requirements outlined in Section 9 of this administrative regulation.

(2) If a licensee has not actively practiced dentistry in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board approved refresher course prior to resuming the active practice of dentistry.

Section 11. Retirement of a License. (1) Each individual desiring retirement of a dental license shall submit a completed and signed Retirement of License Form.

(2) Upon receipt of this form, the board shall send written confirmation of retirement to the last known address of the licensee.

(3) A licensee shall not retire a license that has a pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

Section 12. Reinstatement of a License. (1) Each individual desiring reinstatement of a properly retired dental license shall:

(a) Submit a completed, signed, and notarized Application to Reinstatement of a Dental License with an attached applicant photo taken within the past six (6) months;

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

(c) Show proof of having current certification in CPR that meets or exceeds the guidelines set forth by the American Heart Association;

(d) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(e) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual is reinstating a license that was retired within the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as outlined in Section 9 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dentistry in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of a renewal biennium,

the licensee shall complete all of the continuing education requirements as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

(5) If a license is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

Section 13. Requirements for Verification of Licensure. Each individual desiring verification of a dental license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

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

Section 14. Requesting a Duplicate License. Each individual desiring a duplicate dental license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

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

Section 15. Issuance of Initial Licensure. If an applicant has completed all of the requirements for licensure within six (6) months of the date the application was received at the office of the board, the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Licensure", January 2011;

(b) "Statement Regarding Student Licensure Limitations", July 2010;

(c) "Statement Regarding Faculty Licensure Limitations", July 2010;

(d) "Application for Charitable Dental Licensure," July 2010;

(e) "Application for Specialty Licensure", July 2010;

(f) "Application for Renewal of Dental Licensure", January 2011;

(g) "Retirement of License Form", July 2010;

(h) "Application to Reinstatement of a Dental License", July 2010;

(i) "Verification of Licensure or Registration Form", July 2010;

(j) "Duplicate License or Registration Form", July 2010; and

(k) "American Heart Association CPR Guidelines", 2010.

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DR. C. MARK FORT, DMD, President

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: April 21, 2011 at 10 a.m.

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

GENERAL GOVERNMENT CABINET Board of Dentistry (As Amended at ARRS, August 15, 2011)

201 KAR 8:562. Licensure of dental hygienists.

RELATES TO: KRS 214.615, 304.40 - 075, 313.030, 313.040, 313.060, 313.080, 313.130, 313.254

STATUTORY AUTHORITY: KRS 214.615(2), 313.021(1)(a) - (c), 313.040(1), (2), (7), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.040 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dental hygienists. This administrative regulation establishes requirements and procedures for the licensure of dental hygienists.

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Section 1. General Licensure Requirements. An applicant desiring licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(2) Submit a completed, signed, and notarized Application for Dental Hygiene Licensure with an email contact address and an attached applicant photo taken within the past six (6) months;

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

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(5) Provide proof of completion of the requirements of KRS 214.615(1);

(6) Complete and pass the board's jurisprudence exam;

(7) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines set forth by the American Heart Association, incorporated by reference in 201 KAR 8:532[8:534];

(8) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(9) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dental hygiene held previously or currently in any state or jurisdiction;

(10) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental hygiene school or college or dental hygiene department of a university;

(11) Provide proof that the applicant has successfully completed the National Board Dental Hygiene Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(12) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination. (1) Each individual desiring initial licensure as a dental hygienist by examination shall complete all of the requirements listed in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dental hygienist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of his application.

(a) Prior to July 15, 2013, the board shall accept the following regional clinical examinations:

1. The examination of the Council of Interstate Testing Agencies (CITA);

2. The examination of the Central Regional Dental Testing Service (CRDTS);

3. The examination of the North East Regional Board of Dental Examiners (NERB);

4. The examination of the Southern Regional Testing Agency (SRTA); or

5. The examination of the Western Regional Examining Board (WREB).

(b) After July 15, 2013, the board shall only accept a nationalized clinical examination.

(3) An individual desiring initial licensure as a dental hygienist by examination more than two (2) years after fulfilling all of the requirements of his CODA accredited dental hygiene education shall:

(a) Hold a license to practice dental hygiene in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dental hygiene in good standing, complete a board approved refresher course prior to receiving a license to practice dental hygiene in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan prescribed by the board based on the applicant's deficiencies.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dental hygienist by credentials shall:

(1) Complete all of the requirements listed in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dental hygiene while he or she was legally authorized to practice dental hygiene in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. Requirements for Charitable Limited Licensure. (1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed, signed, and notarized Application for Charitable Dental Hygiene Licensure with an attached applicant photo taken within the past six (6) month;

(c) Not be subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(d) Have a license to practice dental hygiene in good standing in another state; and

(e) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) Individuals licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services which have met requirements of KRS 313.254 and 201 KAR 8:580;

(b) Only perform procedures allowed by KRS 313.254, which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured under KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual and without payment or reimbursement by any governmental agency or insurer; and

(e) Have a charitable limited license that shall be good for two (2) years and expire during the regular dental hygiene renewal cycle.

(f) Comply with reciprocity requirements if applicable,

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participate in a charitable clinic shall have a license to practice dental hygiene in the state in which the dental hygienist practices.

Section 5. Minimum Continuing Education Requirements. (1) Each individual desiring renewal of an active dental hygiene license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dental hygiene and would be useful to the licensee in his practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental hygiene treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Awareness of currently accepted methods of infection control;

(d) Knowledge of basic medical and scientific subjects including, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(e) Knowledge of clinical and technological subjects;

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(f) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(g) Competency in assisting in mass casualty or mass immunization situations;

(h) Clinical skills through the volunteer of clinical charitable dental hygiene that meets the requirements of KRS 313.254;

(i) Knowledge of office business operations and best practices; or

(j) Participation in dental or dental hygiene association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken that meet the requirements of subsection (2)(h) - (j) of this section.

(5) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(6) It shall be the sole responsibility of the individual dental hygienist to obtain documentation from the provider or sponsoring organization verifying participation as outlined in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(7) At license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(8) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 6. Requirements for Renewal of a Dental Hygiene License. (1) Each individual desiring renewal of an active dental hygiene license shall:

(a) Submit a completed, signed, and notarized Application for Renewal of Dental Hygiene Licensure with an email contact address and an attached applicant photo taken within the past six (6) months;

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

(c) Maintain with no more than a thirty (30) day lapse CPR certification that meets or exceeds the guidelines set forth by the American Heart Association, incorporated by reference in 201 KAR 8:530, unless a hardship waiver is submitted to and subsequently approved by the board;

(d) Meet the requirements of KRS 214.615(1); and

(e) Meet the continuing education requirements as outlined in Section 5 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the renewal biennium, in which case the licensee shall complete one-half (1/2) of the hours as outlined in Section 5 of this administrative regulation; and

3. If the licensee graduated in the second year of the renewal biennium, in which case the licensee shall not be required to complete the continuing education requirements outlined in Section 5 of this administrative regulation.

(2) If a licensee has not actively practiced dental hygiene in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board approved refresher course prior to resuming the active practice of dental hygiene.

Section 7. Retirement of a License. (1) Each individual desiring retirement of a dental hygiene license shall submit a completed and signed Retirement of License Form.

(2) Upon receipt of this form, the board shall send written confirmation of retirement to the last known address of the licensee.

(3) A licensee shall not retire a license that has pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

Section 8. Reinstatement of a License. (1) Each individual desiring reinstatement of a properly retired dental hygiene license shall:

(a) Submit a completed, signed, and notarized Application for Dental Hygiene Licensure with an email contact address and an attached applicant photo taken within the past six (6) months;

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

(c) Show proof of having current certification in CPR that meets or exceeds the guidelines set forth by the American Heart Association, incorporated by reference in 201 KAR 8:532[8:534];

(d) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dental hygiene held previously or currently in any state or jurisdiction;

(e) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual is reinstating a license that was retired within the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as outlined in Section 5 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dental hygiene in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of a renewal biennium, the licensee shall complete all of the continuing education requirements as outlined in Section 5 of this administrative regulation prior to the renewal of his license.

(5) If a license is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as outlined in Section 5 of this administrative regulation prior to the renewal of his license.

Section 9. Requirements for Verification of Licensure. Each individual desiring verification of a dental hygiene license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

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

Section 10. Requesting a Duplicate License. Each individual desiring a duplicate dental hygiene license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

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

Section 11. Requirements for Local Anesthesia Registration.

(1) An individual who has completed a course of study in dental hygiene at a board-approved CODA accredited institution on or after July 15, 2010, which meets or exceeds the education requirements as established in KRS 313.060(10) shall be granted the authority to practice local anesthesia upon the issuance by the board of a dental hygiene license.

(2) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to administer local anesthesia and does not qualify to do so under Section 12(1) of this administrative regulation shall complete a training and education course as described in KRS 313.060(10).

(3) The training and education course shall be offered by at least one (1) of the following institutions in Kentucky:

(a) University of Louisville School of Dentistry;

(b) University of Kentucky College of Dentistry;

(c) Western Kentucky University Dental Hygiene Program; and

(d) Kentucky Community Technical College System Dental Hygiene Programs.

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(4) Training received outside of Kentucky shall be from a CO-DA accredited dental or dental hygiene school and shall meet the requirements established in KRS 313.060(10).

(5) Once the required training is complete the applicant shall:

(a) Complete the Dental Hygiene Local Anesthesia Registration Application; and

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

(6) Individuals authorized to practice under this provision shall receive a license from the board indicating registration to administer local anesthesia.

(7) A licensed dental hygienist shall not administer local anesthesia if the licensee does not hold a local anesthesia registration issued by the board.

(8) Any licensed dental hygienist holding a local anesthesia registration from the board who has not administered block anesthesia, infiltration anesthesia, or nitrous oxide analgesia for one (1) year shall complete a board approved refresher course prior to resuming practice of that specific technique.

Section 12. Requirements for General Supervision Registration. (1) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to practice under general supervision shall:

(a) Complete the General Supervision Registration Application;

(b) Meet the requirements of KRS 313.040(7)(a);

(c) Document through payroll records, employment records, or other proof that is independently verifiable the dates and hours of employment by a dentist in the practice of dental hygiene that demonstrate the required two (2) years and 3,000 hours of experience;

(d) Successfully complete a live three (3) hour course approved by the board in the identification and prevention of potential medical emergencies that shall include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;

2. Recognition of common medical emergency situations, symptoms, and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments.

(2) An individual authorized to practice under these provisions shall receive a license from the board indicating registration to practice under general supervision.

(3) A dentist who employs a dental hygienist who has met the standards of this administrative regulation and who allows the dental hygienist to provide dental hygiene services pursuant to KRS 313.040(7) shall complete a written order prescribing the dental service or procedure to be done to a specific patient by the dental hygienist and shall retain the original order in the patient's dental record.

(4) The minimum requirements for the written order shall include:

(a) Medical history update;

(b) Radiographic records requested;

(c) Dental hygiene procedures requested;

(d) Name of the patient;

(e) Date of last oral examination;

(f) Date of the written order; and

(g) Signature of the dentist.

(5) The oral examination of the patient by the supervising dentist shall have been completed within the seven (7) months preceding treatment by the dental hygienist practicing under general supervision.

(6) The supervising dentist shall evaluate and provide to the board written validation of an employed dental hygienists skills necessary to perform dental hygiene services established in KRS 313.040(7) as part of the General Supervision Registration Application.

(7) The supervising dentist shall provide a written protocol addressing the medically compromised patients who may or may not be treated by the dental hygienist. The dental hygienist shall only treat patients who are in the ASA Patient Physical Status Classification of ASA I or ASA II as listed in Guidelines for Teach-

ing Pain Control and Sedation to Dentists and Dental Students, 2007 Edition, American Dental Association.

(8) A licensed dental hygienist shall not practice under general supervision if the licensee does not hold a general supervision registration issued by the board.

Section 13. Requirements for Starting Intravenous Access Lines. (1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to start an intravenous (IV) access line while under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board shall:

(a) Submit a signed and completed Application for Intravenous Access Line Registration;

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

(c) Submit documentation proving successful completion of a board-approved course in starting IV access lines.

(2) An individual authorized to practice under this provision shall receive a license from the board indicating registration to start IV access lines.

(3) A licensed dental hygienist shall not start an IV access line if the licensee does not hold a board-issued registration to start IV access lines.

Section 14. Requirements for Performing Laser Debridement.

(1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to perform laser debridement while under the direct supervision of a dentist licensed by the board shall:

(a) Submit a signed and completed Application for Laser Debridement Registration;

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

(c) Submit documentation proving successful completion of a board-approved course in performing laser debridement.

(2) An individual authorized to practice under this provision shall receive a license from the board indicating registration to perform laser debridement.

(3) A licensed dental hygienist shall not perform laser debridement if the licensee does not hold a registration to do so issued by the board.

Section 15. Issuance of Initial Licensure. If an applicant has completed the requirements for licensure the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Hygiene Licensure", January 2011;

(b) "Application for Charitable Dental Hygiene Licensure", July 2010;

(c) "Application for Renewal of Dental Hygiene Licensure", January 2011;

(d) "Retirement of License Form", July 2010;

(e) "Application to Reinstate a Dental Hygiene License", July 2010;

(f) "Verification of Licensure or Registration Form", July 2010;

(g) "Duplicate License or Registration Request Form", July 2010;

(h) "Dental Hygiene Local Anesthesia Registration Application", July 2010;

(i) "General Supervision Registration Application", July 2010;

(j) "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students", 2007 Edition;

(k) "Application for Intravenous Access Line Registration", July 2010; and

(l) "Application for Laser Debridement Registration", July 2010.

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DR. C. MARK FORT, DMD, President

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: April 21, 2011 at 10 a.m.

CONTACT PERSON: Brian K. Bishop, Executive Director,
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GENERAL GOVERNMENT CABINET Kentucky Board of Barbering (As Amended at ARRS, August 15, 2011)

201 KAR 14:015. Retaking of examination.

RELATES TO: KRS 317.440 [317-420], 317.450, **317.570**

STATUTORY AUTHORITY: KRS 317.440(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(f) requires an administrative regulation pertaining to exam requirements for the Kentucky Board of Barbering. This administrative regulation establishes the conditions if an examinee fails and assures the examinees of the opportunity of retaking the examination.

Section 1. An applicant who has failed [Any applicant failing] the apprentice examinations two (2) consecutive times shall [be required to] return to school for eighty (80) additional hours of training prior to being accepted for the third time. Each unsuccessful attempt thereafter shall [will] require eighty (80) additional hours of training.

(1) An applicant who has failed one (1) portion of the apprentice exam may reapply to sit for:

(a) The entire exam; or

(b) The failed portion only.

(2) A passing score on one (1) portion of the apprentice exam shall only be used for a period of one (1) year to exempt the applicant from retaking that portion of the examination.

Section 2. An examination fee shall [will] be required for each examination.

Section 3. (1) An applicant who has failed one (1) or more portions of the instructor exam may reapply to sit for:

(a) The entire exam; or

(b) The failed portion or portions only.

(2) A passing score on one (1) or more portions of the instructor exam shall only be used for a period of one (1) year to exempt the applicant from retaking that portion or portions of the examination. [Any barber failing the instructor examination would not be permitted to return for ninety (90) days.]

HARTSEL H. STOVALL, Chair

APPROVED BY AGENCY: May 16, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

CONTACT PERSON: Karen Greenwell, Administrator, Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055, phone (502) 429-7148, fax (502) 429-7149.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (As Amended at ARRS, August 15, 2011)

401 KAR 8:020. Public and semipublic water systems; general provisions.

RELATES TO: KRS 211.350-211.392, 223.160-223.220, 224.10-100, 224.10-110, 224.16-050, 369, 40 C.F.R. 141, 142.14, 142.15, 142.16, 142.20, 142.21, 142.40-142.65[-EO-2009-538]

STATUTORY AUTHORITY: KRS 223.200, 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.3, 141.31, 141.75, 142.14, 142.15, 142.20, 142.21, 142.40-142.65, 42 U.S.C. 300f-300j-26[-EO-2009-

538]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. ~~[EO-2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.]~~ This administrative regulation establishes the general provisions for regulating public and semipublic water supplies.

Section 1. A public or semipublic water system shall be subject to the requirements of 401 KAR Chapter 8, except those exempted in 40 C.F.R. 141.3.

Section 2. (1) Public and semipublic water systems. A person shall not operate or commence operation of a public or semipublic water system except in compliance with the provisions of 401 KAR Chapter 8 and 40 C.F.R. 141. A water supply system constructed prior to November 11, 1990 may be continued in use, if the operation, maintenance, bacteriological, chemical, physical, and radiological standards comply with 401 KAR Chapter 8, or the system obtains a variance or exemption from those standards in accordance with 40 C.F.R. 141.

(2)(a) A cross-connection shall be prohibited.

(b) The use of automatic devices, such as a reduced pressure zone back flow preventer and a vacuum breaker, may be approved to protect public health, in lieu of air gap separation.

(c) A combination of air gap separation and an automatic device shall be required if determined by the cabinet to be necessary due to the degree of hazard to public health.

(d) Every public water system shall determine if or where a cross-connection exists and shall immediately eliminate it.

(3) A bypass shall not be created or maintained without the prior written approval of the cabinet stating the approved circumstances for establishment of a bypass, its design, and the exact conditions for its use.

(4) An auxiliary intake shall not be used in direct connection with a public or semipublic water system except with prior written approval from the cabinet stating the emergency condition that necessitates the intake.

(5) The plumbing system serving the purification plant and auxiliary facilities shall discharge to a sewer system if available.

(a) If a sewer is not available, the connection shall be made to a sewage disposal facility approved pursuant to KRS Chapter 211.350 through 211.392 or 224.16-050.

(b) There shall not be connections between the sewer system and a filter backwash, filter-to-waste drain, or clearwell overflow line, unless an air gap is provided between the drain and overflow line and the sanitary storm sewer or natural drainage system, so as to preclude the possibility of back-up of sewage or waste into the drain or overflow line.

(6) The owner or operator of a public water system shall operate and maintain the facilities and systems of treatment, intake, and distribution to comply with the provisions of 401 KAR Chapter 8. Operation and maintenance includes effective performance; preventive maintenance; operator staffing and training pursuant to 401 KAR 8:030, 11:040, and 11:050; establishing representative sample points that comply with the requirements of 401 KAR Chapter 8; and adequate process controls for testing, including quality assurance procedures.

(7) Reports to the cabinet.

(a) The supplier of water shall provide a complete monthly operating report to the cabinet, which shall be received at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601 not later than ten (10) days after the end of the month ~~for~~^{of} which the report is filed.

1. A completed report shall include:

a. Volume of water treated;

b. Type and amount of chemicals added;

c. Test results appropriate to be reported by the plant; and

d. The dated original signature, or equivalent, pursuant to KRS Chapter 369, of the owner or authorized agent.

2. A supplier of water shall submit the reports required by 40 C.F.R. 141.75(b) to the cabinet not later than ten (10) days after the end of each month the public water system serves water to the

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public.

3. A public water system shall report to the cabinet in accordance with 40 C.F.R. 141.31.

(b) Reports of failure to comply. A public water system shall report to the cabinet within forty-eight (48) hours, by phone or in writing, the failure to comply with a provision of 401 KAR Chapter 8, including the failure to comply with monitoring requirements.

(c) Emergency reports.

1. If a public water system experiences a line break or loss of pressure as established in 401 KAR 8:150, Section 4(2)(e), loss of disinfection, or other event that may result in contamination of the water, the public water system shall immediately report to the cabinet by calling the Division of Water in Frankfort at (502) 564-3410 or the appropriate regional field office of the Division of Water.

2. If a report required by this paragraph is made during other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number, (800) 928-2380.

(8) Records to be maintained. An owner or operator of a public water system shall keep the records established in 40 C.F.R. 141.33 on the premises or readily accessible to cabinet staff inspecting the system.

(9) Boil water and consumer advisories.

(a) Boil water advisories.

1. A public water system or semipublic water system shall issue **a boil water advisory**~~[boil water advisories]~~ if the system believes an advisory is warranted.

2. The cabinet may direct that a boil water advisory be issued upon:

a. The reception of confirmed positive bacteriological results including *E. coli* or fecal coliform in at least one (1) sample; or

b. Other circumstances that warrant an advisory for the protection of public health.

3. The cabinet may, if circumstances warrant for the protection of public health, issue a boil water advisory directly, rather than rely on a public or semipublic water system to issue the advisory.

4. **A boil water advisory**~~[Boil water advisories]~~ shall remain in effect until the cabinet approves the lifting of the advisory based on bacteriological results showing coliform bacteria are not present in the water.

(b) Consumer advisory.

1. The cabinet may issue a consumer advisory if:

a. Conditions within a public water system or semipublic water system indicate a possible adverse health effect from consumption of the water distributed by the system; or

b. Other information of interest to the consumer exists.

2. The advisory shall notify affected persons of a required or recommended action.

(c) A public or semipublic water system shall:

1. Immediately notify the local health department that serves the area affected if a boil water advisory or consumer advisory is issued.

a. The notification may be made by telephone or fax machine for an occurrence during normal business hours.

b. For an occurrence after normal business hours, the public or semipublic water system shall notify the affected local health department in a manner agreed upon by the system and affected health department; or

2. Develop a protocol with a local health department that describes when and how the system shall notify the affected health department if the system issues a boil water advisory or consumer advisory. The protocol shall address:

a. For which types of advisories the system shall notify the affected health department;

b. What procedures shall be used to notify and under what circumstances;

c. How soon after the occurrence the notification shall be made; and

d. To whom the notification shall be made, during and after business hours.

(10) How to issue **an** advisory.

(a) A boil water advisory or consumer advisory shall be issued through newspapers, radio, television, or other media having an immediate public impact.

(b) As a health and safety measure, the water system shall repeat the notification during the period of imminent danger at intervals that maintain public awareness.

(c)1. The advisory shall be readily understandable and shall include instructions for the public, as well as an explanation of the steps being taken to correct the problem.

2. Boiling instructions shall caution to boil water to be used for consumption by boiling the water for at least three (3) minutes at a rolling boil.

(11) Maps.

(a) A public or semipublic water system shall have on the premises, or readily accessible to cabinet staff inspecting the system, an up-to-date map of the distribution system. The map shall, at a minimum, show:

1. Line size;

2. Cutoff valves;

3. Fire hydrants;

4. Flush hydrants;

5. Tanks;

6. Booster pumps;

7. Chlorination stations;

8. Connection to emergency or alternative sources;

9. Wholesale customer master meters; and

10. Type of piping material in the distribution system and its location.

(b)1. If a public water system is not able to comply with the requirements of paragraph(a) of this subsection, the system may petition the cabinet to modify this requirement.

2. The petition for modification shall state specifically what portion of the requirements of paragraph (a) of this subsection is not practical and why.

(12) Operation and maintenance manual.

(a) Each public water system shall develop and keep on the premises, for operators and employees of the system, an operation and maintenance manual that includes:

1. A detailed design of the plant;

2. Daily operating procedures;

3. A schedule of testing requirements designating who is responsible for the tests; and

4. Safety procedures for operation of the facility, including storage and inventory requirements for materials and supplies used by the facility.

(b) The operation and maintenance manual shall be updated as necessary, but not less than annually, and shall be available for inspection by the cabinet.

(c) Public water systems serving fewer than 100 people or thirty (30) service connections may request that the cabinet waive the requirements of paragraphs (a) and (b) of this subsection. The request shall be in writing and any waiver granted by the cabinet shall be in writing and be retained by the public water system for examination by cabinet personnel.

(13) Flushing recommended.

(a) To protect public health, a distribution system may be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines.

1. Flushing shall start at the hydrants nearest the source of supply and proceed in an outward direction to the end of each main.

2. Flushing shall continue at each hydrant until all traces of turbidity and color are gone.

3. Hydrants shall be opened and shut slowly to prevent damage from water hammer.

(b) In addition to the regularly scheduled flushing, the following conditions shall indicate a need to flush the entire system:

1. Turbidity within the distribution system greater than five (5) or one (1) nephelometric turbidity units, or NTU, as applicable to the system;

2. An inability to maintain an adequate residual of a disinfection agent in any part of the system; or

3. A heterotrophic plate count, or HPC, in excess of 500.

(c) Other indicators that flushing may be necessary shall be taste and odor complaints, color of water, contaminated water samples, or line repairs.

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(14) A person shall not introduce into the water supply system a substance that may have a deleterious physiological effect, or for which physiological effects may not be known.

(15) Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR Chapter 8, samples shall be analyzed by a laboratory certified by the cabinet as prescribed in 401 KAR 8:040, except that measurements for turbidity, disinfectant residuals, and other parameters specified by 40 C.F.R. 141.28 and 141.131 may be performed by a certified operator or an individual under the supervision of a certified operator.

(16) Right of entry. The cabinet may enter an establishment, facility, or other property of public and semipublic water supplies in order to determine whether the supplies have acted or are acting in compliance with applicable laws or regulations that the cabinet has the authority to enforce.

(a) Entry may include collection of water samples for laboratory analyses and inspection of records, files, papers, processes, controls, and facilities required to be kept, installed, or used under the provisions of 401 KAR Chapter 8.

(b) The cabinet or its authorized agent may cause to be tested a feature of a public water system, including its raw water source, to determine compliance with applicable legal requirements.

(17) Recommended practices for water supply reservoirs to be used for drinking water. The following practices may be employed by water systems that have a lake primarily used as a source of raw drinking water:

(a) Prohibition of swimming, water skiing, and other contact sports;

(b) Prohibition of large motor-driven craft or any craft with toilets;

(c) A requirement that an area at least 100 feet wide from the upper pool elevation be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, and barns;

(d) Prohibition of effluent from sewage treatment plants being discharged into the lake;

(e) Picnicking may be permitted around the lake if plans for the development of a picnic area meet regulatory requirements of the cabinet; and

(f) Implementation of a nonpoint source pollution control plan.

(18) Water treatment chemicals and system components. Chemical additives and protective materials, such as paints and linings, may be used by a water system if they meet the requirements established in the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers' Recommended Standards for Water Works.

(19) Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired, or extended distribution systems shall be disposed in a manner that shall not violate 401 KAR 10:031.

(20) Water loading stations. A public water system that provides water loading stations for the purpose of providing water to water hauling trucks or other bulk water devices shall construct the stations to conform to the standards in the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers' Recommended Standards for Water Works.

Section 3. The cabinet shall maintain records and submit reports as established in 40 C.F.R. 142.14, [and] 142.15, and 142.16(f).

Section 4. A public water system may receive a variance or exemption from some provisions of 401 KAR Chapter 8 only in accordance with 40 C.F.R. 141.4.

Section 5. A public water system may use noncentralized treatment devices only in accordance with 40 C.F.R. 141.100 or bottled water only in accordance with 40 C.F.R. 141, Sections 141.101.

Section 6. Incorporation by Reference. (1) "Recommended Standards for Water Works, 2003," A Report of the Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available the division's Web site at <http://water.ky.gov/www.water.ky.gov/dw/>.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 9, 2011

FILED WITH LRC: May 11, 201 at 2 p.m.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended At ARRS, August 15, 2011)

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 284,] 42 U.S.C. 6991c, **9601 - 9675**

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.60-105, 42 U.S.C. 6991k, [42 U.S.C. 6991e] [40 C.F.R. Part 280, Part 284, 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 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) "**API**" means the **American Petroleum Institute**.

(5) "Assets" is defined by KRS 224.60-120(3).

(6) ~~[(5)]~~ "Automatic line leak detector" means:

(a) Electronic line leak detector; or

(b) Mechanical line leak detector.

(7) "**ASTM**" means the **American Society for Testing and Materials**.

(8) ~~[(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 [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.

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(9) [(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.

(10) [(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.

(11) [(9)] [(8)] "Bodily injury and property damage" is defined by KRS 224.60-115(1).

(12) [(10)] "Cabinet" is defined by KRS 224.01-010(9).

(13) [(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.

(14) [(12)] [(10)] "Cathodic protection tester" means a person accredited or certified as being a cathodic protection tester in accordance with 401 KAR 42:030.

(15) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 - 9675.

(16) [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.

(17) [(14)] "Claim" is defined by KRS 224.60-115(3).

(18) [(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.

(19) [(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.

(20) [(17)] "Consumptive use" means, with respect to heating oil, consumed on the premises where stored.

(21) [(18)] "Contamination" means degradation in the quality of surface water, sediment, groundwater, air, soil, or bedrock as a result of human activities.

(22) [(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.

(23) [(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 by KRS 224.60-115(4) [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 includes [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 also includes [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.

(24) [(21)] ["Corrective action agreement" means a written agreement for reimbursement between the cabinet, the owner or operator, and the certified contractor, which applies to corrective action or interim action to be performed.

(22)] "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified [a corrosion expert] by the National Association of Corrosion Engineers (NACE International), or a professional engineer licensed [registered] by the Kentucky State Board of Licensure [Registration] for Professional Engineers and Land Surveyors with certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(25) [(22)] "Delivery prohibition" means prohibiting the delivery, deposit, or acceptance of a regulated substance to an underground storage tank that has been determined to be ineligible by the cabinet in accordance with 401 KAR 42:045 for such delivery, deposit, or acceptance.

(26) [(23)] "Dielectric material" means a material that does not conduct direct electrical current.

(27) [(24)] "Dispenser" means a device that is used to transfer regulated substances from a UST system to a point outside of the UST system.

(28) [(25)] "Division" is defined by KRS 224.60-115(6).

(29) [(26)] "Domestic-use cistern" means a cistern constructed in a manner to allow the infiltration of groundwater and is currently used or potentially used by humans for consumption or other uses resulting in dermal or inhalation exposure.

(30) [(27)] "Domestic-use spring" means a perennial spring continuously utilized [actively accessed] by humans for consumption or other potable uses resulting in dermal or inhalation exposure.

(31) [(28)] "Domestic-use well" means a well currently used or potentially used by humans for consumption or other uses resulting in dermal or inhalation exposure.

(32) [(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.

(33) [(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.

(34) [(31)] [(25)] "Domestic-use well, spring, cistern, or well head protection area" means a well, spring, cistern, or well head protection area currently used or potentially used by humans for personal, commercial, or agriculture purposes.

(26)] "Electrical equipment" means underground equipment containing dielectric fluid used for the operation of equipment such as transformers and buried electrical cable.

(35) [(32)] "Eligible company or partnership" means a person issued a letter of eligibility in accordance with 401 KAR 42:316.

(36) [(33)] [(27)] "Empty" means all regulated substances have been removed from the UST system using commonly employed practices so that not [no] more than two and five-tenths (2.5) centimeters (one (1) inch) of residue, or three-tenths (0.3) percent by weight of the total capacity of the UST system, remain in the system.

(37) [(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.

(38) [(35)] "Environmental emergency" is defined by KRS 224.01-400(1)(d).

(39) [(36)] [(29)] "Environmentally sensitive feature" means surface waters and jurisdictional wetland areas. The term does [shall] not include road-side ditches or manmade drainage ways that do not discharge to surface waters or wetland areas within a fifty (50) meter radius of the excavation zone.

(40) [(37)] [(30)] "EPA identification number" means the number assigned by the U.S. EPA or the cabinet to each hazardous waste generator; transporter; and treatment, storage, or disposal facility.

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(41) [(38)] [(31)] "Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation. An excavation zone contains one (1) or may contain more than one (1) UST system.

(42) [(39)] [(32)] "Existing UST system" means a UST system used to contain an accumulation of regulated substances or for which installation [has] commenced on or before December 22, 1988. Installation is considered to have commenced if:

(a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the UST facility or installation of the UST system; and

(b) 1. A continuous, physical construction or installation program has begun at the UST facility; or

2. The owner or operator has entered into contractual obligations, that cannot be canceled or modified without substantial loss, for physical construction at the UST facility or installation of the UST system to be completed within a reasonable time.

(43) [(40)] [(33)] "Facility" is defined by KRS 224.60-115(7).

(44) [(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.

(45) [(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, or [and] the U.S. Government Printing Office.

(46) [(43)] [(36)] "Federal regulations" is defined by KRS 224.60-115(8).

(47) [(44)] [(37)] "Financial ability" means the capacity of a petroleum storage tank owner or operator to finance the performance of corrective action.

(48) [(45)] [(38)] "Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(49) [(46)] [(39)] "Free product" is defined by KRS 224.60-115(9).

(50) [(47)] [(40)] "Guarantor" is defined by KRS 224.60-120(4).

(51) [(48)] [(41)] "Gathering lines" means pipelines, equipment, facilities, and buildings used in the transportation of oil or gas during oil or gas production or gathering operations.

(52) [(49)] [(42)] "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(53) [(50)] [(43)] "Hazardous substance UST system" means a UST system that contains a hazardous substance identified in Section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under 401 KAR Chapters 31 through 39), or contains a mixture of this type of hazardous substance and petroleum and is not a petroleum UST system.

(54) [(51)] [(44)] "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or [and] No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels if used as substitutes for one (1) of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(55) [(52)] [(45)] "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(56) [(53)] [(46)] "Hydrogeologically downgradient" means in the direction from a point of higher hydrostatic pressure to a point of lower hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a higher water table elevation exists to a point where a lower water table elevation exists, as defined by wells or piezometers.

(57) [(54)] [(47)] "Hydrogeologically upgradient" means in the direction from a point of lower hydrostatic pressure to a point of higher hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a lower water table elevation exists to a point where a higher water table elevation exists, as defined by wells or piezometers.

(58) [(55)] "Independent third-party evaluator" means a consulting firm, test laboratory, not-for-profit research organization, or educational institution with no organizational or financial conflict of interest.

(59) [(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.

(60) [(57)] "Interstitial space" means the area between the inner and outer wall of double-walled tanks or double-walled piping.

(61) [(58)] "Liquid-tight" means impervious to the passage of water or a liquid regulated substance.

(62) [(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) [(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.

(63) [(60)] [(50)] "Maintenance" means the normal operational upkeep to prevent a UST system from releasing a regulated substance.

(64) [(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.

(65) [(62)] [(52)] "Motor fuel" is defined by KRS 224.60-115(12).

(66) [(63)] [(53)] "NACE" means the National Association of Corrosion Engineers.

(67) [(64)] [(54)] "Net worth" is defined by KRS 224.60-120(3).

(68) [(65)] [(55)] "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.

(69) [(66)] [(56)] "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.

(70) [(67)] [(57)] "NFPA" means the National Fire Prevention Association.

(71) [(68)] [(58)] "Noncommercial purposes" means, with respect to motor fuel, not for resale.

(72) [(69)] [(59)] "Occurrence" is defined by KRS 224.60-115(13).

(73) [(70)] [(60)] "Off-site" means any area beyond the point of compliance.

(74) [(71)] [(61)] "On-site" means the area within the point of compliance.

(75) [(72)] [(62)] "On the premises where stored" means, with respect to heating oil, a UST system [UST systems] located on the same property where the stored heating oil is used.

(76) [(73)] [(63)] "Operation" means the storage and dispensing of a regulated substance from a UST system.

(77) [(74)] [(64)] "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.

(78) [(75)] [(65)] "Operator" means a [any] person in final control of, or having final responsibility for, the daily operation of the UST system. The operator shall be a person who has full authority to comply with the requirements of 401 KAR Chapter 42.

(79) [(76)] [(66)] "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.

(80) [(77)] [(67)] "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.

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(81)[(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.

(82)[(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.

(83)[(78)][(68)] "Permanently closed" means a UST system was:

(a) Closed prior to December 22, 1988 in accordance with the requirements of the Kentucky Fire Marshal, and ~~in accordance with~~ [applicable industry standards when closure occurred, and in a manner that prevents ~~any~~ future use of the UST system];

(b) Closed after December 22, 1988, but prior to April 18, 1994 [December 19, 1990], in accordance with 40 C.F.R. 280.71 through 280.74; or

(c) ~~Closed after December 19, 1990, but prior to April 18, 1994, in accordance with administrative regulations in effect at that time;~~

(d) Closed after April 18, 1994, but prior to January 1, 1996, in accordance with the emergency administrative regulations that took effect on February 15, 1994;

(e) Closed after January 1, 1996 in accordance with 401 KAR 42:070 or 401 KAR 42:071 in effect at that time; or

(f) ~~Closed in accordance with 401 KAR 42:070 after September 1, 2011 [the effective date of this administrative regulation].~~

(79)[(69)] "Person" is defined by KRS 224.60-115(14).

(84)[(79)][(80)][(70)] "Petroleum" is defined by KRS 224.60-115(15).

(85)[(80)][(81)][(74)] "Petroleum storage tank" is defined by KRS 224.60-115(16) [224.60-115(16)];

(86)[(81)][(82)][(72)] "Petroleum storage tank operator" is defined by KRS 224.60-115(17);

(87)[(82)][(83)][(73)] "Petroleum storage tank owner" is defined by KRS 224.60-115(18).

(88)[(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.

(89)[(84)][(85)][(75)] "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of these types of materials).

(90)[(85)][(86)][(76)] "Pipeline facilities" means new ~~or~~^{and} existing pipe rights-of-way and any associated equipment, facilities, or buildings, including gathering lines.

(91)[(86)][(87)][(77)] "Point of compliance" means the property boundaries of the property on which the UST facility is located.

(92)[(87)][(88)] "Product deliverer" means a person who delivers or deposits regulated substances into a UST system.

(93)[(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.

(94)[(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.

(95)[(90)][(91)][(81)] "Regulated substance" is defined by KRS 224.60-100(2).

(96)[(94)][(92)][(82)] "Release" is defined by KRS 224.60-115(20).

(97)[(92)][(93)][(83)] "Release detection" or "leak detection" means a method of determining ~~if~~^{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].

(98)[(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].

(99)[(94)][(95)][(85)] "Residential tank" means a tank located on property used primarily for dwelling purposes.

(100)[(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.

(101) "SARA" means the Superfund Amendments and Authorization Act of 1986.

(102)[(96)][(97)][(87)] "Secretary" is defined by KRS 224.01-010(24).

(103)[(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.

(104) "SFMO" means the State Fire Marshal's Office.

(105)[(98)][(99)] "Statistical Inventory Reconciliation" or "SIR(SIR)" means a leak-detection system that uses computer software to conduct a statistical analysis of inventory, delivery, and dispensing data collected over a period of time to determine if a UST system is leaking.

(106) "STI" means the Steel Tank Institute.

(107)[(99)][(100)][(89)] "Storm-water" or ~~"~~^{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.

(108)[(100)][(101)] "Sump" means a subsurface area designed to provide access to underground UST system equipment.

(109)[(104)][(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.

(110)[(102)][(103)][(94)] "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.

(111)[(103)][(104)] "Suspected UST system release" means the observation of an unusual operating condition or an unconfirmed UST system release.

(112)[(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.

(113)[(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.

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(114) ~~(106)~~ ~~(107)~~ ~~(94)~~ "Temporary closure" means taking a UST system out of operation pursuant to the requirements of 401 KAR 42:070.

(115) ~~(107)~~ ~~(108)~~ ~~(95)~~ "Third party" is defined by KRS 224.60-115(22).

(116) [(+08)] [(+09)] "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.

(117) [(409)] [(410)] "Under-dispenser containment" or "UDC"
means a liquid-tight containment system underneath a dispenser.

(118)(110)(141)(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.

(119) [(144)] [(112)] [(97)] "Underground utility **conduit**~~conduits~~" means a~~any~~ manmade underground conduit installed for utility purposes either on or off site.

(120)[(112)][(113)] "Underground storage tank" is defined by KRS 224.60-100(1).

(121) [(113)] [(144)] [(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.

(122)[(114)][(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.

(123)(115)(146)(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.

(124)(416)(417)(404) "UST system release" means [any] spilling, leaking, emitting, discharging, escaping, leaching, or disposing of[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 **does[shall]** not include spilling, leaking, emitting, discharging, escaping, leaching, or disposing that is permitted or authorized by Kentucky or federal law.

~~(125)~~~~(117)~~~~(118)~~~~(102)~~ "UST system release detection" means a method, that complies with the requirements of 401 KAR 42:040, for determining whether a UST system release has occurred.

(126)[(418)][(419)] "Unusual Operating Condition" means a condition observed during the normal operation of an underground storage tank system that ~~is[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.

(127)(149)(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.

(128)~~(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.]~~

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.

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 15, 2011)

401 KAR 42:011. Scope of Underground Storage Tank Program.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Sub-
part A, ~~[Part 281,]~~ 42 U.S.C. 6991c, **Pub. L. 83-703**

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105[~~40~~
C.F.R. Part 280 Subpart A, Part 281, 42 U.S.C. 6991c]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [Environmental and Public Protection] cabinet to develop and conduct programs that provide for the prevention abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks [tank (UST) systems] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements [standards] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [401 KAR Chapter 42 identifies requirements for UST systems.] This administrative regulation establishes the scope of the cabinet's Underground Storage Tank Program, including provisions for exclusions and [;] deferrals[, and interim prohibitions].

Section 1. [Application of Federal Regulations. The requirements for program applicability, interim prohibition requirements, and definitions for UST systems are governed by 40 C.F.R. Part 280 Subpart A and this administrative regulation.

~~Section 2.] Applicability, Exclusions and Deferrals. (1) The requirements of 401 KAR Chapter 42 shall apply to all owners and operators of UST systems, except as provided in subsections (3) and (4) [(1) and (2)] of this section.~~

(2) A UST system used for dual purposes, at least one (1) of which is regulated, shall meet the requirements of 401 KAR Chapter 42.

~~(3) Any UST system listed in subsection (2) of this section shall meet the requirements of Section 3 of this administrative regulation.~~

(4)] Exclusions. The following **shall be**~~[UST systems]~~~~[are]~~ excluded from the requirements of 401 KAR Chapter 42:

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(a) UST systems containing wastes identified as hazardous in 401 KAR Chapter 31[.] and UST systems containing mixtures of hazardous waste and other regulated substances;

(b) Wastewater treatment tank systems [that are part of a wastewater treatment facility regulated under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.)];

(c) Equipment and machinery containing regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks;

(d) UST systems having a capacity of 110 gallons or less;

(e) UST systems containing a de minimis concentration of regulated substances;

(f) Emergency spill or overflow containment UST systems that are emptied immediately after use; [and]

(g) Exclusions listed in KRS 224.60-100(1)(a) through (i);

(h) UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, as amended, **Pub. L. 83-703**[42 U.S.C. 2011 et seq.];

(i) UST systems that are part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission as established in **10 C.F.R. Part 50, Appendix A**[under Appendix A of 10 C.F.R. Part 50];

(j) Airport hydrant fuel distribution systems; and

(k) UST systems with field-constructed tanks.

(4) Deferrals. With the exception of UST systems installed after April 1, 2012, 401 KAR 42:040 ~~shall~~**[does]** not apply to UST systems that store fuel solely for use by emergency power generators. [UST systems excluded from the definition of "underground storage tank" provided in KRS 224.60-100.

(2) Deferrals. This subsection identifies UST systems that are deferred from compliance with some of the requirements of 401 KAR Chapter 42.

(a) 401 KAR 42:040 does not apply to UST systems that store fuel solely for use by emergency power generators.

(b) 401 KAR 42:020, 401 KAR 42:030, 401 KAR 42:040, and 401 KAR 42:050 do not apply to the following UST systems:

1. Wastewater treatment tank systems that are not part of a wastewater treatment facility regulated under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.);

2. UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.);

3. UST systems that are part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under Appendix A of 10 C.F.R. Part 50;

4. Airport hydrant fuel distribution systems; and

5. UST systems with field-constructed tanks.

(3) Dual-purpose UST System. A UST system used for dual purposes, one (1) of which is regulated, shall meet the requirements of 401 KAR Chapter 42.

Section 3. Interim Prohibition for Deferred UST Systems. (1) Except as provided in subsection (2) of this section, a person shall not install a UST system listed in Section 2(2) of this administrative regulation for the purpose of storing regulated substances unless the system (whether of single- or double-wall construction):

(a) Will prevent UST system releases due to corrosion or structural failure for the operational life of the UST system;

(b) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent a UST system release; and

(c) Is constructed or lined with material that is compatible with the stored substance.

(2)(a) A UST system without corrosion protection may be installed at a UST facility that is determined by a corrosion expert not to be corrosive enough to cause it to have a UST system release due to corrosion during its operating life.

(b) Owners and operators shall maintain records that demonstrate compliance with paragraph (a) of this subsection for the remaining life of the tank.

(3) The document incorporated by reference in Section 4 of this administrative regulation shall be used in meeting the requirements of subsections (1) and (2) of this section.

Section 4. Incorporation by Reference. (1) The National Association of Corrosion Engineers Standard RP0285-2002, Item Number 21030, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", April 2002, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Blvd., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained by calling the Division of Waste Management at (502) 564-5981 or on the Division's Web page located at www.waste.ky.gov.

LEONARD K. PETERS, Secretary

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

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

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 284,] 42 U.S.C. 6991c, **6991e**, 42 U.S.C. 16991k[-6991e]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 42 U.S.C. 6991e, 6991k[-6991e][40 C.F.R. Part 280 Subpart B, 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 requirements concerning performance standards, registration, designated compliance managers and UST facility employees, and alternatives for upgrading existing UST systems.

Section 1. Registrations. (1)(a) The owner shall submit, to the cabinet, a UST Facility Registration Form, DEP 7112 for each UST facility within thirty (30) days of bringing a UST system into operation.

(b) The form shall be signed by the owner and operator of the UST system.[-and]

(c) The form shall be notarized.

(2)(a) Except as established in Section 2 of this administrative regulation, the owner shall submit to the cabinet an amended UST Facility Registration Form, DEP 7112 within thirty (30) days of any change to information contained within the most recently submitted UST Facility Registration Form.[.]

(b) The form shall be signed by the owner and operator of the UST system.[-and]

(c) The form shall be notarized.

(3) An amended UST Facility Registration Form, DEP 7112 shall be submitted for a UST system being placed into temporary closure for more than six (6) months.

(4) An unregistered UST system discovered during permanent closure activities conducted in accordance with 401 KAR 42:070

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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 **sub-section (1) of this section**[(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, **signed, and notarized**["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, **signed, and notarized**["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**[properly-executed] deed or other **mutually executed**[mutually-executed] legal document supporting the sale of the UST system, along with a letter indicating the UST facility name as registered with the cabinet, the UST facility location, and the agency interest number.

Section 4.[5.] Issuance of a Certificate of Registration and Reimbursement Eligibility. Upon a determination by the cabinet that the ["UST Facility Registration Form"], DEP 7112, [(August 2006)], is complete and accurate, the cabinet shall issue a ["Certificate of Registration and Reimbursement Eligibility"], DEP 7113, (August 2006). Upon acceptance of the completed form, the cabi-

net 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 and Compatibility Form**[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[, 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. **An owner;**

(4)(a) [Owners][or operators] Shall designate a primary DCM who may receive compliance related correspondence from the Underground Storage Tank Branch. **An owner:[]**

1. [Owners][or operators] May designate themselves as the primary DCM;[] or

2. [Owners][or operators] May designate another individual as the primary DCM; **and**

(b) [Owners][or operators] May designate multiple individuals as an associate DCM for a UST system[facility].

(5) **Except as provided in this subsection**, operational training, in accordance with this administrative regulation, shall be accomplished through use of the cabinet training system. Individuals unable to use or access the cabinet training system shall contact the Underground Storage Tank Branch for alternate designation and operational training procedures.

(6) Through completion of operational training in accordance with subsection (5) of this section, a DCM shall demonstrate an in-depth understanding of:

(a) UST system operation, maintenance, inspection, and testing requirements including, at a minimum: UST system spill prevention, overfill prevention, release detection, secondary containment, corrosion protection, product compatibility, and notification

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requirements as applicable to the current configuration of the UST system in accordance with this administrative regulation and 401 KAR 42:030, and 42:040;

(b) UST system recordkeeping requirements in accordance with 401 KAR 42:030 and 42:040;

(c) UST system release reporting, release response, temporary closure, permanent closure, initial abatement, and financial responsibility requirements in accordance with 401 KAR 42:050, 42:060, 42:070, and 42:090;

(d) All relevant equipment and its compliance with performance standards in accordance with 401 KAR 42:030 and 42:040;

(e) Requirements for delivery prohibition in accordance with 401 KAR 42:045; and

(f) UST facility employee training requirements in accordance with Section 8 of this administrative regulation.

(7) The owner[or operator] shall ensure that 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 overfill response;

(d) Threat to the public or to the environment caused by spills or releases;

(e) Emergency shut-off procedures; and

(f) Contact telephone numbers in response to emergencies caused by a release or a threatened release from a UST system.

(2) The owner or operator shall maintain a list of all employees trained in accordance with this administrative regulation. The owner or operator shall maintain written records of all training documentation supplied to UST facility employees and shall make those records available to the cabinet upon request.

Section 9. Performance Standards for New UST Systems. (1) Performance standards for new UST systems shall be as established in 40 C.F.R. 280.20; and

(2) In addition to the performance standards in subsection (1) of this section, UST systems installed after April 1, 2012 shall meet the performance standards of Section 11 of this administrative regulation.

Section 10. Upgrading of existing UST systems. Upgrading requirements for existing UST systems shall be as 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 if[, 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 if [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 if[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) If[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) If[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 in accordance with KRS Chapter 224;

(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 that[which] connect tanks to UST system dispensers shall be installed with emergency shutoff valves for each supply line at the base of each UST system dispenser.

(2) The emergency shutoff valves shall be rigidly anchored to the UST system dispenser island or another appropriate anchoring point in a manner that allows the emergency shutoff valve to close automatically in the event of severe impact to a UST system dispenser.

(3) An emergency shutoff valve found to be defective, inoperable, leaking, not functioning as designed by the manufacturer, or not rigidly anchored shall be immediately repaired or replaced by the owner or operator.

Section 14. Nonmetallic Piping. (1) All new or replaced underground nonmetallic piping installed after April 1, 2012 shall meet or exceed the Standard for Safety established by Underwriters Laboratories Inc. in Standard for Nonmetallic Underground Piping for Flammable Liquids - UL 971.

(2) The owner or operator shall repair non-metallic piping in accordance with 401 KAR 42:030 or permanently close 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

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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)[(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 Blvd.], 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>, [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.

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 9, 2011)

401 KAR 42:030. UST system general operating requirements.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart C, [40 C.F.R. Part 281.] 42 U.S.C. 6991c, **6991e**, [42 U.S.C. 6991k, 42 U.S.C. 6991e]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 42 U.S.C. **6991e**, 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 that[which] may

threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting [UST system releases], corrective actions, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that[which] implements federal requirements for underground storage tanks [and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations. 401 KAR Chapter 42 identifies requirements for underground storage tanks.] This administrative regulation establishes requirements for spill and overfill control, operation and maintenance of corrosion protection, compatibility, repairs, and reporting and recordkeeping.

Section 1. Spill and Overfill Control. Spill and overfill control requirements shall be as established in 40 C.F.R. 280.30.

Section 2. Spill Containment Devices (Spill Buckets). (1) All spill containment devices installed after April 1, 2012, shall be double-walled, liquid-tight, compatible with the substance being stored in the tank, and installed in accordance with the manufacturers' instructions.

(2)(a) All double-walled spill containment devices installed after April 1, 2012 shall be tested at installation, and every twelve (12) months thereafter, for liquid-tightness using a hydrostatic test, or a test method approved by the double-walled spill containment device's manufacturer.

(b) The test shall be documented on Spill Containment Device Test, DEP 4065 or on a standardized form provided by the testing equipment manufacturers if the form contains, at a minimum, the same information.

1. Failing test results shall be submitted to the Underground Storage Tank Branch within seven (7) days of the test date.[.]

2. Passing test results shall be submitted to the Underground Storage Tank Branch within thirty (30) days of the test date.[.]

(c) Owners and operators shall maintain written records to document the current test results until the next test is performed.

(3) Owners and operators shall immediately repair or replace a damaged, defective, or leaking spill containment device.

(4) Owners and operators shall not allow regulated substances, liquids, or debris to accumulate in a spill containment device. Owners and operators shall remove all liquid accumulations and debris from a spill containment device immediately.

Section 3. Under-Dispenser Containment and Sumps. (1) Sumps and UDC shall be tested for liquid-tightness at least every three (3) years. Testers shall conduct a hydrostatic, vacuum, or other manufacturer-approved integrity test to verify liquid-tightness.

(2) Owners and operators shall maintain written documentation of the test results for at least three (3) years.

(3)(a) Failing test results shall be submitted to the Underground Storage Tank Branch within seven (7) days of the test date[.]

(b) Passing test results shall be submitted to the Underground Storage Tank Branch within thirty (30) days of the test date[.]

Section 4. Overfill Prevention Devices. All overfill prevention devices installed after April 1, 2012 shall be installed in an extractable fitting to allow for inspection, maintenance, and testing of the device.

Section 5. Corrosion Protection. (1) UST system components that routinely contain product and are regularly or intermittently in contact with soil, water, or backfill shall be protected from corrosion.

(2) Owners or operators with steel tanks or piping that do not have corrosion protection installed in accordance with subsection (1) of this section shall remove all regulated substances and initiate permanent closure, in accordance with 401 KAR 42:070, by January 1, 2012.

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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.

(a) If a reevaluation is performed, it shall be within ninety (90) days of the failing evaluation.

(b) A reevaluation shall only be performed once for a failed system evaluation.

(c) 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 re-

quest, documentation verifying that the training requirements have been met.

Section 10. Compatibility. (1) Requirements for compatibility shall be as established in 40 C.F.R. 280.32; and

(2) The owner or operator of a UST system installed after April 1, 2012 shall submit the Installation Verification and Compatibility Form, DEP 7115 within thirty (30) days of bringing the UST system into operation in order to verify that the UST system is compatible with the regulated substance stored.

(3) A UST System Compatibility Form, DEP 6089 shall be submitted to the cabinet ~~if~~when the regulated substance stored is no longer covered by a previously submitted Installation Verification and Compatibility Form, DEP 7115 or UST System Compatibility Form, DEP 6089.

Section 11. UST System Repairs. (1) UST system repairs allowed shall be as established in 40 C.F.R. 280.33.

(2) UST system repairs shall be performed by a contractor certified by the State Fire Marshal's Office, in accordance with 815 KAR 30:060.

(3) Owners and operators of UST systems shall ensure that repairs ~~shall~~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.

(a) The manned-entry integrity assessment shall be performed not more than twelve (12) months prior to the addition of an impressed current cathodic protection system.

(b) Documentation of the manned-entry integrity assessment and results, including the average tank metal thickness, shall be submitted to the cabinet on the Manned Entry Integrity Assessment, DEP 8050 within thirty (30) days of the assessment being conducted.

(3) If the integrity assessment determines that the average metal thickness of the steel tank is less than seventy-five (75) percent of the tank's original metal thickness, the steel tank shall not be upgraded and shall be permanently closed in accordance with 401 KAR 42:070.

Section 13. Recordkeeping. Requirements for recordkeeping shall be as established in 40 C.F.R. 280.34(b) and (c).

Section 14. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Division of Waste Management prior to the deadline.

(3) The cabinet ~~shall~~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 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)[(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. [(b)] 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

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 42:040. UST system release detection.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart D, [Part 281,] 42 U.S.C. 6991c, **6991e**, 6991k[-6991e]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 42 U.S.C. **6991e**, 6991k[-6991e][40 C.F.R. Part 280 Subpart D, Part 281, 42 U.S.C. 6991c]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [Environmental and Public Protection] Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks [tank-UST systems] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements [standards] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [401-KAR-Chapter 42 identifies requirements for UST systems.] This administrative regulation establishes the requirements for UST system release detection and recordkeeping.

Section 1. General Requirements for all UST Systems. General requirements for all UST systems shall be as established in 40 C.F.R. 280.40.

Section 2. Requirements for Petroleum UST Systems. Requirements for petroleum UST systems shall be as established in 40 C.F.R. 280.41.

Section 3. Requirements for Hazardous Substance UST Systems. Requirements for hazardous substance UST systems shall be as established in 40 C.F.R. 280.42.

Section 4. System Integrity Testing and Reporting. (1) The following tests shall be performed in accordance with the equipment manufacturer's instructions, 401 KAR 42:020, 42:030, and this administrative regulation: [Application of Federal Regulations. (1) The requirements for UST system release detection and recordkeeping for UST systems are governed by 40 C.F.R. Part 280 Subpart D and this administrative regulation.

(2) The documents incorporated by reference in Section 3 of this administrative regulation shall be used in meeting the requirements of subsection (1) of this section.

(3) The results of the following tests required by 40 C.F.R. Part 280 Subpart D shall be submitted to the cabinet within thirty (30) days of the test completion:]

(a) [Annual] Line Tightness Test [for Pressurized Piping];

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- (b) Automatic [Annual/Operational] Line Leak Detector Test;
- (c) Operational Test of Electronic Release Detection Monitoring Equipment; and
- (d) [Five (5)-year] Tank Tightness Test; and
- (d) Tri-annual Line Tightness Test for American Suction Piping).

(2)(a) Results of a test conducted in accordance with subsection (1) of this section shall be submitted on:

1. For line tightness tests: "[Line Tightness Test]", DEP 4064;
2. For automatic line leak detector test: "Automatic Line Leak Detector Operational Test", DEP 4062;
3. For operational test of electronic release detection monitoring equipment: "Electronic Release Detection Equipment Test", DEP 4063; and
4. For tank tightness test: Tank Tightness Test, DEP 4066.[]

(b) Results for a test conducted in accordance with subsection (1) of this section may be submitted on a standardized form provided by the testing equipment manufacturer if the form contains, at a minimum, the same information as the form listed in paragraph (a) of this subsection.

(3)(a) Owners and operators shall immediately report to the cabinet, as a suspected release in accordance with 401 KAR 42:050, failing results of a test performed in accordance with subsection (1) of this section.

(b) All documentation of failing test results shall be submitted to the Underground Storage Tank Branch within seven (7) days of the test date.

(c) All documentation of passing test results shall be submitted to the Underground Storage Tank Branch within thirty (30) days of the test date.

Section 5. Tank and Line Tightness and Line Leak Detector Testers. (1) Owners and operators shall ensure that tests of tanks and piping for tightness and operational tests of automatic line leak detectors **shall be**are] conducted by a person who meets the following requirements:

(a) Uses testing equipment and methods that **shall be**are] certified, as of the time of testing, by an independent third-party evaluator;

(b) Has completed a training course conducted or endorsed by the manufacturer of the testing equipment;

(c) Maintains training credentials as prescribed by the manufacturer of the testing equipment; and

(d) Provides a copy of his or her[their] training credentials to the cabinet upon request.

(2) Failure to provide credentials as established in subsection (1)(d) of this section, upon written request from the cabinet, shall render the test results invalid.

Section 6. Methods of Release Detection for Tanks and Piping. (1) Effective April 1, 2012, methods of release detection for tanks and piping installed prior to April 1, 2012 shall be as established in 40 C.F.R. 280.43 (b), (c), (d), (g), (h), and 280.44.[]

(2) Owners and operators may use automatic tank gauging (ATG) or statistical inventory reconciliation (SIR) as a release detection method for tanks installed, prior to April 1, 2012. **If an ATG or SIR method is used, the method shall be**, 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, **incorporated by reference in 401 KAR 42:020**, 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 **that shall be**[which are] capable of printing sensor readings. Owners and operators shall obtain a record, at least once every thirty (30) days, to verify that release detection is being performed and that releases have not occurred.

(4) For UST systems installed prior to April 1, 2012 for which the owner or operator has established[electronic] interstitial monitoring as the primary method of release detection:

(a) For electronic devices [which are]capable of printing sensor readings, owners and operators shall obtain a record, at least once

every thirty (30) days, to verify that release detection is being performed and that releases have not occurred; or

(b) For [electronic]devices [which are]not capable of printing sensor readings, a monthly log shall be maintained and documented on Visual Interstitial Log, DEP 5041, to verify that release detection is being performed and that releases have not occurred.

(5) All release detection records for the most recent monthly verification[] and for the preceding twelve (12) months[] shall be maintained.

(6) All electronic release detection monitoring equipment for the UST system shall be operationally tested annually in accordance with the equipment manufacturer's instructions or a recognized 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 systems shall be equipped with an automatic line leak detector (ALLD).

(2)(a) All ALLDs shall be performance-tested annually by a qualified individual meeting the requirements of Section 5 of this administrative regulation.

(b) All ALLD performance-testing shall be simulated at the dispenser located furthest away from the ALLD or at the highest elevation above the ALLD.

(c) All ALLDs shall be installed within the UST system during the test as it would be during normal operation.

(d) For electronic line leak detectors, the performance test shall verify that the automatic line leak detector **shall[will]** shut down the Submersible Turbine Pump (STP) and **shall be**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 **shall[will]** be capable of detecting a leak rate equivalent to three (3) gallons-per-hour at ten (10) pounds per square inch of line pressure while reducing the flow [in accordance with manufacturer's recommendation]. In addition, the test shall verify that the STP relay switch **shall not malfunction**[is not malfunctioning] permanently in the on position, which would prevent the mechanical line leak detector from operating properly.

Section 8. Release Detection Recordkeeping. Requirements for release detection recordkeeping shall be as established in 40 C.F.R. 280.45.

Section 9. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Division of Waste Management prior to the deadline.

(3) The cabinet **shall[may]** grant an extension if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 10.[2. Extensions. The owner or operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

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

(a) "Automatic Line Leak Detector **Operational Test**", DEP 4062, April 2011;

(b) "Line Tightness Test", DEP 4064, April 2011;

(c) "Tank Tightness Test", DEP 4066, April 2011;

(d) "Electronic Release Detection Equipment Test", DEP 4063 April 2011; and

(e) "Visual Interstitial Log", DEP 5041, April 2011. ["Site Assessment Outline for External UST System Release Detection Methods (Groundwater, Vapor, and Interstitial Monitoring)" (August 2006); and

(f) "External UST System Release Detection Well Form", DEP Form 8051 (January 2006).]

(2) [(a)] 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.

[(b)] 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

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 42:045. Delivery prohibition.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart C, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 42 U.S.C. 6991e, 6991k[, 42 U.S.C. 6991e]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-105 requires the cabinet to establish a program for regulating underground storage tanks that implements the federal regulatory requirements for underground storage tanks. 42 U.S.C. 6991k establishes the parameters for delivery prohibition for underground storage tank systems. This administrative regulation establishes the procedures for invoking delivery prohibition for an underground storage tank system.

Section 1. Applicability. This administrative regulation shall not apply to a regulated underground storage tank used to fuel an emergency backup generator[generators].

Section 2. Delivery Prohibition for UST Systems. (1) The cabinet shall determine that a UST system is ineligible for delivery, deposit, or acceptance of regulated substances upon confirmation of one (1) or more of the following conditions:

(a) In accordance with 401 KAR 42:020, 42:030, and 42:040, required spill prevention equipment is not installed, operational, or maintained;

(b) In accordance with 401 KAR 42:020, 42:030, and 42:040, required overfill prevention equipment is not installed, operational, or maintained;

(c) In accordance with 401 KAR 42:020 and 42:030, required corrosion protection equipment is not installed, operational, or maintained;

(d) In accordance with 401 KAR 42:040, required release detection is not performed;

(e) In accordance with 401 KAR 42:020 and 42:040, required release detection equipment is not installed, operational, or main-

tained; or

(f) A defective UST system component, confirmed by UST system testing or visual observation by the cabinet, and for which the owner or operator has not documented a repair or replacement, has:

1. Caused a release of a regulated substance into the environment; or

2. Allowed a regulated substance to infiltrate into the interstitial space of the UST system.

(2) ~~If [Upon a determination by the cabinet that]~~ a condition described in subsection (1) of this section exists, the cabinet shall issue a Notice of Violation to the UST system's owner or operator.

(3) The Notice of Violation shall serve as notice to the owner or operator of the cabinet's intent to invoke delivery prohibition for the UST system if the violation is not corrected within the time frame established in writing by the cabinet.

(4) Upon failure by the owner or operator to correct the violation of a condition in subsection (1) of this section, cited in the initial Notice of Violation, or to request an extension, in accordance with Section 3 of this administrative regulation, a second Notice of Violation shall be issued.

(5) Upon issuance by the cabinet of the second Notice of Violation, delivery prohibition shall be invoked and an authorized representative of the cabinet shall attach a delivery prohibition tag to the non-compliant UST system.

(6) An owner or operator shall ensure that a delivery prohibition tag is not removed, defaced, altered, or destroyed.

(7) An owner or operator shall not allow the delivery, deposit, or acceptance of regulated substances into a UST system for which the cabinet has invoked delivery prohibition, unless otherwise directed in writing by the cabinet for the purpose of UST system testing.

(8) An owner or operator shall notify the appropriate product deliverer ~~if [when]~~ delivery prohibition has been invoked.

(9) Delivery prohibition shall remain in effect until the ~~cabinet determines that the~~ non-compliant UST system is returned to compliance for the violation that caused delivery prohibition to be invoked in accordance with subsection (1) of this section.

(10) The cabinet shall determine ~~if [whether]~~ a UST system is authorized to accept deliveries within two (2) business days (Monday through Friday) of receipt of written notice from the owner or operator that the remedial measures established in the Notice of Violation related to subsection (1) of this section have been met.

(11) ~~If [Upon a determination by the cabinet that]~~ the violation has been corrected, the cabinet shall terminate delivery prohibition and remove an affixed delivery prohibition tag within two (2) business days (Monday through Friday).

(12) If the Division director, or ~~his~~ designee, determines, in writing, that delivery prohibition at a UST facility would jeopardize the availability of, or access to, motor fuel in a rural and remote area, the cabinet ~~shall~~ may defer the application of delivery prohibition for a UST system, with reference to (a), (b), (c), (d), or (e) of subsection (1) of this section, for a period not to exceed forty-five (45) days.

Section 3. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Division of Waste Management prior to the deadline.

(3) The cabinet ~~shall~~ may grant an extension, if ~~the cabinet determines that~~ an extension would not have a detrimental impact on human health or the environment.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 15, 2011)

401 KAR 42:050. UST system release reporting, investigation, and confirmation.

RELATES TO: KRS 224.01-400(11), 224.10, 224.60, 40 C.F.R. Part 280 Subpart E, [40 C.F.R. Part 281,] 42 U.S.C. 6991c
STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105[; 40 C.F.R. Part 280 Subpart E, 40 C.F.R. Part 281, 42 U.S.C. 6991c]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [Environmental and Public Protection] cabinet to develop and conduct programs that[which] provide for the prevention, abatement, and control of contaminants that[which] may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting [UST system releases], corrective actions, closures, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program to implement[which implements] federal requirements for underground storage tanks [and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations]. 401 KAR Chapter 42 identifies requirements for underground storage tanks. This administrative regulation establishes the requirements for reporting of suspected UST system releases[;] and investigation of off-site impacts.

Section 1. UST System Release Reporting. (1) Reporting of suspected releases shall be as established in 40 C.F.R. 280.50; and

(2) [Application of Federal Regulations. The requirements for reporting of suspected UST system releases and investigation of off-site impacts for underground storage tank systems are governed by 40 C.F.R. Part 280 Subpart E and this administrative regulation.

Section 2. Suspected UST System Release Reporting.] A suspected or confirmed UST system release shall be reported immediately to the Environmental Response Branch [Team] at (800) 928-2380 or (502) 564-2380.

Section 2. Declared Environmental Emergencies for UST Systems. During the course of an environmental emergency declared by the Environmental Response Branch, the cabinet shall have the authority to prevent delivery, deposit, or storage of regulated substances and require all actions necessary to protect human health and the environment.

Section 3. Investigation Due to Off-site Impacts. Investigations due to off-site impacts shall be as established in 40 C.F.R. 280.51.

Section 4. Suspected Release Investigation and Confirmation Steps. (1) Steps for suspected release investigation and confirmation shall be as established in 40 C.F.R. 280.52; and

(2) Owners and operator shall perform a site check in accordance with the Site Check Outline, incorporated by reference in 401 KAR 42:060, if[when] directed in writing by the cabinet.

Section 5. Reporting and Cleanup of Spills and Overfills. (1) Except as established in subsection (2) of this section, reporting and cleanup requirements for spills and overfills shall be as established in 40 C.F.R. 280.53.[;]

(2) The reporting requirements for spills and overfills for diesel shall be as established in KRS 224.01-400(11).

Section 6. Extensions. (1) With the exception of the reporting requirements in Sections 1(2) and 5 of this administrative regulation, the owner or operator of a UST system may request an ex-

tension 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 shall[may] grant an extension, if [the cabinet determines that]an extension would not have a detrimental impact on human health or the environment. [Section 3. Extensions. With the exception of the reporting requirements in Section 2 of this administrative regulation, the owner or operator of a UST system may request an extension of the timeframe for reports required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.]

LEONARD K. PETERS, Secretary

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 15, 2011)

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. 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137[; 40 C.F.R. Part 280 Subpart F, Part 281, 42 U.S.C. 6991c]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [Environmental and Public Protection] cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks [tank (UST) systems] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements [standards] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [401 KAR Chapter 42 identifies requirements for UST systems.] This administrative regulation establishes the requirements for UST system release response, site characterization, corrective action, and public participation.

Section 1. 1. General Requirements. General requirements shall be as established in 40 C.F.R. 280.60.

Section 2. Initial Response. Initial response requirements shall be as established in 40 C.F.R. 280.61.

Section 3. Initial Abatement Measures and Site Check. (1) Requirements for initial abatement and site check shall be as established in 40 C.F.R. 280.62 and 280.63.

(2) The following documents shall be used to meet the requirements of subsection (1) of this section:

(a) Release Response and Initial Abatement Requirements Outline;

(b) Site Check Outline;

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- (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.f.]

(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.f.];

(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 shall[may] grant an extension, if [the cabinet determines that]an extension would not have a detrimental impact on human health or the environment. [Application of Federal Regulations. (1) The requirements for UST system release response, site characterization, corrective action and public participation for UST systems are governed by 40 C.F.R. Part 280 Subpart F and this administrative regulation.~~

(2) The documents incorporated by reference in Section 4 of this administrative regulation shall be used in meeting the requirements of subsection (1) of this section.

Section 2. Extensions. The owner or operator of a UST system may request an extension of the time frame for reports required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.]

Section 9.[3:] No Further Action Letter. (1) If a UST facility has met all applicable requirements in 401 KAR Chapter 42, the cabinet shall issue a no further action letter [for the UST facility].

(2) Any unpaid registration fees due in accordance with 401 KAR 42:200, shall be paid in full prior to the cabinet issuing a no further action letter [to any UST facility].

(3) ~~If[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 shall[may] revoke the No Further Action letter and require necessary action in accordance with 401 KAR Chapter 42.~~

Section 10.[4:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Release Response and Initial Abatement Requirements Outline", April 2011;

(b) "Site Check Outline", April 2011;

(c) "Site Check Report Form", DEP 6082, April 2011;

(d) "Vapor Intrusion Building Assessment", DEP 0058, April 2011;

(e) "Vapor Intrusion Assessment", DEP 0057, April 2011;

(f) "Site Investigation Outline", April 2011;

(g) "Over-Excavation Report Form", DEP 4067, April 2011;

(h) "Site Investigation Report Form", DEP 8049, April 2011;

(i) "Corrective Action Outline", April 2011;

(j) "Corrective Action Report Certification", DEP 5040, April 2011; and

(k) "Corrective Action Monitoring Report Form", DEP 8045, April 2011.["Site Check Outline", (August 2006);

(b) "Site Investigation Outline", (August 2006);

(c) "Corrective Action Plan Outline", (August 2006);

(d) "UST System Release Response and Initial Abatement Requirements Outline", (August 2006); and

(e) "Site Investigation Checklist Form", DEP 8049, (August 2006).]

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor [Underground Storage Tank Branch, 84 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

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

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, 322, 322A, 40 C.F.R. Part 280 Subpart 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 Subpart G, Part 284, 42 U.S.C. 6991c]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [Environmental and Public Protection] cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks [tank (UST) systems] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements [standards] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [401 KAR Chapter 42 identifies requirements for UST systems.] This administrative regulation establishes the requirements for out-of-service UST systems, temporary and permanent closure of UST systems, and change in service of UST systems.

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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.~~

~~(a) 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.~~

~~(b) UST system release detection is not required if[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; and~~

~~(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 an UST system is temporarily closed for more than twelve (12) months[,] and meets the performance standards for corrosion protection, spill containment and overflow prevention, and leak detection in accordance with 401 KAR 42:020, 42:030, and 42:040, owners and operators shall conduct tank and piping tightness tests on the temporarily closed tanks and piping prior to returning the UST system to operation.~~

~~Section 3. Notice of Intent for [Section 4 of this administrative regulation.~~

~~(b) The owners and operators shall permanently close the substandard UST system at the end of this twelve (12)-month period, unless the cabinet provides an extension of the twelve (12)-month temporary closure period. The cabinet may grant an extension if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.~~

~~Section 4.] Permanent Closure and Changes in Service. (1)(a) Owners and operators shall notify the cabinet of [their] intent to permanently close or make a change in service for a UST system a minimum of two (2) weeks (fourteen (14) calendar days) prior to beginning either the permanent closure or change in service in accordance with Sections 4 and 5 of this administrative regulation[under subsections (2) and (3) of this section].~~

~~1. This notice shall be submitted on the ["]Notice of Intent to Permanently Close Underground Storage Tank System["] DEP 7114[(January 2006)].~~

~~2. Initial abatement action shall not alleviate the owners and operators from notifying the cabinet of the intent to permanently close a UST system.~~

~~3[; however,] The cabinet may specify a shorter notification time prior to permanent closure if permanent closure activities are completed in response to actions conducted in accordance with the Release Response and Initial Abatement Requirements Outline or actions directed by the Environmental Response Team.~~

~~(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.~~

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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 if[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 shall[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) If[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 shall[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", August[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 2001)];

(f) "Test Methods for Evaluation Solid Wastes Physical/Chemical Methods", US EPA –SW-846, March 2009; and

(g) American Petroleum Institute Publication 2015, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks", [(August 2001)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor [Underground Storage Tank Branch, 81 C. Michael Davenport Blvd.], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Waste Management's Web site at <http://waste.ky.gov/ust>.

(3) The material listed in subsection (1)(f) of this section may also[(c) 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

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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.

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

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 authorizes[recognizes] that the administrative regulations may distinguish between types, classes, and ages of UST systems. KRS 224.60-137 requires the cabinet to promulgate[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 from the ground 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 2.[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 shall[may] grant an extension, if [the cabinet determines that]an extension would not have a detrimental impact on human health or the environment.

Section 3.[4.][Section 2. Affected Property Owner Consent. If an affected off-site property owner consents, the allowable residual soil levels applicable on-site may be utilized in addressing contamination within the property boundaries of that consenting off-site property owner. The consent shall be submitted to the cabinet on the "Affected Property Owner Consent Form", DEP 8057, (January 2006), and shall be accompanied by a site map identifying the location and address of the affected property in relation to the site.

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

(a) "Classification Outline", April 2011[(August 2006)]; and
(b) "Classification Guide", DEP 8056, April 2011[(January 2006)];

(c) "Affected Property Owner Consent Form", DEP 8057, (January 2006); and

(d) "Kentucky Guidance for Ambient Background Assessment", (January 2004)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, [Underground Storage Tank Branch, 81 C. Michael Davenport Blvd] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the [may also be obtained by calling the] Division of Waste Management's Web site at <http://waste.ky.gov/ust> [Man-

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agement at (502) 564-5981 or on the division's Web page located at www.waste.ky.gov.

LEONARD K. PETERS, Secretary

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 42:090. Financial responsibility.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart H, [Part 284,] 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-120[, 40 C.F.R. Part 280 Subpart H, Part 284, 42 U.S.C. 6991e]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [Environmental and Protection] cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks [tank (UST) systems] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [401 KAR Chapter 42 identifies requirements for UST systems.] This administrative regulation establishes requirements for demonstrating financial responsibility for corrective action and for compensation of third parties for bodily injury and property damage caused by sudden ~~or~~[and] nonsudden accidental UST system releases arising from the operation of UST systems containing petroleum.

Section 1. Applicability. Applicability shall be as established in 40 C.F.R. 280.90.

Section 2. Compliance Dates. Compliance dates shall be as established in 40 C.F.R. 280.91.

Section 3. Amount and Scope of Required Financial Responsibility. Amount and scope of required financial responsibility shall be as established in 40 C.F.R. 280.93.

Section 4. Allowable Mechanisms and Combinations of Mechanisms. Allowable mechanisms and combinations of mechanisms shall be as established in 40 C.F.R. 280.94.

Section 5. Financial Test of Self-insurance. Requirements for a financial test of self-insurance shall be as established in 40 C.F.R. 280.95.

Section 6. Guarantee. Requirements for a guarantee shall be as established in 40 C.F.R. 280.96.

Section 7. Insurance and Risk Retention Group Coverage. Insurance and risk retention group coverage shall be as established in 40 C.F.R. 280.97.

Section 8. Surety Bond. Requirements for a surety bond shall be as established in 40 C.F.R. 280.98.

Section 9. Letter of Credit. Requirements for a letter of credit shall be as established in 40 C.F.R. 280.99.

Section 10. Use of State-required Mechanism. Use of a state-required mechanism shall be as established in 40 C.F.R. 280.100.

Section 11. State Fund or Other State Assurance. (1) Requirements for the state fund or other state assurance shall be as established in 40 C.F.R. 280.101.

(2) [Application of Federal Regulations. The requirements for demonstrating financial responsibility for corrective action and for compensation of third parties for bodily injury and property damage caused by sudden and nonsudden accidental UST system releases arising from the operation of UST systems containing petroleum are governed by 40 C.F.R. Part 280 Subpart H, KRS 224.60-105, 224.60-120, and this administrative regulation.

Section 2. State Fund Mechanism for Financial Responsibility. (1) The Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) may be utilized as a mechanism to demonstrate financial responsibility in accordance with subsection (1) of this section. The requirements for PSTEAF shall be as established [can be found] in 401 KAR 42:250.

Section 12. Trust Fund. Requirements for a trust fund shall be as established in 40 C.F.R. 280.102.

Section 13. Standby Trust Fund. Requirements for a standby trust fund shall be as established in 40 C.F.R. 280.103.

Section 14. Local Government Bond Rating Test. Requirements for a local government bond rating test shall be as established in 40 C.F.R. 280.104.

Section 15. Local Government Financial Test. Requirements for a local government financial test shall be as established in 40 C.F.R. 280.105.

Section 16. Local Government Guarantee. Requirements for a local government guarantee shall be as established in 40 C.F.R. 280.106.

Section 17. Local Government Fund. Requirements for a local government fund shall be as established in 40 C.F.R. 280.107.

Section 18. Substitution of Financial Assurance Mechanisms by Owner or Operator. Substitution of financial assurance mechanisms by owner or operator shall be as established in 40 C.F.R. 280.108.

Section 19. Cancellation or Nonrenewal by a Provider of Financial Assurance. Cancellation or nonrenewal by a provider of financial assurance shall be as established in 40 C.F.R. 280.109.

Section 20. Reporting by Owner or Operator. Reporting by owner or operator shall be as established in 40 C.F.R. 280.110.

Section 21. Recordkeeping. Recordkeeping shall be as established in 40 C.F.R. 280.111.

Section 22. Drawing on Financial Assurance Mechanisms. Drawing on financial assurance mechanisms shall be as established in 40 C.F.R. 280.112.

Section 23. Release from the Requirements. Release from the requirements shall be as established in 40 C.F.R. 280.113.

Section 24. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance. Bankruptcy or other incapacity of owner or operator or provider of financial assurance shall be as established in 40 C.F.R. 280.114.

Section 25. Replenishment of Guarantees, Letters of Credit, or Surety Bonds. Replenishment of guarantees, letters of credit, or surety bonds shall be as established in 40 C.F.R. 280.115.

Section 26. Suspension of Enforcement. Suspension of en-

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forcement shall be as established in 40 C.F.R. 280.116.

Section 27. ~~40 C.F.R. 280.101 if the following requirements are satisfied:~~

(a) ~~A person owns or operates a petroleum storage tank or tanks;~~

(b) ~~The owner or operator certifies financial responsibility for the petroleum storage tank(s) in accordance with KRS 224.60-120; and~~

(c) ~~The owner or operator registers the petroleum storage tank with the cabinet in accordance with 401 KAR 42:020.~~

(2) ~~An owner or operator shall be deemed by the cabinet to have satisfied the requirements of subsection (1) to utilize the Petroleum Storage Tank Environmental Assurance Fund to meet the financial responsibility requirements of 40 C.F.R. 280.101 if:~~

(a) ~~A Certificate of Registration and Reimbursement Eligibility has been issued to the owner or operator of a petroleum storage tank in accordance with 401 KAR 42:020; and~~

(b) ~~The cabinet has determined that the owner or operator qualifies for participation in the Financial Responsibility Account, or the Petroleum Storage Tank Account through compliance with 401 KAR 42:030 and 42:040.~~

(3) ~~Federal and state-owned facilities shall not be eligible to utilize the state fund mechanism.~~

Section 3.] Certification of Financial Responsibility. An owner or operator shall certify, through signature on the UST Facility Registration Form, DEP 7112, incorporated by reference ~~(January 2006), [required]~~ in 401 KAR 42:020, that financial responsibility has been established and shall be maintained in accordance with ~~[Section 4 of]~~ this administrative regulation.

Section 28. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet shall [may] grant an extension, if [the cabinet determines that] an extension would not have a detrimental impact on human health or the environment.

LEONARD K. PETERS, Secretary

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FILED WITH LRC: April 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.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 42:095. Lender liability.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart I, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This administrative regulation es-

tablishes requirements for lender liability.

Section 1. Definitions. Definitions shall be as established in 40 C.F.R. 280.200.

Section 2. Participation in Management. Requirements for participation in management shall be as established in 40 C.F.R. 280.210.

Section 3. Ownership of an UST or UST System or Facility or Property on which a UST or a UST System is Located. Criteria to prevent a holder from acquiring ownership status shall be as established in 40 C.F.R. 280.220.

Section 4. Operating a UST or a UST System. Criteria to prevent a holder from acquiring operator status for a UST or a UST system shall be as established in 40 C.F.R. 280.230.

Section 5. Extensions. (1) The holder of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet shall [may] grant an extension, if ~~[the cabinet determines that]~~ an extension would not have a detrimental impact on human health or the environment.

LEONARD K. PETERS, Secretary

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 42:200. Annual fee for underground storage tanks ~~[Underground storage tank system owner registration fees].~~

RELATES TO: KRS 224.10-100, 224.60

STATUTORY AUTHORITY: KRS 224.10-100(28)[, (30)], 224.60-105, 224.60-150(1).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-150 states that the cabinet shall levy and collect an annual fee of thirty (30) dollars per underground storage tank ~~[(UST) system]~~ from owners or operators of underground storage tanks ~~[UST systems]~~ for the purpose of funding the administration of the underground storage tank program. KRS 224.10-100(28)~~[(30)]~~ authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. This administrative regulation establishes provisions for the payment of an annual ~~[registration]~~ fee for an underground storage tank.

Section 1. Applicability. This administrative regulation shall apply to all owners and operators of underground storage tanks ~~[UST systems]~~.

Section 2. Annual ~~[Registration]~~ Fee. (1) The owner or operator of an underground storage tank shall pay a thirty (30)~~[,]~~ dollar annual ~~[registration]~~ fee for each underground storage tank ~~[UST system]~~ that is in the ground, and not permanently closed in accordance with 401 KAR 42:070, on July 1 of a year (July 1 through June 30).

(2) Payment shall be submitted to the Underground Storage Tank Branch of the Division of Waste Management.

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(3) Checks shall be made payable to the Kentucky State Treasurer and be submitted within thirty (30) days after receipt of an invoice from the cabinet specifying the required payment.

(4) ~~[Section 3. New Registrations. For a new registration, the fee of thirty (30) dollars per UST system, payable to the Kentucky State Treasurer, shall be submitted to the Underground Storage Tank Branch along with the initial "UST Facility Registration Form", DEP 7112, (January 2006), as required by and incorporated by reference in 401 KAR 42:020.~~

Section 4. Amended Registrations. (1) If the "UST Facility Registration Form", DEP 7112, (January 2006) is amended in accordance with 401 KAR 42:020, to include one (1) or more additional UST systems, the amended form shall be accompanied by payment of any annual registration fees that may be due, including any outstanding fees for preexisting UST systems.

(2) Fees due shall be calculated at a rate of thirty (30) dollars for each additional UST system for each year (July 1 through June 30) the UST system was in the ground.

(3) The fee for any year (July 1 through June 30) shall be due if the underground storage tank [UST system] was in the ground on July 1 of that year.

~~(5)[(4)]~~ Fees shall not be due for years prior to the one (1) beginning July 1, 1990.

(6) Annual fees shall not be required for an unregistered underground storage tank newly discovered during permanent closure activities conducted in accordance with 401 KAR 42:070.

Section 3. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet ~~shall~~ may grant an extension, if ~~[the cabinet determines that]~~ an extension would not have a detrimental impact on human health or the environment. ~~[(5)-If an unregistered UST system is discovered during permanent closure activities pursuant to 401 KAR 42:070, a one (1) time registration fee of thirty (30) dollars shall be submitted for each discovered UST system within thirty (30) days after discovery. Registration fees for previous years shall not be required.~~

Section 5. Changes of Ownership. ~~If ownership of a UST system changes, any unpaid registration fees shall be the responsibility of the new owner.]~~

LEONARD K. PETERS, Secretary

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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.

ENERGY AND ENVIRONMENTAL CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement procedures.

RELATES TO: KRS 224.01-400, 224.01-405, 224.60-120, 224.60-130, 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 ~~[these]~~ procedures to administer the PSTEAF.

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 **October 6, 2011**[the effective date of this administrative regulation] shall be made in accordance with **401 KAR Chapter 42 in effect prior to October 6, 2011**[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 Fund 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. A petroleum storage tank owner or operator shall certify in the Application for Assistance that:

a. ~~(i)~~ A contract has been entered into and submitted in accordance with Section 3 of this administrative regulation; and

(ii) ~~[b:]~~ A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet; or

b. ~~[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; and ~~[c:]~~

(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 ~~found~~ 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]~~

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(5) If the petroleum storage tank owner or operator seeking reimbursement from the PSTEAF changes~~;~~ and **the new petroleum storage tank owner or operator assumes**~~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, DEP 7112, 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**~~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

(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 tank ~~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, **incorporated by reference in 401 KAR 42:070**, 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~~Newly-Discovered~~ Underground Storage Tank Systems. (1) A **newly discovered**~~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**~~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

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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) If ~~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.a. The tonnage verified through the submittal of weigh tickets; or

b. ~~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

2.~~3.~~ Reimbursement for the removal, transportation, and disposal of water encountered within the over-excavation shall be contingent upon analytical confirmation that contaminant levels within the water exceed the applicable groundwater screening levels, and the reimbursable amount for water removed, transported, and disposed shall be based on the quantity of water disposed, as documented by disposal manifests and limited to one (1) pit volume;

(b) The reimbursable amount for a Dual Phase Extraction Event identified in a written directive issued by the Underground

Storage Tank Branch shall be adjusted to include the amount of water disposed as documented by disposal manifests, or the amount of water verified by the eligible company or partnership as being treated on site;

(c) The reimbursable amount for Operation and Maintenance of an approved remediation system shall be adjusted to include the actual cost of utilities as documented by invoices submitted;

(d) If the Underground Storage Tank Branch has not received and approved the Application for Assistance, DEP 6063, prior to the issuance of the written directive, the reimbursable amount identified in the written directive issued shall not include the applicable formulated task rates for mobilization, per diem and field equipment cost. The Underground Storage Tank Branch shall add the applicable formulated task rates for mobilization, per diem, and field equipment to the reimbursable amount, in accordance with the Contractor Cost Outline once an approved Application for Assistance is submitted;~~or~~

(e) If the Underground Storage Tank Branch has not received a signed contract between the eligible applicant and the eligible company or partnership prior to the issuance of the written directive, the reimbursable amount identified in the written directive issued shall not include the applicable formulated task rates for mobilization, per diem, and field equipment cost. The Underground Storage Tank Branch shall add the applicable formulated task rates for mobilization, per diem, and field equipment to the reimbursable amount, in accordance with the Contractor Cost Outline, once the requirements of Section 3 of this administrative regulation are met;~~or~~

(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; ~~or~~;

(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

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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 shall ~~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 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 Outside the Excavation Zone Reimbursement 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 **subsection (1)(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 ~~if[whether]~~ the costs submitted in the claim ~~shall be[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 Under-

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ground Storage Tank Branch on the Facility Restoration Worksheet, DEP 6095, for the completion of facility restoration actions.^[1]

(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^[1] 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 ~~if whether~~ the costs submitted in the claim are eligible for reimbursement.

(11) All claims shall be submitted within two (2) years after issuance of a no further action letter by the Underground Storage Tank Branch.

Section 11. Reimbursement for Actions Directed and Documented by the Environmental Response Branch during a Declared Environmental Emergency. Reimbursement for actions directed and documented by the Environmental Response Branch during a declared environmental emergency shall not be governed by this administrative regulation and shall be made in accordance with procedures established by the cabinet.

Section 12. Eligible and Ineligible Costs. (1) Eligible costs for regulated petroleum storage tanks containing motor fuel shall include:

(a) Tank and Line Tightness Testing as requested in writing by the Underground Storage Tank Branch in conjunction with Site Check, Site Investigation, or Corrective Action activities for a facility;

(b) Site checks at a facility, upon a written directive after September 13, 2006, by the Underground Storage Tank Branch;

(c) Performance of corrective action as defined in KRS 224.60-115(4), due to a release of motor fuel from a regulated petroleum

storage tank system, upon written direction by the Underground Storage Tank Branch;

(d) Transportation, disposal, or treatment at a permitted facility, and replacement of backfill material, excluding the tank volume, contaminated above 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^[1] 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 ~~if where~~ the results of laboratory analysis do not confirm the need for corrective action or for actions to achieve more stringent allowable levels ~~than then~~ those prescribed by the cabinet, except for investigatory or corrective actions otherwise directed from the Underground Storage Tank Branch in writing;

(u) A cost of a party employed to act as a surrogate or stand-in

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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 42:079;

(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 forty (40)~~[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 ~~that~~~~[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 ~~shall be~~~~[are]~~ identified in the Contractor Cost Outline.

(2) Costs not included in the Contractor Cost Outline shall be reasonable and necessary to the performance of corrective action in order to be eligible for reimbursement.

(3) Pass-through costs for utilities and employee expense accounts shall not receive a markup on the actual cost.

(4) A fifteen (15) percent total markup above the estimated cost of materials purchased associated with a task for which there is not a formulated unit rate shall be allowed.

Section 14. Request for Re-Evaluation of the Reimbursable Amount Identified in a Written Directive. (1) If the applicant determines that the scope of work identified in a written directive cannot be completed without exceeding the total reimbursable amount set forth in the written directive, a request for re-evaluation of the reimbursable amount may be submitted to the Underground Storage

Tank Branch on the Reimbursable Amount Re-Evaluation Form, DEP 0062, and shall include:

(a) The submittal of three (3) current written estimates, for services or materials not provided by the contracting company or partnership, from subcontractors in the area in which the facility is located, if applicable;

(b) The submittal of an itemized cost breakdown of the contracting company or partnership's time and materials in completing the written directive; and

(c) The costs shall be calculated using the personnel and equipment rates established in Section 3 of the Contractor Cost Outline.

(2) The Underground Storage Tank Branch shall review the itemized cost breakdown and based upon a determination of reasonable and necessary costs, the Underground Storage Tank Branch shall either:

(a) Determine that the itemized cost breakdown exceeds the reimbursable amount, rescind the written directive, and issue a new written directive establishing a not-to-exceed amount; or

(b) Determine that the reasonable and necessary costs itemized are at or below the initial reimbursement amount, and deny the request for re-evaluation, leaving the reimbursable amount identified in the original directive letter in effect.

(3) ~~If~~~~[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; ~~or~~ **[.]**

(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

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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 ~~shall~~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, ~~the inspector shall~~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.;

(e) This ~~subsection~~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)(a) If the unobligated balance of the Financial Responsibility

Account is \$1,000,000 or less, or the reimbursement of additional claims would cause the unobligated balance of the fund to be less than \$1,000,000, the cabinet shall immediately suspend claim reimbursements and the approval of applications until the unobligated balance is greater than \$1,000,000.

(b) ~~If~~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, ~~August~~JulyApril 2011;

(f) "Facility Restoration Reimbursement Worksheet", DEP 6095, ~~August~~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, JulyApril 2011;

(k) "Underground Storage Tank Branch Written Directive Claim Request", DEP 6091, April 2011; and

(l) "Contractor Cost Outline", JulyApril 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

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reapplying if the requested documentation becomes available.

(6) If the petroleum storage tank owner or operator meets the requirements of subsections (2) and (3) of this section, the cabinet shall:

- (a) Approve the Application for Assistance;
- (b) Reevaluate the eligibility of the owner or operator to receive reimbursement from either the Financial Responsibility Account or the Petroleum Storage Tank Account according to Section 4 of this administrative regulation; and
- (c) If the evaluation results in changing the owner's or operator's account placement from the initial placement made prior to the submittal of the Application for Assistance, the cabinet shall issue an amended "Certificate of Registration and Reimbursement Eligibility", DEP 7113 (January 2006), incorporated by reference in 401 KAR 42:020.

Section 3. Contracts. (1) A petroleum storage tank owner or operator shall obtain a contract from a certified company, if work was initiated on or after July 1, 1999, to be eligible for reimbursement from the cabinet for:

- (a) The performance of release investigation, site check or site investigation for a facility; and
 - (b) The development and implementation of a corrective action agreement in accordance with Section 17 of this administrative regulation.
- (2) The contract shall be obtained and submitted to the cabinet prior to commencing activity, except for those actions directed and documented by the cabinet's Environmental Response Team upon the cabinet's declaration of an environmental emergency.
- (3) If a contract is changed or revised, a copy of that contract shall be submitted to the cabinet within thirty (30) days of execution.

Section 4. Account Placement. (1) An owner or operator of a petroleum storage tank shall be eligible to receive reimbursement for corrective action costs and third-party claims, incurred on or after April 9, 1990, from the Financial Responsibility Account if the cabinet determines the petroleum storage tank owner or operator to have satisfied the following requirements:

- (a) Registered the tanks with the cabinet in accordance with 401 KAR 42:020 prior to the release requiring corrective action;
- (b) Maintained UST system release detection as required by 401 KAR 42:040. A petroleum storage tank permanently or temporarily closed, in compliance with 401 KAR 42:070, shall have maintained compliance with UST system release detection requirements prior to the permanent or temporary closure of the system;
- (c) Maintained corrosion protection as required by 401 KAR 42:030;
- (d) Maintained overfill and spill prevention as required by 401 KAR 42:030 for those tanks in operation after December 22, 1998;
- (e) Received a "Certificate of Registration and Reimbursement Eligibility", DEP 7113 (January 2006) for the facility, pursuant to 401 KAR 42:020, or a Certificate of Eligibility issued prior to the effective date of this administrative regulation;
- (f) Filed a notice of intent form, incorporated by reference in 401 KAR 42:070, if applicable, with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change-in-service to comply with the requirements of 401 KAR 42:070;
- (g) Reported the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400 and 401 KAR 42:050;
- (h) Performed initial abatement procedures as required by the "UST System Release Response and Initial Abatement Requirements Outline" (August 2006), incorporated by reference in 401 KAR 42:060; and
- (i) With regard to reimbursement for third-party claims, has complied with the requirements of 401 KAR 42:300.

(2) An owner or operator of a petroleum storage tank who is not eligible for participation in the Financial Responsibility Account, shall be eligible for reimbursement by the Petroleum Storage Tank Account for the cost of corrective action incurred on or after April 9, 1990, if the cabinet determines the petroleum storage tank owner or operator has satisfied the following requirements:

- (a) Registered the facility with the cabinet in accordance with 401 KAR 42:020;
 - (b) Filed a notice of intent form with the cabinet to permanently close the petroleum storage tanks at the facility (if applicable) or to make a change-in-service (if applicable) to comply with the requirement of 401 KAR 42:070; and
 - (c) Reported a release to the cabinet as required by KRS 224.01-400 and KRS 224.01-405.
- (3) Facilities placed in the Petroleum Storage Tank Account shall not be eligible for third-party coverage.

Section 5. Entry Level to the Financial Responsibility Account and Petroleum Storage Tank Account. (1) For facilities with releases confirmed after the effective date of this administrative regulation, a petroleum storage tank owner's or operator's entry level shall be deducted from the overall reimbursement except as provided in subsections (2) and (3) of this section.

(2) An entry level shall not be deducted from the overall reimbursement if the owner or operator participated in the Small Owner Tank Removal Account in accordance with 401 KAR 42:330.

(3) The entry level shall not be deducted from the overall reimbursement if the owner or operator is directed by the cabinet to perform a site check, in accordance with 401 KAR 42:060, for the facility and the laboratory analyses indicate corrective action is not required at the facility.

(4) Upon request by the petroleum storage tank owner or operator, the cabinet shall reimburse, upon final payment, twenty-five (25) percent of the entry level if the petroleum storage tank owner or operator has:

- (a) Completed corrective action at the facility within:
 - 1. 180 days from the discovery of the release, for soil remediation alone; or
 - 2. Twenty-four (24) months from the discovery of the release, for groundwater alone or for both soil and groundwater remediation; and
- (b) Received a no further action letter without additional measures being required.

Section 6. Newly Discovered Underground Storage Tank System. (1) A newly discovered underground storage tank system encountered at a facility during the performance of corrective action due to a release from a registered tank shall not affect an owner's or operator's account placement eligibility.

(2) The number of newly discovered tanks shall not increase the entry level of the owner or operator.

Section 7. Preestablished Fixed Cost Reimbursement. (1) All reimbursements shall be made on the basis of preestablished fixed costs as established in the "Contractor Cost Outline" (August 2006), except as provided for in Section 8 through Section 19 of this administrative regulation and 401 KAR 42:330.

(2)(a) The preestablished fixed cost shall be identified within a written directive issued by the cabinet pursuant to 401 KAR 42:060 and shall be:

1. Itemized by the cabinet on the appropriate reimbursement cost worksheets attached to the written directive as identified below:

- a. "Initial and Intermediate Site Investigation and Site Check for a Facility" worksheet, DEP 6066C, (August 2006) of this administrative regulation; and
- b. "Final Site Investigation for a Facility" worksheet, DEP 6066D, (August 2006); and

2. Considered the final cost for the completion of the written directive and shall serve as an obligation and guarantee of payment in accordance with KRS 224.60-140(5).

(b) Fixed cost reimbursement shall be made after the following actions are completed:

1. The submittal and approval of an Application for Assistance in accordance with Section 2 of this administrative regulation;

2. A determination by the cabinet that the report submitted in response to each written directive is complete and meets the requirements of 401 KAR Chapter 42;

3. The submittal of necessary documentation pursuant to the "Contractor Cost Outline", (August 2006) of this administrative

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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 agree-

ment.

Section 10. Third-party Claims. Third-party claims shall be submitted in accordance with 401 KAR 42:300 and shall include the "Third-party claim Form", DEP 6078, (January 2006).

Section 11. Capital Equipment. (1) A petroleum storage tank owner or operator who has been directed by the cabinet to initiate corrective action that requires the purchase of equipment costing in excess of \$1,000 shall obtain prior approval of the purchase by submitting a "Capital Equipment Preapproval Purchase/Rental Request", DEP 6071, (January 2006) form.

(2) Reimbursement using the "Capital Equipment Claim Form", DEP 6070, (January 2006) shall be limited to the purchase price, less determined salvage value, as approved by the cabinet.

(3) The cabinet shall approve either the purchase or rental of remediation equipment and shall establish the amount to be reimbursed, in accordance with the "Contractor Cost Outline", (August 2006).

Section 12. Claims for Initial Abatement-free Product Recovery. (1) Reimbursement requests for costs incurred during initial abatement or free product recovery actions, as directed by the cabinet, shall be submitted to the cabinet as a claim. The claim request shall include the following documentation if the written directive is issued by the cabinet after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064, (January 2006);

(b) "Invoice Listing Form", DEP 6065, (January 2006);

(c) "Initial Abatement and Free Product Recovery" worksheet, DEP 6066B, (August 2006); and

(d) Original invoices as required in the "Contractor Cost Outline", (August 2006).

(2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete, in accordance with 401 KAR 42:060.

Section 13. Claims for Quarterly Monitoring Reports and System Maintenance. Reimbursement for costs incurred for quarterly monitoring, system maintenance, and reporting shall be limited to those actions specified in the approved and implemented corrective action plan.

(1) If the work was initiated after the effective date of this administrative regulation, claim requests shall include the following documents:

(a) "Claim Request Form", DEP 6064, (January 2006);

(b) "Invoice Listing Form", DEP 6065, (January 2006);

(c) "Quarterly Monitoring Reporting and System Maintenance" worksheet, DEP 6066G, (August 2006); and

(d) Original invoices as required in the "Contractor Cost Outline", (August 2006).

(2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete.

Section 14. Claims for Optional Soil Removal Outside of the Excavation Zone at the Time of Permanent Closure in Accordance with 401 KAR 42:070. (1) Reimbursement requests for costs incurred for optional soil removal outside of the excavation zone shall be submitted on the "Over-Excavation" worksheet, DEP 6066E, (August 2006).

(2) The claim request shall include the following documentation if the costs submitted were incurred after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064, (January 2006);

(b) "Invoice Listing Form", DEP 6065, (January 2006);

(c) "Over-Excavation" worksheet, DEP 6066E, (August 2006);

(d) Original invoices as required in the "Contractor Cost Outline", (August 2006); and

(e) Backup documentation required to support each task as required on the worksheet.

(3) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete.

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~~Section 15. Claims for Miscellaneous Tasks. (1) The "Miscellaneous Tasks" worksheet, DEP 6066H, (August 2006) shall be completed to initiate reimbursement for the following actions:~~

- ~~(a) Nonemergency initial abatement actions pursuant to 401 KAR 42:060 conducted prior to a directive being issued by the cabinet;~~
- ~~(b) Transportation and disposal of drums containing purged water or soil cuttings not reimbursed on a previous claim;~~
- ~~(c) Initial review of facility information by a newly contracted certified company and contractor having no previous knowledge of the facility;~~
- ~~(d) Decommissioning of cisterns or drinking water wells as required to address conditions at the regulated facility;~~
- ~~(e) Monitoring well pad replacement;~~
- ~~(f) Tank and line tightness testing, as requested in writing by the cabinet, for corrective action activities;~~
- ~~(g) Encroachment permit or off-site access agreements, if required by the cabinet;~~
- ~~(h) Dye trace tests;~~
- ~~(i) Backfill subsidence repair; or~~
- ~~(j) Corrective action activities proposed by the petroleum storage tank owner or operator, or directed by the cabinet that do not include a unit cost listed in this administrative regulation.~~
- ~~(2) The claim request shall include the following documentation if the incurred costs submitted were initiated after the effective date of this administrative regulation:~~
 - ~~(a) "Claim Request Form", DEP 6064, (January 2006);~~
 - ~~(b) "Invoice Listing Form", DEP 6065, (January 2006);~~
 - ~~(c) "Miscellaneous Tasks" worksheet, DEP 6066H, (August 2006);~~
 - ~~(d) Original invoices as required in the "Contractor Cost Outline", (August 2006); and~~
 - ~~(e) Backup documentation to support each task as required on the worksheet.~~
- ~~(3) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete, in accordance with 401 KAR 42:060.~~

~~Section 16. Claims for Facility Restoration. (1) A reimbursement request for costs related to facility restoration shall include the following information:~~

- ~~(a) "Claim Request Form", DEP 6064, (January 2006);~~
- ~~(b) "Invoice Listing Form", DEP 6065, (January 2006);~~
- ~~(c) "Facility Restoration" worksheet, DEP 6066I, (August 2006);~~
- ~~(d) Original invoices as required in the "Contractor Cost Outline", (August 2006);~~
- ~~(e) Backup documentation required to support each task as required on the worksheet; and~~
- ~~(f) A site map for a facility, to scale, depicting the area impacted by corrective action (for example, over-excavation), the area of facility restoration and photographs of the area before and after facility restoration.~~
- ~~(2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete, in accordance with 401 KAR 42:060.~~

~~Section 17. Corrective Action Agreements. At the time the cabinet approves an owner or operator's interim or final corrective action plan pursuant to 401 KAR 42:060, the cabinet and the owner or operator shall for purposes of reimbursement enter into a Corrective Action Agreement which shall set forth:~~

- ~~(1) Method of reimbursement;~~
- ~~(2) Amount to be reimbursed; and~~
- ~~(3) Rate or schedule of payment.~~

~~Section 18. Criteria for Approval of a Claim. (1) A claim with an approved Application for Assistance for the Financial Responsibility Account or the Petroleum Storage Tank Account shall be reviewed to determine if:~~

- ~~(a) The corrective action complies with 401 KAR Chapter 42 and written directives from the cabinet;~~
- ~~(b) Each cost is necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42 and written directives from~~

~~the cabinet;~~

- ~~(c) The claim form is accurate and complete;~~
- ~~(d) All supplemental information has been supplied;~~
- ~~(e) The applicant has complied with Section 25 of this administrative regulation; and~~
- ~~(f) Annual tank fees have been paid as required by KRS 224.60-150.~~
- ~~(2) Reimbursement shall be made by a check remitted to the eligible petroleum storage tank owner or operator.~~

~~Section 19. Eligible Reimbursement Rates. Established unit costs and rates for eligible reimbursement are identified in the "Contractor Cost Outline", (August 2006) incorporated by reference in Section 26 of this administrative regulation.~~

~~Section 20. Signatures. (1) Forms required by this administrative regulation for which a signature is mandated shall be signed by an eligible petroleum storage tank owner or operator as follows:~~

- ~~(a) For a corporation, by:~~
 - ~~1. A president or secretary;~~
 - ~~2. The duly authorized representative or agent of the president or secretary if the representative or agent is responsible for overall operation of the facility; or~~
 - ~~3. A person designated by the board of directors by means of a corporate resolution.~~
- ~~(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or~~
- ~~(c) For a municipality, by:~~
 - ~~1. A principal;~~
 - ~~2. Executive officer; or~~
 - ~~3. Ranking elected official.~~
- ~~(2) A claim form or Application for Assistance shall also be signed by:~~
 - ~~(a) The certified contractor who is responsible for overseeing corrective action, unless corrective action commenced prior to March 1, 1995; and~~
 - ~~(b) An authorized representative of the certified company, unless corrective action commenced prior to July 1, 1999.~~
 - ~~(3) The owner or operator shall submit documentary evidence to substantiate the legality of an authorized representative's power of agency or power of attorney.~~

~~Section 21. Loss of Future Reimbursement Eligibility. (1) A petroleum storage tank owner or operator shall be ineligible to receive future reimbursement from the Financial Responsibility Account or Petroleum Storage Tank Account if the petroleum storage tank owner or operator has:~~

- ~~(a) Knowingly or intentionally submitted false or inaccurate information to the cabinet; or~~
- ~~(b) Knowingly made a false statement, representation, or certification in an application, reimbursement request, or other document submitted to the cabinet.~~
- ~~(2) A cost incurred by, or paid from, the cabinet which is based on false or inaccurate information, or a false statement, representation, or certification shall be recovered by the cabinet from the person who asserted the false or inaccurate information, or false statement, representation, or certification.~~
- ~~(3) The cabinet shall have the right to recover the money paid to a petroleum storage tank owner or operator, or a contractor if:~~
 - ~~(a) The amount was paid due to an error of the cabinet;~~
 - ~~(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the petroleum storage tank owner or operator or in an invoice submitted by a contractor; or~~
 - ~~(c) A person has obtained reimbursement from the cabinet by fraud or intentional misrepresentation.~~

~~Section 22. Subrogation. Prior to making reimbursement of a claim, the cabinet shall acquire, by subrogation, the rights of the person receiving reimbursement to recover the amounts paid by the cabinet for the performance of corrective action from the person responsible or liable for the release.~~

~~Section 23. Facility Inspections. The cabinet may conduct inspections in accordance with KRS 224.60-130(1)(l) to determine~~

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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 ma-

terial is incorporated by reference:

(a) "Application for Assistance", DEP 6063, (August 2006);

(b) "Claim Request Form", DEP 6064, (January 2006);

(c) "Invoice Listing Form", DEP 6065, (January 2006);

(d) "Capital Equipment Claim Form", DEP 6070, (January 2006);

(e) "Capital Equipment Preapproval Purchase/Rental Request", DEP 6071, (January 2006);

(f) "Payment Verification Affidavit", DEP 6075, (January 2006);

(g) "Payment Waiver Form", DEP 6077, (January 2006);

(h) "Environmental Response Team Declared Emergency" worksheet, DEP 6066A, (August 2006);

(i) "Initial Abatement & Free Product Recovery" worksheet, DEP 6066B, (August 2006);

(j) "Initial and Intermediate Site Investigation and Site Check for Facilities" worksheet, DEP 6066C, (August 2006);

(k) "Final Site Investigation for a Facility" worksheet, DEP 6066D, (August 2006);

(l) "Over-Excavation" worksheet, DEP 6066E, (August 2006);

(m) "Quarterly Monitoring Reports and System Maintenance" worksheet, DEP 6066G, (August 2006);

(n) "Miscellaneous Tasks" worksheet, DEP 6066H, (August 2006);

(o) "Facility Restoration" worksheet, DEP 6066I, (August 2006);

(p) "Third Party Claim Form", DEP 6078, (January 2006); and

(q) "Contractor Cost Outline", (August 2006).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays. This material is also available on the Division of Waste Management's Web page located at www.waste.ky.gov.

LEONARD K. PETERS, Secretary

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 42:290. Ranking system.

RELATES TO: KRS [42.040-42.020,] 224.60-120, 224.60-130, 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)[224.130(1)] requires the cabinet to establish by administrative regulation the procedures to administer the financial responsibility and petroleum storage tank accounts of the Petroleum Storage Tank Environmental Assurance Fund. This administrative regulation establishes the criteria for ranking facilities[sites] according to the extent of damage to the environment, the potential threat to human health, and the financial ability of the petroleum storage tank owner or operator to perform corrective action, in order to address the completion of corrective action and the subsequent reimbursement of eligible costs in accordance with 401 KAR 42:250 [payment of claims].

Section 1. Applicability. (1) In order to determine the sequence by which written directives shall be issued in order to address the completion of corrective action, and the subsequent reimbursement of those eligible costs in accordance with 401 KAR 42:250, a ranking system [A ranking system to address the completion of corrective action and the payment of claims] shall be established for the Financial Responsibility Account and the Petroleum Storage

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Tank Account, respectively, as set forth in Sections 2 and 3 of this administrative regulation.

(2)(a) Actions directed and documented by the Environmental Response Team, upon the cabinet's declaration of an environmental emergency, shall take priority over the ranking system in this administrative regulation. Once the Environmental Response Branch terminates the emergency phase, subsequent actions at the UST facility shall be prioritized in accordance with this administrative regulation.

(b) Actions contracted by the Division of Waste Management shall take priority over the ranking system in this administrative regulation. Once the Division of Waste Management completes or terminates contracted work, subsequent actions at the UST facility shall be prioritized in accordance with this administrative regulation.

(3) Facilities performing site checks or initial abatement at the written direction of the cabinet in accordance with the Site Check Outline or the Release Response and Initial Abatement Outline, incorporated by reference in 401 KAR 42:060, shall not be subject to the ranking system.

(4)(a) Those facilities for which the owner or operator has verified, through submittal of an Affidavit of Waiver for PSTeAF Reimbursement, DEP 6092, that reimbursement from the PSTeAF will not be sought shall not be subject to the ranking system.

(b) The affidavit shall be notarized.

(5) A facility that has been ranked based upon accurate classification of the UST system, in accordance with 401 KAR 42:080 and this administrative regulation, shall not thereafter receive a lower priority ranking as a result of the performance of directed corrective actions.

(6) All UST facilities, required to classify in accordance with the Classification Outline incorporated by reference in 401 KAR 42:080, shall be ranked in accordance with this administrative regulation regardless of previous ranking determinations made under the administrative regulations effective September 13, 2006.

(7) Facilities conducting corrective action under the provisions of 401 KAR Chapter 42 in effect prior to April 18, 1994 shall not be required to classify in accordance with 401 KAR 42:080, but shall be ranked in accordance with this administrative regulation.

Section 2. Ranking System for the Financial Responsibility Account. Facilities eligible to participate in the Financial Responsibility Account shall be ranked as follows:

(1) For purposes of addressing the completion of corrective action [determining extent of damage to the environment]:

(a) Rank 1. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are a source of confirmed contamination within [te] domestic-use wells, domestic-use springs, or domestic-use cisterns exceeding the maximum contaminant levels specified in 401 KAR Chapter 8. This ranking shall also include facilities with releases, for which the division has not issued a No Further Action Letter, that are a source of confirmed vapor intrusion, as defined in 401 KAR 42:005, in occupied residential and commercial buildings [levels specified in Groundwater Table I of the Classification Outline, (August 2006), incorporated by reference in 401 KAR 42:080].

(b) Rank 2. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are required to use the screening levels listed in [Class IV and] Groundwater Table 1 [I] of the Classification Outline, [(August 2006),] incorporated by reference in 401 KAR 42:080, within the point of compliance, where:

1. Groundwater[groundwater] contamination, exceeding the screening levels listed in Groundwater Table 1, has been confirmed within the point of compliance; or

2. Groundwater contamination exceeding the screening levels listed in Groundwater Table 1 has been confirmed beyond the point of compliance [at levels exceeding those listed in Groundwater Table I but has not resulted in the contamination of domestic use wells, springs, or cisterns. Facilities conducting corrective action under the provisions of 401 KAR Chapter 42 in effect prior to April 18, 1994 shall be placed into this ranking if required to utilize the levels listed in Groundwater Table I and groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I.]

(c) Rank 3. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are required to use the screening levels listed in [Class III and] Groundwater Table 2 [I] of the Classification Outline, [(August 2006),] incorporated by reference in 401 KAR 42:080, within the point of compliance, where:

1. Groundwater[groundwater] contamination, exceeding the screening levels listed in Groundwater Table 2, has been confirmed within the point of compliance; or

2. Groundwater contamination exceeding the screening levels listed in Groundwater Table 1 has been confirmed beyond the point of compliance [at levels exceeding those listed in Groundwater Table I but has not resulted in the contamination of domestic use wells, springs, or cisterns].

(d) Rank 4.

1. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are required to use the screening levels listed in [Class IV and] Groundwater Table 3 [I] of the Classification Outline, [(August 2006),] incorporated by reference in 401 KAR 42:080, within the point of compliance, where:

a. Groundwater[groundwater] contamination, exceeding the screening levels listed in Groundwater Table 3, has been confirmed within the point of compliance; or

b. Groundwater contamination exceeding the screening levels listed in Groundwater Table 1 has been confirmed beyond the point of compliance [at levels exceeding those listed in Groundwater Table II but has not resulted in the contamination of domestic use wells, springs, or cisterns].

2. Facilities subject to the provisions of 401 KAR 42:070, Section 1(3), and subject to the requirements in place [conducting corrective action under the provisions of 401 KAR Chapter 42 in effect] prior to April 18, 1994 shall be placed into this ranking [if required to utilize the levels listed in Groundwater Table II and groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II].

(e) Rank 5. Those facilities, with releases for which the division has not issued a No Further Action Letter, for which:

1. Soil contamination above applicable screening levels has been confirmed; and

2. Groundwater contamination above applicable screening levels has not been confirmed. [These facilities required to use the levels listed in Class III and Groundwater Table II of the Classification Outline, (August 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II but has not resulted in the contamination of domestic use wells, springs, or cisterns.]

(f) Rank 6. All other facilities that are not included in Ranks 1, 2, 3, 4, or 5, as specified in this subsection.]

(2) Facilities shall be further categorized within their respective Rank as determined in subsection (1) of this section, based on the financial ability of the owner or operator as follows:

(a) Facilities shall be placed in Category 1 within their respective rank if:

1. The owner's or operator's average total income for the last five (5) years is less than or equal to \$50,000; or

2. The owner or operator is registered and recognized by the federal government as a tax-exempt nonprofit organization.

(b) Facilities shall be placed in Category 2 within their respective rank if the owner's or operator's average total income for the last five (5) years is more than \$50,000 but less than or equal to \$100,000.

(c) Facilities shall be placed in Category 3 within their respective rank if the owner's or operator's average total income for the last five (5) years is more than \$100,000.

(d) Facilities within each category shall be further prioritized based on the cabinet's evaluation of the threat posed to human health and the environment by the release from a petroleum storage tank.

(e) The cabinet shall utilize the information provided in an owner's or operator's Application for Assistance, incorporated by reference in 401 KAR 42:250, for purposes of determining financial ability to perform corrective action.

(3) Cabinet inspectors shall be provided access to a facility for the purpose of verifying [facility] classification. Refusal by an owner

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or operator to allow access requested by cabinet inspectors shall[will] render the facility ineligible for reimbursement from the cabinet.

(4) If the cabinet receives misrepresentations, or otherwise inaccurate information, or receives new information related to specific facilities, it shall[may] amend facility rankings and categories in accordance with subsections (1) and (2) of this section. [(5) A facility that has been ranked based upon accurate classification of the facility shall not thereafter receive a lower priority ranking as a result of the performance of directed corrective actions.]

Section 3. Facilities eligible to participate in the Petroleum Storage Tank Account shall be ranked as follows:

(1) For purposes of addressing the completing of corrective action [determining extent of damage to the environment]:

(a) Rank 1. Those facilities with releases that are a[the] source of confirmed contamination to domestic-use wells, domestic-use springs, or domestic-use cisterns exceeding the levels specified in Groundwater Table 1[I] of the Classification Outline, [(August 2006).] incorporated by reference in 401 KAR 42:080. This ranking shall also include facilities with releases that are a source of confirmed vapor intrusion, as defined in 401 KAR 42:005, in occupied residential and commercial buildings.

(b) Rank 2. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are required to use the screening levels listed in [Class IV and] Groundwater Table 1[I] of the Classification Outline, [(January 2006).] incorporated by reference in 401 KAR 42:080, within the point of compliance, where:

1. Groundwater[groundwater] contamination, exceeding the screening levels listed in Groundwater Table 1, has been confirmed within the point of compliance; or

2. Groundwater contamination exceeding the screening levels listed in Groundwater Table 1 has been confirmed beyond the point of compliance[at levels exceeding those listed in Groundwater Table I but has not resulted in the contamination of domestic use wells, springs, or cisterns. Facilities conducting corrective action under the provisions of 401 KAR Chapter 42 in effect prior to April 18, 1994 shall be placed into this ranking if required to utilize the levels listed in Groundwater Table I and groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I].

(c) Rank 3. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are required to use the screening levels listed in [Class III and] Groundwater Table 2[I] of the Classification Outline, [(August 2006).] incorporated by reference in 401 KAR 42:080, within the point of compliance, where:

1. Groundwater[groundwater] contamination, exceeding the screening levels listed in Groundwater Table 2, has been confirmed within the point of compliance; or

2. Groundwater contamination exceeding the screening levels listed in Groundwater Table 1 has been confirmed beyond the point of compliance[at levels exceeding those listed in Groundwater Table I but has not resulted in the contamination of domestic use wells, springs, or cisterns].

(d) Rank 4.

1. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are required to use the screening levels listed in [Class IV and] Groundwater Table 3[I] of the Classification Outline, [(August 2006).] incorporated by reference in 401 KAR 42:080, within the point of compliance, where:

a. Groundwater[groundwater] contamination, exceeding the screening levels listed in Groundwater Table 3, has been confirmed within the point of compliance; or

b. Groundwater contamination exceeding the screening levels listed in Groundwater Table 1 has been confirmed beyond the point of compliance[at levels exceeding those listed in Groundwater Table II but has not resulted in the contamination of domestic use wells, springs, or cisterns].

2. Facilities subject to the provisions of 401 KAR 42:070, Section 1(3) and subject to the requirements in place[conducting corrective action under the provisions of 401 KAR Chapter 42 in effect] prior to April 18, 1994 shall be placed into this ranking [if required to utilize the levels listed in Groundwa-

ter Table II and groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II].

(e) Rank 5. Those facilities, with releases for which the division has not issued a No Further Action Letter, for which:

1. Soil contamination above applicable screening levels has been confirmed; and

2. Groundwater contamination above applicable screening levels has not been confirmed[required to use the levels listed in Class III and Groundwater Table II of the Classification Outline, (August 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II but has not resulted in the contamination of domestic use wells, springs, or cisterns.

(f) Rank 6. All other facilities that are not included in Ranks 1, 2, 3, 4 or 5, as specified in this subsection.]

(2) Facilities shall be further categorized within their respective Rank as determined in subsection (1) of this section, based on the financial ability of the owner or operator (applicant) as follows:

(a) Facilities shall be placed in Category 1 within their respective rank if:

1. The owner's or operator's average total income for the last five (5) years is less than or equal to \$50,000; or

2. The owner or operator is registered and recognized by the federal government as a tax-exempt nonprofit organization.

(b) Facilities shall be placed in Category 2 within their respective rank if: the owner's or operator's average total income for the last five (5) years is more than \$50,000 but less than or equal to \$100,000.

(c) Facilities shall be placed in Category 3 within their respective rank if the owner's or operator's average total income for the last five (5) years is more than \$100,000.

(d) Facilities within each category shall be further prioritized based on the cabinet's evaluation of the threat posed to human health and the environment by the release from a petroleum storage tank.

(e) The cabinet shall utilize the information provided in an owner's or operator's Application for Assistance for purposes of determining financial ability to perform corrective action.

(3) Cabinet inspectors shall be provided access to a facility for the purpose of verifying [facility] classification. Refusal by an owner or operator to allow access requested by cabinet inspectors shall[will] render the facility ineligible for reimbursement from the cabinet.

(4) If the cabinet receives misrepresentations, or otherwise inaccurate information, or receives new information related to specific facilities, it shall[may] amend facility rankings and categories in accordance with subsections (1) and (2) of this section. [(5) A facility that has been ranked based upon accurate classification of the facility shall not thereafter receive a lower priority ranking as a result of the performance of directed corrective actions.]

Section 4. Ranking Allocations. (1) Issuance of written directives shall be prioritized for facilities within the Financial Responsibility Account and the Petroleum Storage Tank Account, respectively, according to rank and category, in the following order:

- (a) Rank 1, Category 1;
- (b) Rank 1, Category 2;
- (c) Rank 1, Category 3;
- (d) Rank 2, Category 1;
- (e) Rank 2, Category 2;
- (f) Rank 2, Category 3;
- (g) Rank 3, Category 1;
- (h) Rank 3, Category 2;
- (i) Rank 3, Category 3;
- (j) Rank 4, Category 1;
- (k) Rank 4, Category 2;
- (l) Rank 4, Category 3;
- (m) Rank 5, Category 1;
- (n) Rank 5, Category 2; and
- (o) Rank 5, Category 3; (p) Rank 6, Category 1;
- (q) Rank 6, Category 2;
- (r) Rank 6, Category 3.

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(2) The cabinet shall consider the current legislatively-enacted budget[,] [associated appropriations,] and available funding in making the allocations described in subsection (1) of this section.

(3) The cabinet shall notify owners or operators of the decision to suspend written directives for specified rankings within either the Petroleum Storage Tank Account or the Financial Responsibility Account, respectively, upon a determination of insufficient funding being available to initiate corrective action in all rankings.

Section 5. Incorporation by reference. (1) "Affidavit of Waiver for PSTeAF Reimbursement", DEP 6092, April 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is available on the Division of Waste Management's Web site at <http://waste.ky.gov/ust>. [(4) Actions directed and documented by the Environmental Response Team, upon the cabinet's declaration of an environmental emergency, shall take priority over the ranking system in this administrative regulation. Once the Environmental Response Team terminates the emergency phase, subsequent actions at the facility shall be prioritized in accordance with this administrative regulation.

(5) Facilities performing site checks or initial abatement at the written direction of the cabinet shall be reimbursed in lieu of the ranking system.]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

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

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.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 42:300. Third-party claims.

RELATES TO: KRS 224.60-120, 224.60-130(1)(c), (e), 224.60-140(2)(b), (17), 40 C.F.R. Part 280 Subpart H

STATUTORY AUTHORITY: KRS 224.60-120(6), 224.60-130(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(c) requires the establishment of a Financial Responsibility Account to reimburse eligible petroleum storage tank owners and operators for compensating third parties for bodily injury and property damage, and requires the cabinet to establish, by administrative regulation, eligibility requirements for the account. This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

Section 1. Applicability. (1) An eligible third-party claim shall be limited to bodily injury and property damage, asserted against an owner or operator as a result of sudden or nonsudden accidental releases into the environment from a petroleum storage tank at a facility eligible for participation in the Financial Responsibility Account.

(2) A petroleum storage tank owner or operator shall be eligible to receive reimbursement or payment for a third-party claim if:

(a) The owner or operator has been issued a Certificate of Registration and Reimbursement Eligibility or a Certificate of Eligibility;

(b) The cabinet has approved an Application for Assistance; and

(c) The owner or operator has maintained compliance with the eligibility requirements for participation in the Financial Responsibility Account in effect at the time the Application for Assistance was approved. [1. The owner or operator has been issued a "Certifi-

cate of Registration and Reimbursement Eligibility" DEP 7113 (January 2006), incorporated by reference in 401 KAR 42:020;

2. The cabinet has approved the "Application for Assistance" DEP 6063 (August 2006); and

3. The owner or operator has maintained compliance with the eligibility requirements of the Financial Responsibility Account pursuant to 401 KAR 42:250; or

(b)1. An owner or operator was issued a Certificate of Eligibility prior to the effective date of this administrative regulation;

2. The cabinet approved a previously-utilized Application for Assistance; and

3. The owner or operator has maintained compliance with the eligibility requirements for participation in the Financial Responsibility Account in effect at the time of approval.]

(3) If a petroleum storage tank owner or operator receives a written notice from the cabinet indicating noncompliance with the eligibility of the Financial Responsibility Account pursuant to 401 KAR 42:250, the petroleum storage tank owner or operator shall only be eligible for reimbursement of the costs of third-party claims brought against the petroleum storage tank owner or operator within sixty (60) days from the date of the written notice.

Section 2. Notice to the Cabinet. (1) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall:

(a) Submit a new Application for Assistance, DEP 6063, incorporated by reference in accordance with 401 KAR 42:250, Section 2; and

(b) Notify the cabinet of the assertion of the third-party claim within twenty-one (21) days of the filing of an action against the owner or operator by the third[-] party, or the receipt of an assertion of a claim in writing by a third[-] party.

(2) A third-party claim shall be paid on the basis of:

(a) A final and enforceable judgment; or

(b) A written agreement between a third party and the owner or operator, to be reviewed and considered[approved] by the cabinet.

(3) Settlement of claims.

(a) A settlement of a third-party claim shall not be made by an owner or operator without the prior approval of the cabinet.

(b) The cabinet shall not pay a third-party judgment or reimburse an owner or operator for payment of the judgment in an amount exceeding a settlement offer rejected by the owner or operator if the settlement offer[which] was:

1. Not submitted to the cabinet for consideration; or

2. Previously approved by the cabinet.

Section 3. Payment of Claims. (1) Claim payment shall be limited to actual, documented, bodily injury or[and] property damage caused by the release of petroleum.

(2) A claim for bodily injury or[and] property damage shall be paid to the extent that the damages are not addressed by the performance of corrective action.

(3) The aggregate amount of payment of all third-party claims shall not exceed \$1,000,000 per occurrence of a release.

(4)(a) Claim requests shall be submitted on Third-Party Claim Form, DEP 6078;

(b) The applicant shall retain a copy of the completed form for his or her[their] records.

(5) The cabinet shall acquire by subrogation the right of the third[-] party to recover, from the person responsible or liable for the release, the amount of damages paid to the third[-] party.

(6) [(5)] Reimbursement for third-party claims shall be made in accordance with 401 KAR 42:290, Section 2.

(7) [(6)] Payment of the third-party claim shall be made [to the third party] after approval by the cabinet.

Section 4. Incorporation by Reference. (1) "Third-Party Claim Form", DEP 6078, April 2011, is incorporated by reference.

(2) [(a)] This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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~~[(b)]~~This material is also available on the Division of Waste Management's Web site at <http://waste.ky.gov/ust>.

LEONARD K. PETERS, Secretary

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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.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 42:316. Petroleum Storage Tank Environmental Assurance Fund eligibility criteria for ~~[Certification of]~~ contracting companies and partnerships.

RELATES TO: KRS 224.10-420, 224.10-440, 224.60-130, 224.60-140, **322, 322A**

STATUTORY AUTHORITY: KRS 224.60-130(1)~~[(a)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1) requires the cabinet to establish by administrative regulation the procedures to administer the financial responsibility and petroleum storage tank accounts of the Petroleum Storage Tank Environmental Assurance Fund, and authorizes establishment of eligibility criteria for ~~[the certification of partnerships and]~~ companies and partnerships that engage in corrective action. This administrative regulation establishes eligibility criteria for ~~[certification of]~~ companies or partnerships that contract with eligible owners and operators seeking reimbursement for the performance of ~~[to perform]~~ corrective action at petroleum storage tank facilities.

Section 1. Eligibility~~[Certification]~~ Requirements. (1) ~~[A company or partnership who contracts with an eligible owner or operator to perform corrective action shall be certified by the cabinet. The cost of corrective action performed by a company or partnership not certified shall not be reimbursable.]~~

(2) To be eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet, ~~a~~~~[the]~~ company or partnership shall:

(a) Employ or contract with a Professional Engineer (P.E.) licensed with the Kentucky Board of Licensure for Professional Engineers and Land Surveyors, in accordance with KRS 322, or a Professional Geologist (P.G.) registered with the Kentucky Board of Registration for Professional Geologists, in accordance with KRS Chapter 322A ~~[one (1) or more individuals certified by the cabinet pursuant to 401 KAR 42:314];~~

(b) Hold, in good standing, all licenses, permits, and training certifications required to perform corrective action services in Kentucky;

(c) Maintain, at a minimum, general and professional liability insurance and pollution or property~~[pollution/property]~~ coverage in the amount of \$1,000,000~~[Provide to the cabinet applicable work experience to demonstrate the technical, administrative and financial capability to perform and manage corrective action at a facility];~~ and

(d) Be approved in writing by the cabinet as eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet~~[certified]~~ to perform corrective action services ~~[in Kentucky]~~.

(2)(a) By January 1, 2012, a~~[any]~~ company or partnership holding an existing contract with a petroleum storage tank owner or operator seeking reimbursement shall comply with subsection (1) of this section and shall submit the PSTEAF Eligible Company or Partnership Application, DEP 6073.~~[(a)]~~

(b) The applicant shall retain a copy of the application for their records.

(3) ~~[This requirement shall apply to corrective actions initiated on or after July 1, 1999.]~~

(4) An authorized representative of an eligible ~~[a certified]~~

company shall sign an application or claim payment request in addition to the eligible owner or operator. The eligible ~~[certified]~~ company shall certify that:

(a) The information or payment request has been reviewed and is true and correct; and

(b) Each claim payment cost is reasonable, necessary, and was performed in compliance with 401 KAR Chapter 42.

Section 2. Application Requirements. (1) An applicant for company or partnership eligibility ~~[certification]~~ shall submit:

(a) A completed PSTEAF Eligible Company or Partnership Application, DEP 6073.~~[(a)]~~ ~~["Certified Company or Partnership Application", DEP 6073, (January 2006)];~~

(b) Verification of the employment or contracting of a Professional Engineer (P.E.) licensed with the Kentucky Board of Licensure for Professional Engineers and Land Surveyors, in accordance with KRS Chapter 322, or a Professional Geologist (P.G.) registered with the Kentucky Board of Registration for Professional Geologists, in accordance with KRS Chapter 322A~~[one (1) or more individuals certified pursuant to 401 KAR 42:314]~~

(c) ~~As references, the names and addresses of three (3) previous clients for whom environmental remediation has been performed by the company. If none, the applicant shall provide the names and addresses of three (3) previous or current clients of the individual certified pursuant to 401 KAR 42:314; and~~

~~[(d)] A list of the names and address of officers and principals of the applicant[, and if applicable, a list of all stockholders].~~

(2) Cabinet staff shall~~[may]~~ inspect the records and business premises ~~[facilities]~~ of the applicant if necessary to verify information in the application or to assist in the evaluation of the applicant's capabilities.

(3) The cabinet shall~~[may]~~ require additional information and documentation if necessary to verify information in the application ~~[the applicant's actual work experience]~~.

(4) An application for eligible ~~[certified]~~ company or partnership status shall be denied if the applicant:

(a) Fails to provide the information required in the application or in this administrative regulation;

(b) Does not meet the requirements of subsection (1) of this section;

(c) ~~[Does not hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;~~

(d) ~~Fails to allow cabinet staff to access company records for audit purposes pursuant to 401 KAR 42:335;~~

(e) ~~Fails to provide additional information and documentation requested by the cabinet to verify that the requirements of this administrative regulation have been met;~~

(f) ~~Fails to demonstrate the technical, administrative and financial capability to perform and manage corrective action at underground storage tank facilities;~~

(g) Provides false or misleading information in the application;

or

(f)~~[(h)]~~ Has an officer, director, principal, or stockholder who has had a certification, granted pursuant to 401 KAR 42:314, revoked or suspended;

(i) Has an officer, director, principal, or stockholder who was an officer, director, principal, or stockholder in a certified company, previously having had its certification revoked or suspended; or

(j) Fails to maintain general and professional liability insurance and pollution or property~~[pollution/property]~~ coverage.

(5) An applicant whose application for company or partnership eligibility~~[certification]~~ is denied may appeal the determination by requesting a reconsideration or hearing pursuant to KRS 224.10-420, 224.10-440, and 401 KAR 100:010.

(6) The cabinet shall issue a letter of eligibility~~[certificate]~~ to a qualifying applicant~~[], indicating certification pursuant to this administrative regulation]~~.

Section 3. Amended Applications. (1) An eligible company or partnership shall submit an amended application if~~[when any of the]~~ information in the PSTEAF Eligible Company or Partnership Application has changed.

(2) The cabinet may request an updated application upon the

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receipt of information indicating a[any] change to application information.

Section 4. Eligibility~~[3.Certification]~~ and Renewal Procedures.

(1) The cabinet shall issue a letter of eligibility~~[certificate]~~ to each company that successfully complies with this administrative regulation. ~~[The certificate shall be renewed two (2) years from the date of certification. The certified company shall be responsible for renewing certification prior to expiration.]~~

(2) Eligibility shall be renewed two (2) years from the date of the letter of eligibility. The company or partnership shall be responsible for renewing eligibility prior to expiration.

(3)~~[(2)]~~ An application for eligibility renewal shall be submitted to the cabinet on the PSTEAF Eligible Company or Partnership Application, DEP 6073.

(4) Corrective action costs incurred, after the expiration date, shall be ineligible for reimbursement upon the failure of the company or partnership, under contract with an owner or operator, to renew eligibility. ~~["Certified Company or Partnership Application", DEP 6073, (January 2006).~~

(3) ~~Actions performed by a certified company, under contract with an owner or operator, that fails to renew its certification, shall be ineligible for reimbursement of corrective action costs incurred after the expiration date.]~~

Section 5.~~[4.]~~ Revocation~~[or—Suspension]~~ of Eligibility~~[Certification]~~. (1) A letter of eligibility~~[certificate]~~ issued pursuant to this administrative regulation shall be revoked~~[or—suspended]~~ if ~~[the certified company]~~:

(a) The eligible company or partnership or~~[Or]~~ its employee or agent knowingly submits materially false information or~~]~~ documentation, or a false payment request to an owner, operator, or the cabinet;

(b) The eligible company or partnership or a current officer, director, or principal of that company, has been convicted of an environmental crime.~~[or]~~

(c) The eligible company or partnership has~~[Has permitted an employee, agent or subcontractor to violate a provision of 401 KAR Chapter 42, or to perform corrective action in violation of the standards of the State Fire Marshal or the cabinet;~~

(e) ~~Has] failed to comply with the terms set forth in 401 KAR 42:335; or~~

(d) The eligible company or partnership~~[Has negligently, incompetently, recklessly or intentionally violated a provision of this chapter or a required federal, state or local regulation, code or standard relating to corrective action;~~

(e) ~~Has] obtained eligibility~~[the certification]~~ through fraud or misrepresentation~~]; or~~~~

(f) ~~Fails to perform a corrective action in a manner consistent with state or federal laws and regulations for safety or corrective actions, or fails to perform a corrective action consistent with generally acceptable professional standards.]~~

(2) The cabinet shall issue a letter by certified mail notifying a noncompliant~~[certified]~~ company or partnership that its eligibility~~[certification]~~ has been revoked~~[or—suspended]~~ by action of the cabinet.

(3) A person whose eligibility~~[certificate]~~ is ~~[suspended or]~~ revoked may appeal the determination by requesting a hearing pursuant to KRS 224.10-420, 224.10-440, 401 KAR 42:320, and 401 KAR 100:010~~[400:010]~~.

Section 6.~~[5.]~~ Incorporation by Reference. (1) "PSTEAF Eligible Company or Partnership Application," DEP 6073, April 2011~~["Certified Company or Partnership Application", DEP 6073, (January 2006)],~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor~~[Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ~~[(3)]~~ This material is also available, excluding state holidays, and may also be obtained~~] on the Division of Waste Management's Web site at http://waste.ky.gov/ust.~~ ~~[page located at www.waste.ky.gov.]~~

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

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

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.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 42:320. Hearings.

RELATES TO: KRS 224.10-410 -224.10-470, 224.60

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.60-130(1)(f)~~[224.10-100(30), 224.60-130(2)(f)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28)~~[224.10-100(30)]~~ authorizes the cabinet~~[Environmental and Public Protection Cabinet]~~ to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.60-130(1)(f) requires complaints brought regarding the payment of claims from the cabinet, in accordance with KRS 224.10-410 to 224.10-470 to be heard. This administrative regulation establishes hearing procedures to be followed in the hearing of those complaints.

Section 1. Postdetermination Actions. A person aggrieved by a final, adverse determination regarding reimbursement eligibility or a claim for payment may request:

(1) Reconsideration, under Section 2 of this administrative regulation; or

(2) A formal hearing, pursuant to KRS 224.10-420 and 224.10-440~~[224.10]~~, under Section 3 of this administrative regulation.

Section 2. Reconsideration. (1) A request for reconsideration shall be:

(a) 1. Documented on Reconsideration Request Form, DEP 0063; and

2. The applicant shall keep a copy of the form for his or her~~[their]~~ own records~~[in writing]~~; and

(b) Received by the cabinet within thirty (30) days from the date the person has notice, or could reasonably have had notice, of the adverse determination.

(2) The request shall include:

(a) A statement of the grounds for reconsideration;

(b) Supporting documents; and

(c) Other evidence not previously considered.

(3) The cabinet shall reevaluate the eligibility determination or payment claim previously denied, if the evidence accompanying the request warrants reconsideration by demonstrating clear error or clarifying information through submittal of additional documentation.

(4) The cabinet shall not reconsider a matter more than once.

Section 3. Formal Administrative Hearings. A person aggrieved by a final, adverse determination regarding reimbursement eligibility or a claim for payment may petition the cabinet for a formal administrative hearing.

(1) The hearing shall be in accordance with KRS 224.10-420 and 224.10-440; and

(2) [These administrative hearings shall be heard in accordance with] 400 KAR Chapter 1 and 401 KAR 100:010.

Section 4. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

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(3) The cabinet ~~shall~~may grant an extension~~[-]~~ if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 5. Incorporation by Reference. (1) "Reconsideration Request Form", DEP 0063, ~~[(April 2011)]~~, is incorporated by reference.

~~(2)(a)~~ This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

~~[(b)]~~ This material is also available on the Division of Waste Management's Web site at <http://waste.ky.gov/ust>.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

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

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.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

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~~[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 ~~shall~~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~~[legislatively-enacted]~~ budgets and associated appropriations.

Section 3. ~~[4.]~~ Application Procedure. (1) The owner shall file a completed SOTRA ~~["Application for Assistance"]~~, DEP 6067~~[- (August 2006), incorporated by reference in this administrative regulation]~~ for participation in this account at least forty-five (45) days prior to the permanent closure of the petroleum storage tank~~[or tanks]~~. The owner shall also provide the following information:

(a) Verification of income through the submittal of~~[level-by]~~ copies of the applicant's signed federal income tax returns for the last five (5) years, with the exception of Non-Profit Public Service Corporations, eligible governmental bodies and all other Non-Profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years;~~[previous five (5) years' income tax returns]~~

(b) A copy of the contract between the owner and the primary contractor;

(c) A facility map identifying approximate property boundaries, placement of petroleum storage tank pits, location of other relevant facility features including buildings, canopies, driveways, piping, dispenser islands, paved areas, and the proposed extent of areas to be evacuated in the performance of permanent closure, including dimensions;~~[A site map delineating the facility boundaries and the location of all tank pits and areas to be impacted by the permanent closure; and]~~

(d) Color photographs of the facility and the areas to be 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.

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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
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.

1. This shall include the cost of preparing a classification guide.

2. 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, DEP 0064, and shall be approved by the Underground Storage Tank Branch, in writing, prior to incurring costs. Additional costs related to the repair of subsidence resulting from improper placement of fill material shall not be reimbursable~~[- Surface replacement]~~

(b) Transportation, disposal, or treatment, and replacement of~~[contaminated]~~ backfill ~~contaminated above the applicable screening levels established in 401 KAR 42:080~~;

(c) Disposal of asphalt surface material;

(d) Installation of up to four (4) soil borings in accordance with Section 4.4 of the Closure Outline, **incorporated by reference in 401 KAR 42:070**~~[- 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, **incorporated by reference in 401 KAR 42:070**, 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 **his or her**~~[their]~~ records~~[- (January 2006)]~~;

(2)(a) In addition to the completed claim form, the owner shall submit the required SOTRA Reimbursement Worksheet, DEP 0064~~[-]~~;

(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

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thirty (30) days of receipt of the request shall cause the claim to be denied.

~~(7)(f)~~ 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)(a)~~ An entry level shall not be assessed for eligible reimbursement in accordance with this administrative regulation.

~~(b); however~~ An entry level shall be assessed upon confirmation of a release, constituting an occurrence, that requires corrective action for which the applicant is seeking reimbursement through the Financial Responsibility Account or Petroleum Storage Tank Account in accordance with 401 KAR 42:250.

~~(9)~~ All claims shall be submitted within two (2) years after issuance of a No Further Action letter by the Underground Storage Tank Branch.

Section 6. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet shall 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, August[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. ~~[(b)]~~ 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.

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

(c) How much will it cost to administer this program for the first year? This amendment will not have increased cost to the agency for implementation. There may be an increase in the amount of money paid out of SOTRA as the rates have increased.

(d) How much will it cost to administer this program for subsequent years? This amendment will not have increased cost to the agency for implementation. There may be an increase in the amount of money paid out of SOTRA as the rates have increased.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 42:335. Financial audits.

RELATES TO: KRS 61.878(1)(c), 224.60-130(1)(d), (j), (k), 224.60-140(2)(a), (e)

STATUTORY AUTHORITY: KRS 224.60-130(1)(k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(k) requires the establishment of the policy, guidelines, and procedures to perform a financial audit of an owner or operator receiving reimbursement for corrective action services from the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) [cabinet], or of an entity who contracts or subcontracts for corrective action services at a facility whose owner or operator is eligible for reimbursement from the PSTEAF. This administrative regulation establishes procedures for audits and the penalties for noncompliance.

Section 1. Applicability. An entity shall be subject to financial audit if it is an entity described in KRS 224.60-130(1)(k).

Section 2. Financial Audit Policy and Procedure. (1) The cabinet shall audit an entity if:

(a) A document it is required to submit to the cabinet appears to be fraudulent; or

(b) There is evidence or other reason to believe that the entity has violated a federal or state law or regulation related to its actions.

(2) Upon written request by the cabinet, records, as described in KRS 224.60-130(l)(k), shall be provided to the cabinet during a financial audit [A record shall be subject to financial audit if it is described in KRS 224.60-130(1)(k)].

(3)(a) The cabinet shall notify the subject of the audit, in writing, of the date that the audit is scheduled to begin. The notice shall be sent at least ten (10) working days before the scheduled start of the audit.

(b) A decision to reschedule the audit shall rest solely with the cabinet, and it shall not be rescheduled more than thirty (30) days after the date of the original audit.

(4)(a) If the owner or operator fails to maintain records as required by KRS 224.60-130(1)(k), the cabinet shall recover money reimbursed to the owner or operator for the cost of corrective action at the facility to which the missing documents relate.

(b) If an eligible contractor or subcontractor fails to maintain records as required by KRS 224.60-130(1)(k), the cabinet shall recover any monies paid to the entity pursuant to a contract or agreement to perform a corrective action service at that facility. ~~If the entity is certified under 401 KAR 42:316, that certification shall be revoked or suspended in accordance with 401 KAR 42:316, Section 4-]~~

Section 3. Improper Use of Reimbursements. (1) If the audit by the cabinet finds an improper, irregular, or illegal use of money received directly or indirectly from the cabinet, or that the money was obtained by fraud or misrepresentation, the cabinet shall report the results of the audit to the proper authorities for civil and criminal investigation. ~~[(2) If the subject of the audit is certified pursuant to 401 KAR 42:314 or 401 KAR 42:316, and the audit conducted by the cabinet finds improper, irregular, or illegal use of money received directly or indirectly from the cabinet, or that the money was obtained by fraud or misrepresentation, the cabinet shall immediately revoke the certification in accordance with 401 KAR 42:314, Section 8, or 401 KAR 42:316, Section 4-]~~

(3)(a) Failure by an owner or operator to cooperate with [allow] an audit shall render the petroleum storage tank owner or operator ineligible for reimbursement. Reimbursements to the owner or operator shall be subject to recovery by the cabinet.

(b) Failure by an entity, who contracts or subcontracts for corrective action services at a facility, to cooperate with an audit shall result in the revocation of eligibility. Reimbursements to that entity, pursuant to a contract for a corrective action service, shall be subject to recovery by the cabinet.

Section 4. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet ~~shall~~ [may] grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment. ~~[Failure by a person certified pursuant to 401 KAR 42:316, or a supplier, provider, contract employee, or subcontractor of that person, to allow an audit shall result in the revocation of that certification. Reimbursements to that person, pursuant to a contract for a corrective action service, shall be subject to recovery by the cabinet.]~~

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

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

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 42:340. Laboratory certification.

RELATES TO: KRS [224.10-420, 224.10-440,] 224.60-110, [KRS] 224.60-130, [KRS] 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) requires the establishment of criteria to certify laboratories that contract with owners or operators of petroleum storage tanks to perform analytical testing and ~~[-The statute requires] that owners and operators have all required analytical testing performed by a certified laboratory to be eligible for Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) reimbursement.~~ This administrative regulation establishes the requirements for certification and the parameters and methods on which certification shall be granted.

Section 1. Applicability. (1) Owners and operators seeking reimbursement from the PSTEAF for analytical testing shall utilize [A sample required by 401 KAR Chapter 42 shall be submitted to] a laboratory certified pursuant to this administrative regulation.

(2) This administrative regulation shall apply to analytical testing performed on or after October 1, 1999.

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(3) An owner or operator of a petroleum storage tank who fails to comply with this requirement shall not be reimbursed by the cabinet for costs related to analytical testing~~[and corrective action]~~.

Section 2. Certification Requirements. (1) A laboratory shall demonstrate current accreditation by:

(a) The American Association for Laboratory Accreditation~~[for the "Kentucky Underground Storage Tank Laboratory Accreditation Program"]~~; or

(b) ~~A~~[Any] state approved to accredit environmental laboratories~~[to perform the following tests]~~, in accordance with National Environmental Laboratory Accreditation Program requirements and standards~~[: 1. Benzene, toluene, ethylbenzene, xylene, and methyl tertiary butyl ether (BTEX, MTBE) in soil and water];~~

2. Polynuclear aromatic hydrocarbons in soil and water;

3. Total lead in soil and water;

4. Toxicity characteristic leaching procedures (TCLP) for:

a. Metals;

b. Volatiles;

c. Acid/base/neutral; and

d. Pesticides and herbicides;

5. Ignitability;

6. Paint filter test; and

7. pH.]

(2) A laboratory seeking certification from the cabinet shall submit a completed ~~["Application for Laboratory Certification"]~~, DEP 6074~~[(January 2006)]~~.

(a) The application shall include proof of accreditation as described in subsection (1) of this section; and

(b) The applicant shall retain a copy of the form for his or her[their] own records.

(3) The cabinet shall reimburse a petroleum storage tank owner or operator for the cost of a laboratory analysis if the:

(a) Analysis is conducted in accordance with the established parameters and methods;

(b) Analysis is required by written directive by the cabinet and performed in accordance with 401 KAR Chapter 42; and

(c) Laboratory is certified by the cabinet to conduct that analysis.

Section 3. Maintaining Laboratory Certification. (1) A certified laboratory shall maintain accreditation by the American Association for Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for the duration of certification.

(2) If[When] a certified laboratory's accreditation, in accordance with Section 1 of this administrative regulation, is renewed, or otherwise changes in status, the certified laboratory shall submit updated documentation of the accreditation status to the cabinet within thirty (30) days.

(3)(a) A laboratory holding valid certification from the USTB issued prior to October 1, 2011 shall not be required to submit a new Application for Laboratory Certification, DEP 6074.

(b) In order to maintain certification status, the certified laboratory shall comply with subsection (2) of this section.

(4) If a certified laboratory fails to maintain certification in accordance with this section, the laboratory shall be required to submit an Application for Laboratory Certification, DEP 6074, in accordance with Section 2 of this administrative regulation.[Renewal of Certification. A certification shall be valid for two (2) years from the date of issuance by the cabinet. To apply for renewal an applicant for renewal shall submit:

(1) An "Application for Laboratory Certification", DEP 6074, (January 2006); and

(2) Updated documentation demonstrating accreditation by the:

(a) American Association for Laboratory Accreditation; or

(b) National Environmental Laboratory Accreditation Program.]

Section 4. Loss of Certification. (1) The cabinet shall[may] revoke ~~[or suspend]~~ a certification if the applicant:

(a) ~~[Negligently, incompetently, recklessly, or intentionally violates any provision of this administrative regulation, or any state, federal, or local statute, regulation, code or standard concerning the performance of analytical testing;~~

(b) ~~[Obtains the certification through fraud or misrepresenta-~~

~~tion; or~~

~~(b)[(e)] Knowingly or intentionally submits materially false information to owners, operators, contractors, or the cabinet.~~

~~(2)[A certified laboratory shall maintain accreditation by the American Association for Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for the duration of certification.~~

~~(3) The cabinet shall, within ten (10) days of a revocation[his] determination, notify the[a] laboratory, in writing, of the [suspension or] revocation of certification.~~

~~(3)[(4)] A laboratory seeking to dispute revocation may[or suspension shall] appeal that decision pursuant to KRS 224.10-420, 224.10-440, 401 KAR 42:320, and [401-KAR]100:010.~~

Section 5. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet ~~shall[may]~~ grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 6.~~[5.]~~ Incorporation by Reference. (1) "Application for Laboratory Certification", DEP 6074, April 2011 is incorporated by reference.[The following material is incorporated by reference:

(a) "Application for Laboratory Certification", DEP 6074, (January 2006); and

(b) The American Association for Laboratory Accreditation, "Kentucky Underground Storage Tank Laboratory Accreditation Program Requirements", (September 2005).]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor[Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available[excluding state holidays, and may also be obtained] on the Division of Waste Management's Web site[page located] at <http://waste.ky.gov/ust>. [www.waste.ky.gov].

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

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

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 47:205. Contents of the application for petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facilities.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.99, **322.010(3), 322A.010(3), 322A.080**

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS **224.10-100**~~[Chapter 224]~~ requires the cabinet to promulgate~~[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~~[petroleum-contaminated]~~ soil treatment facility.

Section 1. Definitions.~~[As used in this administrative regulation:]~~

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(1) "Certifying engineer" means a "professional engineer," as defined by KRS 322.010(3), who~~the professional engineer that~~ implements the petroleum-contaminated~~petroleum-contaminated~~ soil treatment facility construction quality assurance plan.^[1]

(2) "Construction progress report" means the written notice from the applicant to the cabinet that the biopile liner system and the petroleum-contaminated~~petroleum-contaminated~~ soil treatment facility is completed.

(3) "Petroleum-contaminated~~Petroleum-contaminated~~ soil" means silt, sand, clay, gravel, or other earthen material; or asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels established in 401 KAR 48:205, Section 6, Table 3[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~~Petroleum-contaminated~~ soil treatment facility" means a solid waste site or facility where petroleum-contaminated~~petroleum-contaminated~~ soil is treated to reduce contaminant concentrations to or below the levels established in 401 KAR 48:205, Section 6, Table 3[2].

Section 2. Objective and General Requirements. (1) This administrative regulation shall apply to petroleum-contaminated~~petroleum-contaminated~~ soil treatment facilities.

(2) Designs, reports, and plans constituting the public practice of geology, as defined by KRS 322A.010(3)~~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~~petroleum-contaminated~~ soil treatment facility.

(2) Owners or operators of petroleum-contaminated~~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~~Petroleum-contaminated~~ Soil Treatment Facility Permits. In order to apply for a petroleum-contaminated~~petroleum-contaminated~~ soil treatment facility permit, the applicant shall first submit a completed and notarized form DEP 7128~~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;

(a)~~(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

(b)~~(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 a completed and notarized form DEP 7129~~the form DEP 7128~~, Application for a Petroleum Contami-

nated Soil Treatment Facility Permit which shall specify standards for the construction and operation of the petroleum-contaminated~~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.^[1]

(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~~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 upon~~at the time the~~ cabinet ~~makes a~~ determination to issue a solid waste permit.

(g) Issuance of construction and construction - operation~~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~~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, 401 KAR 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~~construction/operation~~ permit shall be issued by the cabinet ~~if~~^{when}:

a. The applicant submits the completed and notarized form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility:

(i)~~i~~ Certifying that the petroleum-contaminated~~petroleum-contaminated~~ soil treatment facility construction has been completed in accordance with the construction permit; and

(ii)~~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.^[1]

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; and

d. The applicant submits a certification by the certifying engineer that the facility is constructed in accordance with the approved plans and specifications.

(5)~~(3)~~ In order to continue operating after March 1, 2013, an owner or operator of an~~owners or operators of~~ existing petroleum-contaminated~~petroleum-contaminated~~ soil treatment facility~~facilities~~ operating under a current permit shall obtain a petroleum-contaminated~~petroleum-contaminated~~ soil treatment facility permit.

(6)~~(4)~~ For a major modification to an existing petroleum-contaminated~~petroleum-contaminated~~ soil treatment facility permit as established in 401 KAR 47:130, Section 3 that:

(a) Does not increase the area monitored by the groundwater monitoring system as established in 401 KAR 48:300, Section 4 the owner or operator shall:

1. Submit to the cabinet a completed and notarized form DEP 7129~~DEP 7128~~, Application for a Petroleum Contaminated Soil Treatment Facility Permit; and

2. Comply with the permit application procedures as estab-

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lished in this section;[.]

(b) Does increase the area monitored by the groundwater monitoring system as established in 401 KAR 48:300, Section 4 the owner or operator shall submit to the cabinet a completed and notarized:

1. DEP 7128, Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility; and

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. 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~~[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 as established in KRS 322 and 322A;

(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 (0.1) of one (1)[One-tenth of one (0.1)] foot vertical; and

(b) One (1) foot horizontal;

(6)(a) A procedure for written documentation if[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; and;

(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. Technical Contents of the Permit Application for a Petroleum Contaminated Soil Treatment Facility. The following information shall be submitted on or with form DEP 7129[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:

(a)[4-] North arrow;

(b)[2-] Buffer zones;

(c)[3-] Buildings;

(d)[4-] Treatment areas;

(e)[5-] Storage areas;

(f)[6-] Access roads;

(g)[7-] Fences;

(h)[8-] Gates;

(i)[9-] Floodplains;

(j)[10-] Floodway;

(k)[11-] Wells and springs;

(l)[12-] Surface water bodies including ponds;

(m)[13-] Property lines;

(n)[14-] Monitoring wells; and

(o)[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[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 established in 401 KAR 47:030:

(a) Floodplain restrictions[established in 401 KAR 47:030, Section 2];

(b) Endangered and threatened species[established in 401 KAR 47:030, Section 3];

(c) Surface waters[established in 401 KAR 47:030, Section 4];

(d) Polychlorinated biphenyls[established in 401 KAR 47:030 Section 8];

(e) Air[established in 401 KAR 47:030, Section 10];

(f) Safety[established in 401 KAR 47:030, Section 11(1) and 11(3)];

(g) Public nuisance[established in 401 KAR 47:030, Section 12]; and

(h) Wetlands;[established in 401 KAR 47:030, Section 14.]

(8) A narrative description of the liner design and quality assurance plan as established in 401 KAR 48:205, Section 3;[.]

(9) A detailed contingency plan for emergencies including fires, equipment failure, and provisions for temporary storage of waste;

(10) A description of the type of hydrocarbons and contaminants in the petroleum-contaminated[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[petroleum-contaminated] soil as required in 401 KAR 48:205, Section 5, to verify the information in subsection (11) of this section;

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(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~~[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 3[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 3[2]; and

(f) Storage of soil meeting the treatment standards of 48:205, Section 6, Table 3[2];

(15) Treated soil specifications for the constituents found during waste characterization that are not listed in 401 KAR 48:205, Section 6, Table 3[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; and[.]

(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. If[Where] the ~~petroleum-contaminated~~[petroleum contaminated] soil treatment facility overlies fractured bedrock, weathered limestone, or dolomite be-

drock; 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~~[petroleum contaminated] soil treatment facility will be located; and

(22) A plan for the closure of the ~~petroleum-contaminated~~[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. Public Information Process for ~~Petroleum-contaminated~~[Petroleum Contaminated] Soil Treatment Facilities. The cabinet and applicant shall comply with the public information requirements for ~~petroleum-contaminated~~[petroleum contaminated] soil facilities established in 401 KAR 47:207.

Section 8. 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~~[petroleum contaminated] soil treatment facility shall submit an assessment or corrective action plan, if required.

Section 9. Alternative Specifications. Alternative specifications may be used. If alternative specifications are used, they shall 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, as established in KRS 322 and 322A, 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. 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. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility Permit", DEP 7128, April 2011;

(b) "Application for a Petroleum Contaminated Soil Treatment Facility Permit", DEP 7129, April 2011; and

(c) "Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility", DEP 8064, April 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Waste Management's Web site at

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<http://waste.ky.gov>.

LEONARD K. PETERS, Secretary

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**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 2011)**

401 KAR 47:207. Public information procedures for petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facilities.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS **224.10-100**~~[Chapter 224]~~ requires the cabinet to promulgate~~[adopt]~~ rules and administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes~~[sets forth]~~ permit issuance and public information procedures for petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facilities.

Section 1. Definitions. ~~[As used in this administrative regulation:]~~

(1) "Petroleum-contaminated~~[Petroleum-contaminated]~~ soil" means silt, sand, clay, gravel, or other earthen material; or asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels established in 401 KAR 48:205, Section 6, Table 3[2], but does not exhibit a hazardous characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

(2) "Petroleum-contaminated~~[Petroleum-contaminated]~~ soil treatment facility" means a solid waste site or facility where petroleum-contaminated~~[petroleum-contaminated]~~ soil is treated to reduce contaminant concentrations to or below the levels established in 401 KAR 48:205, Section 6, Table 3[2].

Section 2. Applicability. The requirements in this administrative regulation apply to the following applications:

(1) A new petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility permit as established in 401 KAR 47:205; or

(2) A major modification to an existing petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility permit that~~[which]~~ is an increase in the amount of storage or treatment capacity, area, or volume.

Section 3. Permit Application and Public Notice Process. (1) Upon receipt of DEP 7128, Notice of Intent to Apply for a Petroleum-contaminated~~[Petroleum-Contaminated]~~ Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, or upon receipt of a request for a major modification to a petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility permit in DEP 7129, Application for a Petroleum-contaminated~~[Petroleum-Contaminated]~~ Soil Treatment Facility Permit, as incorporated by reference in 401 KAR 47:205, Section 10, the cabinet shall provide a public notice that~~[which]~~ includes the items established in Section 4(1)(a)~~[subsection (4)(a)]~~ through (d)~~[of Section 4]~~ of this administrative regulation.

(2) Once the review in 401 KAR 47:205, Section 3(4)(g) is complete, the cabinet shall tentatively decide whether to issue the draft construction permit or to deny the application.

(a) If the cabinet makes a tentative determination to issue a construction permit, a draft permit shall be prepared that~~[is prepared which]~~ shall include the application by reference and contain the following information:

1. The proposed design and specifications; and
2. Proposed conditions to protect the human health and environment as established in 401 KAR 47:030.

(b) The draft permit shall be based on the administrative record as established in Section 7 of this administrative regulation.

(3) Upon completion of the draft permit, the cabinet shall comply with the public information procedures as established in Sections 4, 5, 6, and 8 of this administrative regulation.

(4) The cost of public information procedures established in subsection (3) of this section that~~[which]~~ are incurred by the cabinet shall be paid by the applicant.

(5) If the cabinet makes a determination to issue the final construction permit, a permit shall be issued that~~[is issued which]~~ shall include the application by reference and contain the following information:

(a) The design and specifications; and

(b) Conditions to protect the human health and the environment as established in 401 KAR 47:030.

Section 4. Public Notice. (1) A public notice~~[Public notices]~~ shall contain the following information:

(a) Name, address, and telephone number of the division processing the permit action for which notice is being given;

(b) Name, address, and telephone number of the applicant and, if different, of the facility or activity regulated by the permit;

(c) A brief description of the petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility activities described in the permit application;

(d) A brief description of the proposed location of the petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility including a description of the primary access routes;

(e) The location of a repository for documents in the county in which the petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility is proposed or exists, including copies of the draft permit or permit, fact sheet and application;

(f) The time and place of a hearing if~~[when]~~ already scheduled and procedures by which the public may participate in the final permit decision;

(g) The statement: "The cabinet has issued a draft construction permit for a petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility. A person may comment on the draft permit within thirty (30) days of the publication of this notice as established in 401 KAR 47:207, Section 3 or request a hearing pursuant to 401 KAR 47:207, Section 8. If the cabinet issues a final construction permit, any person who may be aggrieved by the permit issuance shall have thirty (30) days to file a petition as established in KRS 224.10-420(2)."; and

(h) Additional information as established in KRS 224.40-305.

(2) Public notices may describe more than one (1) permit or permit action.

(3) Public notices shall be of a size to include not less than two (2) column widths for advertising and shall be in a display format.

(4) Public notices issued by the cabinet shall be distributed by the following methods:

(a) By mailing a copy of a notice to the following persons:

1. The applicant;

2. Other agencies that the cabinet knows have issued or are required to issue an environmental permit for the same facility or activity;

3. a. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources;

b. The Kentucky Heritage Council; and

c. Other government authorities with jurisdiction over the petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility, including other affected states;

4.a. Persons on a cabinet mailing list that~~[which]~~ has been compiled by notifying the public of the opportunity to be put on the mailing list through periodic publication; and

b. Individuals shall request in writing to be on the list;

5. a. Adjacent property owners to the proposed or existing facility.

b. If, prior to issuance of the final construction permit, an adjacent property owner provides written evidence to the cabinet that the adjacent property owner did not receive public notice as re-

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quired in clause a. of this subparagraph~~[subsection (4)(a)5.a of this section]~~ due to incorrect or incomplete information in the petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility permit application, the cabinet shall send a certified letter to the adjacent property owner and allow that property owner an additional thirty (30) days to provide public comment from the date of receipt of the certified letter; and~~[-]~~

(b) Publication of a notice in a daily or weekly major local newspaper of general circulation where the proposed or permitted site is located.~~[-]~~

Section 5. Public Comment Period. The public comment period shall allow at least thirty (30) days for public comment during which an interested person may do the following:

(1) For the public notices established in Section 3(1) of this administrative regulation, an interested person may request a public hearing as established in Section 8 of this administrative regulation;~~[-]~~

(2) For the public notices established in Section 3(3) of this administrative regulation:

(a) Submit written comments on the application or draft permit; or

(b) Request a public hearing as established in Section 8 of this administrative regulation;or~~[-]~~

(3) For issuance of the permit in Section 3(5) of this administrative regulation, file a petition for an adjudicative hearing within thirty (30) days of the date of issuance as established in KRS 224.10-420(2).

Section 6. Fact Sheet. (1)(a) A fact sheet shall be prepared by the cabinet for a draft permit for a new or major modification to a petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility as established in Section 2 of this administrative regulation.

(b) The cabinet shall send this fact sheet to the applicant and to a person if~~[when]~~ requested.

(2) The fact sheet shall include:

(a) A brief description of the petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility permit application that~~[which]~~ is the subject of the permit action;

(b) 1. The type and quantity of petroleum-contaminated~~[petroleum-contaminated]~~ soil that~~[which]~~ is proposed to be and is being stored or treated; and

2. A summary of the facility design including the petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment area, equipment, structures, liner, and leachate collection system specification;~~[-]~~

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions~~[-]~~ and appropriate supporting references to the administrative record as established in Section 7 of this administrative regulation;

(d) Reasons why a requested variance as established in 401 KAR 30:020, Section 2 or other alternative to required standards is justified in the draft permit;

(e) The procedures for issuing a final decision on the draft permit including:

1. The beginning and ending dates of the comment period established in Section 8 of this administrative regulation, and the address where comments shall be received;

2. Procedures for requesting a hearing, and the nature of that hearing; and

3. Procedures including public participation in the final decision;and~~[-]~~

(f) The name and telephone number of a person to contact for additional information.

Section 7. Administrative Record for Permits. (1) The provisions of a draft permit prepared by the cabinet as established in Section 3(1) of this administrative regulation~~[subsection (1) of Section 3]~~ shall be based on the administrative record.

(2) The administrative record shall consist of:

(a) The application and supporting data furnished by the applicant;

(b) The draft permit;

(c) The fact sheet as established in Section 6 of this adminis-

trative regulation;

(d) Documents cited in the fact sheet; and

(e) Documents contained in the supporting file for the draft permit.

(3)(a) Material readily available at the cabinet need not be physically included at the public repository if the fact sheet contains a specific reference to the material.

(b) Published material need not be physically included at the public repository if it is specifically referred to in the administrative record.

Section 8. Public Hearings. (1) The cabinet shall hold a public hearing if~~[when]~~ public interest exists concerning a notice of intent to apply for petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility permit or an application for petroleum-contaminated~~[petroleum-contaminated]~~ soil treatment facility permit.

(2) If~~[Whenever]~~ a public hearing is held, the secretary of the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(3) The presiding officer shall allow:

(a) Persons to submit oral or written statements;

(b) A five (5) minute~~[five-minute]~~ limit on the time allowed for oral statement by each individual; and

(c) 1. The public comment period established in Section 5 of this administrative regulation to automatically be extended to the close of the public meeting;and

2. The cabinet shall not extend the thirty (30) day period to file a petition for an adjudicative hearing regarding permit issuance as established in KRS 224.10-420(2).

(4) A written transcript of the hearing shall be made available to a person upon payment of the cost of copying.

Section 9. Adjudicative Hearing. The cabinet shall hold an adjudicative hearing as established in KRS 224.10-420(2) if~~[whenever]~~ a petition in opposition to a permit and a request for an adjudicative hearing is received within thirty (30) days of the issuance of a final construction permit as established in Section 3(5) of this administrative regulation.

Section 10. Response to Comments. (1) Upon cabinet issuance of~~[At the time that the cabinet issues]~~ a final construction permit, the cabinet shall issue a response to comments, which:

(a) Specifies which provisions of the draft permit have been changed in the final permit decision~~[-]~~ and the reasons for the change; and

(b) Describes and responds to comments on the proposed permit raised during the public comment period or during a public hearing.

(2) The cabinet shall send the responses to comments to commenters.

(3) The cabinet shall document that copies have been sent to each commenter and make copies available to the public upon written request.

Section 11. Issuance and Effective Date of Permit. (1)(a) After the close of a public comment period as established in Section 5(2) of this administrative regulation and a hearing on a draft permit held in accordance with Section 8 of this administrative regulation, the cabinet shall issue a final construction permit decision as established in Section 3(5) of this administrative regulation.

(b) For the purposes of this section, a final construction permit decision means a final decision to issue, deny, modify, or terminate a permit.

(2) A final construction permit decision shall become effective on the date issued by the cabinet.

(3) The cabinet shall provide notice of the final construction permit to persons on the mailing list as established in Section 4(4)(a) of this administrative regulation.

LEONARD K. PETERS, Secretary

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 48:205. Technical requirements for petroleum-contaminated[~~petroleum-contaminated~~] soil treatment facilities.

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-105, 224.20-150, 224.40-100, 224.40-305, 224.40-330, 224.40-605, 224.40-650, 224.70-100, 224.70-110, 224.99-010, 224.99-020, **322**
STATUTORY AUTHORITY: KRS 224.10-100(19)(c), (24), 224.40-100, 224.40-305

NECESSITY, FUNCTION AND CONFORMITY: KRS 224.10-100(19)(c), (24) and 224.40-305 authorize the cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of solid waste obtain a permit. This administrative regulation establishes requirements for petroleum-contaminated[~~petroleum-contaminated~~] soil treatment facilities.

Section 1. Definitions. [As used in this administrative regulation:] (1) "Asphalt plant aggregate dryer" means a low-temperature thermal desorption unit identical in design to a countercurrent rotary dryer that does[~~but may~~] not have a secondary treatment chamber, typically operates at a soil discharge temperature range from 300 degrees to 600 degrees Fahrenheit, and produces treated soil suitable for use as hot mix asphalt aggregate only. [An Asphalt Plant Aggregate Dryer shall operate only in conjunction with a hot mix asphalt operation that uses the treated soil immediately upon being discharged from the treatment unit.]

(2) "Biopile" means a contained vessel or a lined and covered pile used for the biological treatment of petroleum-contaminated[~~petroleum-contaminated~~] soil.

(3) "Conveyor furnace" means a low-temperature thermal desorption unit consisting of a flexible metal belt, which conveys petroleum-contaminated[~~petroleum-contaminated~~] soil through the heating chamber. Soil agitators lift and turn the soil to enhance heat transfer. Organic vapors exiting the chamber are destroyed in an afterburner.

(4) "Low-temperature thermal desorption" means an ex-situ treatment technology that uses heat to physically separate petroleum hydrocarbons from excavated soils that have been screened to remove objects greater than two (2) inches in diameter. Low-temperature thermal desorption units heat soils to temperatures sufficient to volatilize petroleum hydrocarbons and can[~~may~~] cause some hydrocarbons to completely or partially decompose. Vaporized hydrocarbons can[~~may~~] be additionally treated in a secondary treatment chamber consisting of an afterburner, catalytic oxidation chamber, condenser, or carbon absorption unit.

(5) "Petroleum-contaminated[~~Petroleum-contaminated~~] soil" means silt, sand, clay, gravel, or other earthen material; or asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels established in [401 KAR 48:205,] Section 6, Table **3 of this administrative regulation**[2], but does not exhibit a hazardous characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

(6) "Petroleum-contaminated[~~Petroleum-contaminated~~] soil treatment facility" means a solid waste site or facility where petroleum-contaminated[~~petroleum-contaminated~~] soil is treated to reduce contaminant concentrations to or below the levels established in [401 KAR 48:205,] Section 6, Table **3 of this administrative regulation**[2].

(7) "Rotary dryer" means a low-temperature thermal desorption unit that is a cylindrical metal reactor in which soil is brought into contact with heated purge gases, raising the temperature of the

soil to physically separate petroleum hydrocarbons from the soil. Soil passing through the unit are lifted and turned to ensure all soil particles are sufficiently heated to adequately vaporize petroleum hydrocarbons out of the soil. Soil can[~~may~~] pass through the unit concurrently or countercurrently to the direction of the purge gas flow.

(8) "Thermal screw" means a low-temperature thermal desorption unit consisting of a series of augers that convey, mix, and heat soil to volatilize petroleum hydrocarbons into a purge gas stream, with the exiting organic vapors either collected or destroyed. Heat is provided indirectly by hot oil or steam circulated through hollow stem augers and the jacketed trough in which each auger rotates.

(9) "Wellhead protection area" means:

(a) The surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field, or spring; or

(b) An area defined as a wellhead protection area in a county water supply plan.

Section 2. Applicability. (1) This administrative regulation establishes minimum standards for the requirements, which shall be met for site selection, design, operation, and closure of a petroleum-contaminated[~~petroleum-contaminated~~] soil treatment facility.

(2) This administrative regulation applies to a person[~~persons~~] conducting treatment of excavated petroleum-contaminated[~~petroleum-contaminated~~] soils.

Section 3. Siting and Design Requirements for Petroleum-contaminated[~~Petroleum-Contaminated~~] Soil Treatment Facilities.

(1) Treatment processes shall include low-temperature:

(a) Low temperature thermal desorption[;] and[~~(b)~~] biopiles.

(2)(a) Facility design and operation shall be as established in this administrative regulation and [;]How to Evaluate Alternative Cleanup Technologies for Underground Storage Tank Sites: A Guide for Corrective Action Plan Reviewers[;] (EPA 510-B-94-003; EPA 510-B-95-007; and EPA 510-R-04-002), Chapter IV, Biopiles, and Chapter VI, Low-Temperature Thermal Desorption; and[;]

(b) Designs and plans constituting the practice of engineering shall be prepared by a professional engineer licensed in the Commonwealth of Kentucky and shall bear the professional engineer's seal, original signature, and date as established in KRS Chapter 322.

(3) Siting Considerations.

(a) Petroleum-contaminated[~~Petroleum-contaminated~~] soil treatment facilities shall maintain buffer zone distances as established in Table 1 of this subsection; and[;]

Table 1. Required buffer zones for a petroleum-contaminated[~~petroleum-contaminated~~] soil treatment facility, minimum distance in feet.

Structure or Feature	<u>Petroleum-contaminated</u> [Petroleum-Contaminated] Soil, Closest Boundary (ft)
Residences & occupied buildings	500
Drinking water well	300
Surface water body or wetland	300
Perennial stream	300
Karst feature	300
Public road	50
Intermittent or ephemeral stream	50
Property line	50

(b) Petroleum-contaminated[~~Petroleum-contaminated~~] soil treatment facilities shall not be located in a 100-year floodplain, wellhead protection area or wetland[~~wetlands~~].

(4)(a) Storage and preparation of soil to be treated shall be conducted in a roofed enclosure with a concrete floor or in an enclosed container.

(b) Temporary storage of incoming materials, shall not exceed

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seven (7) days, and shall be:

1. In trucks, trailers, or storage containers with impermeable covers; or

2. On an impermeable pad or synthetic liner with a minimum thickness of thirty (30) mils, with an impermeable cover.

(c) Storage and preparation areas shall be designed to control run-on and run-off.

(5) Biopiles. A biopile treatment system shall include the following:

(a) **1.** A liner system with a minimum slope of two (2) percent, designed to contain and capture liquids, that has ~~the following~~ from bottom to top:

a. ~~1.~~ A subgrade;

b. ~~(i) 2.a.~~ A twelve (12) inch thick compacted clay liner (CCL); ~~or b.(ii) a~~ twelve (12) inch thick geosynthetic clay liner (GCL) support layer with a maximum remolded coefficient of permeability of 1×10^{-7} centimeters per second in the laboratory; and

(ii) A GCL with a demonstrated hydraulic conductivity less than 5×10^{-9} centimeters per second;

c. ~~3.~~ A sixty (60) mil thick High-Density Polyethylene (HDPE);

d. ~~4.a.~~ A granular leachate collection layer and leachate collection system with an overlain geotextile; and ~~b.~~ an equivalent Synthetic Drainage Layer (SDL) meeting the following requirements:

(i) The SDL shall not be adversely affected, chemically or physically, by waste placement or leachate; and

(ii) Documentation shall be submitted to ensure chemical compatibility of the SDL chosen; **and**

e. ~~5.~~ A twelve (12) inch thick soil layer with a minimum permeability of 1.0×10^{-3} centimeters per second to protect the liner system; or

2. ~~(b)~~ A reinforced six (6) inch thick concrete pad with a minimum slope of two (2) percent designed to contain and capture liquids that have the following, from bottom to top:

a. ~~1.~~ The pad shall be overlain by a sixty (60) mil thick HDPE liner;

b. ~~(i) and 2.a.~~ A granular leachate collection layer, and leachate collection system with an overlain geotextile; or

(ii) b. An equivalent SDL; and

c. ~~3.~~ A twelve (12) inch thick soil layer with a minimum permeability of 1.0×10^{-3} centimeters per second to protect the liner system;

3. ~~(e)~~ An air inlet and air extraction system with off-gas collection and treatment;

4. ~~(d)~~ A nutrient and moisture injection system;

5. ~~(e)~~ A synthetic cover; **and**

5. ~~(f)~~ A berm sufficient to control run-on and run-off from a twenty-four (24) hour, 100-year storm event; and

6. ~~(g)~~ The construction of the liners in paragraphs (a) and (b) of this subsection shall comply with the quality assurance and quality control requirements of 401 KAR 48:206, 48:207, and 48:208.

7. ~~(f)~~ Low-temperature Thermal Desorption.

(a) A low-temperature thermal desorption facility shall obtain fiscal court approval and an air contaminant source permit from the Division of Air Quality in accordance with KRS 224.20-150.

(b) The treatment system shall be one **(1)** of the following:

1. Rotary dryer;

2. Asphalt Plant Aggregate dryer. **An Asphalt Plant Aggregate dryer shall operate only in conjunction with a hot mix asphalt operation that uses the treated soil immediately upon being discharged from the treatment unit;**

3. Thermal screw; or

4. Conveyor furnace.

(c) The design shall include off-gas collection and treatment system and a particulate collector.

(d) Treated soil shall be stored as established in subsection (4) of this section until analytical results demonstrate **compliance with** ~~that it meets~~ the limits as established in Section 6(1), Table **3[2]** of this administrative regulation.

Section 4. Procedures for Excluding the Receipt of Wastes Other than **Petroleum-contaminated** ~~Petroleum Contaminated~~ Soil. (1)(a) The permittee shall implement a program at the facility for detecting and preventing the receipt of nonpermitted wastes.

(b) These nonpermitted waste streams include:

1. Household wastes including garbage;

2. Conditionally exempt small quantity generator (CESQG) hazardous wastes;

3. Hazardous waste exempt spill residues;

4. Hazardous wastes as defined in 401 KAR Chapter 31;

5. Polychlorinated biphenyl (PCB) wastes; and

6. Other nonpermitted wastes.

(2) This program shall include:

(a) Visual inspection of all waste as it is delivered;

(b) Random inspections of incoming loads;

(c) Inspection of suspicious loads;

(d) Records of inspections;

(e) Training of facility personnel to recognize wastes that are not permitted wastes;

(f) Procedures for notifying the proper authorities if a hazardous or PCB waste is discovered at the facility;

(g) Procedures to remove and transport solid or special wastes other than permitted wastes to the proper solid or special waste disposal site or facility; and

(h) Employee safety, health, training, and personal protective equipment to be used in inspection.

(3) The permittee shall implement the following to meet the requirements of subsection (1) of this section:

(a) The permittee shall have a program, as established in the approved permit, to inspect all waste entering the facility. The program to exclude nonpermitted waste shall include:

1. Random inspections in time, but uniformly distributed to all waste sources based on volume; **and**

2. An inspection record including the following:

a. Name of the driver;

b. Name of the hauling company;

c. Mailing address of the hauling company;

d. Source of the waste;

e. Volume of the waste; and

f. Waste characteristics; **and** **3. Inspection record maintenance performed by the permittee;** ~~The permittee shall maintain a record of the inspections.~~

(b) Upon discovery of hazardous or PCB waste, the permittee shall isolate the load and notify the cabinet within one (1) business day; **and** **3.**

(c) Upon discovery of non-permitted solid or special wastes, the permittee shall implement the procedures to remove and transport non-permitted solid or special wastes to a permitted solid or special waste landfill.

Section 5. **Petroleum-contaminated** ~~Petroleum Contaminated~~ Soil Characterization. (1)(a) **Petroleum-contaminated** ~~Petroleum contaminated~~ soil shall be characterized as established in 401 KAR Chapter 42; or

(b) ~~(2)(a)~~ Wastes shall be characterized according to the maximum dry weight concentration of pollutants based on the average concentration in a minimum of two (2) representative samples.

(2) ~~(b)~~ The permittee shall take representative samples as established in ~~Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,~~ EPA Publication SW-846, Update IV of the Third Edition.

(3) ~~(a)~~ Wastes shall be characterized by analyzing the following:

Table 2. Petroleum-contaminated Petroleum contaminated Soil Characterization Parameters	
Number	Parameter name
1	Benzene
2	Toluene
3	Ethylbenzene
4	Xylene
5	Chrysene
6	Benzo(a)anthracene
7	Benzo(a)pyrene
8	Benzo(b)fluoranthene
9	Benzo(k)fluoranthene
10	Dibenzo(a,h)anthracene
11	Indeno(1,2,3-cd)pyrene

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12	Acenaphthene
13	Acenaphthylene
14	Anthracene
15	Benzo(ghi)perylene
16	Fluoranthene
17	Fluorene
18	Phenanthrene
19	Pyrene
20	Naphthalene
21	Oil and grease (total)
22	Biochemical oxygen demand, 5-day (BOD ₅)
23	pH
24	Electrical conductivity
25	Polychlorinated biphenyls, Total (PCBs)
26	Arsenic (total)
27	Boron (total)
28	Cadmium (total)
29	Calcium (total)
30	Chloride (total)
31	Chromium (total)
32	Copper (total)
33	Lead (total)
34	Mercury (total)
35	Molybdenum (total)
36	Nickel (total)
37	Selenium (total)
38	Sodium (total)
39	Zinc (total)

(4)(a) The permittee shall characterize chemical and physical waste parameters that are potential surface water or groundwater pollutants not in Table 2[1] of this section.

(b) The characterization shall include, based on generator knowledge, ingredients, additives, by-products, contaminants, lubricants, cleaning agents, hazardous constituents, and chemicals from the following sources:

1. 401 KAR 47:030, Section 4 and 5, Environmental Performance Standards;[1]
2. 401 KAR 10:031[5:031], Surface Water Standards;
3. U.S. EPA Regional Screening Levels (RSLs); and
4. Material safety data sheets.

(5)(a) Waste analysis shall be reported as the average of at least two (2) representative samples on a dry weight basis.

(b) Dry weight pollutant concentrations shall be calculated by determining the pollutant concentration of the sample, and converting to dry weight (mg/kg) content using the percent solids of the original sample.

(6) The applicant shall obtain a new waste characterization as established in subsections (1) or (2) of this section for each source of **petroleum-contaminated**[petroleum-contaminated] soil.

Section 6. Treatment Standards and Disposition of Treated Soil (1)(a) The applicant shall treat **petroleum-contaminated**[petroleum-contaminated] soil **to ensure**[such] that the following parameters are equal to or less than the concentrations as established in Table 3[2] below:

Table 3. Petroleum-contaminated [2. Petroleum-Contaminated] Soil Treatment Standards	
Benzene	0.01 ppm
Toluene	0.7 ppm
Ethylbenzene	0.9 ppm
Xylene	5.0 ppm
Chrysene	15 ppm
Benzo(a)anthracene	0.15 ppm
Benzo(a)pyrene	0.015 ppm
Benzo(b)fluoranthene	0.15 ppm
Benzo(k)fluoranthene	0.3 ppm
Dibenzo(a,h)anthracene	0.015 ppm
Indeno(1,2,3-cd)pyrene	0.15 ppm
Acenaphthene	10 ppm
Acenaphthylene	10 ppm
Anthracene	10 ppm

Benzo(ghi)perylene	10 ppm
Fluoranthene	10 ppm
Fluorene	10 ppm
Phenanthrene	10 ppm
Pyrene	10 ppm
Naphthalene	3.6 ppm
Methyl-tert-butylether (MTBE)	0.2 ppm
Lead	400 ppm
Arsenic	9.4 ppm
Cadmium	0.78 ppm
Chromium	21.3 ppm
Copper	28.0 ppm
Mercury	0.07 ppm
Nickel	21.7 ppm
Selenium	0.99 ppm
Zinc	57 ppm

(b) For metals, the permittee:

1. May establish background concentrations at the property of origination for each parameter in Table 3[2] of this section and treat the **petroleum-contaminated**[petroleum-contaminated] soil to the background level; and

2. Shall not release treated soil for placement within:

a. Four (4) vertical feet of the seasonal high groundwater table; **or**[1]

b. 250 feet of an intermittent or perennial stream.

(2)(a) The applicant shall take representative samples as established in 401 KAR Chapter 42 or samples as established in [1]Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,[1] EPA Publication SW-846, Update IV of the Third Edition.

(b) The sample concentration shall **comply with**[meet] subsection (1) of this section prior to release of treated soil from the facility.

(c) If the sample concentration does not meet subsection (1) of this section, the treated soil **shall**[must] be disposed in a permitted solid waste disposal facility.

(3) The permittee shall provide the following to individuals receiving treated soil:

(a) Copies of the treated soil analyses; and

(b) A brochure explaining the procedures to be utilized in the use of treated soil including setback requirements in [paragraph (b)2 of]subsection (1)**(b)2. of this section.**

(4)The permittee shall not allow the volume of stored treated soil to exceed three (3) months' treatment capacity, as established in the permit under 401 KAR 47:205.

Section 7. Closure Plan and Cost Estimate. (1) A closure plan and cost estimate, as required in 401 KAR 47:205, Section 10[9], shall contain **cost estimates for** the following:

(a) The maximum storage capacity of untreated soil;

(b) The maximum amount of soil in the process of being treated;

(c) Transportation of **petroleum-contaminated**[petroleum-contaminated] soil;

(d) Disposal of untreated soil at a permitted disposal facility;

(e) Decommissioning of the liner and leachate collection system;

(f) Removal of processing equipment;

(g) Revegetation of disturbed areas; and

(h) Sampling of soils on-site to document that soil parameters comply with Section 6(1) of this administrative regulation.

(2) The cost estimate for closure under the requirements established in 401 KAR 48:310, Section 2, and KRS 224.40-650.

Section 8. Recordkeeping and Reporting. (1) The permittee of a **petroleum-contaminated**[petroleum-contaminated] soil treatment facility shall retain at the office of the facility for a period of five (5) years, the following information:

(a) The source, volume in cubic yards (CY), and date the contaminated soil was received for treatment;

(b) The monthly volume of treated soil in CY;

(c) The log of recipients who receive more than twenty (20) cubic yards of treated soil in any given month required to be in-

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cluded in the form DEP 5042, Annual Report for a Petroleum Contaminated Soil Treatment Facility;

(d) The biopile monitoring log required to be in the form DEP 5042, Annual Report for a **Petroleum-contaminated** [Petroleum Contaminated] Soil Treatment Facility; and

(e) The laboratory analysis reports.

(2)(a) The operator shall complete and submit to the cabinet by January 31 of each year, for the previous year, typed or printed legibly in permanent ink, the form DEP 5042, Annual Report for a **Petroleum-contaminated** [Petroleum Contaminated] Soil Treatment Facility.

(b) The annual report shall include:

1. Agency interest and permit number;
2. Name, address, and contact information for the applicant;
3. Name and certification number of the certified operator;
4. **Petroleum-contaminated** [Petroleum-contaminated] soil

information for each waste stream including:

a. Property of origination, name of property owner, and name of leaseholder;

b. Underground Storage Tank registration number, if applicable;

c. Hydrocarbon type;

d. Volume in cubic yards (CY); and

e. Characterization as required by Section 5 of this administrative regulation; [.]

5. The volume of treated soils:

a. Prepared for distribution;

b. Distributed from the facility;

c. Disposed at a permitted solid waste disposal facility; or

d. Reused on-site as a recovered material; [.]

6. Treated soil analytical information for each biopile or sample unit;

7. Copies of laboratory analysis reports for the reporting year; and

8. The information in subsection (1) of this section for the previous twelve (12) months.

Section 9. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) "How to Evaluate Alternative Cleanup Technologies for Underground Storage Tank Sites: A Guide for Corrective Action Plan Reviewers" (EPA 510-B-94-003; EPA 510-B-95-007; and EPA 510-R-04-002), Chapter IV, Biopiles, and Chapter VI, Low-Temperature Thermal Desorption, October 1994;

(b) U.S. EPA "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", Update IV of the Third Edition, March 2011;

(c) "**Petroleum-contaminated** [Petroleum Contaminated] Soil Treatment Facility Annual Report", DEP 5042, April 2011; and

(d) U.S. EPA "Regional Screening Levels", November 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at the division's Web site: <http://waste.ky.gov>

(3)(a) The material in subsection (1)(a) of this section may also be obtained at:

1. National Technical Information Service (NTIS); U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; or

2. <http://www.epa.gov/oust/pubs/tums.htm>

(b) The material in subsection (1)(b) of this section may also be obtained at:

1. National Technical Information Service (NTIS); U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; or

2.

<http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm> [.]

(c) The material in subsection (1)(d) of this section may also be obtained at <http://www.epa.gov/region9/superfund/prg/> [.]

[(d) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Manage-

ment, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(4) The material in subsection (1) of this section may also be obtained from the Division of Waste Management's Web site at <http://waste.ky.gov>.]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

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

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 48:206. **Petroleum-contaminated [Petroleum-contaminated] soil treatment facility liner soil layer quality assurance and quality control.**

RELATES TO: KRS [Subchapters] 224.01, 224.10, 224.40, 224.43, 224.99, 322.010(16), **322.180(16)**

STATUTORY AUTHORITY: KRS 224.10-100, **224.40-100(9)(c), (24), (28)**, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.40-100(19)(c), (24) and (28) requires the cabinet to **promulgate** [adopt] rules and administrative regulations for the permitting, management, processing, or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes the liner quality assurance and quality control testing requirements for **petroleum-contaminated** [petroleum-contaminated] soil treatment facilities.

Section 1. Definitions. [As used in this administrative regulation:]

(1) "Certifying engineer" means **"professional engineer," as defined by KRS 322.010(3), who implements the petroleum-contaminated soil treatment facility construction quality assurance plan** [the professional engineer that implements the petroleum-contaminated soil treatment facility construction quality assurance plan];

(2) "**Petroleum-contaminated** [Petroleum-contaminated] soil" means silt, sand, clay, gravel, or other earthen material; or asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels established in 401 KAR 48:205, Section 6, Table 3[2], but does not exhibit a hazardous characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

(3) "**Petroleum-contaminated** [Petroleum-contaminated] soil treatment facility" means a solid waste site or facility where **petroleum-contaminated** [petroleum-contaminated] soil is treated to reduce contaminant concentrations to or below the levels established in 401 KAR 48:205, Section 6, Table 3[2].

(4) "Quality assurance" means the procedures implemented by the professional engineer to ensure that the construction of the **petroleum-contaminated** [petroleum-contaminated] soil treatment facility meets design specifications and performance requirements; [.] and

(5) "Quality control" means the system of control implemented by the manufacturer, fabricator, installer, construction contractor, operator, or other person in order to meet construction specifications for the construction of the **petroleum-contaminated** [petroleum-contaminated] soil treatment facility.

Section 2. Applicability. (1) The quality assurance and quality control requirements of this administrative regulation apply to the construction of biopile liners at **petroleum-contaminated** [petroleum-contaminated] soil treatment facilities.

(2) The liner design requirements for biopiles at **petroleum-contaminated** [petroleum-contaminated] soil treatment facilities are

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established in 401 KAR 48:205, Section 3.

Section 3. Specific Subgrade Requirement for Bottom Liners.

(1) The ~~petroleum-contaminated~~~~[petroleum-contaminated]~~ soil treatment facility liner subgrade is the uppermost in situ rock layer, in situ soil layer, or structural soil fill that shall be graded and prepared for liner construction.

(2) Materials required. The liner subgrade material shall be free of organic material and consist of bedrock, on-site soils, or structural soil fill with the ability to support the maximum load with a minimum factor of safety of two and zero-tenths (2.0).

(3) Construction requirements. (a) The subgrade shall be graded in accordance with the requirements of the approved engineering plans, report, and specifications in the ~~petroleum-contaminated~~~~[petroleum-contaminated]~~ soil treatment facility permit.~~[-]~~

(b) The material shall be sufficiently dry and structurally sound to ensure that the first lift and all succeeding lifts of structural soil fill placed over the subgrade shall be adequately compacted to comply with the design requirements.

(4) Certification requirements.

(a) The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a ~~Petroleum-contaminated~~~~[Petroleum-Contaminated]~~ Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, a discussion of the reviewed data resulting from the quality assurance and quality control testing required in this section of this administrative regulation.

(b) The results of all testing shall be included in the form DEP 8064, Construction Progress Report for a ~~Petroleum-contaminated~~~~[Petroleum-Contaminated]~~ Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to repair the failed material, and documentation of retesting performed.

(c) At a minimum, the subgrade shall be inspected in accordance with the following requirements:

1. Before placing material over the subgrade, the certifying engineer shall visually inspect the exposed surface to evaluate the suitability of the subgrade and ensure that the surface is properly compacted, smooth, uniform, and has positive surface drainage;

2. Liner soil subgrade shall be proof-rolled using a fully loaded articulated truck with a fifty-five (55) ton gross vehicle weight;

3. A structural soil fill subgrade shall be tested for density and moisture content at a minimum frequency of nine (9) tests per acre, and constructed in lifts;

4. The subgrade shall be compacted to a density of at least ninety-two (92) percent of the standard proctor;

5. The completed form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, shall show the finished elevation of the completed subgrade, referenced to existing site control, using a Three (3) Dimensional Terrain Model on Computer Assisted Design Drawing (CADD) or cross-section;

6. The finished elevations shall serve as documentation and reference data for future volume calculations; and

7. Testing shall be performed in accordance with ASTM International standards, or similar method based on the applicable standards of practice for certification by a professional engineer as established in KRS 322.010(16).

Section 4. Specific Soil Support Component Requirements of Compacted Clay Liner (CCL) Systems for Bottom Liners. The Compacted Clay Liner (CCL) component of the bottom liner shall be a continuous layer of low permeability soil constructed to control fluid migration.

(1)(a) Low permeability soil components shall have a maximum remolded coefficient of permeability of 1×10^{-7} centimeters per second.

(b) The soil shall be placed without damaging the collection and removal system components.

(c) The soil material in the top maximum compacted six (6) inch lift shall be free of roots, wood, or other decayable materials~~[-]~~.

and durable rock greater than one-half (1/2) inches in diameter.

(d) The soil material in the bottom lifts shall be free of roots, wood, or other decayable materials~~[-]~~ and durable rock greater than two (2) inches in diameter.

(e) The CCL shall contain not more than thirty (30) percent by volume durable rock.

(f) The ~~soil~~~~[soils]~~ shall be compacted to a minimum of ninety-two (92) percent of the modified or standard proctor density.

(2) Construction requirements. The certifying engineer shall ensure that the soil component of the liner system installation conforms to the following minimum requirements:

(a) 1. Compaction shall be performed by properly controlling the moisture content, lift thickness, and other necessary details to obtain the density, moisture, and permeability characteristics established in this administrative regulation; and

2. The maximum final compacted thickness of each lift of soil material shall be six (6) inches or the thickness necessary to protect the integrity of underlying components and achieve the required liner performance standards~~[-]~~.

(b) During construction, the moisture content of the CCL shall be maintained within the range identified in accordance with paragraph (c) of this section to ensure that each remolded lift attains the required minimum permeability~~[-]~~.

(c) 1. The layers of the CCL shall be compacted using non-vibratory compactors with full depth penetrating feet with a minimum of six (6) passes per soil layer.

2. a. The compactor ballast shall be adjusted to prevent reaching the desired proctor density with fewer than six (6) passes; and

b. The sheepsfoot length shall be one (1) inch longer than the loose soil layer thickness; and~~[-]~~.

(d) At the end of each work period, the surface shall be sealed from rain infiltration.

(3) Certification requirements. The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 11~~[10]~~:

(a) A discussion of required quality assurance and quality control testing. Quality assurance testing shall include moisture-density testing performed using nuclear methods:

1. At least nine (9) density tests per acre per lift of soil material placed; and

2. A minimum of nine (9) moisture content tests per lift of soil material placed; and

(b) The results of testing~~[shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10]~~, including documentation of failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of retesting performed in accordance with the following requirements:

1.a. The certifying engineer shall certify, after review of the quality control testing of the soil layer, that the material meets the requirements of the approved engineering plans, reports, and specifications in the ~~petroleum-contaminated~~~~[petroleum-contaminated]~~ soil treatment facility permit.

b. The certifying engineer shall approve and certify the quality assurance testing of all soil liner materials.

c. All quality assurance testing shall be done by the certifying engineer or under the direct supervision of the certifying engineer as established in KRS 322.180(16).

~~[d. The intent of the quality assurance is to ensure the accuracy of the quality control and that the specified material meets the requirements of subsection (1) of this section; and]~~

2. The following quality control tests shall be performed on a minimum of at least one (1) sample from each soil classification:

a. One (1) analysis of soil particle size for every 2,000 cubic yards of soil material;

b. Classification of soils for engineering purposes for each 10,000 cubic yards of soil material;

c. One (1) moisture content test for every 2,000 cubic yards of soil material;

d. One (1) Atterberg limits analysis of plastic and liquid limit and plasticity index in the permit for every 2,000 cubic yards of soil material; and

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e. (i) A minimum of one (1) comparison of the moisture-density-permeability relation for every 20,000 cubic yards of soil material; and

(ii) Procedures that comply with the American Society of Civil Engineers paper, "Water Content-Density Criteria for Compacted Soil Liners" by Daniel and Benson, to develop the window of overall acceptable zone of permeability on a graph of dry unit weight versus molding water content; and

~~(c) [(d) Quality assurance testing included in this paragraph shall be compared to and evaluated against the quality control testing of paragraph (c) of this subsection if applicable. Quality assurance testing shall include moisture density testing performed using nuclear methods:~~

~~1. At least nine (9) density tests per acre per lift of soil material placed; and~~

~~2. A minimum of nine (9) moisture content tests per acre per lift of soil material placed;~~

~~(e)] All testing shall be performed in accordance with a method based on the applicable standards of practice for certification by a professional engineer as established in KRS 322.010(16).~~

Section 5. Specific Requirements for the Geosynthetic Clay Liner (GCL) Support Layer for Bottom Liners. The GCL support layer of the bottom liner shall be a continuous layer of cohesive soil constructed to adequately support or protect the geosynthetic clay liner (GCL) and resist puncturing.

(1)(a) The GCL support layer of the bottom liner system shall have a maximum remolded coefficient of permeability of 1×10^{-7} centimeters per second in the laboratory.

(b) The soil shall be placed without damaging the collection and removal system components.

(c) The soil material in the top six (6) inch lift shall be free of roots, wood, or other decayable materials[,] and durable rock greater than one (1) inch in diameter.

(d) The soil material in the bottom lifts shall be free of roots, wood or other decayable materials[,] and durable rock greater than two (2) inches in diameter.

(e) The CCL shall contain not more than thirty (30) percent by volume durable rock.

(f) The ~~soil~~~~soils~~ shall be compacted to a minimum of ninety-five (95) percent of the standard proctor density.

(2) Construction requirements. The certifying engineer shall ensure that the support component of the bottom liner system installation conforms to the following minimum requirements:

(a) 1. Compaction shall be performed by controlling the moisture content and lift thickness to obtain the density and moisture window derived using procedures in ["Water Content-Density Criteria for Compacted Soil Liners" by Daniel and Benson];

2. The maximum final compacted thickness of each lift of soil material shall be six (6) inches; and

3. The thickness of the initial lift shall be increased as necessary to protect the integrity of underlying components and achieve the required liner performance standards;

(b) To ensure that each lift attains the required density during construction of the support layer, the moisture content of the GCL support component of the bottom liner system shall be maintained within the range identified in accordance with the ASTM D698 - 07e1 ["Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12 400 ft-lbf/ft³ (600 kN-m/m³))"]; and

(c) At the end of each work period, the surface shall be sealed from rain infiltration.

(3) Certification requirements. The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10[.];

(a) A discussion of required quality assurance and quality control testing. Quality assurance testing shall include:

1. At least nine (9) density tests per acre per lift of soil material placed; and

2. A minimum of nine (9) moisture content tests per acre per lift of soil material placed; and

(b) The results of all testing shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated

Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of retesting performed in accordance with the following requirements:

1. a. The certifying engineer shall certify, after review of the quality control testing of the GCL support layer, if the material meets the requirements of the approved engineering plans, reports, and specifications in the ~~petroleum-contaminated~~~~petroleum-contaminated~~ soil treatment facility permit; and

b. The quality control testing shall ensure that the specified material meets the density requirements of subsection (1) of this section; and

2. Quality assurance testing shall be based on the applicable standards of practice for certification by a professional engineer as established in KRS 322.010(16), and shall be performed at the following minimum frequency for each soil classification:

a. One (1) analysis of soil particle size for every 4,000 cubic yards of soil material;

b. One (1) analysis of soil classification for engineering purposes for each 20,000 cubic yards of soil material;

c. One (1) moisture content test for every 4,000 cubic yards of soil material;

d. One (1) Atterberg limits analysis of plastic and liquid limit and plasticity index in the permit for every 4,000 cubic yards of soil material placed; and

e. One (1) moisture content test for every 4,000 cubic yards of soil material placed.

~~[(d) Quality assurance testing included in this paragraph shall be compared to and evaluated against the quality control testing established in paragraph (a) of this subsection if applicable. Quality assurance testing shall include:~~

~~1. At least nine (9) density tests per acre per lift of soil material placed; and~~

~~2. A minimum of nine (9) moisture content tests per acre per lift of soil material placed.]~~

Section 6. Specific Requirements for the Synthetic Liner Soil Support Layer for Bottom Liners. The synthetic liner soil support layer of the bottom liner system shall be a continuous layer of soil constructed to adequately support or protect the synthetic liner.

(1)(a) The synthetic liner support layer of the bottom liner system shall be placed without damaging the collection and removal system components.

(b) The soil material in the top six (6) inch lift shall be free of roots, wood, or other decayable materials, and durable rock greater than one (1) inch in diameter.

(c) The soil material in the bottom lifts shall be free of roots, wood, or other decayable materials[,] and durable rock greater than two (2) inches in diameter.

(d) The synthetic liner support layer shall not contain more than thirty (30) percent by volume durable rock.

(e) The soils shall be compacted to a minimum of ninety-two (92) percent of the standard proctor density.

(2) Construction requirements. The certifying engineer shall ensure that the synthetic liner support component of the bottom liner system installation conforms to the following minimum requirements:

(a) 1. Compaction shall be performed by properly controlling the moisture content and lift thickness to obtain the density and moisture characteristics established within the range identified in accordance with the ASTM D698 - 07e1 ["Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft³ (600 kN-m/m³))"]; and

2. The maximum final compacted thickness of each lift of soil material shall be six (6) inches. The thickness of the initial lift shall be increased as necessary to protect the integrity of underlying components and achieve the required liner performance standards;

(b) To ensure that each lift attains the required density during construction of the synthetic liner support layer, the moisture content of the synthetic liner support component of the bottom liner system shall be maintained within the range identified in accordance with the ASTM D698 - 07e1 ["Standard Test Methods for

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Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft³ (600 kN-m/m³) ["]; and

(c) At the end of each work period, the surface shall be sealed from rain infiltration.

(3) Certification requirements. The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 48:205, Section 10[.];

(a) A discussion of required quality assurance and quality control testing. **Quality assurance testing shall include:**

1. At least nine (9) density tests per acre per lift of soil material; and

2. A minimum of nine (9) moisture content tests per acre per lift of soil material; and

(b) The results of testing[shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 48:205, Section 10], including documentation of failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of retesting performed in accordance with the following requirements:

1. a. The certifying engineer shall certify, after review of the quality control testing of the synthetic liner support layer, if the material meets the requirements of the approved engineering plans, reports, and specifications in the permit; and

b. The quality control testing shall ensure that the specified material meets the density requirements of subsection (1) of this section; and

2. Quality assurance testing shall be based on the applicable standards of practice for certification by a professional engineer as established in KRS 322.010(16), and shall be performed at the following minimum frequency for each soil classification:

a. One (1) analysis of soil particle size for every 4,000 cubic yards of soil material;

b. One (1) analysis of soil classification for engineering purposes for each 20,000 cubic yards of soil material; and

c. One (1) moisture content test for every 4,000 cubic yards of soil material placed.

[~~(d) Quality assurance testing included in this paragraph shall be compared to and evaluated against the quality control testing of paragraph (a) of this subsection if applicable. Quality assurance testing shall include:~~

~~1. At least nine (9) density tests per acre per lift of soil material; and~~

~~2. A minimum of nine (9) moisture content tests per acre per lift of soil material.]~~

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

(a) [The] "Water Content-Density Criteria for Compacted Soil Liners" by David E. Daniel, Member, American Society of Civil Engineers (ASCE), and Craig H. Benson, Associate Member, ASCE, The Journal of Geotechnical Engineering, Vol. 116, No. 12, December 1990[is incorporated by reference]; and

(b) ASTM D698 - 07e1 "Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft³ (600 kN-m/m³)", April 2007.

(2) **This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.**

(3) **This material may also be obtained at the American Society of Civil Engineers:**

(a) ASCE World Headquarters, 1801 Alexander Bell Drive, Reston, Virginia 20191-4400 USA; and

(b) Web site: <http://www.asce.org/asce.cfm>[The documents listed in this administrative regulation are available from the American Society of Civil Engineers, ASCE World Headquarters, 1801 Alexander Bell Drive, Reston, Virginia 20191-4400 USA, or from their Web site at <http://www.asce.org/asce.cfm>.]

LEONARD K. PETERS, Secretary

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, August 15, 2011)

401 KAR 48:207. Petroleum-contaminated[Petroleum-contaminated] soil treatment facility liner geosynthetic quality assurance and quality control.

RELATES TO: KRS [Subchapters]224.01, 224.10, 224.40, 224.43, 224.99, 322.010(16)

STATUTORY AUTHORITY: KRS 224.10-100, **224.40-100(19)(c), (24), (28)**, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.40-100(19)(c), (24), and (28) requires the cabinet to **promulgate[adopt]** rules and administrative regulations for the permitting, management, processing, or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes the biopile liner geosynthetic quality assurance and quality control testing requirements for solid waste **petroleum-contaminated[petroleum-contaminated]** soil treatment facilities.

Section 1. Definitions.[As used in this administrative regulation:](1) "Certifying engineer" means **"professional engineer," as defined by KRS 322.010(3), who implements the petroleum-contaminated soil treatment facility construction quality assurance plan,**[the professional engineer that implements the petroleum-contaminated soil treatment facility construction quality assurance plan.];

(2) **"Petroleum-contaminated[Petroleum-contaminated] soil"** means silt, sand, clay, gravel, or other earthen material; **or** asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels established in 401 KAR 48:205, Section 6, Table **3[2]**, but does not exhibit a hazardous characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

(3) **"Petroleum-contaminated[Petroleum-contaminated] soil treatment facility"** means a solid waste site or facility where **petroleum-contaminated[petroleum-contaminated]** soil is treated to reduce contaminant concentrations to or below the levels established in 401 KAR 48:205, Section 6, Table **3[2]**.

(4) "Quality assurance" means the procedures that are initiated by the owner or operator and implemented by the professional engineer to ensure that the construction of the **petroleum-contaminated[petroleum-contaminated]** soil treatment facility meet design specifications and performance requirements[.]; **and**

(5) "Quality control" means the system of control implemented by the manufacturer, fabricator, installer, construction contractor, operator, or other person in order to meet construction specifications for the construction of the **petroleum-contaminated[petroleum-contaminated]** soil treatment facility.

Section 2. Applicability. (1) The quality assurance and quality control requirements of this administrative regulation apply to the construction of liner geosynthetics for biopiles at **petroleum-contaminated[petroleum-contaminated]** soil treatment facilities.

(2) The biopile liner design requirements are established in 401 KAR 48:205, Section 3, for **petroleum-contaminated[petroleum-contaminated]** soil treatment facilities.

Section 3. Specific Geosynthetic Clay Liner (GCL) Requirements for Bottom Liners. A Geosynthetic Clay Liner (GCL) is a low permeability man-made material having a maximum coefficient of permeability of 5×10^{-9} centimeters per second[.] and is used to control fluid migration.

(1) Materials required. (a) The GCL shall have a demonstrated hydraulic conductivity less than 5×10^{-9} centimeters per second.

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(b) 1. Documentation shall be submitted to ensure chemical compatibility of the wastes with the GCL; or

2. In the absence of the appropriate documentation, chemical compatibility testing shall be performed using the current version of ASTM D6141 [“]Standard Guide for Screening Clay Portion of Geosynthetic Clay Liner (GCL) for Chemical Compatibility to Liquids[“]; or similar method based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(2)(a) Construction requirements. A GCL shall be installed in accordance with the requirements of the approved engineering plans, reports, and specifications in the **petroleum-contaminated**[~~petroleum-contaminated~~] soil treatment facility permit and manufacturer's recommendations.

(b) The certifying engineer shall ensure that the GCL installation, at a minimum, shall conform to the following:

1. The GCL shall meet the manufacturer's and professional engineer's specifications based on the Geosynthetic Research Institute (GRI) GRI-GCL3, [“]Test Methods, Required Properties, and Testing Frequencies of Geosynthetic Clay Liners (GCLs)[“];

2. The GCL shall be installed on a biopile liner subgrade to promote positive drainage;

3. GCL installed on slopes shall be designed to withstand the calculated tensile forces acting upon the synthetic material and shall ensure that overall slope stability is maintained;

4. a. The surface of the supporting soil above which the GCL liner shall be installed shall be free of stones, organic matter, irregularities, protrusions, loose soil, and abrupt changes in grade that may damage the GCL; and

b. The supporting soil shall conform to the requirements established in 401 KAR 48:206, Section 5;

5. The anchor trench shall be excavated to the length and width prescribed on the approved design drawings in the permit;

6. a. Field seams shall be oriented parallel to the line of maximum slope, which is oriented along, not across the slope.

b. In corners and irregularly-shaped locations, the number of field seams shall be minimized;

7. The materials shall be overlapped using the appropriate method acceptable to the manufacturer;

8. The seam area shall be free of moisture, dust, dirt, debris, and foreign material before overlapping; and

9. Field seam overlapping shall be prohibited if the conditions, including precipitation[,] and wind, do not meet the professional engineer's recommendations based upon the manufacturer's specifications.

(3) Certification requirements.

(a) The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, a discussion of the approved data resulting from the quality assurance and quality control testing required in this subsection.

(b) The results of testing shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to correct the failed material, and statements of retesting performed.

(c) The certifying engineer shall certify, after review of the quality control testing of the GCL, that the material meets the requirements of the approved engineering plans, reports, and specifications in the **petroleum-contaminated**[~~petroleum-contaminated~~] soil treatment facility permit. Before installing a GCL, the following information shall be available to the certifying engineer for approval:

1. Origin and identification of the raw materials used to manufacture the GCL;

2. Copies of quality control certificates issued by the producer of the raw materials used to manufacture the GCL; and

3. a. Reports of tests conducted by the manufacturer to verify the quality of the raw materials used to manufacture the GCL.

b. Tests shall be conducted for Bentonite Fluid Loss, Bentonite Mass per Area, Bentonite Swell Index, Grab Strength, Hydrated Internal Shear Strength, Hydraulic Conductivity, Index Flux and

Peel Strength in accordance with GRI-GCL3, [“]Test Methods, Required Properties, and Testing Frequencies of Geosynthetic Clay Liners (GCLs)[“], or other suitable tests based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(d)[(e)] Quality assurance testing performed in the field under the supervision of the certifying engineer shall assure conformity of the GCL installation with the engineering plans, reports, and specifications submitted in accordance with the following requirements:

1. a. During the construction phase, the GCL shall be inspected for uniformity, damage, and imperfections.

b. The GCL shall be inspected for tears, punctures, or holes; and

c. All imperfections shall be repaired and reinspected; **and**[-]

2. a. Tests conducted by the independent laboratory to verify the quality of the GCL received at the facility.

b. Tests shall be conducted for Grab Tensile Strength, Swell Index, Peel Strength, Bentonite Mass per Area in accordance with GRI-GCL3 [“]Test Methods, Required Properties, and Testing Frequencies of Geosynthetic Clay Liners (GCLs)[“], or other appropriate test methods based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

Section 4. Specific Synthetic Liner Requirements for Bottom Liners. A biopile synthetic liner shall comply with the requirements of 401 KAR 48:205, Section 3 and meet the following requirements:

(1) Materials required. (a) The synthetic liner material shall have a chemical and physical resistance not adversely affected by waste placement or leachate generated.

(b) 1. Documentation shall be submitted to ensure chemical compatibility of the synthetic liner material chosen; or

2. In the absence of the appropriate documentation, chemical compatibility testing shall be performed using EPA SW-846 test method 9090A, [“]Compatibility Test for Wastes and Membrane Liners[“] incorporated by reference in 401 KAR 48:205, Section 9; and

(2) Construction requirements.

(a) A biopile synthetic **liner**[~~liners~~] shall be installed in accordance with the requirements of the approved engineering plans, report, and specifications in the **petroleum-contaminated**[~~petroleum-contaminated~~] soil treatment facility permit and manufacturer's recommendations.

(b) The certifying engineer shall ensure that the biopile synthetic liner installation, at a minimum, shall conform to the following:

1. The biopile synthetic liner shall have a nominal thickness of sixty (60) mils for liners;

2. The biopile synthetic liner shall be installed on a liner subgrade that promotes positive drainage;

3. The biopile synthetic liner installed on **a slope**[~~slopes~~] shall be designed to withstand the calculated tensile forces acting upon the synthetic material and shall ensure that overall slope stability is maintained;

4. The surface of the supporting soil above which the biopile synthetic liner shall be installed shall be free of stones, organic matter, irregularities, protrusions, loose soil, and abrupt changes in grade that **could**[~~may~~] damage the biopile synthetic liner;

5. The anchor trench shall be excavated to the length and width prescribed on the approved design drawings in the **petroleum-contaminated**[~~petroleum-contaminated~~] soil treatment facility permit;

6. Field seams shall be oriented parallel to the line of maximum slope, which is, oriented along, not across the slope. In corners and irregularly-shaped locations, the number of field seams shall be minimized;

7. The materials shall be seamed using the appropriate method in the permit. Seam testing shall be performed in accordance with the requirements of Section 5 of this administrative regulation;

8. The seam area shall be free of moisture, dust, dirt, debris, and foreign material before seaming; and

9. Field seaming shall be prohibited if the conditions including ambient air, temperature, precipitation, **or**[~~and~~] wind do not meet

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the professional engineer's recommendations based upon the manufacturer's specifications.

Section 5. Synthetic Liner Certification Requirements for Bottom Liners. (1) The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, a discussion of the reviewed data resulting from the quality assurance and quality control testing required in this section.

(2) The results of all testing shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to repair the failed material, and documentation of retesting performed.

(3) The certifying engineer shall certify, after review of the quality control testing of the biopile synthetic liner, if the material meets the requirements of the approved engineering plans, reports, and specifications in the permit.

(4) Before installing a biopile synthetic liner, the following information shall be available to the certifying engineer for approval:

(a) Origin and identification of the raw materials used to manufacture the biopile synthetic liner;

(b) Copies of quality control certificates issued by the producer of the raw materials used to manufacture the biopile synthetic liner; and

(c) Reports of the following tests conducted to verify the quality of the raw materials used to manufacture the biopile synthetic liner: tests for specific gravity, melt flow index, and percent carbon black shall be performed using GRI Test Method GM13, [“]Test Methods, Test Properties and Testing Frequency for High Density Polyethylene (HDPE) Smooth and Textured Geomembranes[“].

(5) The certifying engineer shall verify through appropriate documentation that the quality control testing of the synthetic liner at the factory took place in accordance with the manufacturer's quality control plan, which is based on the appropriate GRI specifications based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(6) Quality assurance testing performed in the field under the supervision of the certifying engineer shall assure conformity of the biopile synthetic liner installation with the engineering plans, reports, and specifications submitted in accordance with the following requirements:

(a) During the construction phase, the biopile synthetic liner shall be inspected for uniformity, damage, and imperfections using the following procedures:

1. The biopile synthetic liner shall be inspected for tears, punctures, or blisters; and

2. All imperfections shall be repaired and reinspected;

(b) All field seams shall be nondestructively tested over their entire length using the air pressure test for double fusion seams or the vacuum test for other seams using the following procedures:

1. The certifying engineer shall be responsible for overseeing the accomplishment of nondestructive testing;

2. The contractor or test personnel shall do the following:

a. Record the location, date, test unit number, name of tester, and results of testing;

b. Inform the installer of required repairs; and

c. (i) Overlay seams that cannot be nondestructively tested with the same biopile synthetic liner; and

(ii) The seaming and patching operation shall be inspected by the certifying engineer for uniformity and completeness; **and**

(c)1. Destructive testing shall be performed on the synthetic liner seam sections using GRI Test Method GM19, [“]Seam Strength and Related Properties of Thermally Bonded Polyolefin Geomembranes[“].

2. Seam samples for testing shall be taken as follows:

a. A minimum of one (1) test per every 500 feet of seam length unless a more frequent testing protocol is agreed upon by the installer and professional engineer; and

b. Additional test locations may be determined during seaming **and shall be** based on the applicable standards of practice as

established in KRS 322.010(16) for certification by a professional engineer.

3. Test locations shall be documented in the following manner:

a. The certifying engineer shall approve the sample size to be taken;

b. The sample size shall be predetermined as being large enough to perform the required testing; and

c. An independent laboratory shall perform the required testing that shall include, as a minimum, testing for seam strength and peel adhesion using GRI Test Method GM19 [“]Seam Strength and Related Properties of Thermally Bonded Polyolefin Geomembranes[“].

4. If a sample fails destructive testing, the certifying engineer shall ensure that:

a.(i) The seam shall be reconstructed between the location of the sample that failed and the location of the next acceptable sample; or

(ii)[b-] The welding path shall be retraced to an intermediate location at least ten (10) feet from the location of the sample that failed the test, and new samples shall be taken for additional field tests; and

b.[e-](i) If both new samples pass testing, the seam shall then be reconstructed between the location of both new samples; and

(ii) If a new sample fails, the process in this subparagraph shall be repeated.

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

(a) “ASTM D6141 Standard Guide for Screening Clay Portion of Geosynthetic Clay Liner (GCL) for Chemical Compatibility to Liquids”, **November 2009**;

(b) GRI-GCL3 “Test Methods, Required Properties, and Testing Frequencies of Geosynthetic Clay Liners (GCLs)”, **July 2010**;

(c) GRI Test Method GM13 “Test Methods, Test Properties and Testing Frequency for High Density Polyethylene (HDPE) Smooth and Textured Geomembranes for HDPE”, **July 2009**; and

(d) GRI Test Method GM19 “Seam Strength and Related Properties of Thermally Bonded Polyolefin Geomembranes”, **November 2010**. [“]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the following organizations:

(a) The material in subsection (1)(a) may be obtained at:

1. ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428-2959 USA; or

2. <http://www.astm.org/index.shtml>;

(b) The material in subsection (1)(c) through (f) may be obtained at:

1. Geosynthetic Research Institute, 475 Kedron Avenue, Folsom, PA 19033-1208 USA; or

2. <http://www.geosynthetic-institute.org/>

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

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

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.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 15, 2011)**

401 KAR 48:208. ~~Petroleum-contaminated~~[~~Petroleum-contaminated~~] soil treatment facility liner high-permeability layer quality assurance and quality control.

RELATES TO: KRS [Subchapters]224.01, 224.10, 224.40,

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224.43, 224.99, 322.010(16)

STATUTORY AUTHORITY: KRS 224.10-100, **224.40-100(19)(c), (24), (28)**, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.40-100(19)(c), (24), and (28) requires the cabinet to **promulgate** rules and administrative regulations for the permitting, management, processing, or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes the liner quality assurance and quality control testing requirements for **petroleum-contaminated** soil treatment facilities.

Section 1. Definitions. ~~[As used in this administrative regulation:]~~ (1) "Certifying engineer" means **"professional engineer," as defined by KRS 322.010(3), who implements the petroleum-contaminated soil treatment facility construction quality assurance plan.** ~~[the professional engineer that implements the petroleum-contaminated soil treatment facility construction quality assurance plan;]~~

(2) **"Petroleum-contaminated"** ~~[Petroleum-contaminated]~~ soil means silt, sand, clay, gravel, or other earthen material; **or** asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels established in 401 KAR 48:205, Section 6, Table **3[2]**, but does not exhibit a hazardous characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

(3) **"Petroleum-contaminated"** ~~[Petroleum-contaminated]~~ soil treatment facility means a solid waste site or facility where **petroleum-contaminated** ~~[petroleum-contaminated]~~ soil is treated to reduce contaminant concentrations to or below the levels established in 401 KAR 48:205, Section 6, Table **3[2]**.

(4) "Quality assurance" means the procedures that are initiated by the owner or operator and implemented by the professional engineer to ensure that the construction of the **petroleum-contaminated** ~~[petroleum-contaminated]~~ soil treatment facility meet design specifications and performance requirements. ~~;~~ **and**

(5) "Quality control" means the system of control implemented by the manufacturer, fabricator, installer, construction contractor, operator, or other person in order to meet construction specifications for the construction of the **petroleum-contaminated** ~~[petroleum-contaminated]~~ soil treatment facility.

Section 2. Applicability. (1) The quality assurance and quality control requirements of this administrative regulation **shall** apply to the construction of liners for biopiles at **petroleum-contaminated** ~~[petroleum-contaminated]~~ soil treatment facilities.

(2) The liner design requirements for biopiles **shall be as** ~~[are]~~ established in 401 KAR 48:205, Section 3 for **petroleum-contaminated** ~~[petroleum-contaminated]~~ soil treatment facilities.

Section 3. Specific Precipitation Drainage, Leachate Collection, or Gas Collection High Permeability Soil Requirement. (1) The high permeability soil is the sand or gravel that shall be used for the leachate collection layer on the biopile liner at a **petroleum-contaminated** ~~[petroleum-contaminated]~~ soil treatment facility.

(a) High permeability soil components shall have a minimum coefficient of permeability of 1×10^{-3} centimeters per second.

(b) The soil shall be placed without damaging the collection and removal system or liner components.

(c) The soil material shall be processed and substantially free of tree roots, wood, or other decayable materials and large rocks.

(d) High permeability soil components shall be resistive to leachate, so that clogging of the layer shall not cause the hydraulic head on the liner to exceed twelve (12) inches in depth.

(2) Certification requirements. (a) The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, a discussion of quality assurance and quality control testing.

(b) The testing procedures and protocols shall be ASTM International, or other test method based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(c) The results of testing shall be included in the form DEP

8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of retesting performed in accordance with the following requirements:

1. The certifying engineer shall review the results of the quality control testing by the supplier of a high permeability soil component;

2. The quality control and quality assurance testing shall ensure that the specified material **complies with** ~~[meets]~~ the permeability and clogging preventive requirement of subsection (1)(d) of this section;

3. The following quality control tests shall be performed on a minimum of at least one (1) sample from each soil classification:

a. Classification of soils for engineering purposes using the following:

(i) Soil particle size; and

(ii) Insoluble residue or calcium carbonate content; **and** ~~[.]~~

b. Hydraulic conductivity.

(d) Quality assurance testing included in paragraph (b) of this subsection shall be compared to and evaluated against the quality control testing of paragraph (a) of this subsection based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(e) Quality assurance testing shall be based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer and shall be performed at the following minimum frequency for each soil classification:

1. One (1) analysis of soil particle size for every 10,000 cubic yards of soil material;

2. One (1) analysis of soil classification for engineering purposes for each 20,000 cubic yards of soil material;

3. One (1) insoluble residue in carbonate aggregates test, for every 20,000 cubic yards of soil material using D3042-03, ~~["]~~Standard Test Method for Insoluble Residue in Carbonate Aggregates~~["]~~ modified for a pH of no greater than **four and zero-tenths (4.0)[4.0]** or similar test based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer; and

4. One (1) hydraulic conductivity test for every 20,000 cubic yards of soil material.

(f)1. The completed form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, shall show the finished elevation of each high permeability soil component of the liner referenced to existing site control, using a Three (3) Dimensional Terrain Model on Computer Assisted Design Drawing (CADD), cross-section, or another method of equivalent accuracy and quality; and

2. These finished elevations shall serve as documentation and reference data for future volume calculations.

Section 4. Specific Synthetic Drainage Layer (SDL) Requirements for Bottom Liners. A Synthetic Drainage Layer (SDL) shall have an allowable flow rate equivalent to the design requirements of the leachate collection layer as established in Section 2 of this administrative regulation.

(1) Materials required. (a) The SDL shall have an allowable flow rate that meets the requirements of this administrative regulation as determined by GRI standard GC-8 ~~["]~~Determination of the Allowable Flow Rate of a Drainage Geocomposite~~["]~~ or similar method based on the applicable standards of practice for certification by a professional engineer as established in KRS 322.010(16).

(b) The SDL shall not be adversely affected, chemically or physically, by waste placement or leachate.

(c)1. Documentation shall be submitted to ensure chemical compatibility of the SDL chosen; or

2. In the absence of the appropriate documentation, chemical compatibility testing shall be performed using Method 9090A, ~~["]~~Compatibility Test for Wastes and Membrane Liners~~["]~~, SW-846 Update IV of the Third Edition, which is incorporated by reference in 401 KAR 48:205, Section 10; or ASTM D6388-99 (2005), ~~["]~~Standard Practice for Tests to Evaluate the Chemical Resistance

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of Geonets to Liquids[~~"]~~, or other similar test method based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(2) Construction requirements. (a) The SDL shall be installed in accordance with the requirements of the approved engineering plans, reports, and specifications in the permit and manufacturer's recommendations.

(b) The certifying engineer shall ensure that the SDL installation, at a minimum, shall conform to the following:

1. The SDL shall have a nominal thickness that is specified by the professional engineer to meet the design flow of the leachate collection as established in 401 KAR 48:205, Section 3;

2. The SDL shall have a transmissivity that is specified by the professional engineer to ~~comply with~~~~[meet]~~ the design flow of the leachate collection layer as established in 401 KAR 48:205, Section 3;

3. The SDL shall be designed to withstand the calculated tensile forces acting upon the SDL to ensure that stability shall be maintained;

4. The anchor trench shall be designed to withstand the calculated tensile forces acting upon the SDL to ensure that stability shall be maintained;

5. Field seams shall be oriented parallel to the line of maximum slope, which is oriented along, not across the slope; and

6. In corners and irregularly-shaped locations, the number of field seams shall be minimized.

(3) Certification requirements.

(a) The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, a discussion of the reviewed data resulting from the quality assurance and quality control testing.

(b) The results of testing shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to repair the failed material, and documentation of retesting performed.

(c) The certifying engineer shall certify, after review of the quality control testing of the SDL, if the material meets the requirements of the approved engineering plans, reports, and specifications in the ~~petroleum-contaminated~~~~[petroleum-contaminated]~~ soil treatment facility permit.

(d) Before installing an SDL, the following information shall be available to the certifying engineer for approval:

1. Origin and identification of the raw materials used to manufacture the SDL;

2. Copies of quality control certificates issued by the producer of the raw materials used to manufacture the SDL; and

3. Reports of tests conducted to verify the quality of the raw materials used to manufacture the SDL.

(e) Tests shall be performed using appropriate ASTM International, GRI or other similar specifications based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(f)1. The certifying engineer shall verify through appropriate documentation that the quality control testing of an SDL made at the factory took place in accordance with the manufacturer's quality control plan, which is based on the GRI standard GC-8 [~~"]~~Standard Guide for Determination of the Allowable Flow Rate of a Drainage Geocomposite[~~"]~~ or appropriate specifications based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

2. Quality assurance testing performed under the supervision of the certifying engineer shall assure conformity of the SDL with the approved engineering plans in the permit and the GRI standard GC-8 Standard Guide for Determination of the Allowable Flow Rate of a Drainage Geocomposite[~~"]~~ or appropriate specifications based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

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

(a) ASTM D3042-03 "Standard Test Method for Insoluble Re-

sidue in Carbonate Aggregates", modified for a pH of no greater than 4.0, July 2002;

(b) GRI standard GC-8 "Standard Guide for Determination of the Allowable Flow Rate of a Drainage Geocomposite", April 2001; and

(c) ASTM D6388-99(2005) "Standard Practice for Tests to Evaluate the Chemical Resistance of Geonets to Liquids", June 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at: [The documents listed in this administrative regulation are available from the following organizations:]

(a) ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428-2959 USA, or from their Web site~~[website]~~ at <http://www.astm.org/index.shtml>[:];

(b) Geosynthetic Research Institute, 475 Kedron Avenue, Folsom, PA 19033-1208 USA, or from their Web site~~[website]~~ at <http://www.geosynthetic-institute.org/>[: or]

~~[(c) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays.]~~

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

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

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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 9, 2011)

501 KAR 2:020, Definitions for 501 KAR Chapter 2,

RELATES TO: KRS 532.060, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(4) requires the Department of Corrections to house qualifying Class D and Class C felons in county jails and promulgate administrative regulations establishing required programs for the jails where they are housed. This administrative regulation establishes the definitions used in 501 KAR Chapter 2, which implements the required housing program.

Section 1. Definitions. (1) "Assessment and Classification Center" or "AC Center" means the units at Roederer Correctional Complex and Kentucky Correctional Institution for Women that initially receive all convicted felons, except for those sentenced to the death penalty, who are committed to ~~[into]~~ the Kentucky Department of Corrections ~~[Adult Correctional System]~~.

(2) "Class C felon" means an inmate convicted of a Class C felony that meets the requirements established in KRS 532.100(4)(c)1~~[532.100(4)(b)]~~.

(3) "Class D felon" means an inmate convicted of a Class D felony that meets the requirements established in KRS 532.100(4)(a), (b), or (c)~~[or (b)]~~.

(4) "Classification branch manager" means the Department of Corrections employee who approves inmates for placement in jails and in halfway house facilities throughout the state and oversees the prerelease programs.

(5) "Close custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(6) "Community custody" means that the inmate meets the requirements for that classification level established in the Depart-

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ment of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(7) "Controlled intake inmate" means a convicted felon who is entering into the Kentucky Adult Correctional System.

(8) "Department" is defined in KRS 441.005(5).

(9) ~~(8)~~ "Educational good time" means a credit on an inmate's sentence for an educational accomplishment pursuant to KRS 197.045(1)(a)2 ~~197.045(4)~~.

(10) ~~(9)~~ "Escape" is defined in KRS 520.010(5).

(11) ~~(10)~~ "Jail" is defined in KRS 441.005(1).

(12) "Jail personnel" is defined in KRS 441.005(6).

(13) ~~(14)~~ "KOMS" means Kentucky Offender Management System.

(14) ~~(12)~~ "Maximum custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(15) ~~(13)~~ "Medium custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(16) ~~(14)~~ "Meritorious good time" means a credit on an inmate's sentence ~~for good conduct~~ pursuant to KRS 197.045(1)(b)2 ~~197.045(3)~~.

(17) ~~(15)~~ "Minimum custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(18) ~~(16)~~ "Restricted custody" means that the inmate meets the requirements for that subcategory of the minimum custody classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(19) ~~(17)~~ "Statutory good time" means a credit on an inmate's sentence pursuant to KRS 197.045(1)(b)1 ~~197.045(4)~~.

(20) ~~(18)~~ "Waiver" means that the department has granted the county an exemption from housing any Class D or Class C felons in its county jail pursuant to KRS 532.100.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman
APPROVED BY AGENCY: April 11, 2011
FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 2:060. Procedures for housing of Class D and Class C felons.

RELATES TO: KRS 196.035, 197.020, 197.045, 431.215, 441.045, 441.075, 441.510, 532.100

STATUTORY AUTHORITY: KRS 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(4) requires the Department of Corrections to house qualifying Class D and Class C felons in county jails. This administrative regulation establishes the procedures to implement the required housing program.

Section 1. Eligibility. Any county housing qualified Class D and Class C felons pursuant to KRS 532.100(4) shall be eligible to continue to do so unless the department, through its minimum jail

standards enforcement procedures established by KRS 441.075, orders a county jail to cease housing Class D and Class C felons.

Section 2. Submission of Documents for Class D Felons. In any county jail housing Class D felons, the jailer shall forward to the assessment and classification center the following documents, within ten (10) working days of receipt of the judgment, for each Class D felon for whom a transfer has not been requested:

- (1) Picture which shall be updated annually;
- (2) Any detainers;
- (3) Any incident or disciplinary reports; and
- (4) Body identification sheet.

Section 3. Custody Assignment for Class D Felons. (1) The assessment and classification center staff shall, within ten (10) working days of receipt of the presentence investigation and the judgment documents, review the inmate file and assign a custody classification level to the Class D felon.

(2) The AC Center staff shall forward the inmate file to Offender Information Branch, Central Office, which shall audit the file within five (5) working days of receipt.

(3) Central Office Offender Information ~~shall~~ notify the jailer of the custody classification level assignment.

(4) If the custody level assigned is minimum or community, the Class D felon may participate in community service work or any program offered outside the secure perimeter of the jail.

(5) If the custody level assigned is restricted, the Class D felon ~~may~~:

- (a) May only participate in community service work under direct supervision of jail ~~personnel~~ ~~staff~~; and
- (b) Shall not participate in any outside program.

(6) If the custody level assigned is medium, close, or maximum, the Class D felon shall not be eligible to participate in any program or work outside the secure perimeter of the jail.

(7) The jailer may request the department to review the assignment ninety (90) days from the date of the last assignment. Any additional custody review may be completed as deemed necessary by the Classification Branch Manager.

Section 4. Assignment of Class C Felons. (1) The assessment and classification center shall identify and inform the jailer of a Class C felon who qualifies under KRS 532.100(4)(c)1 ~~532.100(4)~~ to be housed in a county jail ~~Class C felons and the Division of Local Facilities shall inform the jailer of any felon who qualifies under KRS 532.100(4)~~.

(2) The jailer shall forward, within ten (10) working days of receiving the notice, the felon's fingerprints and photographs to the assessment and classification center, in order that the Class C felon may be processed into the program. The photograph shall be updated annually.

(3) The AC center shall notify the jailer when an inmate has been assigned as a Class C felon.

(4) Class C felons, as inmates with a community custody level as required by KRS 532.100, may perform community service work.

Section 5. Assessment Summary Reports. Prior to the meeting of the Parole Board, jail ~~personnel~~ ~~staff~~ shall prepare and submit an assessment summary report on each Class D and Class C felon to the Offender Information Branch via KOMS or electronically.

Section 6. Transportation. Jail ~~personnel~~ ~~staff~~ shall be responsible for the transportation of a Class D or Class C felon except as specified in KRS 431.215(1) and 441.510.

Section 7. Release Procedures. (1) The release of a Class D or Class C felon shall follow the procedure established by CPP 25.6, incorporated by reference in 501 KAR 6:020.

(2) (a) Jail ~~personnel~~ ~~staff~~ shall not release a Class D or Class C felon to any other county jail or agency without submission of an external movement information to the Director of Local Facilities or designee. The information shall include:

1. Name;

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2. Inmate number;

3. Facility transferring felon;

4. Facility receiving felon; and

5. Date transferred and received.

(b)[.] Any jail that is under order of the department relating to restrictions on state inmates shall receive prior authorization from the Director of Local Facilities before requesting state inmates from the Department or any other county jail. [without advance notice to the Director of Local Facilities or designee and entering the external movement into KOMS.]

(c) A Class D or Class C felon shall not be released to another state or to federal authorities without advance notice and approval of the Director of Local Facilities or designee.

(3) Jail personnel [staff] shall notify the Director of Local Facilities or the Offender Information Branch of any detainer or holder lodged against the Class D or Class C felon by another jurisdiction.

Section 8. Furlough Program. (1) The Classification Branch Manager shall have the authority and responsibility to grant and monitor any furloughs of a Class D or Class C Felon.

(2) Eligibility for a furlough shall be determined as follows:

(a) The furlough of a Class D or Class C felon shall be a privilege, not a right.

(b) To be considered for a furlough, a community or minimum custody Class D felon or a Class C felon shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.

(c) A Class D felon who is community custody or minimum custody or a Class C felon, who meets the requirement established in paragraph (b) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, beginning six (6) months after his final sentencing date. The total time on furlough shall not exceed eight (8) days each calendar year. There shall be a minimum of sixty (60) days between furloughs.

(d) To be considered for a furlough, a probation or parole violator who is a community or minimum custody Class D or a Class C felon shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.

(e) A probation or parole violator who is a community or minimum custody Class D or a Class C felon, who meets the requirement established in paragraph (d) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, beginning six (6) months after his commitment date. The total time on furlough shall not exceed eight (8) days each calendar year. There shall be a minimum of sixty (60) days between furloughs.

(f) To be considered for a furlough, a Class D or Class C felon shall meet the furlough criteria established in CPP 25.4, incorporated by reference in 501 KAR 6:020, with the exception of the six (6) continuous months of minimum or community custody requirement.

Section 9. Escape. If a Class D or Class C felon escapes, the procedures established in CPP 25.6, incorporated by reference in 501 KAR 6:020, shall be followed.

Section 10. Medical Needs. The department shall pay each jail a per diem for state prisoners as established by KRS 532.100(6). The jail shall pay for routine medical and medication expenses. If the inmate requires an admission to a hospital with at least one (1) night stay or outpatient surgery in which a general anesthesia is used, the cost shall be paid by the department.

Section 11. Inmate Pay. A Class D or Class C felon on a work assignment shall be paid in accordance with Local Facilities guide-lines 1.3 [CPP 19.3, incorporated by reference in 501 KAR 6:020].

Section 12. Good Time. For a Class D or Class C felon housed in a county jail, the awarding of **good time or sentence credit shall be as follows:**

(1) Statutory good time shall follow the procedures established in KRS 197.045(1)(b)1, [497.045(4)-(2)];

(2) Meritorious good time shall follow procedures established in KRS 197.045(1)(b)2, [497.045(3)] and CPP 15.3, incorporated by reference in 501 KAR 6:020;[.]

(3) Educational good time shall follow procedures established in KRS 197.045(1)(a)2, [497.045(1)] and CPP 20.1, incorporated by reference in 501 KAR 6:020; **and**

(4) If the jail has a substance abuse program approved by the department, then the felon shall receive credit to his sentence allowed by KRS 197.045(1)(a)3.

Section 13. Annual Photograph. The jailer or [a] jail personnel [staff member] shall take a photograph each year of each Class D and Class C inmate and immediately send it by United States mail **or email or via KOMS**, ~~via KOMS or email~~ to Offender Information Services, Central Office, P.O. Box 2400, Frankfort, Kentucky 40602 [via KOMS or electronically].

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, August 15, 2011)**

501 KAR 3:010. Definitions for 501 KAR Chapter 3.

RELATES TO: KRS 67A.028, 67B.020(1), 441.005, 441.045, 441.055, Ky. Const. Sec. 99, 152, 42 U.S.C. 15601-15609

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes definitions for 501 KAR Chapter 3, regulating full-service jail facilities.

Section 1. Definitions. (1) "Ceiling" means the overhead area in any area of the jail which is below the secure deck.

(2) "Commissioner" is defined in KRS 196.010(2).

(3)[(2)] "Dayroom" means a secure area with controlled access from the **prisoner**[inmate] living area, to which **prisoners**[inmates] may be admitted for daytime activities including dining, bathing, and selected recreation or exercise.

(4)[(3)] "Deck" means the secure overhead area of the jail, which is part of the security perimeter.

(5)[(4)] "Department" is defined in KRS 441.005(5).

(6)[(5)] "Detoxification area" means an area used to hold one (1) or more chemically impaired persons temporarily during the detoxification process until they can care for themselves.

(7)[(6)] "Direct supervision area" means an area used to house seventy (70) or fewer prisoners in which **jail personnel** [a corrections officer] is always present and directly supervising the prisoners.

(8)[(7)] "Dormitory" means:

(a) An area equipped for housing not less than three (3) nor more than thirty-six (36) persons; or

(b) If in a direct supervision area, an area equipped for housing not more than seventy (70) persons.

(9)[(8)] "Full-service jails" means jails that may house state prisoners pursuant to KRS 441.055 and that meet the standards established by 501 KAR Chapter 3.

(10) "Governing authority" means a county fiscal court, urban-county government, charter county government, consolidated local government, unified local government, or regional jail authority. [(9)]

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"Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, or discharge, or until they can be moved to a general housing area.

(11)[(10)] "Jail" is defined in KRS 441.005(1).

(12)[(11)] "Jail Administrator" means the official appointed by a regional jail authority [board] and charged with the responsibility of administering the regional jail.

(13)[(12)] "Jail personnel" is defined in KRS 441.005(6).

(14)[(13)] "Jailer" means:

(a) The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the jail;

(b) A department as defined in KRS 67B.020(1); or

(c) A correctional services division as created by KRS 67A.028.

(15)[(14)] "Medical authority" means the person or persons licensed [and certified] to provide medical care to prisoners in the jail's custody.

(16) "Passive Holding Area", "Diversion Holding Area", or "Temporary Holding Area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, or discharge, or until they can be moved to a general housing area.

(17)[(15)] "Pat or frisk" means a manual search of a clothed person and includes a visual inspection of the open mouth.

(18)[(16)] "Penal type" means furnishings, fixtures, and equipment approved by the department.

(19)[(17)] "Prisoner" is defined in KRS 441.005(3).

(20)[(18)] "Prisoner living area" means a group of rooms or cells that provide housing for the prisoner population.

(21)[(19)] "PREA" means the Prison Rape Elimination Act, 42 U.S.C. 15601-15609.

(22)[(20)] "Probing of body cavities" means a manual or instrument search of a person's oral, anal, vaginal, or other body cavity, performed by medical personnel.

(23) "Religion Reference Manual" means the Kentucky Department of Corrections Religion Reference Manual incorporated by reference in 501 KAR 6:080.

[(24)][(21)] ["Safety vestibule" means a defined space that promotes security by the use of two (2) or more doors used to contain and observe those who pass.]

(24)[(25)][(22)] "Sally port" means a covered vehicular drive-through [an enclosed, covered vehicular drive-in], located adjacent to the jail intake area.

(25)[(26)][(23)] "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(26) "Security vestibule" means a defined space that promotes security by the use of two (2) or more doors used to contain and observe those who pass. [(24) "Security personnel" means full-time and part-time personnel operating within a security area.]

(27) "Sexually abusive conduct" means:

(a) [includes but is not limited to:] Sexual contact, sexual intercourse, and deviate sexual intercourse, as defined by KRS 510.010;

(b) [and] Sexual abuse as defined by 28 C.F.R. 115.6; and [Nation Prison Rape Elimination Commission's Standards for the Prevention, Detection, Response and Monitoring of Sexual Abuse in Adult Prisons and Jails.]

(c) Other types of similar sexually based conduct.

(28) "Sick Call" means the evaluation and treatment of an ambulatory patient in a clinical setting, either on or off site of the jail, by the medical authority.

(29)[(25)] "Special Needs Area" means an area used to hold one (1) prisoner [person] for [direct] observation when displaying violent, erratic, or suicidal behavior or expressing suicidal ideations. [suicidal or violent tendencies or other physical or emotional expressions.]

(30)[(26)] "Strip search" means a body search during which a person is required to open or remove clothing, during which a person is subject to visual inspection of the torso, female breast, genital area, anal area, and other body cavities.

(31) "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, transfer of health or medical data, and continuing education.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner

RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 201 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 3:020, Administration; management.

RELATES TO: KRS 69.210, 202A.091, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation sets forth procedures for the administration and management of those jails.

Section 1. Policy and Procedure-Organization. (1) The jailer or jail administrator for a jail that houses state prisoners shall develop and maintain an organizational chart and a policy and procedures manual that has been adopted by the governing authority [an operations manual of policy and procedure that has been adopted by the fiscal court or regional jail authority] and filed with the department [of Corrections].

(2) The written policy and procedures manual shall be made available to employees. Employees shall sign documentation attesting they have read and will comply with the jail's policy and procedure manual.

(3) The policy and procedures [operations] manual shall include, at a minimum, the following aspects of the jail's operation:

- (a) Administration;
- (b) Fiscal management;
- (c) Personnel;
- (d) Security and control;
- (e) Sanitation and management;
- (f) Medical services;
- (g) Food services;
- (h) Emergency and safety procedures;
- (i) Classification;
- (j) Prisoner programs;
- (k) Prisoner services; [and]
- (l) Admission and release; and [-]
- (m) Training.

(4) The policy and procedures [operations] manual shall be reviewed, [and] updated, and any changes approved by the governing authority at least annually. All revisions shall be marked with the effective date and filed with the department [of Corrections].

Section 2. Legal Assistance. (1) The jailer for a jail that houses [house elects to] state prisoners shall be represented and advised by the county attorney as provided in KRS 69.210.

(2) The county attorney shall advise the governing authority [fiscal court] in writing if legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The governing authority [fiscal court] shall provide funds for

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adequate legal representation for the jailer if the jailer has acted within his official capacity and is involved in civil or criminal litigation as a result. The governing authority [fiscal court] shall be encouraged to carry liability insurance for the jail employees [staff] and other county officials.

Section 3. Legal Assistance for Regional Jails. The jail administrator for a regional jail that houses [which elects to house] state prisoners shall be represented and advised by the county attorney in the county in which the regional jail is located.

Section 4. Public Information. (1) The jailer for a jail that houses [elects to house] state prisoners shall develop and implement a procedure for the dissemination of information about the jail to the public, to government agencies, and to the media. The public and prisoners shall have access to the procedures.

(2) With the prisoner's written consent on a form authorizing release of information, news media shall be permitted to interview a prisoner as set forth in the [With the consent of the prisoner, news media shall be permitted to interview any prisoner as set forth in the] jail's policy and procedures [procedure] manual except if the safety and security of the jail is affected. [(3) Written policy and procedure shall set forth the time and length allowable for prisoner interviews.]

(4) ~~All official statements to the news media, relating to jail administration policy, shall be made by the jailer only or his designee.~~

(5) ~~Release of prisoner information.~~

(a) ~~All requests for information shall be addressed to the jailer.~~

(b) ~~Governmental agencies shall be provided with information pertinent only to their specific function.~~

(c) ~~Private citizens shall only be provided with information made available to the media.~~

(6) ~~Information shall not be released that is detrimental to another prisoner.]~~

Section 5. Information Systems. The jailer for a jail that houses [elects to house] state prisoners shall establish and maintain an information system that shall comply with the requirements of this section.

(1) Jail information and prisoner records shall be retained in written form or within computer records.

(2) Jail information and prisoner records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Prisoner records shall be maintained as required by the Department of Libraries and Archives pursuant to 725 KAR Chapter 1. [Written guidelines shall specify the length of time a prisoner record shall be maintained after a prisoner's release from custody and the conditions under which archives are maintained.]

(3) A telephonic report to the department [of Corrections] shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence, and a final written report shall be made within forty-eight (48) hours. This report shall be placed in the jail record. Extraordinary or unusual occurrences shall include, but shall not be limited to:

(a) Death of a prisoner;

(b) Suicide or attempted suicide that constitutes a serious health situation;

(c) Serious injury, whether accidental or self-inflicted;

(d) Escape or attempted escape from confinement;

(e) Fire;

(f) Riot;

(g) Battery, whether by jail personnel [a staff member] or prisoner;

(h) Sexually abusive conduct [Sexual assaults];

(i) Occurrence of contagious or infectious disease, or illness within the facility;

(j) Violent acts or behavior by either mental inquest detainees held under KRS Chapter 202A or prisoners known to be or suspected to be mentally ill or mentally retarded; and

(k) Any serious event that threatens the safety or security of the facility or jail personnel [staff].

(4) Each jail that houses [electing to house] state prisoners shall keep a log of daily activity within the jail. [(5) Each jail electing to house state prisoners shall assign a staff member the responsibility to enter, maintain, and audit the training records for the jail's staff. The assigned staff member shall utilize the current DOC training records management system to meet this responsibility. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.]

(5) [(6)] Each jail that houses [electing to house] state prisoners shall be required to provide the department [of Corrections] with a weekly population update that shall include the number of state prisoners, federal prisoners, and county prisoners. [(7) Each jail electing to house state prisoners shall provide the Department of Corrections with a monthly "PREA" report via KOMS or electronically that shall include the number of incidents of sexual contact between staff, staff on inmate, inmate on staff, and inmate on inmate.]

(6) [(8)] Each jail that houses [electing to house] state prisoners shall provide the Department [of Corrections] with all external movements of state prisoners via KOMS or electronically and on a daily basis. This information shall be sent to the Division of Local Facilities.

Section 6. Prisoner Records. (1) The information required by 501 KAR 3:120 and 3:130 for admission and release shall be retained for each prisoner. Other information retained in each prisoner's jail record shall include but not be limited to:

(a) Court orders;

(b) Personal property receipts;

(c) Infraction reports;

(d) Reports of disciplinary actions;

(e) Work record and program involvement; and

(f) Unusual occurrences and in the event of the death of a prisoner, disposition of the prisoner's property and remains.

(2) Medical records shall be maintained as required by the Department of Libraries and Archives pursuant to 725 KAR Chapter 1 [501 KAR 3:090].

(3) The jailer for a jail that houses [which elects to house] state prisoners shall ensure that prisoner records are safeguarded [in accordance with relevant federal and state laws and administrative regulations].

(4) The jailer shall not release information, other than public information, to individuals other than law enforcement or court officials unless the prisoner has signed a form authorizing release of information [consent form]. A copy of the signed [consent] form shall be maintained in the prisoner's record. The [This] form shall include [but not be limited to]:

(a) Name of person, agency, or organization requesting information;

(b) Name of facility releasing information; [(c) Specific information to be disclosed;]

(c) [(d)] Information to be disclosed [Purpose of the information];

(d) [(e)] Date consent form is signed; and

(e) [(f)] Signature of prisoner; and (g) ~~Signature of employee witnessing the prisoner's signature.]~~

(5) All jail records maintained on mental inquest detainees held under KRS Chapter 202A shall be kept separate from any other jail records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer for a jail that houses [elects to house] state prisoners shall seal the records and the mental inquest detainee's stay at the jail shall be deemed never to have occurred.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

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JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 3:030. Fiscal management.

RELATES TO: KRS 43.070, 68.020, 441.055, 441.135, 441.215, 441.235

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [elect to] house state prisoners. This administrative regulation establishes fiscal management procedures to be followed in full-service jails.

Section 1. Budgeting. The jailer, county judge/executive and treasurer shall prepare and present a line item budget request to the governing authority [fiscal court] in accordance with KRS 441.215.

Section 2. Accounting. (1) The county treasurer shall maintain fiscal records which clearly indicate the local cost for operating the jail in accordance with KRS 68.020 and 441.235.

(2) Fiscal records shall have an itemized breakdown of the total operating expenses including but not limited to wages, salaries, food and operating supplies.

Section 3. Canteen. As provided in KRS 441.135, each jailer may establish a canteen to provide prisoners with approved items.

Section 4. Audits. (1) The county jail budget shall be audited in accordance with KRS 43.070.

(2) The records of income, expense, and disbursements of the jail canteen fund shall be examined annually by the Auditor of Public Accounts concurrently with the annual audit of the county conducted in accordance with KRS 43.070(1)(a), unless the Auditor of Public Accounts declines to perform the examination of the canteen fund or has failed to respond to written notice of intent to employ a certified public accountant within thirty (30) days of receipt of the notice.

(a) If the county judge/executive notifies the Auditor of Public Accounts with specific or known jail canteen fund concerns or irregularities, the auditor shall thoroughly investigate the noted concerns or irregularities in the examination if, in the auditor's judgment, the investigation is warranted.

(b) [The Auditor of Public Accounts shall forward a copy of the report of any jail canteen examination it performs to the Kentucky Department of Corrections.]

(c) The jailer shall forward a copy of the report of any jail canteen audit to the [Kentucky] department [of Corrections].

(c) [(d)] The cost of the canteen fund audit [examination] shall be paid from the canteen fund as an allowable expense. If the jail's canteen fund is insufficient to cover the expense of the examination, the expense shall be borne by the county jail fund.

Section 5. Payroll. Jail employees shall be paid on the same dates as county employees.

Section 6. Inventory. Each jailer shall implement and utilize the established inventory procedure of the county.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the De-

partment of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner

RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 3:040. Personnel.

RELATES TO: KRS 441.045, 441.055, 441.115

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes personnel procedures to be followed in full-service jails.

Section 1. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all prisoners by providing a minimum of three (3) jail personnel, excluding jail personnel designated for communication. A staffing analysis may be requested by the jailer or governing authority. [Each jail shall provide twenty-four (24) hour awake supervision for all prisoners by providing a minimum of two (2) staff members, excluding communication staff. If requested by the jailer or fiscal court, the Department of Corrections may conduct a staffing analysis.]

(2) If a female prisoner is booked, detained, or otherwise lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Qualifications. All persons who work inside the secure perimeter of the jail shall be at least twenty-one (21) years of age.

Section 3. Compensation. Each employee shall receive a wage at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies. [Section 4. Training; Curriculum. (1) In order to qualify for the training expense allowance under KRS 441.115, the jailer shall successfully complete a minimum of forty (40) hours annual in-service training certified by the department.]

(a) ~~Local corrections training efforts shall be certified by the department prior to the training.~~

(b) ~~The Curriculum Advisory Committee shall advise the department on topics for training curriculum.~~

(c) ~~Jailer training shall be delivered on a regional basis by the department or by computer-based training, if appropriate.~~

(2) ~~Jail personnel shall attend a minimum of sixteen (16) hours annual in-service training delivered by the department on a regional or local basis or approved by the department if delivered by another agency.~~

(3) ~~Jail staff who are assigned to a direct supervision area shall receive forty (40) hours of preservice training related to direct supervision. The training shall be approved by the Department of Corrections.]~~

Section 4[5]. Policy and Procedure. Written policy shall specify that equal employment opportunities exist for every [staff] position.

Section 5[6]. Physical Fitness. The jailer shall ensure a level of physical fitness is maintained that will allow each employee to satisfactorily perform his or her duties.

Section 6[7]. Code of Ethics. (1) The jailer shall make a written code of ethics available to each employee.

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(2) The written code of ethics shall be incorporated in the jail's policy and procedures manual and shall include the following:

(a) An employee shall not:

1. Exchange a personal gift or favor with a prisoner, prisoner's family, or prisoner's friend~~[friends]~~;
2. Accept any form of bribe or unlawful inducement;
3. Perform duties under the influence of an intoxicant or consume an intoxicant while on duty;
4. Violate or disobey an established rule, administrative regulation, or lawful order from a superior;
5. Discriminate against a prisoner on the basis of race, religion, creed, gender, national origin, or other individual characteristic;
6. Employ corporal punishment or unnecessary physical force;
7. Subject a prisoner to physical or mental abuse;
8. Intentionally demean or humiliate a prisoner;
9. Bring a weapon or an item declared as contraband into the jail without proper authorization;
10. Engage in critical discussion of jail employees~~[staff]~~ or a prisoner in the presence of another prisoner;
11. Divulge confidential information without proper authorization;
12. Withhold information which threatens the security of the jail, jail employees~~[its staff]~~, visitors, or the community;
13. Through negligence or intentionally, endanger the well-being of self or another;
14. Engage in a business or profitable enterprise with a prisoner;
15. Inquire about, disclose, or discuss details of a prisoner's crime other than as may be absolutely necessary in performing official duties;
16. Enter into an intimate, personal relationship with a prisoner while the prisoner is incarcerated at the same jail that the employee is employed by; or
17. Enter into an intimate, personal relationship with a former prisoner of the jail within six (6) months of that prisoner's release; and

(b) An employee shall:

1. Comply with established rules, administrative regulations, and lawful orders from a superior;
 2. Treat each prisoner in a fair, impartial manner; and
 3. Report a violation of the code of ethics to the jailer.
- (3) A violation of the code of ethics shall be made a part of the employee's personnel file.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman
APPROVED BY AGENCY: April 11, 2011
FILED WITH LRC: May 6, 201 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 9, 2011)

501 KAR 3:060. Security; control.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes security procedures to be followed in full-service jails.

Section 1. Policy and Procedure. (1) ~~The~~~~[Each]~~ jailer shall develop a written policy and procedure governing the security aspects of the jail's operation.

(2) ~~If requested in writing, the~~~~[The]~~ department shall provide technical assistance to the jailer in formulating written policy and procedure.

(3) The policies and procedures shall include:

- (a) Prisoner rules~~[and administrative regulations]~~;
- (b) Staffing;
- (c) Searches of prisoner and of secure areas;
- (d) Visitation;
- (e) Key and weapon control;
- (f) Prisoner head counts;
- (g) Surveillance checks;
- (h) Emergency situations;
- (i) Jail schedule; and
- (j) Administering medication.

Section 2. Prisoner Supervision. (1) Jail personnel shall conduct and document direct in-person surveillance of each prisoner on an irregular schedule, at least every sixty (60) minutes.

(2) Jail personnel shall conduct and document direct in-person surveillance every twenty (20) minutes on the following classes of prisoners:

- (a) Suicidal;~~[(b) Assaultive, unless housed in a single cell;~~
- ~~(c) Escape risk, unless housed in a single cell;]~~
- ~~(b) [(d)] Mentally or emotionally disturbed, if housed in a single cell; [(e) In segregation, unless housed in a single cell;~~
- ~~(c) [(f)] In detox cell;~~
- ~~(d) [(g)] Juveniles, if housed in the jail; and~~
- ~~(e) [(h)] Mental inquest detainees.~~

(3) If available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sally ports, perimeter security, points of egress, and common and support areas.

(4) There shall be at least three (3) documented prisoner counts every twenty-four (24) hours during which each prisoner's physical presence, by show of skin or by movement, shall be observed. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for weekly inspection, for contraband and physical security, of each area accessible to a prisoner.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) The prisoner rules, as specified in Section 1(3)(a) of this administrative regulation, shall contain a clear definition of each item permitted in the jail. All other items shall be considered contraband.

(c) There shall be a written procedure for reporting security irregularities.

(2) A weapon, ammunition, chemical agent, related security equipment, or object which may be used as a weapon shall not be permitted in the security area unless authorized by the jailer. Firearms shall not be permitted in the security area~~[perimeter]~~ unless authorized by the jailer, under emergency circumstances.

(3) If a weapon, ammunition, chemical agent, or related security equipment is not being carried or used, as authorized by the jailer, it shall be stored in an arsenal, vault, or other secure room under lock.

(a) The weapons storage area shall be inaccessible to unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) Security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) Tools and toxic, corrosive, or flammable substances, and other potentially dangerous supplies and equipment shall be stored in a secure, locked area located outside the security perimeter of the confinement area.

(6) A prisoner shall use hazardous tools, supplies, or equipment only under the direct supervision of jail personnel.

(7) A prisoner:

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(a) May be assigned the responsibility of providing prisoner services, including providing meals, under the direct supervision of jail personnel~~[staff]~~; and

(b) Shall not be assigned to a position of authority over another prisoner.

(8) A prisoner shall not be permitted to perform or assist in a security duty.

(9) A jail with a work release or community service program shall establish special control procedures to minimize contact between a prisoner with work release privileges and another prisoner.

(10) A prisoner shall be searched, in accordance with the guidelines established in 501 KAR 3:120, if entering or leaving the security perimeter.

(11) Written procedures shall be developed for transporting a prisoner outside the jail and shall identify training required before jail personnel~~[staff]~~ are permitted to transport any prisoner.

(12) Each jailer shall develop written policies and procedures governing the use of physical restraints.

(13) A prisoner placed in physical restraints shall be constantly monitored.

(14) The jail shall have key-control procedures which shall include:

(a) A key control center that is secure and inaccessible to an unauthorized person at all times;

(b) An accounting procedure for issuing and returning keys;

(c) A procedure for immediate reporting and repairing of a broken or malfunctioning key or lock;

(d) A set of duplicate keys to be maintained in a separate, secure place;

(e) A prisoner shall not be permitted to handle a key used to operate a jail security lock;

(f) A key operating a lock to an outside door or gate shall not be permitted in the security~~[confinement]~~ area;

(g) An emergency key or any key to a critical security area shall be issued in accordance with written procedures established by the jailer;

(h) Precautions similar to those outlined in paragraphs (a) through (g) of this subsection~~[above]~~ shall be taken to ensure~~[insure]~~ the security of nonkey operated locking devices including electrical switches or levers;

(i) A lock to an outside exit shall be keyed differently from an interior lock; and

(j) The lock to the control room shall be keyed differently from all other locks.

(15) Trustees.

(a) A trustee shall not have access to, or control of, a weapon.

(b) An unsupervised trustee shall not be permitted in either a program, support, or housing area with a prisoner of the opposite sex.

(c) A trustee shall not be permitted in either a program, support, or housing area with a juvenile inmate.

Section 4. Daily Jail Log; Special Reports. A daily jail log shall be kept current and shall reflect significant occurrences within the jail. Special reports shall include:

(1) Use of force;

(2) Disciplinary action;

(3) Medical or mental health treatment;

(4) Feeding schedule and menus;

(5) Extraordinary occurrences.

(a) Fire;

(b) Assault;

(c) Suicide or attempted suicide; and

(d) Escape or attempted escape;

(6) Inmate vandalism;

(a) Destruction of jail property; and

(b) Flooding of plumbing fixtures;

(7) Jail personnel~~[Staff]~~ roster for each shift; and

(8) Visitor's log.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the De-

partment of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner

RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

(As Amended at ARRS, August 15, 2011)

501 KAR 3:070. Safety; emergency procedures.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes safety and emergency procedures to be followed in local full-service jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written policy and procedure that specifies fire prevention practices to provide for~~[shall specify fire prevention administrative regulations and practices to ensure]~~ the safety of prisoners, visitors, and jail employees ~~[staff]~~. The policy shall include:

(a) ~~[Provision for]~~ A fire emergency planning session for jail employees ~~[staff]~~ at least quarterly;

(b) **Maintaining** written documentation of the fire planning session including evacuation, fire drills, and other procedures covered during the session;

(c) A fire safety inspection by the department at least once a year;

(d) Inspection and testing of fire protection equipment by a qualified person at least annually with visual inspections by jail employees ~~[staff]~~ monthly;

(e) All county jails that ~~[elect to]~~ house state prisoners shall be tobacco free ~~[deemed nonsmoking]~~ facilities; and~~[.]~~

(f) An evacuation plan coordinated with local fire officials and approved by the department ~~[of Corrections]~~.

(2) Each jail shall have written policy and procedures for emergency situations including:

(a) Escape;

(b) Hostage taking;

(c) Riot;

(d) Food poisoning;

(e) Civil disturbance in the community;

(f) Natural disaster;

(g) Suicide;

(h) Other death and disorder; and

(i) Mass evacuation disaster plan.

Section 2. Physical Plant. (1) Each jail shall comply with the Kentucky Building Code, incorporated by reference in 815 KAR 7:120. An existing jail for which approval has been granted may continue without change, except if a significant alteration, addition or change of occupancy occurs.

(2) Each exit shall be:

(a) Distinctly and permanently marked;

(b) Visible at all times;

(c) Kept clear; and

(d) Maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights, power, HVAC, and communications in an emergency situation.

(4) In each area where a prisoner may be confined, there shall be an emergency smoke control system activated by smoke detec-

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tors and operated by emergency power. Inspection and testing of the smoke control system shall be conducted by a qualified person at least annually.

(5) Each jail shall have a an approved fire alarm and smoke detection system.

(6) Each direct supervision area shall have a an approved fire-suppression system.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 3:080. Sanitation; hygiene.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation sets forth procedures to provide proper sanitation and hygiene in full-service jails.

Section 1. Procedures. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jailer shall have a written preventative maintenance plan that includes but is not limited to:

(a) A cleaning schedule for various locations and items in the jail;

(b) A schedule for inspections by the jailer;

(c) A schedule for trash and garbage removal; and

(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.

(4) The jail shall have fresh air circulating within prisoner living and activity areas.

(5) The jail shall furnish clean sanitized bedding to prisoners except in holding areas and unless it is determined to be detrimental to a particular prisoner. Issuance of bedding in detoxification is optional. Bedding shall include:

(a) One (1) mattress;

(b) One (1) blanket if conditions require;

(c) Two (2) sheets;

(d) One (1) pillow, if not part of the mattress; and

(e) One (1) pillowcase, if applicable.

(6) Prisoner bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week and cleaned prior to reissue to next prisoner;

(b) Blankets shall be laundered~~cleaned~~ upon reissue or quarterly, whichever is sooner; and

(c) Mattresses and pillows shall be cleaned quarterly and cleaned prior to reissue to next prisoner.

(7) Each prisoner shall be issued a clean jail uniform and towel upon admission to a prisoner living area. Jail uniforms and towels shall be laundered at least twice weekly and laundered prior to reissue to the next prisoner. Prisoners shall not be required to be without a clean uniform or towel while laundry is being processed.

~~[Towels shall be laundered weekly or more as needed and cleaned prior to reissue to next prisoner.]~~

(8) All floors, toilets, and sinks in the jail shall be cleaned~~washed~~ daily or more often as necessary.

(9) All showers shall be cleaned on at least a weekly basis.

(10) (a) All prisoners assigned to prisoner living areas shall be issued or permitted to obtain the following hygienic items:

1. Soap;

2. Toothbrush;

3. Toothpaste;

4. Toilet paper; and

5. Female sanitary supplies (if applicable).

(b) Indigent prisoners shall be furnished these items by the jail.

(11) All prisoners shall be permitted to shave a minimum of two~~(2) [three (3)]~~ times per week. Communal razors shall not be used.

(12) Hair cutting services or sanitized hair cutting equipment shall be available to all prisoners.

(13) All prisoners shall be provided shower facilities within twenty-four (24) hours of admission. Prisoners shall be permitted to shower daily.

(14) All prisoners in the jail shall be provided with hot and cold running water in showers and lavatories.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

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CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 3:090. Medical services.

RELATES TO: KRS 72.025, 441.045, 441.047, 441.055, 441.560

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 441.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health standards for jails that house state prisoners. This administrative regulation sets forth procedures for the proper delivery of medical services in full-service jails.

Section 1. Medical Services. (1) The jail's medical services shall be provided by contracting with a health care provider licensed in Kentucky.

(2) The medical authority shall be a licensed practical nurse (LPN), a higher level of licensed nurse, a licensed medical doctor, or licensed doctor of osteopathy. Telehealth services[Telemedicine technology] may be used.

(3)[(2)] The health care [medical] staff shall not be restricted by the jailer in the performance of their duties except to adhere to the jail's security requirements.

(4)[(3)] All health care staff working in the jail shall comply with state licensure and certificate requirements commensurate with similar health care personnel working elsewhere in the community. Copies of licenses and certificates for health care staff employed by the jail shall be maintained on file within the jail. (5)[(4)] A daily medical log shall be maintained documenting specific medical treatment rendered in the jail. This log shall be kept current to the preceding hour.

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~~(6)~~~~(5)~~ Prisoners shall not perform any medical functions within the jail.

~~(7)~~~~(6)~~ Prisoners shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the jail.

~~(8)~~~~(7)~~ All medical procedures shall be performed according to orders issued by the responsible medical authority. All medical procedures that require hospital care shall use the Kentucky Correctional Health Care Services Network, or other contracted health care network ~~provider~~.

~~(9)~~~~(8)~~ Medical screening shall be performed by the receiving jail personnel ~~officer~~ on all prisoners upon their admission to the jail and before their placement in prisoner living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include but not be limited to:

(a) Current illnesses and health problems;
(b) Medications taken and special health requirements;
(c) Screening of other health problems designated by the medical authority;

(d) Behavioral observation, state of consciousness, and mental status;

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics;

(f) Condition of skin and body orifices, including rashes and infestations; and

(g) Disposition and referral of prisoners to qualified medical personnel on an emergency basis.

~~(10)~~~~(9)~~ Sick call conducted by the medical authority shall be available to each prisoner as follows:

(a) Facilities with fewer than 100 prisoners or less shall hold sick call one (1) day ~~two (2) days~~ per week, at a minimum;

(b) Facilities with 101 to 200 ~~100 to 300~~ prisoners shall hold sick call two (2) ~~three (3)~~ days per week, at a minimum; and

(c) Facilities with 201 to 300 ~~more than 300~~ prisoners shall hold sick call three (3) ~~five (5)~~ days per week, at a minimum; and.

(d) Facilities with more than 300 prisoners shall hold sick call four (4) days per week, at a minimum.

(11) Jailers shall be required to report suicides or attempted suicides that constitute a serious health situation to the department within twenty-four (24) hours.

(12) Each jail shall have a written policy and procedure outlining jail personnel response to detainees who are at risk for suicide or have attempted or completed suicide.

~~(10) Deputy jailers and correctional officers shall have current training in standard first aid equivalent to that defined by the American Red Cross.~~

~~(11) Deputy jailers and correctional officers member per shift shall be trained and certified to perform approved CPR (Cardiopulmonary Resuscitation).~~

~~(13)~~~~(12)~~ Emergency medical, vision, and dental care shall be available to all prisoners commensurate with the level of care available to the community.

~~(14)~~~~(13)~~ Medical research shall not be permitted on any prisoner in the jail.

~~(15)~~~~(14)~~ Access to the prisoner's medical file shall be controlled by the medical authority and the jailer. ~~[The physician-patient privilege shall apply to the medical record.]~~ The medical record shall be separate from custody and other administrative records of the jail.

~~(16)~~~~(15)~~ All examinations, treatments, and procedures affected by informed consent standards in the community shall be observed for prisoner care.

~~(17)~~~~(16)~~ The jailer or designee shall notify the coroner, if a prisoner dies while in the jail's custody, to allow for a postmortem examination pursuant to KRS 72.025. ~~[In accordance with KRS 72.025, a postmortem examination shall be conducted on all prisoners who die while in the custody of the jailer.]~~

~~(18)~~~~(17)~~ The jailer shall have written delousing procedures. ~~[(18) All jail staff or contract staff who administer medications to prisoners shall be trained in the proper procedures as outlined in the Policy and Procedures Manual.]~~

(19) The jail shall have first aid kits available at all times.

(20) A prisoner who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the jail shall be moved to another confinement facility that can provide the treatment or may be moved to a hospital.

(21) If emergency care is needed, it shall be provided.

Section 2. Medical Transfers pursuant to KRS 441.560. (1) A jailer may request that a prisoner be transferred to the department for necessary medical treatment and care if the prisoner:

(a) Is injured;
(b) Is pregnant;
(c) Becomes sick or ill;
(d) 1. Is severely and persistently mentally ill; and
2. Is presenting an imminent risk of harm to self or others; or
(e) Requires specialized medical care or long-term medical care which is not available at the local jail.

(2) The transfer request shall be submitted to the Classification Branch ~~Commissioner~~ in writing and shall contain the following information:

(a) Prisoner's name;
(b) Prisoner's Social Security number;
(c) County where currently housed;
(d) Inmate number;
(e) Pending charge or conviction and whether felony or misdemeanor;

(f) Estimated sentence or time to serve;
(g) Whether the prisoner has insurance or not;
(h) Whether the prisoner is indigent or not;
(i) Justification for medical transfer;
(k) Whether the care is necessary or not;
(l) Any conflict reports; and
(m) Relevant attachments such as:
1. Copy of prisoner's insurance card;
2. Doctor's report;
3. Incident report;
4. Citation;
5. Booking information;
6. Preexisting medical records; or
7. Current medication.

(3) If a prisoner is approved for transfer to the department, pursuant to KRS 441.560 ~~[department as a catastrophic medical prisoner]~~, the jail shall provide the following, unless already provided with the transfer request:

(a) All medical information;
(b) Current medication in proper container;
(c) Booking information;
(d) Incident reports;
(e) Current citation;
(f) Classification information;
(g) Conflict reports;
(h) Any additional pertinent information; and
(i) Custody receipt.

(4) If a prisoner is approved for transfer to the department, pursuant to KRS 441.560 ~~[department as a catastrophic medical prisoner]~~, the prisoner shall be transported by the department.

Section 3. Inmate Medications. (1) When a prisoner is transferred from one facility to another, all pertinent medical information, including a minimum three (3) day supply of prescription medication, a prescription for necessary medications that will allow the medication to be filled at least once, and a copy of the most recent Medical Administration Record (MAR), shall be sent to the receiving facility.

(2) If prescribed medication is purchased for a prisoner, by a facility, then upon release to the community from the facility, a minimum supply of three (3) days medication and a prescription for necessary medications that will allow the medication to be filled at least once shall be provided to the prisoner.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the De-

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partment of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman
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PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 3:100. Food Services.

RELATES TO: KRS 196.035, 197.020, 217.280-217.390, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health standards for jails that house state prisoners ~~[and for jails which do not elect to hold state prisoners]~~. This administrative regulation sets forth procedures for proper food services for jails that house state prisoners ~~[in both types of jails]~~.

Section 1. Procedures. (1) The jail shall comply with KRS 217.280 through 217.390 and 902 KAR 45:005.

(2) The jailer shall provide adult prisoners with a nutritionally adequate diet containing at least 2,400 calories per day. If prisoners are housed in the diversion holding area during normal meal times, they shall be fed. Meals may be either hot or cold.

(3) (a) Except as provided by paragraph (b) of this subsection, prisoners shall receive three (3) meals per day, one (1) of which shall be hot. More than fourteen (14) hours shall not elapse between any two (2) meals.

(b) The jailer may elect to provide only two (2) meals on Saturdays, Sundays, and holidays, if [provided that] both meals still meet the minimum 2,400 calories per day. If the jailer elects to serve only two (2) meals, more than sixteen (16) hours shall not elapse between any two (2) meals [the time elapsing between the meals requirement shall not apply].

(4) The jailer shall provide for religious diets in accordance with 501 KAR 3:130 after review and approval of religious authority.

(5) The jailer shall provide for medical diets if prescribed by a medical authority.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary ~~[or reward]~~ purposes.

(8) A nutritionist or dietician shall approve the nutritional value of the jail menu on an annual basis.

(9) ~~Jail personnel~~ [A staff member] shall directly supervise all food prepared within the jail.

(10) All food shall be served under the direct supervision of jail personnel ~~[a staff member]~~.

(11) The jail shall have sufficient cold and dry food storage facilities.

(12) The jailer or his designee shall inspect the food service area daily.

(13) Canteen food items purchased by prisoners may be stored or prepared in amounts that do not pose a threat to the health or security of the institution.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 3:110. Classification.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that ~~elect to~~ house state prisoners. This administrative regulation establishes procedures for the classification of prisoners in full-service jails.

Section 1. Procedure. (1) Each jail shall develop a prisoner classification system, which shall be included in the facility's written policy and procedure manual.

(2) The prisoner classification system shall provide for separation of the following categories of prisoners:

- (a) Male and female prisoners, except in diversion/holding;
- (b) Mental inquest detainee and other prisoners;
- (c) Mentally ill or mentally retarded prisoner and other prisoners;
- (d) Chemically incapacitated prisoner and other prisoners;
- (e) A prisoner with a tendency to harm others, be harmed by others, or requiring administrative segregation and other prisoners; and
- (f) A prisoner with a communicable disease and other prisoners.

(3) The criteria to be used in the classification of other prisoner categories shall be as follows:

- (a) Seriousness of current offense;
- (b) Institutional behavioral history;
- (c) Special needs;
- (d) Known criminal history; and ~~Sentenced or unsentenced status;~~
- (e) ~~Felony or misdemeanor charge.~~
- (f) ~~Noncriminal and criminal status including a traffic violator, nonsupport case or civil contempt.~~
- (g) ~~Community custody prisoner including work release, and education release, weekenders.]~~

(4) Trustees. The jailer or his designee shall base selection of prisoners for trustee status on the following criteria:

- 1. The nature of the prisoner's offense and sentence;
- 2. Previous escape attempts; and
- 3. The prisoner's "day-to-day" behavior.

(5) A prisoner's classification shall be reevaluated if the prisoner's status changes based on factors to include the following: ~~[changed to reflect changes in his status, including the following]:~~

- (a) Results of a court ~~[Court]~~ appearance by the prisoner, such as being sentenced;
- (b) Disciplinary hearing and action; and
- (c) Reevaluation of the prisoner's physical, emotional, or mental condition.

(6) The prisoner classification system shall prohibit discrimination or segregation based upon race, color, creed, or national origin.

Section 2. (1) Each detention facility with direct supervision areas shall, and other detention facilities may, develop a system of prisoner classification to assess prisoners for the purpose of:

- (a) Protecting public or institutional safety;

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(b) Providing an acceptable level of health care services; and
(c) Considering the opportunity to provide programs intended to reduce the likelihood of reincarceration.

(2) The classification system shall provide for the assessment of prisoner risk and need, considering elements including:

- (a) Need for medical care;
- (b) Need for mental health care;
- (c) Propensity for suicidal behavior;
- (d) Potential conflict arising from contact with another individual or group within the institution;
- (e) Potential threat of escape;
- (f) Potential threat to public safety if placed in a community release program;
- (g) Potential risk to staff or another prisoner;
- (h) Record of previous institutional behavior; and
- (i) Assessment for participation in educational, vocational, rehabilitative, or work-related programming.

(3) Each classification system shall consider the development of the following components:

(a) An assessment of a prisoner upon intake to the facility to determine:

- 1. Legal custody;
- 2. Medical fitness for acceptance; and
- 3. Information asked of the arresting or transporting agent concerning the prisoner's potential risk and needs.

(b) A screening component to assess, as soon as practical after acceptance into the facility, the prisoner's risk and need for the purpose of determining appropriate housing, supervision requirements, and the need for providing immediate health care[.] or other services.

(c) A primary classification of a prisoner shall be accomplished as soon as practical after his initial court appearance, or prior to a permanent housing placement within the institutional population[. The purpose of primary classification is] to address the long term housing, supervision, and health care needs of the prisoner. Primary classification may also address the appropriateness of program placement in consideration of the needs of the prisoner and the potential risks to the community and the institution associated with the placement.

(4) A reclassification component shall be developed that reassesses the prisoner's risk, need, and housing assignment and supervision based upon either time, event, change of status, or request.

(5) An instrument of assessment shall be developed for each of the classification components using sources including charged offense, criminal history of the prisoner, available institutional behavior history, interview and observation of the prisoner, or other information sources available to the institution.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 3:120. Admission; searches and release.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [elect to] house state prisoners. This administrative regulation establishes admission, search, and release procedures for full-service jails.

Section 1. Policy and Procedure. Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual.

Section 2. Admission. (1) A person in need of emergency medical attention shall not be admitted to the jail until a medical examination is conducted. A Denial of Admission document shall be completed, listing the reason for denial. The document shall be signed by jail personnel on duty.

(2) Jail personnel shall ensure[~~assure~~] that each prisoner is committed under proper legal authority by a duly authorized officer.

(3) An intake form shall be completed on every new admission and shall include the following:

- (a) Time and date of commitment;
- (b) Name, alias, and nickname;
- (c) Official charge[~~, cite five (5) digit UOR number~~];
- (d) Authority ordering commitment;
- (e) Unit of government to be billed;
- (f) Signature and title of arresting or committing officer;
- (g) Date of birth;
- (h) Race;
- (i) Sex;
- (j) Height and weight;
- (k) Current or last known address;
- (l) Telephone number;
- (m) Marital status;
- (n) Spouse or next of kin;
- (o) Emergency contact including name, relation, address, and telephone number;
- (p) Employer, place of employment, and telephone number;
- (q) Social Security number;
- (r) Health status including current medications, known allergies, diet, or other special medical needs;
- ~~(s) Blood type, if known;~~
- ~~(s) [(t)]~~ The name of any known person in the jail who might be a threat to the prisoner; and
- ~~(t) [(u)]~~ Mental health history including past hospitalizations, comprehensive care treatment, current treatment, and medication.

Section 3. Searches. (1) Jail personnel shall conduct a search of each prisoner and his possessions.

(a) Each prisoner shall be searched for contraband in a manner ~~jail personnel~~ [staff] reasonably determine is necessary to protect the safety of fellow prisoners, ~~jail personnel~~ [staff], and institutional security.

(b) A prisoner may be strip searched only on reasonable suspicion that is based upon the existence of objective information that may predict the likelihood of the presence of a weapon, drugs, or other item of contraband concealed on a particular prisoner. Reasonable suspicion may [shall] be based upon one (1) or more of the following examples:

1. A current felony offense, fugitive status, or past felony conviction, involving [felony] violence or[~~or~~] drug charges[~~or~~ or fugitive status];~~2. A criminal history of offenses involving the use of a weapon or the possession of contraband;~~

~~2~~[3]. Institutional behavior, reliable information, or history that indicates possession or manufacturing of a dangerous contraband, the refusal to submit to a clothed pat down search, or a clothed pat down search reveals the possession of a dangerous contraband;

~~3~~[4]. Contact with the public by a contact visit, court appearance that takes place in an area to which the public may have access, or after transport from or through an area to which the public may have access; or

~~4~~[5]. The court has ordered commitment to custody after arraignment, conviction, sentencing, or other court appearance, and the prisoner was not in custody prior to the court appearance.

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(c) The jailer shall require that a strip search or body cavity search ~~[shall]~~ be documented. Documentation shall include:

1. Basis for reasonable suspicion to conduct a search;
2. Date and time of search;
3. Name of prisoner;
4. Name of person conducting search;
5. Type of search; and
6. Result of search.

(d) A strip search shall be conducted by jail personnel [a-staff person] of the same sex as the prisoner and in a private area.

(e) Probing of body cavities shall:

1. Not be done unless there is reasonable suspicion to believe that the prisoner is carrying contraband in a body cavity; and
2. Be conducted in a private location, under sanitary conditions, by a licensed medical professional, acting within his statutory scope of practice.

(2) Each jail shall develop written policies and procedures, specifying the personal property that a prisoner may retain in his possession.

(a) Cash or personal property taken from a prisoner upon admission shall be listed by complete description on a receipt form, and securely stored pending the prisoner's release. The receipt shall be signed by the receiving jail personnel [officer] and the prisoner and kept for the jail record.

(b) If the prisoner is inebriated, is a mental inquest detainee, or is mentally ill or mentally retarded, there shall be at least one (1) witness to verify the transaction in paragraph (a) of this subsection. As soon as the prisoner is able to understand and account for his actions, the prisoner may [shall] sign the receipt.

(c) Personal property released to a third party shall have the prisoner's signature of approval and the signature receipt of the third party.

(3) The jailer may establish a written policy on hair length or beards if based on actual concerns for safety, security, identification, or hygiene. A prisoner may be permitted freedom in personal grooming if not in conflict with the jail's policy. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding religious practice.

Section 4. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each prisoner.

(2) The orientation shall provide the prisoner with information regarding his confinement, including the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the prisoner's confinement;

(b) Rules of prisoner conduct established pursuant to 501 KAR 3:060, Section 1(3);

(c) Disciplinary procedures;

(d) Information regarding work, educational and vocational training, counseling, and other social service programs; and

(e) Procedures for making a request or registering a complaint with the jail personnel [staff] or department personnel. Prisoners shall follow the grievance procedure and attach a copy of the grievance documents if requesting a review by the department [of Corrections].

Section 5. Release. (1) Written legal authorization shall be required prior to the release or removal of a prisoner from confinement.

(2) When a prisoner is released or removed for a legal purpose to the custody of another, the identity of receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the prisoner is released or removed.

(4) Prior to the release or removal of a prisoner, the receiving authority shall sign an authorized release form.

(5) Before jail personnel releases a prisoner to an out-of-state jurisdiction, jail personnel shall consult with the appropriate prosecutorial office in the county.

(6) Property, not legally confiscated or retained, receipted from the prisoner upon admission shall be returned to the prisoner when the prisoner is released [at the time of release].

(7) Each prisoner shall sign a receipt for property returned at the time of release.

(8) Complaint regarding property returned shall be submitted in writing with specific details within twenty-four (24) hours from the time of release.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 9, 2011)

501 KAR 3:130. Prison[Prisoner] programs; services.

RELATES TO: KRS 439.179, 441.055, 441.125, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 532.100(4)(d)[532.100(4)(e)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for prisoner programs and services in those jails.

Section 1. [Definitions. (1) "Chaplain" means a volunteer authorized to provide religious counsel, instruction, and advice to inmates and to provide a system of services or religious volunteers, ecclesiastical visitors, and guests for inmates.

(2) "Inmate Religious Beliefs and Practices Manual" means the U.S. Department of Justice, Federal Bureau of Prisons technical reference manual, "Inmate Religious Beliefs and Practices," dated March 27, 2002, incorporated by reference in 501 KAR 6:080.

(3) "Religious diet" means any diet deemed essential by the Inmate Religious Beliefs and Practices manual.

(4) "Religious items" means items associated with a particular religious faith which may include religious medallions, kufi cap, prayer rugs, crucifix, yarmulke, prayer beads, rosary, sacred eagle feathers, medicine bag, or Star of David.

(5) "Religious practice" means outwardly observable manifestations of religious beliefs including:

(a) Participating in congregations and meetings;

(b) Engaging in rituals and ceremonies;

(c) Praying, chanting, and singing;

(d) Wearing special items of clothing, jewelry, hairstyles, or beards;

(e) Adhering to special diets; and

(f) Participating in special activities characteristic of a particular religion or adherents of a particular religion.

Section 2. [Work Programs. (1) Written policy and procedure shall provide that prisoner programs and services shall be available and include social services, religious services, recreation and leisure time activities, and library services.

(2) Sentenced prisoners who perform work as authorized by KRS 441.125 may receive rewards in the form of sentence reductions or other privileges, if granted by the proper authority.

(3) Written policy and procedure shall provide that unsentenced prisoners shall not be required to work except to do personal housekeeping.

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Section 2[3]. Education Programs. (1) The jail shall develop a policy and procedure that encourages the implementation of education programs in the jail. The utilization of community resources in these efforts shall also be encouraged to offset the costs of the programs.

(2) Education programs may be made available in accordance with KRS 439.179.

(3) State prisoners shall be provided the opportunity to attend adult basic education programs or to pursue a general educational development (GED) diploma.

Section 3[4]. Library Services. If resources are available in the community, library services may be made available to all prisoners.

Section 4[5]. Religious Programs. (1) Written policy and procedure shall ensure the constitutional rights of prisoners to voluntarily practice their own religious activities, subject to those limitations necessary to maintain the order and security of the jail.

(2) The jailer or designee shall ensure that an inmate has the opportunity to participate in practices of his religious faith in accordance with the Religion Reference Manual incorporated by reference in 501 KAR 6:080. For specific situations not addressed in the Religion Reference Manual, the jailer or designee may refer to department **Policy and Procedure**[Policies and Procedures] 23.1 incorporated by reference in 501 KAR 6:020. [Inmate Religious Beliefs and Practices Manual. These practices shall:

(a) Include religious publications, religious symbols, congregational religious services, individual and group counseling, religious study classes, and religious diets; and

(b) Be limited only by documentation showing a threat to the safety of persons involved in an activity or that the activity itself disrupts order in the institution.

(3) Each jail shall provide a chaplain or staff who plans, directs, and coordinates all aspects of the religious program including approval and training of both lay and clergy volunteers from faiths represented by the inmate population.

(4) If the chaplaincy staff or volunteers do not include a religious leader of an inmate's faith, the chaplain shall assist the inmate in contacting a person who has the appropriate credentials from the faith judiciary. That person may minister to the inmate under the supervision of the chaplain.

(5) The chaplain, in cooperation with the jailer or designee, shall develop and maintain communications with faith communities and approve donations of equipment or materials for use in religious programs.

(6) The jailer shall have final authority over publications, services, volunteers, and other operations of religious services.

(7) Jailer or designee responsibilities. The jailer or designee shall:

(a) Assure equal status and protection for all religions listed in the inmate Religious Beliefs and Practices Manual;

(b) Coordinate scheduling of religious programs;

(c) Have access to approved areas of the jail;

(d) Develop and maintain close relationships with community religious resources; and

(e) Coordinate and supervise all religious volunteers.

(8) Religious Programming.

(a) The provisions of the Inmate Religious Beliefs and Practices Manual notwithstanding, the following religious practices and activities shall not be authorized:

1. Animal sacrifice;

2. Language or behavior that may reasonably be construed as a threat to safety, security, or the orderly running of the institution;

3. Nudity;

4. Self mutilation;

5. Use, display, or possession of weapons or what appear to be weapons;

6. Paramilitary exercises;

7. Self-defense training;

8. Sexual acts;

9. Profanity;

10. Consumption of alcohol (except consumption by the celebrating ordained minister as provided in the Inmate Religious Beliefs and Practices Manual);

11. Ingestion of illegal substances;

12. Proselytizing;

13. Inscription;

14. Discouragement of other religions; or

15. Use of candles or open flames inside any building.

(b) The jail shall provide space and equipment adequate for the conduct and administration of each religious program.

1. In an institution that uses a common worship area, adequate space shall be provided for religious emblems and other items used during worship.

2. The institution shall maintain a basic library of religious reading materials, which shall include required literature of faiths represented by the inmate population.

(c) Services and ceremonies.

1. Each jail shall allow religious services pursuant to this policy.

2. A specific religious service and ceremony may be provided based upon the inmate's stated religious preference.

(d) Religious objects and literature. All jails shall permit an inmate to possess items essential to the practice of his particular religious faith if the items are not a threat to institutional security.

(e) Religious diets. The jail shall, to the extent it is feasible and within appropriate jail resources, provide each inmate with the opportunity to satisfy the minimum dietary requirements deemed essential by the Inmate Religious Beliefs and Practices Manual. Religious diets shall be included in the Department of Corrections' master menu. Any request for a religious diet not included in the master menu shall be reviewed by the jailer or designee.

(f) New religious components. If a request is made for a religious service not represented at the jail, the jailer or designee shall consult the Inmate Religious Beliefs and Practices Manual.

1. If the request is in compliance with the Inmate Religious Beliefs and Practices Manual, it shall be implemented.

2. If the request is for a religion or religious practice that is not represented in the Inmate Religious Beliefs and Practices Manual, then the request shall be denied.

3. Documentation of the request and action taken shall be forwarded to the jailer or designee.]

(3)[(g)] Inmate responsibilities.

(a)[4.] Upon entry into the correctional system, an inmate's religious preference shall be recorded on the inmate I.D. form.

(b)[2.] After three (3) months, an inmate may change his religious preference by contacting the jailer or designee.

(c)[3.] It shall be the inmate's responsibility to seek a job or program assignment that does not conflict with his religious beliefs and practices.[4. An inmate request for a special service or ceremony shall be made at least forty-five (45) days prior to the requested date. This request shall be made in writing to the chaplain and shall include a statement of the reason for the request. In order to ensure consistency of religious programming, any special request shall be referred through the institutional administration to the Director of Operations/Programs for appropriate action.

(9) Staff Meetings and Training. The jail's chaplains or religious staff shall meet on a quarterly basis to address issues pertaining to religious services. These meetings shall be coordinated through the office of the Director of Operations/Programs.]

Section 5[6]. Recreation Programs. (1) Written policy and procedure shall provide all prisoners with the opportunity to participate in at least one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. There shall be available one (1) hour of outdoor recreation two (2) times per week if weather permits. Prisoners who pose a threat to the safety and security of the jail shall be denied outdoor recreation.

(2) Leisure time and recreation programs shall be scheduled to permit prisoners to participate in board games, arts and crafts, radio and television, or other activities designed to relieve idleness and boredom.

Section 6[7]. Programs for State Prisoners. (1) State prisoners may be provided the opportunity to participate in work programs in accordance with KRS 441.125.

(2) Substance abuse programs. State prisoners shall be provided the opportunity to participate in self-help substance abuse programs offered within the jail. State prisoners who apply for

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treatment and are accepted by the Division of Mental Health, shall be allowed to participate in the substance abuse program (SAP), if space is available or may be housed in jails offering the program, if space is available.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman
APPROVED BY AGENCY: April 11, 2011
FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6886.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 3:150, Hearings, procedures, disposition.

RELATES TO: KRS **Chapter 13B**, 441

STATUTORY AUTHORITY: KRS **13B.170, 441.075**[441.043]

NECESSITY, FUNCTION, AND CONFORMITY: The Commissioner of the Department of Corrections is authorized by KRS **441.075(4)**[441.075(3)] to hear matters covered by the order of the department requesting county jails, correctional or detention facilities to comply with the minimum standards for local jails pursuant to KRS 441.055 and to issue, modify or repeal the order at the conclusion of the hearing.

Section 1. Definitions. (1) "Day" means a calendar day. ["Commissioner" means the Commissioner of the Department of Corrections.

(2) "Department" means the Department of Corrections.

(3) "Standards" means the minimum jail standards for local jails.]

(4) "Hearing officer" means a hearing officer appointed by the commissioner pursuant to KRS 441.075.

(5) "Order" means the order of the commissioner requiring the petitioner or petitioners[petitioner(s)] to comply with the minimum jail standards for local jails as specified in the order.

(6) "Petitioner" means the jailer or county/judge executive who requests a hearing for review of the commissioner's order.

(7) "Proceeding" means any proceeding before the commissioner or before a hearing officer.

(8) "Standards" means the minimum jail standards for local jails as established by the department in 501 KAR Chapters 3, 7, and 13. ["Day" means a calendar day.

(9) "Order" means the order of the commissioner requiring the petitioner(s) to comply with the minimum jail standards for local jails as specified.

(10) "Petitioner" means the jailer or county/judge executive who requests a hearing for review of the commissioner's order.

(11) "Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 67B.020 and juvenile detention facilities, operated by and under the supervision of any county, city or urban county government.]

Section 2. Assignment of Hearing; Filings. (1) Pursuant to KRS **441.075(4)**[441.075(3)], cases coming before the commissioner may be assigned to a hearing officer within the discretion of the commissioner for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the commissioner.

(2) A recommended order or adjudication by the hearing officer or the initial order of the commissioner, if dismissed or disposed of

as provided in subsection (1) of this section, or any modification of repeal of the initial order, shall become the final order of the commissioner under the provisions of KRS **441.075(4)**[441.043(3)], appealable to the Franklin Circuit Court, thirty (30) days from the date of issue.

(3) Prior to the assignment of a case to a hearing officer, the county jailer or county judge/executive shall, within seventy-two (72) hours of receipt of notification of order, request in writing a public hearing before the commissioner or his designee on the matters covered by the[said] order to the Commissioner of the Department of Corrections, P.O. Box 2400, Frankfort, Kentucky 40602-2400. Subsequent to the assignment of the case to a hearing officer and prior to the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice of hearing.

(4) All evidence and witnesses of both parties and interveners and all proof shall[must] be presented at the [time of] hearing. [No] Additional evidence shall not be permitted after the hearing[will be permitted thereafter] except in unusual circumstances and within the discretion of the commissioner or the hearing officer.

(5) All hearings shall be held in Frankfort, Kentucky unless otherwise ordered by the commissioner.

(6) Unless otherwise ordered, all filing may be accomplished by first class mail.

(7) Filing shall be[is] deemed effective when mailed[at the time of mailing].

Section 3. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) This administrative regulation[These rules] shall govern all proceedings before the department and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with KRS Chapter 13B and the Kentucky Rules of Civil Procedure.

Section 4. Computation of Time. If[Where] service of a pleading or documents is by mail pursuant to Section 2 of this administrative regulation, three (3) days shall be added to the time allowed by this administrative regulation[these rules] for the filing of a responsive pleading.

Section 5. Notice and Time of Hearing. (1) Notice of hearings shall be given to all parties and interveners within forty-five (45) days from the receipt of the request for hearing unless otherwise ordered by the commissioner or his designee. A[No] hearing shall not be held later than ninety (90) days from the date of request.

(2) The notice of hearing shall comply with KRS 13B.050(3)[include:

(a) Statement of the time and place of the hearing.

(b) The name and address of the assigned hearing officer.

(c) Statement of the legal authority and jurisdiction under which the hearing is held.]

Section 6. Continuance of Hearing. (1) Continuance of a hearing shall[ordinarily will] not be allowed except in the case of an extreme emergency or in usual circumstances.

(2) A request for a continuance shall be provided to the department[Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing] at least three (3) days in advance of the time set for the hearing. The request for continuance shall[must] include the reasons for the continuance[therefor].

(3) The hearing officer may consider a request for an extension during the hearing, if extenuating circumstances:

(a) Arise during the hearing; or

(b) Prevented compliance with the timing provisions of subsection (2) of this section.

(4) Continuance of hearing not in excess of fifteen (15) days may be granted in the discretion of the hearing officer. One (1) additional continuance not in excess of fifteen (15) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. An[No] additional continuance shall not[may] be granted without approval of the commissioner.

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Section 7. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer.

(2) Requests for a newly scheduled hearing ~~shall~~**[must]** be made in the absence of extraordinary circumstances within five (5) days after the scheduled hearing date.

(3) The commissioner or the hearing officer, upon a showing of good cause, may excuse ~~a[such]~~**[such]** failure to appear. ~~If the failure to appear is excused, the hearing shall~~**[In such event, the hearing will]** be rescheduled.

Section 8. Consolidation. Cases may be consolidated on the motion of any party, on the hearing officer's own motion, or on the commissioner's own motion, ~~if[where]~~**[if]** there exist common parties, common questions of law or fact, or both, or in ~~other appropriate circumstances~~**[such other circumstances as justice and the administration of the Act require.]**

Section 9. Severance. Upon its own motion, or upon motion of any party or intervener, the commissioner or the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 10. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal, before issuance of a recommended order.

(2) The petition shall set forth the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unnecessarily delay the proceeding.

(3) The commissioner or the hearing officer may grant a petition for intervention to ~~the[such an]~~**[the]** extent and upon ~~the[such]~~**[the]** terms as the commissioner or the hearing officer ~~determines~~**[shall determine]**.

(4) The caption of all cases where intervention is allowed shall reflect ~~the[such]~~**[the]** intervention by adding to the caption after the name of the respondent the name of the intervener, followed by the designation "intervener."

Section 11. Service. (1) ~~If filing pleadings or other documents, the filing party or intervenor shall serve a copy~~**[At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor]** on every other party or intervener.

(2) Service upon a party or intervener who has appeared through a representative shall be made only upon ~~the[such]~~**[the]** representative.

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service ~~shall be~~**[is]** deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(4) Proof of service shall be accomplished by a written statement of ~~service~~**[the same]** which sets forth the date and manner of service. ~~The[Such]~~**[The]** statement shall be filed with the pleading or document.

~~[(5) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.]~~

Section 12. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 13. Response to Motions. Any party or intervener upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 14. Failure to File. Failure to file any pleading pursuant to ~~this administrative regulation~~**[these rules]** when due, may, in

the discretion of the commissioner or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 15. Withdrawal of Notice of Hearing. At any stage of a proceeding, a party may withdraw his notice of hearing, subject to the approval of the commissioner.

Section 16. Prehearing Conference. (1) At any time before a hearing, the commissioner or the hearing officer, on ~~his or her~~**[their]** own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings, ~~or for any other matter in accordance with KRS 13B.070(1).~~

(2) The commissioner or the hearing officer may issue a prehearing order ~~in accordance with KRS 13B.070(2). The~~**[which includes the agreements reached by the parties. Such]** order shall be served on all parties and shall be a part of the record.

Section 17. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request, or within ~~a[such]~~**[a]** shorter or longer time as the commissioner or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with ~~this administrative regulation~~**[the provisions of these rules]** and filed with the commissioner within the time allotted and shall be a part of the record.

Section 18. Discovery Depositions and Interrogatories. (1) Except by special order of the commissioner or the hearing officer, discovery depositions of parties, interveners, or witnesses, and interrogatories directed to parties, interveners, or witnesses shall not be allowed.

(2) ~~If~~**[In the event]** the commissioner or the hearing officer grants an application ~~to conduct discovery depositions or interrogatories, the order~~**[for the conduct of such discovery proceedings, the order granting the same]** shall set forth appropriate time limits governing the discovery.

Section 19. Failure to Comply with Orders for Discovery. If any party or intervener fails to comply with an order of the commissioner or the hearing officer to permit discovery in accordance with the provisions of ~~this administrative regulation~~**[these rules]**, the commissioner or the hearing officer may issue appropriate orders.

Section 20. ~~Reporter's Fees. Reporter's fees shall be equally shared by all parties. This shall include the reporter's per diem costs and the cost of the original transcript. All other copies will be paid by the requesting party.~~

Section 21. Transcript of Testimony. Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties and interveners of such filing. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of fees fixed ~~therefor~~**[therefor]**.

~~Section 22.] Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, ensure~~**[to assure]** that the facts are fully elicited, ~~to~~**[to]** adjudicate all issues, and avoid delay. The hearing officer, ~~in~~**[shall have authority with respect to]** cases assigned to him, between the time he is designated and the time he issues his decision, subject to the ~~rules and~~**[rules and]** administrative regulations of the department, ~~may~~**[to]**:

(1) Administer oaths and affirmations;

(2) Rule upon offers of proof and receive relevant evidence;

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(3) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(4) Hold conferences for the settlement or simplification of the issues;

(5) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the commissioner and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated ~~[prior to issuance of this decision];~~

(6) Examine witnesses and to introduce into the record documentary or other evidence;

(7) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof; **and**

(8) Adjourn the hearing as the needs of justice and good administration require; ~~and~~

~~(9) Take any other action necessary under the foregoing and authorized by the published rules and administrative regulations of the department.]~~

Section ~~21~~~~[23.]~~ Exhibits. (1) All exhibits offered in evidence shall be ~~[numbered and]~~ marked with a designation identifying the party or intervener by whom the exhibit is offered.

(2) In the absence of objection by another party or intervener, exhibits shall be **numbered and** admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to ~~[Section 27 of]~~ this administrative regulation.

(3) Unless the hearing officer finds it impractical, a copy of each ~~[such]~~ exhibit shall be given to the other parties and interveners.

(4) All exhibits offered, but denied admission into evidence, shall be identified as **required by** ~~[in]~~ subsection (1) of this section and shall be placed in a separate file designed for rejected exhibits.

~~Section 22.[24.] Rules of Evidence. Hearings before the department and its hearing officers insofar as practicable shall be governed by the Kentucky Rules of Evidence.~~

~~Section 25. Burden of Proof. In all proceedings commenced by the filing of a notice of hearing, the burden of proof shall rest with the department.~~

~~Section 26.[Objections.]~~ (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. ~~An~~~~[No such]~~ objection shall **not** be deemed waived by further participation in the hearing.

(2) ~~If~~~~[Whenever]~~ evidence is excluded from the record, the party offering ~~the~~~~[such]~~ evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section ~~23~~~~[27.]~~ Recommendations of Hearing Officer; Exceptions; Final Order. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order to the commissioner disposing of all issues before him **in accordance with KRS 13B.110.**

(2) Any party may file exceptions to the hearing officer's findings of fact, conclusions of law, and recommended order **in accordance with KRS 13B.110(4).** ~~[within ten (10) days of the date of said findings of fact, conclusions of law, and recommended order.]~~

(3) The commissioner shall **issue a final order in accordance with KRS 13B.120.** ~~[within forty-five (45) days of the date of the hearing officer's findings of fact, conclusions of law, and recommended order, issue a final order modifying, repealing, or adopting the findings of fact, conclusions of law and recommended order of the hearing officer.]~~

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has re-

viewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner

RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 3:160. Training.

RELATES TO: KRS 441.045, 441.055, 441.115

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners and KRS 441.115 sets requirements to obtain training allowances. This administrative regulation establishes training requirements for jail personnel.

Section 1. Procedure. (1) Training of Jailers, jail personnel and other employees shall be the responsibility of the governing authority. The department shall provide training assistance and archiving of electronic training records at no cost to the local body of government.

(2) The department shall schedule a Jail Training Curriculum Advisory Committee meeting annually to advise concerning needs and topics for jail training curriculum. The committee shall be comprised of the Deputy Commissioner of Corrections for Local Facilities, the Director of Local Facilities, **and** the Director of the Division of Corrections Training (DCT). The committee shall also include those members of the Kentucky Jailers Association (KJA) that are appointed by the KJA Executive Board.

Section 2. Information System. (1) A jail shall maintain cumulative records on the types and hours of training completed annually by jail personnel. The records shall be maintained in a manner so that all of the records for a specific jail employee may be readily retrieved and shall be entered into the department training records management system.

(a) If the training is conducted by the department, the department shall enter and maintain records of the training for the jail personnel in the department's training records management system.

(b) If training is conducted by someone other than the Department, jail personnel who have been trained to enter information into the Department training records management system shall enter the training information. Training information shall be entered within ten (10) days of the training being completed. A jail employee shall have access to his individual record.

(2) Training records within the Division of Corrections Training (DCT) Learning Management System shall serve as proof of attendance and successful completion of department training to the governing authority for its employees.

Section 3. ~~[New]~~ Jailer Training. (1) Pursuant to KRS 441.115, training shall be offered to newly elected jailers. The training may be coordinated and conducted with the Kentucky Jailers Association (KJA). A jail administrator appointed to complete the term of office of an elected jailer who is unable to complete his term or appointed after new jailer training has occurred shall be offered training prior to assuming his duties.

(2) In order to qualify for the training expense allowance pursuant to KRS 441.115, for his first year, the jailer shall successfully complete a minimum of forty (40) hours training provided or ap-

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proved by the department. [Section 4. Jail Personnel Basic Training. (1) The training shall include:

(a) A minimum of four (4) hours of mental health training within the first year of service. The initial four (4) hours of mental health training may be conducted by the service provider of mental health triage or mental health services to the jail.

(b) Human immunodeficiency virus infection training and acquired immunodeficiency syndrome training approved by the Cabinet for Health and Family Services;

(2) Jail personnel who are assigned to duties within a direct supervision area or facility shall receive forty (40) hours of pre-service training related to direct supervision.

(3) The training shall be approved by the department or the jailer.]

[3] [Section 5. Annual Training. (1)] In order to qualify for the training expense allowance pursuant to KRS 441.115 after his first year, the jailer shall complete a minimum of forty (40) hours annual in-service training provided or approved by the department.

Section 4. Curriculum. (1) Jail personnel shall receive a minimum of sixteen (16) hours annual in-service training. The training shall be provided by the department or other instruction approved by the jailer.

(2) The training shall include:

(a) A minimum of four (4) hours of mental health training within the first year of service, and one (1) hour of additional mental health training each year thereafter. The initial four (4) hours of mental health training should be conducted by the service provider of mental health triage or mental health services to the jail, if possible;

(b) Human immunodeficiency virus infection training and acquired immunodeficiency syndrome training approved by the Cabinet for Health and Family Services;

(c) All Jail personnel or health services staff who administer medications to prisoners shall be trained in the proper procedures as outlined in the jail's policy and procedures manual; and

(d) Jail personnel who are assigned to duties within a direct supervision area or facility shall receive forty (40) hours of pre-service training related to direct supervision. The training shall be approved by the department.

[2] Jail personnel shall receive a minimum of sixteen (16) hours of annual in-service training. The training shall be provided by the department or other instruction approved by the jailer.

[3] A minimum of one (1) hour of mental health training shall be included in annual training.]

Section **5** [6. Medication Administration.] First Aid and CPR. (1) **[All]** Jail personnel shall have current training in standard first aid equivalent to that provided by the American Red Cross, American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive training within their first year of employment.

(2) **[All]** Jail personnel shall be certified to perform CPR (Cardiopulmonary Resuscitation), equivalent to that provided by the American Red Cross, American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive certification within their first year of employment.

[3] Jail personnel or health services staff who administer medications to prisoners shall be trained in the medication administration procedures established in the jail's policy and procedures manual.]

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman
APPROVED BY AGENCY: April 11, 2011
FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 3:170. Classifications.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.045, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes jail categories defined by the maximum bed capacity of full-service jails.

Section 1. Jail Categories.

(1) Category I – Jails with one (1) to **100** ~~one hundred (100)]~~ beds shall be classified as a Category I jail.

(2) Category II – Jails with **101 beds to 250** ~~one hundred one (101) beds to two hundred fifty (250)]~~ beds shall be classified as a Category II jail.

(3) Category III – Jails with **251 beds to 500** ~~two hundred fifty-one (251) beds to five hundred (500)]~~ beds shall be classified as a Category III jail.

(4) Category IV – Jails with **501 beds to 999** ~~five hundred one (501) to nine hundred ninety-nine (999)]~~ beds shall be classified as a Category IV jail.

(5) Category V – Jails with **1,000** ~~one thousand (1,000)]~~ beds or more shall be classified as a Category V jail.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman
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JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 7:010. Definitions for 501 KAR Chapter 7.

RELATES TO: KRS **67.900**, 67A.028, 67B.020(1), 441.045, 441.055, Ky. Const. Sec. 99, 152

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that ~~elect to~~ house state prisoners. This administrative regulation establishes definitions for 501 KAR Chapter 7, regulating restricted custody centers.

Section 1. Definitions. (1) **"Department" is defined in KRS 441.005(5)**

(2) **"Governing authority" means a county fiscal court, urban-county government, charter county government, consolidated local government, unified local government, or regional jail authority.**

(3) **"Jailer" means:**

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(a) The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the center;

(b) A department as defined in KRS 67B.020(1); or

(c) A correctional services division as created by KRS 67A.028.

~~[(3) "Governing authority" means a county fiscal court, urban-county government, charter-county government, consolidated local government, unified local government or regional jail authority.]~~

~~(4) "Jail personnel" is defined in KRS 441.005(6).~~

~~(5)[(2)] "Medical authority" means the person or persons licensed[and certified] to provide medical care to prisoners in the jail's custody.~~

~~(6)[(3)] "Pat or frisk" means a manual search of a clothed person and includes a visual inspection of the open mouth.~~

~~(7)[(4)] "Prisoner" is defined in KRS 441.005(3).~~

~~(8)[(5)] "Prisoner living area" means a group of rooms or cells which provide housing for the prisoner population.~~

~~(9)[(6)] "Probing of body cavities" means a manual or instrument search of a person's oral, anal, vaginal, or other body cavity, performed by medical personnel.~~

~~(10)[(7)] "Restricted custody center" or "center" means a facility or area separate from the jail used for the housing of:~~

~~(a) Sentenced prisoners who have been approved for educational, work, or program participation release; and~~

~~(b) Pretrial prisoners who have been approved by the court for educational, work, or program participation release.~~

~~(11)[(8)] "Security area" means a defined space whose physical boundaries have controlled ingress and egress.~~

~~(12) "Sexually abusive conduct" means:~~

~~(a)[includes but is not limited to:] Sexual contact, sexual intercourse, and deviate sexual intercourse, as defined by KRS 510.010;~~

~~(b)[and] Sexual abuse as defined by 28 C.F.R. 115.6; and [National Prison Rape Elimination Commission's Standards for the Prevention, Detection, Response and Monitoring of Sexual Abuse in Adult Prisons and Jails.]~~

~~(c) Other types of similar sexually based conduct. [(9) "Staff" means deputy jailers and other personnel involved in the supervision, custody, care, or treatment of prisoners in the center.]~~

~~(13)[(40)] "Strip search" means a body search during which a person is required to open or remove clothing, and during which a person is subject to visual inspection of the torso, female breast, genital area, and anal area, as well as other body cavities.~~

~~(14) "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, transfer of health or medical data, and continuing education.~~

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, August 15, 2011)

501 KAR 7:020. Administration; management.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.045, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [elect to] house state prisoners. This administrative regulation establishes procedures to be followed for the administration and management of restricted custody centers.

Section 1. Policy, Procedure, and Organization. (1) The jailer shall develop and maintain an organizational chart and ~~a[an operations manual of]~~ policy and procedures[procedure] manual which has been adopted by the governing authority [fiscal court] and filed with the department.

(2) The written policy and procedures manual shall be available to employees.

(3) The policy and procedures [operations] manual shall include the following aspects of the center's operation:

- (a) Administration;
- (b) Fiscal management;
- (c) Personnel;
- (d) Security and control;
- (e) Sanitation and management; (f) Medical services;
- (g) Food services;
- (h) Emergency and safety procedures;
- (i) Classification;
- (j) Prisoner programs;
- (k) Prisoner services; and
- (l) Admission and release.

(4) The policy and procedures [operations] manual shall be reviewed, [and] updated, and any changes approved by the governing authority at least annually. Each revision shall be marked with the effective date and filed with the department.

Section 2. Public Information. (1) The jailer shall develop and implement a procedure for the dissemination of information about the center to the public, to government agencies, and to the media. The public and prisoners shall have access to the procedure.

(2) With the prisoner's written consent on a form authorizing release of information, news media shall be permitted to interview a prisoner as set forth in the center's policy and procedures[procedure] manual, except if the safety and security of the center is affected. ~~[(3) Written policy and procedure shall establish the time and length allowable for a prisoner interview.]~~

~~(4) An official statement to the news media relating to center administration policy shall be made by the jailer or his designee.~~

~~(5) The procedure for the release of prisoner information shall include the following:~~

- ~~(a) A request for information shall be addressed to the jailer;~~
- ~~(b) A governmental agency shall be provided with information pertinent only to its specific function; and~~
- ~~(c) A private citizen shall be provided with only that information supplied to the media.~~

~~(6) Information that is detrimental to another prisoner shall not be released.]~~

Section 3. Information Systems. The jailer shall establish and maintain an information system.

(1) Center information and prisoner records shall be:

(a) Retained in written or electronic form; and

(b) Stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Prisoner records shall be maintained as required by the Department of Libraries and Archives pursuant to 725 KAR Chapter 1. [Written guidelines shall specify the length of time a prisoner record shall be maintained after the prisoner's release from custody and the conditions under which archives shall be maintained.]

(2) A telephonic report to the Department shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence, and a final written report shall be made [of an extraordinary or unusual occurrence] within forty-eight (48) hours [of the occurrence]. The report shall be placed in the prisoner's center record. An extraordinary or unusual occurrence shall include:

- (a) Death of a prisoner;

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- (b) Attempted suicide that constitutes a serious health situation, or suicide;
 - (c) Serious injury, whether accidental or self-inflicted;
 - (d) Attempted escape or escape from center;
 - (e) Fire;
 - (f) Riot;
 - (g) Battery, whether by jail personnel ~~[a staff member]~~ or prisoner;
 - (h) ~~Sexually~~Sexual ~~abusive conduct~~ [assault]; and
 - (i) Occurrence of contagious or infectious disease, or illness within the center facility.
- (3) The center shall keep a log of daily activity. ~~[(4) Each center shall maintain records on the types and hours of training completed by each employee. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.]~~

Section 4. Prisoner Records. (1) The information required by 501 KAR 7:120 for admission and release shall be retained for each prisoner in the prisoner's center record. Other information retained in each prisoner's center record shall include:

- (a) Court orders;
 - (b) Personal property receipts;
 - (c) Infraction reports;
 - (d) Reports of disciplinary actions;
 - (e) Work record and program involvement;
 - (f) Any extraordinary or unusual occurrence; and
 - (g) If a prisoner dies, the disposition of the prisoner's property and remains.
- (2) Medical records shall be maintained as required by the Department of Libraries and Archives pursuant to 725 KAR Chapter 1.
- (3) The jailer shall ensure that prisoner records are safeguarded ~~[in accordance with federal and state laws and regulations]~~.
- (4) The jailer shall require a prisoner to sign a form authorizing release of information. ~~["Release of Information Consent Form"]~~ prior to the release of information, other than public information, to an individual other than law enforcement or a court official. A copy of the signed ~~[consent]~~ form shall be maintained in the prisoner's record. ~~The~~This form shall include:
- (a) Name of person, agency, or organization requesting information;
 - (b) Name of center~~[facility]~~ releasing information;
 - (c) ~~[Specific]~~ Information to be disclosed; ~~[(d) Purpose of the information;]~~
 - ~~(d)~~(e) Date consent form is signed; and
 - ~~(e)~~(f) Signature of prisoner; and
 - ~~(g)~~ Signature of prisoner~~[employee witnessing the prisoner's signature]~~.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman
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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, August 15, 2011)

501 KAR 7:030. Fiscal management.

RELATES TO: KRS 43.070, 441.055, 441.135

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that ~~[elect to]~~ house state prisoners. This administrative regulation establishes fiscal management procedures to be followed in restricted custody centers.

Section 1. Budgeting and Accounting. The center's budget and fiscal records shall be kept in accordance with the general records of the center.

Section 2. Canteen. (1) As provided in KRS 441.135, each jailer may establish a canteen to provide prisoners~~[residents]~~ with approved items not supplied by the center.

(2) The records of income, expense, and disbursements of the canteen shall be examined annually by the Auditor of Public Accounts concurrently with the annual audit of the county conducted in accordance with KRS 43.070(1)(a), unless the Auditor of Public Accounts declines to perform the examination of the canteen fund or has failed to respond to written notice of intent to employ a certified public accountant within thirty (30) days of receipt of the notice.

(a) If the county judge/executive notifies the Auditor of Public Accounts with specific or known jail canteen fund concerns or irregularities, the auditor shall thoroughly investigate the noted concerns or irregularities in the examination if, in the auditor's judgment, the investigation is warranted. ~~[(b) The Auditor of Public Accounts shall forward a copy of the report of any jail canteen examination it performs to the Kentucky Department of Corrections.]~~

~~(b)~~(c) The jailer shall forward a copy of the report of any jail canteen audit to the department~~[Kentucky Department of Corrections]~~.

~~(c)~~(d) The cost of the canteen fund audit ~~[examination]~~ shall be paid from the canteen fund as an allowable expense. If the jail's canteen fund is insufficient to cover the expense of the examination, the expense shall be borne by the county jail fund.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman
APPROVED BY AGENCY: April 11, 2011
FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, August 15, 2011)

501 KAR 7:040. Personnel.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes personnel procedures to be followed in restricted custody centers.

Section 1. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all prisoners by providing a minimum of one (1) jail personnel excluding jail personnel designated for communication ~~[two (2) staff members, excluding jail personnel designated for communication staff]~~. If requested by the jailer or govern-

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~~ing authority [fiscal court]~~, the Department ~~[of Corrections]~~ may conduct a staffing analysis.

(2) If a female prisoner is housed in the center, the center shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Qualifications. ~~Jail personnel [Security employees]~~ shall be at least twenty-one (21) years of age.

Section 3. Compensation. Each employee shall receive a wage that is at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies. ~~[Section 4. Training. Jail personnel whose jobs require prisoner supervision shall successfully complete a minimum of sixteen (16) hours annual in-service training delivered by the department on a regional or basis, or by computer-based training, or by another agency after first being reviewed and approved by the Department of Corrections.]~~

Section 4~~[5]~~. Policy and Procedure. Written policy shall specify that equal employment opportunities exist for every ~~[staff]~~ position.

Section 5~~[6]~~. Physical Fitness. The jailer shall ensure that a level of physical fitness is maintained that will allow each employee to satisfactorily perform his duties.

Section 6~~[7]~~. Code of Ethics. (1) The jailer shall make a written code of ethics available to each employee.

(2) The written code of ethics shall be incorporated in the center's policy and procedures manual and shall include the following:

(a) An employee shall not:

1. Exchange a personal gift or a favor with a prisoner, **prisoner's family, or prisoner's friend**~~[his family, or friend];~~
2. Accept any form of bribe or unlawful inducement;
3. Perform duties under the influence of an intoxicant or consume an intoxicant while on duty;
4. Violate or disobey an established rule, administrative regulation, or lawful order from a superior;
5. Discriminate against any prisoner on the basis of race, religion, creed, gender, national origin, or other individual characteristic;
6. Employ corporal punishment or unnecessary physical force;
7. Subject a prisoner to physical or mental abuse;
8. Intentionally demean or humiliate a prisoner;
9. Bring a weapon or an item declared as contraband into the center without proper authorization;
10. Engage in critical discussion of **jail employees**~~[personnel]~~ ~~[staff]~~ or any prisoner in the presence of a prisoner;
11. Divulge confidential information without proper authorization;
12. Withhold information which, in so doing, threatens the security of the center, **jail employees**~~[personnel]~~ ~~[its staff]~~, visitors, or the community;
13. Through negligence, endanger the well-being of self or others;
14. Engage in any form of business or profitable enterprise with a prisoner;
15. Inquire about, disclose, or discuss details of a prisoner's crime other than as may be absolutely necessary in performing official duties;
16. Enter into an intimate, personal relationship with a prisoner while the prisoner is incarcerated at the same jail that the employee is employed by; or
17. Enter into an intimate, personal relationship with a former prisoner of jail within six (6) month of that prisoner's release.

(b) An employee shall:

1. Comply with established rules, administrative regulations, and lawful orders from superiors;
 2. Treat prisoners in a fair, impartial manner; and
 3. Report a violation of the code of ethics to the jailer.
- (3) A violation of the code of ethics shall be made a part of the employee's personnel file.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has re-

viewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 7:060. Security; control.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that ~~[elect to]~~ house state prisoners. This administrative regulation establishes security procedures to be followed in restricted custody centers.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing the security aspects of the center's operation.

(2) ~~If requested in writing, the~~ ~~[The]~~ department ~~may~~ ~~[shall]~~ provide technical assistance to the jailer in formulating written policy and procedure.

(3) The policies and procedures shall include:

- (a) Prisoner rules ~~[and regulations]~~;
- (b) Staffing;
- (c) Searches of prisoner and of secure areas;
- (d) Visitation;
- (e) Key and weapon control;
- (f) Prisoner head counts;
- (g) Movement of prisoners;
- (h) Emergency situations;
- (i) Center schedule; and
- (j) Administering medication.

Section 2. Prisoner Supervision. (1) ~~Jail~~ ~~[Center]~~ personnel shall conduct rounds of the center at least every sixty (60) minutes.

(2) There shall be at least three (3) documented prisoner counts every twenty-four (24) hours during which each prisoner's physical presence, by show of skin or by movement, shall be observed or his location accounted for. At least one (1) count shall be conducted per shift.

(3) Males and females shall be housed separately.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for weekly inspection, for contraband and physical security, of each area accessible to any prisoner.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) The center rules, as specified in Section 1(3)(a) of this administrative regulation, shall contain a clear definition of each item permitted in the center. All other items shall be considered contraband.

(c) There shall be a written procedure for reporting security irregularities and for confiscating contraband.

(2) A weapon, ammunition, chemical agent, related security equipment, or an object which may be used as a weapon shall not be permitted in the security area unless authorized by the jailer. A firearm shall not be permitted in the security ~~area~~~~[perimeter]~~ unless authorized by the jailer, under emergency circumstances.

(3) All weapons, ammunition, chemical agents, or related security equipment, ~~if~~~~[when]~~ not being carried or used, as authorized by

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the jailer, shall be stored in an arsenal, vault, or other secure room under lock.

(a) The weapons storage area shall be inaccessible to unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) Security devices and safety equipment shall be inspected each quarter to ensure they are maintained in proper working order.

(5) Tools and toxic, corrosive, or flammable substances, and other potentially dangerous supplies and equipment shall be stored in a secure, locked area not accessible to prisoners.

(6) A prisoner shall use hazardous tools, supplies, or equipment only under the direct supervision of jail [center] personnel, and shall be provided with proper safety equipment.

(7) A prisoner may be assigned the responsibility of providing prisoner services, including providing meals under the direct supervision of jail personnel [staff].

(8) A prisoner shall not be:

(a) Permitted to perform or assist in a security duty; or

(b) Assigned to a position of authority over another prisoner.

(9) A prisoner and his belongings shall be searched, in accordance with the guidelines established in 501 KAR 7:120, if entering the security perimeter.

(10) Written procedures shall be developed for transporting a prisoner outside the center.

(11) Each center shall have key control procedures.

Section 4. Daily Center Log; Special Reports. A daily center log shall be kept current and shall reflect significant occurrences within the center. Special reports shall include:

(1) Use of force;

(2) Disciplinary action;

(3) Medical or mental health treatment;

(4) Feeding schedule and menus;

(5) Extraordinary occurrences:

(a) Fire;

(b) Assault;

(c) Suicide or attempted suicide that constitutes a serious health situation; or

(d) Escape or attempted escape;

(6) Prisoner vandalism;

(a) Destruction of center property; or

(b) Flooding of plumbing fixtures;

(7) Jail personnel [Staff] roster for each shift;

(8) Visitors' log; or

(9) Fire emergency planning sessions, pursuant to 501 KAR 7:070, Section 1(1).

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 7:070. Safety; emergency procedures.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes safety and emergency procedures to be followed in restricted custody centers.

Section 1. Policy and Procedure. (1) Each center shall have a written policy and procedure that specifies fire prevention practices to provide for~~work with its local fire department to develop a written policy and procedure that shall specify fire prevention~~ [administrative regulations and] [practices to ensure] the safety of prisoners, visitors, and jail employees[personnel] [staff]. The policy shall include:

(a) A fire ~~[Provision for a fire]~~ emergency planning session for jail employees[personnel] [staff] at least quarterly;

(b) Maintaining written ~~[Written]~~ documentation of the fire planning session including evacuation, fire drills, and other procedures covered during this session;

(c) A fire safety inspection by the department at least once a year;

(d) Inspection and testing of fire protection equipment by a qualified person at least annually with visual inspections by jail personnel [staff] monthly;

(e) All restricted custody centers shall be tobacco free ~~[deemed nonsmoking]~~ facilities; and

(f) An evacuation plan coordinated with local fire officials and approved by the department ~~[of Corrections]~~.

(2) Each center shall have written policy and procedures for emergency situations including:

(a) Escape;

(b) Hostage taking;

(c) Riot;

(d) Food poisoning;

(e) Civil disturbance in the community;

(f) Natural disaster;

(g) Suicide;

(h) Other death and disorder; and

(i) Mass evacuation disaster plan.

Section 2. Physical Plant. (1) The center shall comply with the Kentucky Building Code, incorporated by reference in 815 KAR 7:120. An existing center for which approval has been granted may continue without change, except if a significant alteration, addition, or change of occupancy occurs.

(2) Each exit shall be:

(a) Distinctly and permanently marked;

(b) Visible at all times;

(c) Kept clear; and

(d) Maintained in usable condition.

(3) Each center shall have equipment necessary to maintain essential lights, power, HVAC, and communications in an emergency situation.

(4) Each center shall have a ~~[an approved]~~ fire alarm and smoke detection system.

(5) Each area shall have a ~~[an approved]~~ fire-suppression system.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, August 15, 2011)

501 KAR 7:080. Sanitation; hygiene.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for proper sanitation and hygiene in restricted custody centers.

- Section 1. Procedures. (1) The jailer shall provide for:
- (a) The control of vermin and pests; and
 - (b) Both solid and liquid waste disposal.
- (2) The jailer shall have a written preventative maintenance plan which includes schedules for:
- (a) Cleaning various specified locations and items in the center;
 - (b) Inspections by the jailer;
 - (c) Trash and garbage removal; and
 - (d) Periodic inspection and maintenance of specified mechanical equipment.
- (3) The center shall have fresh, purified air circulating within each prisoner living and activity area.
- (4) The center shall furnish clean, sanitized bedding to prisoners, including:
- (a) One (1) penal mattress;
 - (b) One (1) blanket, if conditions require;
 - (c) Two (2) sheets;
 - (d) One (1) pillow, if not part of the mattress; and
 - (e) One (1) pillowcase, if applicable.
- (5) Prisoner bedding shall be cleaned on a regular basis according to the following schedule:
- (a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week and cleaned prior to~~or upon~~ reissue to another inmate;
 - (b) Blankets shall be laundered ~~cleaned~~ upon reissue or quarterly, whichever is sooner; and
 - (c) Mattresses and pillows shall be cleaned quarterly and cleaned prior to~~or upon~~ reissue to another inmate.
- (6) Each prisoner shall be issued a clean towel. Towels shall be laundered at least twice weekly and laundered prior to ~~weekly, or more as needed, or upon~~ reissue to another inmate. Prisoners shall not be required to be without a towel while laundry is being processed.
- (7) Provisions shall be made for laundering prisoner clothing at least twice weekly. Prisoners shall not be required to be without clean clothing while laundry is being processed. ~~[once a week.]~~
- (8) Floors, toilets, and sinks shall be cleaned~~washed~~ daily or more often as necessary.
- (9) Showers shall be cleaned on at least a weekly basis.
- (10)(a) Prisoners shall be issued or permitted to obtain the following hygienic items:
1. Soap;
 2. Toothbrush;
 3. Toothpaste;
 4. Toilet paper; and
 5. Female sanitary supplies, if applicable.
- (b) An indigent prisoner shall be furnished these items by the center.
- (11) Hair cutting services or sanitized hair cutting equipment shall be available to all prisoners.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner

RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

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CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, August 15, 2011)

501 KAR 7:090. Medical services.

RELATES TO: KRS 72.025, 441.045, 441.055, 441.560
STATUTORY AUTHORITY: KRS 441.055, 441.560
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures to provide proper medical services in restricted custody centers.

Section 1. Medical Services. (1) The center's medical services shall be provided by contracting with a Kentucky licensed health care provider.

(2) The medical authority shall be a licensed practical nurse (LPN), a higher level of licensed nurse, a licensed medical doctor, or licensed doctor of osteopathy. Telehealth services[Telemedicine technology] may be used.

~~(3) [(2)]~~ The health care ~~[medical]~~ staff and mental health professionals shall not be restricted by the jailer in the performance of their duties except to adhere to the center's security requirements.

~~(4) [(3)]~~ All health care staff working in the center shall comply with state licensure and certificate requirements commensurate with similar health care personnel working elsewhere in the community. Copies of the licenses and certificates for health care staff employed by the center shall be maintained on file within the center.

~~(5) [(4)]~~ A daily medical log shall be maintained documenting specific medical treatment rendered in the center. This log shall be kept current to the preceding hour.

~~(6) [(5)]~~ Prisoners ~~[Residents]~~ shall not perform any medical functions within the center.

~~(7) [(6)]~~ Prisoners ~~[Residents]~~ shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the center.

~~(8) [(7)]~~ All medical procedures shall be performed according to orders issued by the responsible medical authority.

~~(9) [(8)]~~ Medical screening information shall be transferred to the center from the jail on each prisoner. Jail personnel ~~[resident. Staff]~~ shall ensure~~insure~~ that the information is current when the prisoner ~~[resident]~~ is transferred. The medical screening inquiry shall include but not be limited to:

- (a) Current illnesses and health problems;
- (b) Medications taken and special health requirements;
- (c) Screening of other health problems designated by the medical authority;
- (d) Behavioral observation, state of consciousness, and mental status;
- (e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics;
- (f) Condition of skin and body orifices, including rashes and infestations; and
- (g) Disposition and referral of prisoners ~~[residents]~~ to qualified medical personnel on an emergency basis.

~~(10) [(9)]~~ Medical, dental, and psychological care for prisoners ~~[residents]~~ shall be provided in accordance with KRS Chapter 441. ~~[(10) At least one (1) center staff member per shift shall be trained in first aid procedures including CPR.]~~

~~(11)~~ Medical research shall not be permitted on any prisoner ~~[resident]~~ in the center.

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(12) Access to the prisoner's [resident's] medical file shall be controlled by the medical authority and the jailer. ~~[The physician-patient privilege shall apply to the medical record.]~~ The medical record shall be separate from custody and other administrative records of the center.

(13) The jailer or designee shall notify the coroner, if a prisoner dies while in the jail's custody, to allow for a postmortem examination pursuant to KRS 72.025. ~~[In accordance with KRS 72.025, a postmortem examination shall be conducted on all residents who die while in the custody of the jailer.]~~

(14) ~~All center staff, or contract staff who administer medications to residents shall be trained in the proper procedures as outlined in the Policy and Procedures Manual.]~~

~~[(15)]~~ The center shall have first aid kits available at all times.

~~[(16)]~~ If a urine surveillance program is in effect there shall be written procedures for carrying out the program

Section 2. Medical Transfers pursuant to KRS 441.560. (1) A jailer may request that a prisoner [resident] be transferred to the department for necessary medical treatment and care if the prisoner [resident]:

- (a) Is injured;
- (b) Is pregnant;
- (c) Becomes sick or ill;
- (d) 1. Is severely and persistently mentally ill; and
2. Is presenting an imminent risk of harm to self or others; or
- (e) Requires specialized medical care or long-term medical care which is not available at the local jail.

(2) The transfer request shall be submitted to the Classification Branch [commissioner] in writing and shall contain the following information:

- (a) Prisoner's [resident's] name;
- (b) Prisoner's [resident's] Social Security number;
- (c) County where currently housed;
- (d) Inmate number;
- (e) Pending charge or conviction and whether felony or misdemeanor;
- (f) Estimated sentence or time to serve;
- (g) Whether the prisoner [resident] has insurance or not;
- (h) Whether the prisoner [resident] is indigent or not;
- (i) Justification for medical transfer;
- (k) Whether the care is necessary or not;
- (l) Any conflict reports; and
- (m) Relevant attachments such as:
 1. Copy of prisoner's [resident's] insurance card;
 2. Doctor's report;
 3. Incident report;
 4. Citation;
 5. Booking information;
 6. Preexisting medical records; or
 7. Current medication.

(3) If a prisoner [resident] is approved for transfer to the department, pursuant to KRS 441.560 ~~[as a catastrophic medical prisoner]~~, the jail shall provide the following, unless already provided with the transfer request:

- (a) All medical information;
- (b) Current medication in proper container;
- (c) Booking information;
- (d) Incident reports;
- (e) Current citation;
- (f) Classification information;
- (g) Conflict reports;
- (h) Any additional pertinent information; and
- (i) Custody receipt.

(4) If a prisoner [resident] is approved for transfer to the department pursuant to KRS 441.560, the prisoner ~~[as a catastrophic medical prisoner, the resident]~~ shall be transported by the department.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

partment of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

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CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 7:110. Classification.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners ~~[detention facilities]~~. This administrative regulation establishes ~~[sets forth]~~ the procedure for the classification of prisoners in restricted custody centers ~~[residents]~~.

Section 1. Procedures. (1) Each center shall develop an appropriate prisoner [resident] classification system, which shall be included in the center's [facility's] written policy and procedure manual.

(2) The classification system shall:

(a) Establish guidelines for admission to the center and for transfer to the jail from the center;

(b) Provide for the separation of male and female prisoners;

(c) Provide for a program evaluation of each prisoner by jail personnel whenever there is a change in the prisoner's status; and

(d) Prohibit discrimination or segregation based on race, color, or national origin.

(3) Each center shall establish a procedure for an appeal by the prisoner of his classification. ~~[The center shall establish guidelines for admission to the facility and a procedure for transfer to the jail from this facility.]~~

~~[(3) The resident classification system shall provide for the separation of male and female residents.]~~

~~[(4) Program evaluation of each resident by a staff no less than once per month and, whenever there is a change in the resident's status.]~~

~~[(5) The classification system shall prohibit discrimination or segregation based on race, color or national origin.]~~

~~[(6) There shall be a procedure for an appeal by the resident of his classification.]~~

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

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JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 7:120. Admission; searches and release.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [elect to] house state prisoners. This administrative regulation establishes admission, search, and release procedures for restricted custody centers.

Section 1. Policy and Procedure. Each center shall develop written admission, orientation, and release procedures to be included in the center's policy and procedure manual.

Section 2. Admission. (1) Jail personnel [~~The center staff~~] shall ensure that each prisoner is transferred under proper legal authority by a duly authorized officer.

(2) Prisoner records shall be delivered to the center when the prisoner is admitted[~~at the time of admission~~]. The admitting jail personnel [~~officer~~] shall make certain that all required forms are complete and that information is current.

Section 3. Searches. (1) Jail personnel [~~The center staff~~] shall conduct a search of each prisoner and his possessions upon admission.

(a) Each prisoner shall be searched for contraband in a manner [as responsible] jail personnel [staff] reasonably determine is necessary to protect the safety of fellow prisoners, jail personnel [staff] and institutional security. The search shall be conducted in a private area and in a manner which protects the prisoner's dignity to the extent possible in that particular center.

(b) A prisoner may be strip searched only on reasonable suspicion that is based upon the existence of objective information that may predict the likelihood of the presence of a weapon, drugs, or other item of contraband concealed on a particular prisoner. Reasonable suspicion may[~~shall~~] be based upon one (1) or more of the following examples:

1. A current felony offense, fugitive status, or past felony conviction involving violence or drug charges;~~[A current offense involving felony violence, drug charges, or fugitive status;]~~

2. ~~[A criminal history of offenses involving the use of a weapon or the possession of contraband;~~

3.] Institutional behavior, reliable information, or history that indicates possession or manufacturing of a dangerous contraband, the refusal to submit to a clothed pat down search, or a clothed pat down search reveals the possession of a dangerous contraband;

3.~~[4.]~~ Contact with the public by a contact visit, court appearance that takes place in an area to which the public may have access, or after transport from or through an area to which the public may have access; or

4.~~[5.]~~ The court has ordered commitment to custody after arraignment, conviction, sentencing, or other court appearance and the prisoner was not in custody prior to the court appearance.

(c) The jailer shall require that a strip search or body cavity search ~~[shall]~~ be documented. Documentation shall include:

1. Basis for reasonable suspicion to conduct a search;

2. Date and time of search;

3.~~[2.]~~ Name of prisoner;

4.~~[3.]~~ Name of person conducting search;

5.~~[4.]~~ Type of search; and

6.~~[5.]~~ Result of search.

(d) A strip search shall be conducted by jail personnel [a staff person] of the same sex as the prisoner, and in a private area.

(e) Probing of body cavities shall:

1. Not be done unless there is reasonable suspicion to believe that the prisoner is carrying contraband in a body cavity; and

2. Be conducted in a private location, under sanitary conditions, by a licensed medical professional, acting within his statutory scope of practice.

(2) Each center shall develop written policies and procedures, specifying the personal property that a prisoner may retain in his possession.

(a) Cash or personal property taken from a prisoner upon admission shall be listed by complete description on a receipt form, and securely stored pending the prisoner's release. The receipt shall be signed by the receiving jail personnel [~~officer~~] and the prisoner.

(b) Personal property released to a third party shall have the prisoner's signature of approval and the signature receipt of the third party.

Section 4. Orientation. (1) The prisoner shall sign to indicate if he has received an oral and a written copy of the prisoner orientation information. This document shall be placed in the prisoner's file. Special assistance shall be given to any illiterate or non-English speaking prisoner.

(2) The orientation shall provide the prisoner with information regarding his confinement, including the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the prisoner's confinement;

(b) Rules of prisoner conduct established pursuant to 501 KAR 7:060, Section 1(3);

(c) Disciplinary procedures;

(d) Information regarding work, educational and vocational training, counseling, and other social service programs; and

(e) Procedures for making a request or registering a complaint with the center's jail personnel [staff] or department personnel. Prisoners shall follow the grievance procedure and attach a copy[~~copies~~] of the grievance forms if requesting a review by the department~~[of Corrections]~~.

Section 5. Release. (1) Written legal authorization shall be required prior to the release or removal of a prisoner from confinement.

(2) When any prisoner is released or removed for any legal purpose to the custody of another, the identity of the receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the prisoner is released or removed.

(4) Prior to the release or removal of a prisoner, the receiving authority shall sign an authorized release form.

(5) Before jail personnel releases a prisoner to an out-of-state jurisdiction, jail personnel shall consult with the appropriate prosecutorial office in the county.

(6) Property, not legally confiscated or retained, receipted from the prisoner upon admission shall be returned to the prisoner when the prisoner is released[~~at the time of release~~].

(7) Each prisoner shall sign a receipt for property returned at the time of release.

(8) A complaint regarding property returned shall be submitted in writing with specific details within twenty-four (24) hours from the time of release.

Section 6. Transfer. (1) The jailer shall develop policy and procedure to determine the conditions under which a prisoner becomes ineligible to remain at the restricted custody center [facility] and shall be transferred to the secure jail.

(2) A prisoner transferred to the secure jail shall be accompanied by:

(a) An incident report specifying the reasons for the transfer;

(b) The prisoner's record; and

(c) The prisoner's personal property.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the De-

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partment of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman
APPROVED BY AGENCY: April 11, 2011
FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 7:130. Prisoner programs; services.

RELATES TO: KRS 441.055, 441.125, 532.100
STATUTORY AUTHORITY: KRS 441.055,
532.100(4)(d)]532.100(4)(e)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that ~~which elect to~~ house state prisoners. This administrative regulation establishes procedures for prisoner programs and services.

Section 1. Programs. (1) Written policy and procedure shall provide that prisoner programs and services shall be available and include social services, religious services, recreation and leisure time activities, and library services.

(2) Prisoners who perform work as authorized by KRS 441.125 may receive rewards in the form of sentence reductions or other privileges, if granted by the proper authority.

(3) Written policy and procedures shall establish guidelines for prisoners as to acceptable means of transportation to and from work, school, and programs.

(4) There shall be written procedures for the verification and monitoring of the prisoner's employment status. A written schedule shall be maintained for program release to include time of departure, destination, telephone number and address of program location, and time of return. Periodic monitoring of a prisoner's adherence to the approved schedule shall occur.

(5) Written procedures shall specify the monetary amount of reimbursement for room and board at the center ~~facility~~ by the prisoner and the process by which these fees shall be collected and used. Accurate records of receipts shall be maintained.

Section 2. Religious Programs. Written policy and procedure shall ensure the constitutional rights of prisoners to voluntarily practice their own religious activities, subject to those limitations necessary to maintain the order and security of the center.

Section 3. Recreation Programs. Written policy and procedure shall provide all prisoners with the opportunity to participate in an average of one (1) hour of recreational activity per day. Recreation programs may include board games, arts and crafts, radio and television, or other activities designed to relieve idleness and boredom.

Section 4. Volunteers. The policy and procedure manual shall establish guidelines for the selection and use of volunteers in the center ~~facility~~.

Section 5. Prisoner Programs and Services. (1) On-the-job training (OJT) work programs. State prisoners shall be provided the opportunity to participate in OJT work programs in accordance with KRS 441.125. State inmates who have an approved custody level shall be allowed to work on community service projects outside the jail if authorized by the jailer.

(2) Education programs. State prisoners shall be provided the opportunity to attend adult basic education programs or to pursue a general educational development (GED) diploma.

(3) Substance abuse programs. State prisoners shall be provided the opportunity to participate in substance abuse programs including Alcoholics Anonymous (AA) or Narcotics Anonymous (NA). State prisoners who have been determined to have substance abuse problems shall be referred to outpatient treatment available in the community. State prisoners, who are in need of extensive substance abuse treatment and have been referred by the Division of Mental Health, shall be allowed to participate in the substance abuse program (SAP), if space is available.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman
APPROVED BY AGENCY: April 11, 2011
FILED WITH LRC: May 6, 2011 at 4 p.m.
CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 7:150. Training.

RELATES TO: KRS 441.045, 441.055, 441.115
STATUTORY AUTHORITY: KRS 196.035, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners and KRS 441.115 sets requirements to obtain training allowances. This administrative regulation establishes minimum training requirements for jail personnel.

Section 1. Information System. (1) A Jail shall maintain cumulative records on the types and hours of training completed annually by jail personnel. The records shall be maintained in a manner so that all of the records for a specific jail employee may be readily retrieved and shall be entered into the department training records management system.

(a) If the training is conducted by the department, the department shall enter and maintain records of the training for the jail personnel in the department's training records management system.

(b) If the training is conducted by someone other than the department, jail personnel who have been trained to enter information into the department training records management system shall enter the training information. Training information shall be entered within ten (10) days of the training being completed. A jail employee shall have access to his individual record.

Section 2. Curriculum. (1) Jail personnel shall receive a minimum of sixteen (16) hours annual in-service training. The training ~~shall~~may be provided by the department or other instruction approved by the jailer~~shall be training approved by the jailer and governing authority~~.

(2) The training shall include:

(a) A minimum of four (4) hours of mental health training within the first year of service, and one (1) hour of additional mental health training each year thereafter. The initial four (4) hours of mental health training should be conducted by the service provider of mental health triage ~~and~~or mental health services to the jail, if possible; ~~and~~.

(b) Human immunodeficiency virus infection training and acquired immunodeficiency syndrome training approved by the Cabinet for Health and Family Services;

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(c) All Jail personnel or health services staff who administer medications to prisoners shall be trained in the proper procedures as outlined in the Jail's Policy and Procedures manual; and

(d) Jail personnel who are assigned to duties within a direct supervision area or facility shall receive forty (40) hours of pre-service training related to direct supervision. The training shall be approved by the department.

Section 3. First Aid and CPR. (1) Jail personnel shall have current training in standard first aid equivalent to that provided by the American Red Cross, American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive training within their first year of employment.

(2) Jail personnel shall be certified to perform CPR (Cardiopulmonary Resuscitation), equivalent to that provided by the American Red Cross, American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive certification within their first year of employment.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 15, 2011)

501 KAR 13:010. Life safety issues.

RELATES TO: KRS 67.900, 198B.650-198B.689, 217.280-217.390, 441.005, 441.045, 441.055, 441.560, 532.100
STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 441.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health and life safety standards for jails that do not ~~select to~~ house state prisoners. This administrative regulation sets forth procedures to provide protection for basic health and life safety in jails that do not house state prisoners.

Section 1. Definitions. (1) "Department" is defined in KRS 441.005(5).

(2) "Governing authority" means a county fiscal court, urban-county government, charter county government, consolidated local government, unified local government, or regional jail authority.

(3) "Jail" or "Life Safety Jail" means any county jail and correctional or detention facility, including correctional facilities defined in KRS 67B.020, operated by and under the supervision of a governing authority [any county, regional jail authority, city, or urban-county government] that does not house state prisoners pursuant to KRS 532.100.

(4) "Jail personnel" is defined in KRS 441.005(6).

(5) [(2)] "Medical authority" means the person or persons licensed [and certified] to provide medical care to prisoners in the jail's custody.

(6) "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, transfer of health or medical data, and continuing education.

Section 2. Staffing. (1) Each jail shall provide twenty-four (24)

hour awake supervision for all prisoners by providing a minimum of two (2) jail personnel [staff members], excluding jail personnel designated for communication [staff]. If requested by the jailer or governing authority [fiscal court], the department [of Corrections] may conduct a staffing analysis.

(2) Each jail shall be required to provide the Department [of Corrections] with a weekly population update.

(3) If a female prisoner is lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

(4) Qualifications. Jail personnel [Security employees] shall be at least twenty-one (21) years of age.

(5) Compensation. Each employee shall receive a wage at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies.

(6) Males and females shall be housed separately.

Section 3. Physical Plant. (1) Square footage living space requirement for jails shall be the same as required in 501 KAR 3:050.

(2) All furnishings in the jail shall be noncombustible and non-toxic as approved by the department [of Corrections].

(3) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

(a) Compliance with standards of the Retail Food Code, 902 KAR 45:005;

(b) Commercial type stoves and refrigeration units; and

(c) Walls, floors, and decks that are approved fire-rated masonry, concrete, or steel construction.

(4) Gauges, indicators, and alarms shall be located in an area monitored by jail personnel [staff].

(5) The jail shall provide ventilation to meet the air exchange requirements in the Kentucky Department of Corrections Jail Construction, Expansion, and Renovation Guidelines [Jail Construction and Renovation Standards] incorporated by reference in 501 KAR 3:050.

(6) Electrical outlets if provided shall be ground-faulted or have ground-fault circuit breakers.

(7) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area not accessible to prisoners [which shall be secure].

(8) The jail shall have a procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(9) A set of duplicate keys shall be maintained in a separate, secure place.

(10) Each jail shall comply with the Kentucky Building Code, 815 KAR 7:120.

Section 4. Fire Safety. (1) Each jail shall have a written policy and procedure that specifies fire prevention [regulations and] practices to ensure the safety of prisoners, visitors, and jail personnel [staff]. These shall include, at a minimum:

(a) Fire [Provision for fire] emergency planning sessions for jail personnel [staff] at least quarterly;

(b) Maintaining written [Written] documentation of fire planning sessions and a written copy of the material taught;

(c) A fire safety inspection by the department [of Corrections] at least once a year;

(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by jail personnel [staff] monthly;

(e) Being a tobacco-free facility [All life safety jails shall be deemed nonsmoking facilities]; and

(f) A written [Written] evacuation plan coordinated with local fire officials.

(2) Each jail shall have exits distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights, power, HVAC, and communications in an emergency situation.

(4) In all areas where a prisoner may be confined, each jail shall have [be provided with] an emergency smoke evacuation

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system activated by smoke detectors and operated by emergency power.

(5) Each jail shall have an approved fire alarm and smoke detection system.

Section 5. Sanitation; Hygiene. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jail shall have fresh air circulating within prisoner living and activity areas.

(4) All prisoners shall be provided with hot and cold running water in showers and lavatories.

Section 6. Medical Services. (1) Jail personnel ~~[Deputy jailers and correctional officers]~~ shall have current training in standard first aid equivalent to that provided ~~[and C.P.R., as offered]~~ by the American Red Cross, the American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive training within their first year of employment.

(2) At least one (1) jail personnel per shift shall be trained and certified to perform CPR (Cardiopulmonary Resuscitation), equivalent to that provided by the American Red Cross, the American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive certification within their first year of employment.

(3)~~[(2)]~~ The jail shall have first aid kits available at all times.

(4)~~[(3)]~~ A health status (including current medications, known allergies, and diet or other special medical needs) shall be completed on each prisoner during admission.

(5)~~[(4)]~~ Each prisoner shall be afforded access to necessary medical care as in KRS 441.045.

(6) The medical authority shall be a licensed practical nurse (LPN), a higher level of licensed nurse, a licensed medical doctor, or licensed doctor of osteopathy. Telehealth services~~[Telemedicine technology]~~ may be used.

Section 7. Medical Transfers pursuant to KRS 441.560. (1) A jailer may request that a prisoner be transferred to the department ~~[department]~~ for necessary medical treatment and care if the prisoner:

- (a) Is injured;
- (b) Is pregnant;
- (c) Becomes sick or ill;
- (d) 1. Is severely and persistently mentally ill; and
2. Is presenting an imminent risk of harm to self or others; or
- (e) Requires specialized medical care or long-term medical care which is not available at the local jail.

(2) The transfer request shall be submitted to the Classification Branch ~~[commissioner]~~ in writing and shall contain the following information:

- (a) Prisoner's name;
- (b) Prisoner's Social Security number;
- (c) County where currently housed;
- (d) Inmate number;
- (e) Pending charge or conviction and whether felony or misdemeanor;

- (f) Estimated sentence or time to serve;
- (g) Whether the prisoner has insurance or not;
- (h) Whether the prisoner is indigent or not;
- (i) Justification for medical transfer;
- (k) Whether the care is necessary or not;
- (l) Any conflict reports; and
- (m) Relevant attachments such as:
 1. Copy of prisoner's insurance card;
 2. Doctor's report;
 3. Incident report;
 4. Citation;
 5. Booking information;
 6. Preexisting medical records; or
 7. Current medication.

(3) If a prisoner is approved for transfer to the department as a ~~[department as a catastrophic]~~ medical prisoner, the jail shall provide the following, unless already provided with the transfer re-

quest:

- (a) All medical information;
 - (b) Current medication in proper container;
 - (c) Booking information;
 - (d) Incident reports;
 - (e) Current citation;
 - (f) Classification information;
 - (g) Conflict reports;
 - (h) Any additional pertinent information; and
 - (i) Custody receipt.
- (4) If a prisoner is approved for transfer to the department as a ~~[department as a catastrophic]~~ medical prisoner, the prisoner shall be transported by the department.

Section 8. Food Services. (1) The jail shall comply with KRS 217.280 to 217.390, 803 KAR 2:317, and 902 KAR 45:005.

(2) The jail shall provide prisoners with a nutritionally adequate diet containing at least 2,400 calories daily and jail menus shall be approved annually by a nutritionist or dietician.

(3) Except as provided by subsection (4) of this section, prisoners shall receive three (3) meals per day, one (1) of which shall be hot. More than fourteen (14) hours shall not elapse between any two (2) meals.

(4) The jailer may elect to provide only two (2) meals on Saturdays, Sundays, and holidays, if provided that both meals still meet the minimum 2,400 calories per day. If the jailer elects to serve only two (2) meals, more than sixteen (16) hours shall not elapse between any two (2) meals~~[the time requirement elapsing between meals shall be waived]~~.

(5)~~[(4)]~~ The jailer shall provide for medical diets if prescribed by a~~[the]~~ [a] medical authority.~~[(5) The jailer shall provide for religious diets in accordance with 501 KAR 3:130 after review and approval of religious authority.]~~

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary purposes.

(8) Jail personnel ~~[A staff member]~~ shall directly supervise all food prepared within the jail.

(9) All food shall be served under the direct supervision of jail personnel ~~[a staff member]~~.

(10) The jail shall have sufficient cold and dry food storage facilities.

(11) The jailer or his designee shall inspect the food service area daily.

(12) Canteen food items purchased by prisoners may be stored and prepared in amounts that do not pose a threat to the health or security of the institution.

This is to certify that the Jail Standards Review Advisory Commission established pursuant to KRS 441.055(2) has reviewed this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
RODNEY BALLARD, Designee of the Chairman

APPROVED BY AGENCY: May 06, 2011

FILED WITH LRC: April 11, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, 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.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(As Amended at ARRS, August 15, 2011)

601 KAR 11:035. Waiver of skills test for military personnel.

RELATES TO: KRS 281A, 49 C.F.R. 383
STATUTORY AUTHORITY: KRS 281A.165~~[Ky. Ch. 20]~~

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.165~~[Ky. Ch. 20]~~ requires the Transportation Cabinet to promulgate an administrative regulation to establish an application form for military personnel applying for a commercial driver's license and requesting the waiver of a skills test. This administrative regulation establishes an application form and the procedures for submitting the form to the cabinet.

Section 1. Waiver Form. (1) An applicant for a commercial driver's license who meets the criteria established in KRS 281A.165~~[Ky. Ch. 20]~~ may apply for a skills test exemption. If the applicant applies, the applicant shall complete a Military Certification for Skills Test Exemption, TC Form 94-167.

(2) A completed application form shall be submitted to the Transportation Cabinet, Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622.

Section 2. Notification. (1) Within thirty (30) days of submission to the cabinet, an applicant shall be notified by mail of the approval or disapproval.

(2) An applicant shall take the notification of an approved application form to the circuit clerk's office for his or her county of residence.

Section 3. Incorporation by Reference. (1) "Military Certification for Skills Test Exemption", TC Form 94-167, August~~[June]~~ 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622. This material may also be obtained by accessing the cabinet's Web site at <http://transportation.ky.gov/>.

T.O. ZAWACKI, Commissioner
MIKE HANCOCK, Commissioner

APPROVED BY AGENCY, June 14, 2011

FILED WITH LRC, June 14, 2011 at 3 p.m.

CONTACT PERSON: D. Ann D'Angelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (As Amended at ARRS, August 15, 2011)

702 KAR 6:110. Claim reimbursement for school and community nutrition programs.

RELATES TO: KRS 156.070(5); 7 C.F.R. 210.8, 220.11, 225.9, 226.10, 42 U.S.C. 1751, 1761, 1766, 1773~~[7 C.F.R. 220.11, 7 C.F.R. 225.9, 7 C.F.R. 226.10; 42 U.S.C. 1751, 42 U.S.C. 1761, 42 U.S.C. 1766, 42 U.S.C. 1773.]~~

STATUTORY AUTHORITY: KRS ~~[43A.130, KRS]~~ 156.070(5), ~~[KRS 156.130,]~~ 7 C.F.R. 210.8(b)(1), 220.11(b), 225.9(d)(6), 226.10(e).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(5) requires the Kentucky Board of Education to promulgate administrative regulations governing the operation of programs within the Department of Education. 7 C.F.R. 210.8(b)(1), 220.11(b), 225.9(d)(6), and~~[7 C.F.R. 220.11(b); 7 C.F.R. 225.9(d)(6); 7 C.F.R.]~~ 226.10(e) provides the Department of Education with the authority to establish deadlines for claim reimbursement for federal nutrition programs. This administrative regulation establishes the claims deadlines for these programs.

Section 1. Definitions. (1) ~~["Application" means the online application completed by the sponsor that has been reviewed and approved by the Division of School of School and Community Nutrition ("SCN").~~

~~(2) ["Online Reporting System" means the Web-based computer application used for claims processing [and maintenance of~~

~~the application/agreement].~~

~~(2) [(3)] "Sponsor" means an entity approved to participate in a nutrition program that is administered by SCN.~~

Section 2. Submission of Monthly Claims. To be entitled to reimbursement ~~[under this part]~~, each participating sponsor shall submit a monthly Claim for Reimbursement to SCN. The Claim for Reimbursement form used shall be the form corresponding to the type of program operated by the sponsor, and shall be one (1) of the following forms:

(1) Non-Profit Programs Report and Claim for Reimbursement;

(2) For-Profit Programs Report and Claim for Reimbursement;

(3) Adult Programs Report and Claim for Reimbursement;

(4) Family Day Care Homes Report and Claim Form for Reimbursement;

(5) NSLP/SBP/SMP Report and Claim for Reimbursement Worksheet; or

(6) Summer Food Program Report and Claim for Reimbursement.

Section 3. Submission Timeframes. (1) A final Claim for Reimbursement shall be postmarked or submitted through the online reporting system to SCN no later than 11:59 p.m. Eastern time on the 15th of the month following the month covered by the claim to be considered a timely filing.

(2) Claims not postmarked or~~[and/or]~~ submitted by the claims deadline shall not be considered a timely claim by SCN. A request for waiver may be submitted in writing to the SCN's division director with the reason for the late claim filing clearly specified ~~[unless otherwise authorized].~~

(3) Corrected claims shall~~[must]~~ be submitted on or before the 30th of the month following the month covered by the claim to be considered a timely filing and shall~~[must]~~ be accompanied by a completed Corrective Action Plan. The Corrective Action Plan submitted shall be the plan corresponding to the type of program operated by the sponsor, and shall be one (1) of the following plans:

(a) Child and Adult Care Food Program (CACFP) Claim for Reimbursement Corrective Action Plan;

(b) Family Day Care Homes (FDCH) Claim for Reimbursement Corrective Action Plan;

(c) National School Lunch/Breakfast/Special Milk Programs Claim for Reimbursement Corrective Action Plan; or

(d) Summer Food Service Program (SFSP) Claim for Reimbursement Corrective Action Plan.

Section 4. Claim Verification. The claim shall be signed by an authorized official of the sponsor.

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

(a) "Non-Profit Programs Report and Claim for Reimbursement", 7/2010;

(b) "For-Profit Programs Report and Claim for Reimbursement", 7/2010;

(c) "Adult Programs Report and Claim for Reimbursement", 7/2010;

(d) "Family Day Care Homes Report and Claim for Reimbursement", 01/2010;

(e) "NSLP/SBP/SMP Report and Claim for Reimbursement Worksheet", 08/2011;

(f) "Summer Food Program Report and Claim for Reimbursement", 08/2011;

(g) "Child and Adult Care Food Program (CACFP) Claim for Reimbursement Corrective Action Plan", 08/2011;

(h) "Family Day Care Homes (FDCH) Claim for Reimbursement Corrective Action Plan", 08/2011;

(i) "National School Lunch/Breakfast/Special Milk Programs Claim for Reimbursement Corrective Action Plan", 08/2011; and

(j) "Summer Food Service Program (SFSP) Claim for Reimbursement Corrective Action Plan", 08/2011.

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(2) This material may be inspected, copied, or obtained at the Kentucky Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TERRY HOLLIDAY, Ph.D., Commissioner

DAVID KAREM, Chairperson

APPROVED BY AGENCY: June 15, 2011

FILED WITH LRC: June 15, 2011 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321 or email at kevin.brown@education.ky.gov.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Employment and Training
(As Amended at ARRS, August 15, 2011)**

787 KAR 1:090. Unemployed worker's reporting requirements.

RELATES TO: KRS 341.350, 341.360, 341.370, 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115(1), 341.125(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, and the procedures for electronic, telephone, and mail claims, and the requirement for random audits.

Section 1. Registration for Work. (1) An unemployed worker shall be registered for work with a state employment service before he shall be eligible to receive benefits. A registration shall be considered filed if the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens a claim, he shall be assigned a group classification code A or B based upon his reemployment prospects.

(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of twelve (12) weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:

1. Unemployed and has definite return prospects with his last employer within a period of twelve (12) weeks from the date of filing of the initial or reopened claim;

2. Unemployed because of a labor dispute in the establishment where he has been employed; or

3. A member of a union which shall be responsible for securing future employment.

(3) During any benefit year, an unemployed worker shall be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits. (1) In order for an unemployed worker to file an initial or reopened claim for benefits, he shall complete the Initial Claim Application, Form 401, by using:

(a) An internet claim registration through the Web site provided by the agency for that purpose at <https://uicclaims.des.ky.gov/ebenefit/>;

(b) A telephone claim registration through the call center provided by the agency for that purpose; or

(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) If any issues regarding the unemployed worker's eligibility as provided by KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall be responsible for:

(a) Providing picture identification and valid proof of the worker's Social Security number from the Social Security Administration; and

(b) Presenting all facts in support of the application.

(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary shall backdate the initial or reopened claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later.

Section 3. Claiming Weeks of Benefits. (1) Once an unemployed worker has filed an initial claim and established a benefit year, he shall claim his benefits on a biweekly basis by one (1) of the methods and within the time frames established in subsection (2) of this section.

(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits.

(b) Except as provided in paragraph (c) [(d)] of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period.

(c) Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late.

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

(a) Through the Web site provided by the agency for that purpose at <https://uicclaims.des.ky.gov/ebenefit/>, with the claim completed before **7 p.m. Eastern Time on the Friday** ~~midnight on the Saturday~~ of the calendar week following the second week of the period claimed; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose, with the claim completed between the hours of **10 a.m.** ~~[2 p.m.]~~ and 9 p.m. Eastern Time on the Sunday, or between the hours of 7 a.m. and 7 p.m. Eastern Time on the Monday through the Friday of the calendar week following the second week of the period claimed.

(3)(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:

1. Unavailability of those options for the type of benefits claimed;

2. Unavailability of those options due to technical problems; or

3. A physical or mental condition preventing the worker from using those options.

(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.

(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

(d) The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail, and unless the claim is filed within the prescribed time, it shall not be allowed.

Section 4. Employer Filed Claims. (1) An employer may file a claim on behalf of an unemployed worker if:

(a) The worker has definite recall rights within four (4) calendar weeks;

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(b) The employer has a workforce of at least 100 workers at the time of the layoff;

(c) The employer submits the claim information in the required electronic format using the Mass Electronic Filing Cell Data and Formatting Guide; and

(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the division that the information is in the required format prior to the date the period of unemployment will begin.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:

(1) The worker's classification as established in Section 1(2) of this administrative regulation;

(2) The worker's individual employment and earning history; and

(3) The local labor market.

Section 6. (1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:

(a) The employer's failure to comply with 787 KAR Chapter 1;

(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim; or

(c) Failure by the division's personnel to discharge necessary responsibilities.

(2)(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

Section 7. [(4)] The secretary shall conduct random audits of claims. Each random audit shall include one (1) or more of the eligibility requirements provided by KRS 341.350.

Section 8. [7.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The initial claim application "Form 401", revised 8/10;

(b) The "Continued Claim Form", revised 10/95; and

(c) "Mass Electronic Filing Cell Data and Formatting Guide", revised 03/07.

(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 East Main Street, 2 CD, 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.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, August 15, 2011)

803 KAR 2:304. Exit routes and emergency planning. [Exit routes, emergency action plans, and fire prevention plans.]

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) ~~requires~~[authorizes] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. [KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards.] This administrative regulation establishes exit route, emergency action plan, and fire prevention plan standards to be enforced by the Department of Workplace Standards [Office of Occupational Safety and Health] in general industry.

Section 1. Definitions. (1) "Employee" is defined in KRS 338.015.

(2) "Employer" is defined in KRS 338.015.

(3) "NFPA" means the National Fire Protection Association.

(4) "OSHA" means the Occupational Safety and Health Administration or the Kentucky Department of Labor, Office of Occupational Safety and Health.

(5) "Standard" is defined in KRS 338.015.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.33 through 29 C.F.R. 1910.39 and Appendix, revised July 1, 2010;[,] and

(2) The amendments to 29 C.F.R. 1910.33, 1910.34, 1910.35, and 1910.36 as published in the June 8, 2011 Federal Register, Volume 76, Number 110. [Section 2. General industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions established in Section 1 of this administrative regulation.] [Section 3. Incorporation by Reference. (1) The revisions to 29 C.F.R. 1910.33 through 29 C.F.R. 1910.39 and Appendix, as published in the November 7, 2002 Federal Register, Volume 67, Number 216, are incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Labor, Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Services, General Services Administration.]

MARK S. BROWN, Chairman

APPROVED BY AGENCY:

FILED WITH LRC: June 15, 2011 at 10 a.m.

CONTACT PERSON: Kristi Redmon, CIH, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(As Amended at ARRS, August 15, 2011)

803 KAR 2:309. General environmental controls.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.141-1910.147

STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.141 to 1910.147 establishes the federal requirements relating to general environmental controls. [EO 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor.] This administrative regulation establishes the general environmental controls standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined in KRS 338.015(2).

(5) "Employer" is defined in KRS 338.015(1).

(6) "Established federal standard" is defined in KRS 338.015(10).

(7) "National consensus standard" is defined in KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" is defined in KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 and the requirements in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.141-1910.147, revised July 1, 2010; [2008.]

(2) The amendments to 29 C.F.R. 1910.145 and 1910.147 published in the May 2, 2011, Federal Register, Volume 76, Number 84; [and]

(3) The correction to 29 C.F.R. 1910.145 and 1910.147 published in the July 25, 2011, Federal Register, Volume 76, Number 142; and

(4) The amendments to 1910.141 published in the June 8, 2011, Federal Register, Volume 76, Number 110.

Section 3. (1)(a) Construction of Water Closets. The requirements relating to construction of water closets in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.141(c)(2)(i).

(b) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.

(2)(a) Lockout. The requirements relating to the utilization of lockout procedures in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.147(c)(2)(ii).

(b) If an energy isolating device is capable of being locked out, the employer's energy control program under 29 C.F.R. 1910.147(c)(1) shall utilize lockout.

(3)(a) Full employee protection. The requirements relating to tag location in subsection (b) of this section shall apply in lieu of 29 C.F.R. 1910.147(c)(3)(i).

(b) When a tagout device is used on an energy isolating device which is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program. If tagout devices are used with energy isolating devices designed with the incapability of being locked, the tag attachment shall be fastened at the same point at which the lock would have been attached.

MARK S. BROWN, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(As Amended at ARRS, August 15, 2011)

803 KAR 2:313. Materials handling and storage.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 ~~require~~[authorize] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. [KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards.] The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Standard" is defined by KRS 338.015(3), [means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".]

(4) "U.S. Department of Labor" means the Kentucky Department of Labor or the U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.176 through [1910.178(m)(14) and 1910.178(m)(13) through] 1910.184, revised July 1, 2010;

(2) The amendment to 29 C.F.R. 1910.177 as published in the May 2, 2011 Federal Register, Volume 76, Number 84; and

(3) The amendment to 29 C.F.R. 1910.184 as published in the June 8, 2011 Federal Register, Volume 76, Number 110.

Section 3. When a truck that falls within the scope of 29 C.F.R. 1910.178 is equipped with vertical only, or vertical and horizontal controls elevatable with the lifting carriage or forks for lifting personnel, the following shall be required:

(1) Use of a safety platform firmly secured to the lifting carriage or forks;

(2) Means whereby personnel on the platform can shut off power to the truck; and

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(3) Protection from falling objects as necessary by the operating conditions. ~~[(1) The language in paragraphs (a), (b), and (c) of this subsection shall apply in lieu of 29 C.F.R. 1910.178(m)(12).~~

~~(a) Use of a safety platform firmly secured to the lifting carriage and/or forks.~~

~~(b) Means shall be provided whereby personnel on the platform can shut off power to the truck.~~

~~(c) Such protection from falling objects as indicated necessary by the operating conditions shall be provided.]~~ [Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. 1910.176-.190, Subpart N, "Materials Handling and Storage", revised as of July 1, 1998, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revision to the revision to 29 C.F.R. 1910.178, "Powered Industrial Trucks", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, is incorporated by reference.

(c) The revision to 29 C.F.R. 1910.178, "Powered Industrial Trucks", as published in the Federal Register, Volume 64, Number 80, April 27, 1999, is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8:00 a.m. - 4:30 p.m. (ET), Monday through Friday. (16 Ky.R. 695; eff. 12-15-89; Am. 17 Ky.R. 1849; eff. 1-6-91; 20 Ky.R. 2697; eff. 5-11-94; 23 Ky.R. 1714; eff. 12-13-96; 25 Ky.R. 2448; eff. 6-16-99; 26 Ky.R. 652; 1008; eff. 11-15-99; TAm eff. 8-9-2007.)]

MARK S. BROWN, Chairman

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CONTACT PERSON: Kristi Redmon, CIH Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET

**Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, August 15, 2011)**

803 KAR 2:425. Toxic and hazardous substances.

RELATES TO: 29 C.F.R. 1926.1101-1926.1152

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.1101 to 1926.1152 establish the federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in the construction industry.

Section 1. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1101 through 1926.1152, revised as of July 1, **2010** [2009]; and

(2) The amendments to 29 C.F.R. 1926.1101 and 1926.1127 published in the June 8, 2011, Federal Register, Volume 76, Number 110. [The amendments to 29 C.F.R. 1926.1126 published in the March 17, 2010, Federal Register, Volume 75, Number 51, and confirmed in the May 14, 2010, Federal Register, Volume 75, Number 93.]

MARK S. BROWN, Chairman

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LABOR CABINET

**Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, August 15, 2011)**

803 KAR 2:505. Cranes and derricks in construction.

RELATES TO: KRS 338.015, 29 C.F.R. Part 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards. The following administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions established in Section 1 and the requirements in Section 3 of this administrative regulation, the construction industry shall comply with the following federal regulation published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: 29 C.F.R. Part 1926, Subpart CC, Cranes and Derricks in Construction, published in the August 9, 2010 Federal Register, Volume 75, Number 152.

Section 3. **(1) 29 C.F.R. 1926.1423(e)(1)(iii) is amended to read as follows: "On horizontal lattice booms where the fall distance is ten (10) feet or more."**

(2) 29 C.F.R. 1926.1423(f) is amended to read as follows: "For assembly/disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck."

(3) 29 C.F.R. 1926.1423(h)(2) is amended to read as follows: For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level." As approved by the Kentucky Occupational Safety and Health Standards Board.

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MARK S. BROWN, Chairman

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3579, fax (502) 564-1682.

PUBLIC PROTECTION CABINET Department of Insurance Division of Agent Licensing (As Amended at ARRS, August 15, 2011)

806 KAR 9:220. Continuing education.

RELATES TO: KRS 304.2-295, 304.5-030, 304.9-230, 304.9-
260, 304.9-295, 304.14-642, 304.15-700(3), Pub.L. 108-264 sec.
207

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-295(6),
(8), (5), (7), 304.14-642(5), 304.15-720, Pub.L. 108-264 sec. 207

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 effectu-
ation of any provision of the Kentucky Insurance Code as defined
in KRS 304.1-010. KRS 304.9-295(6) and (8) authorize the com-
missioner to limit the number of continuing education hours carried
forward to the subsequent biennium. KRS 304.14-642(5) requires
the commissioner to promulgate an administrative regulation to
implement the Kentucky Long-Term Care Partnership Program. KRS
304.15-720 requires the commissioner to promulgate adminis-
trative regulations to implement KRS 304.15-700 to 304.15-720,
Kentucky's Life Settlement Law. Pub.L. 108-264 sec. 207 requires
the Administrator of the Federal Emergency Management Agency
to establish minimum training and education requirements for all
insurance agents who sell flood insurance policies in cooperation
with state insurance regulators. This administrative regulation es-
tablishes procedures for approval of agent and life settlement bro-
ker continuing education courses and obtaining credit for attending
continuing education courses.

Section 1. Definitions. (1) "Commissioner" means the Commis-
sioner of the Department of Insurance.

(2) "Department" means the Department of Insurance.

(3) "Provider" means the sponsor of a continuing education
course.

Section 2. Continuing Education Course Requirements. (1) A
continuing education course shall be offered by a provider ap-
proved by the commissioner, pursuant to this section:

(a) The application for approval of a provider shall be sub-
mitted on the "Provider Approval Application" form incorporated by
reference, in 806 KAR 9:340; and

(b) The information shall show that the provider is qualified,
through knowledge or experience, to provide prelicensing or con-
tinuing education courses and that the provider is properly autho-
rized to charge a course fee, if any.

(2) (a) A continuing education course shall be filed with and
approved by the commissioner at least sixty (60) days in advance
of advertising unless the commissioner [.] waives the sixty (60) day
period.

(b) In determining whether to grant a waiver, the commissioner
shall consider whether the failure to file and approve the continuing
education course within the time period specified in paragraph (a)
of this subsection was due to circumstances which would reasona-
bly justify failure to comply.

(3) (a) 1. All applications for approval of a continuing education
course shall be submitted on the "Course Approval Application"
form incorporated by reference, in 806 KAR 9:340, which shall be
accompanied by the "Filing Fee Submission Form" incorporated by
reference, in 806 KAR 9:340, and a nonrefundable initial fee of ten
(10) dollars.

2. Notwithstanding the requirements in paragraph (a)1 of [.]
this subsection, application for approval of a continuing education

course being offered in more than one (1) state[.] may be submit-
ted on the National [Nation] Association of Insurance Commission-
ers' "Uniform Continuing Education Reciprocity Course Filing
Form" incorporated by reference in 806 KAR 9:340.

(b) After review and assignment of the number of credit hours,
the commissioner shall notify the provider of the additional fee of
five (5) dollars per credit hour due pursuant to 806 KAR 4:010.

(c) A continuing education course shall not be approved until
all fees are paid.

(4) The commissioner shall approve a continuing education
course if it meets the following requirements:

(a) The continuing education course shall contribute directly, at
a professional level, to the competence of the licensee including
the following subjects:

1. Insurance, annuities, and risk management;
2. Insurance laws and administrative regulations;
3. Mathematics, statistics, and probability;
4. Economics;
5. Business law;
6. Finance;
7. Taxes;

8. Agency management including all aspects of agency opera-
tions that support the long-term stability of the agency system and -
encourage [encouragement] the service and protection of custom-
ers, unless specifically excluded in subsection (5) of this section;

9. Ethics; and

10. Other topics approved by the commissioner which contri-
bute directly at a professional level to the competence of the licen-
see; and (b) Course development and presentation:

1. The continuing education course shall have substantial intel-
lectual or practical content to enhance and improve the knowledge
and professional competence of participants;

2. The course shall be developed by persons who are qualified
in the subject matter and instructional design;

3. Material shall be current, relevant, accurate, and include
valid reference materials, graphics, and interactivity;

4. The course shall have clearly defined objectives and course
completion criteria;

5. Each course shall have a written outline and study materials
or texts;

6. Information shall show that the instructors are qualified,
through training or experience, to instruct the continuing education
course competently and shall be submitted on the "Instructor Ap-
proval Application" incorporated by reference, in 806 KAR 9:340,
and shall be accompanied by the "Filing Fee Submission Form"
incorporated by reference, as in 806 KAR 9:340;

7. The number of participants and physical facilities shall be
consistent with the teaching method specified; and

8. All courses shall include some means of evaluating quality.

(5) Continuing education credit shall not be provided for:

(a) Any course used to prepare for taking an examination re-
quired pursuant to KRS Chapter 304;

(b) Committee service of professional organizations;

(c) Computer training to develop functional skills;

(d) Motivational or sales training courses; and

(e) Any course not in accordance with Section 2(4) of this ad-
ministrative regulation.

(6) Any material change in a continuing education course shall
be filed with and approved by the commissioner prior to use. The
material change shall not be approved until the filing fees are paid
in accordance with subsection (3) of this section.

(7) Biennially, providers shall renew approval of continuing
education courses and instructors. Providers shall file applicable
information with and pay the applicable fee specified in 806 KAR
4:010 to the commissioner prior to June 30 of even-numbered
years.

Section 3. Measurement of Credit Hours. Continuing education
courses shall be measured according to course type and calcu-
lated in the following manner:

(1) Classroom courses. Each credit hour of a continuing edu-
cation course shall include at least fifty (50) minutes of continuous
instruction or participation.

(2) Self-Study Courses. Each credit hour of a continuing edu-

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cation course completed online or by correspondence shall be calculated in accordance with the National Association of Insurance Commissioners' "Recommended Guidelines for Online Courses."

(3) A continuing education course, regardless of whether it is offered as a classroom course, online course, by correspondence, or self-study, shall not be credited for continuing education by a licensee more than once per continuing education biennium.

Section 4. Reasons for Withdrawal. The commissioner may withdraw approval of a continuing education course, provider, or instructor for any of the following reasons:

(1) The continuing education course teaching methods or course content:

(a) No longer meet the requirements of:

1. KRS 304.9-295; or

2. Sections 2 and 3 of this administrative regulation; or

(b) The course has been materially changed without being filed with and approved by the commissioner, in accordance with Section 2 of this administrative regulation;

(2) The continuing education course provider has certified to the commissioner that a licensee has satisfactorily completed the course when, in fact, the licensee has not done so;

(3) The continuing education course provider fails to certify to the commissioner that a licensee has satisfactorily completed the course when, in fact, the licensee has done so; or

(4) Unethical conduct of a provider or instructor.

Section 5. Product Specific Continuing Education and Training Requirements. (1) Any resident licensee selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304.14-462, shall complete eight (8) hours of initial long-term care training, and four (4) hours of additional training for each biennial continuing education compliance period.

(2) Any resident licensee licensed with Property and Casualty lines of authority selling federal flood insurance shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-264, Section 207.

(3)(a) Any individual licensee selling, soliciting, or negotiating the sale of an annuity, as defined in KRS 304.5-030, shall successfully complete four (4) hours of initial training that shall include information on the following topics:

1. The types of annuities and various classifications of annuities;

2. Identification of the parties to an annuity;

3. The manner in which fixed, variable, and indexed annuity contract provisions affect consumers;

4. The application of income taxation of qualified and non-qualified annuities;

5. The primary uses of annuities; and

6. Appropriate sales practices, replacement, and disclosure requirements.

(b) The training required by subsection (3)(a) of this section shall not include:

1. Marketing information;

2. Sales techniques; or

3. Specific information about a particular insurer's product.

(c) An individual licensee who holds a life line of authority on the effective date of this administrative regulation shall complete the training requirements set forth in subsection (3)(a) of this section within six (6) months after the effective date of these training requirements.

(d) An individual licensee who obtains a life line of authority on or after the effective date of this administrative regulation shall complete the training requirements set forth in subsection (3)(a) of this section prior to selling, soliciting, or negotiating the sale of an annuity.

(e) The training required by subsection (3)(a) of this section shall be filed and approved in accordance with Section 2 of this administrative regulation.

(f) The satisfaction of the training requirements of another state that are substantially similar to the provisions of subsection (3)(a)

of this section shall satisfy the training requirements in this section.

(g) The training requirements in this subsection shall be effective on January 1, 2012.

(4) The training requirements in subsections (1), (2) and (3) [and (2)] of this section may apply toward fulfillment of a licensee's continuing education requirement as set forth in KRS 304.2-295 and 304.15-700(3), if the training has been approved as a continuing education course in accordance with Section 2 of this administrative regulation and proof of completion is made in accordance with Section 6 of this administrative regulation.

Section 6. Proof of Completion. (1)(a) Within thirty (30) days of completion of a continuing education course, the provider shall certify to the commissioner the names of all licensees who satisfactorily completed the continuing education course.

(b) The provider shall maintain the "Continuing Education Course Attendance Roster" form, incorporated by reference in 806 KAR 9:340, for at least five (5) years and shall be subject to random audits to ensure compliance with this requirement.

(c) The certification of completion required by this section for a classroom course shall be submitted electronically on the "Continuing Education Course Attendance Roster" form, incorporated by reference in 806 KAR 9:340, through the Department of Insurance Web site, <https://insurance.ky.gov/eservices/default.aspx>.

(d) 1. The certification of completion required by this section for a self-study course shall be submitted on the "Continuing Education Certificate of Completion" Form, incorporated by reference in 806 KAR 9:340.

2. The provider shall:

a. Forward the form to the licensee for signature; and

b. Instruct the licensee to file the form with the commissioner.

3. In addition, the information may be submitted electronically by the provider to the commissioner through the Department of Insurance Web site, <https://insurance.ky.gov/eservices/default.aspx>.

(2) (a) The provider of the continuing education course shall furnish to the licensee attending the course a certificate and the licensee shall retain the certificate for at least five (5) years.

(b) The certification required by this subsection shall be on the "Continuing Education Certificate of Completion" Form, incorporated by reference in 806 KAR 9:340.

(c) The provider of the continuing education course shall retain a copy of the certificate for at least five (5) years.

(d) Providers of continuing education courses and licensees shall make available to the commissioner's designee copies of these certificates upon the request of the commissioner.

(3) Pursuant to KRS 304.9-295(2) and (9), every licensed individual required to complete continuing education shall be responsible for ensuring that his or her continuing education certificates of completion are timely filed with the department even if the provider does not fulfill its responsibilities under this administrative regulation.

(4) (a) At least six (6) hours of total credit earned per biennium shall be directly related

to any one (1) or more of the lines of authority for which the agent is actively licensed.

(b) At least three (3) hours of total credit earned per biennium shall be in ethics.

(c) Hours may be classroom, self-study, or a combination of both.

(5) Each self-study course shall require successful completion of a written examination or the submission of a statement by the licensee made under oath that the course was completed within the biennium.

(6) Licensees may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

Section 7. Cancellation and Reinstatement of Licenses. (1) Proof of fulfillment of a resident licensee's continuing education requirement shall be received in conjunction with license renewal in accordance with KRS 304.9-260 and 304.9-295.

(2) If the department does not receive proof of the fulfillment of a licensee's continuing education requirements on or before the

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deadline, pursuant to KRS 304.9-295, [-] the commissioner shall:

(a) Make information of the deficiency available to the licensee; and

(b) Terminate the license if proof of completion of the deficient hours on the "Continuing Education Course Attendance Roster" Form incorporated by reference, in 806 KAR 9:340, or the "Continuing Education Certificate of Completion" Form incorporated by reference, in 806 KAR 9:340, is not received by the department on or before the deadline in accordance with KRS 304.9-295.

(3) Within twelve (12) months after a license is terminated for failing to submit certification of continuing education, the license may be reissued if the licensee:

(a) Satisfies the delinquent continuing education requirements;

(b) Submits a new application with required attachments for a license; and

(c) Submits the applicable fees.

(4) If the continuing education delinquency remains unsatisfied for twelve (12) months or longer, the former licensee shall satisfy all of the licensing requirements specified in KRS Chapter 304, Subtitle 9.

Section 8. Requests for an Extension of Time for Continuing Education. (1) An agent exempted from continuing education requirements on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions may withdraw the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

(a) Completing the continuing education requirements for the immediate preceding continuing education biennium;

(b) Providing a certification of completion of those continuing education requirements; and

(c) Providing a signed, written statement withdrawing the affidavit.

(2) Use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any reason, including an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the agent to suspension or revocation of the agent license.

(3) Members of the Armed Forces who have been mobilized or deployed in support of their duties may:

(a) Request an extension of time for completion of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department form, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," incorporated by reference in 806 KAR 9:340; or

(b) Request a waiver for continuing education requirements in accordance with KRS 304.9-260(3).

Section 9. Limited lines of authority as identified in KRS 304.9-230 shall be exempt from all continuing education requirements.

Section 10. Incorporation by Reference. (1) "Recommended Guidelines for Online Courses", 2005 National Association of Insurance Commissioners, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 14, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax(502) 564-1453.

PUBLIC PROTECTION CABINET

Department of Insurance

Division of Kentucky Access

(As Amended at ARRS, August 15, 2011)

806 KAR 17:545. ICARE Program employer eligibility, application process, and requirements.

RELATES TO: 2010 ES Acts ch. 1, Part XII, secs. 1-8, 12, KRS 304.1-050(2), 304.2-310, 304.9-020(1), 304.17A-005(22)

STATUTORY AUTHORITY: KRS 304.2-110(1), 2010 ES Acts ch. 1, Part XII, secs. 1(2), 1(3), 2(5)

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 provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2010 ES Ky Acts ch. 1, Part XII, sec. 1(2) and (3) require the department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2010 ES Ky Acts ch. 1, Part XII, sec. 2(5) requires the department to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Complete ICARE Program renewal application" means the ICARE Program renewal application, ICARE-APP-1, with all fields completed and all required attachments, including:

(a) Documentation verifying that the employer group's average annual salary is 300 percent of the federal poverty level or below, which may include the employer's:

1. Quarterly unemployment tax statement; or

2. Payroll register;

(b) Documentation supporting coverage of the employer group under a qualified health benefit plan if:

1. The employer group is participating in the ICARE Program as a previously uninsured group; or

2. The employer group is participating in the ICARE Program under the high cost condition category and the employer group has changed coverage during the ICARE Program year;

(c) Employee ICARE Program high-cost condition certification, if applicable; and

(d) Any additional attachments, if applicable.

(3) "Department" is defined in KRS 304.1-050(2).

(4) "Eligible employee" is defined in 2010 ES Ky Acts ch. 1, Part XII, Sec. 1(3).

(5) "Eligible employer" is defined in 2010 ES Ky Acts ch. 1, Part XII, Sec. 1(2).

(6) "Federal poverty level" means a standard of income for an individual who resides in one (1) of the forty-eight (48) contiguous states which:

(a) Is issued annually by the United States Department of Health and Human Services;

(b) Is published annually in the Federal Register; and

(c) Accounts for the previous year's price increases as measured by the consumer price index.

(7) "Full time employee" means an employee who works at least twenty-five (25) hours per week.

(8) "Full time equivalent" means a number that equals the total hours worked per week by part time employees divided by twenty-five (25).

(9) "Health benefit plan" is defined in KRS 304.17A-005(22).

(10) "Health care incentive payment" means a payment as established in 2010 ES Ky Acts ch. 1, Part XII, secs. 2(3) and 4(1).

(11) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2010 ES Ky Acts ch. 1, Part XII, sec. 2(1).

(12) "ICARE Program high-cost condition" means a high-cost

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condition as:

- (a) Defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(5); and
- (b) Established in 806 KAR 17:540.

(13) "ICARE Program participating employer" means an eligible employer who is enrolled in the ICARE Program.

(14) "ICARE Program participating insurer" is defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(6).

(15) "ICARE Program year" means a one (1) year period of time beginning on an eligible employer's enrollment date in the ICARE Program.

(16) "Insurer" is defined in KRS 304.17A-005(27).

(17) "Qualified health benefit plan" is defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(8).

Section 2. Employer Eligibility. (1) To determine the number of employees of an employer pursuant to 2010 Ky Acts ch. 127, Part XII, sec. 1(2), the department shall consider:

- (a) Full time employees; and
- (b) Full time equivalents rounded to the nearest whole number.

(2) The average annual salary of the employer group shall not exceed 300 percent of the most current federal poverty level for a family of three (3). To determine the average annual salary of the employer group pursuant to 2010 ES Ky Acts ch. 1, Part XII, sec. 2(4), the department shall:

(a) Calculate the sum of the annual gross salaries of all eligible employees, excluding the salary of any employee:

- 1. With an ownership interest in the business;
- 2. Who is a Medicare-eligible employee;
- 3. Who has attained age sixty-five (65); or
- 4. Who does not meet eligibility requirements for participation in the employer-sponsored health benefit plan established by the employer and insurer; and

(b) Divide the sum calculated in paragraph (a) of this subsection by the total number of employees whose salaries were used in the calculation established in paragraph (a) of this subsection.

(3) An eligible employer shall pay fifty (50) percent or more of the average single premium cost of qualified health benefit plan coverage for each eligible employee.

(4) An eligible employer shall have at least one (1) eligible employee who is not an owner of the business.

Section 3. Changes in Application Information. An ICARE Program participating employer shall provide written notification of any change in ICARE Program application information to the department within thirty (30) days of the date of the change.

Section 4. Renewal of ICARE Program Participation. (1) At least sixty (60) days prior to the ICARE Program year renewal date, the department shall send a renewal notification to an ICARE Program participating employer.

(2) At least thirty (30) days prior to the ICARE Program year renewal date, an ICARE Program participating employer who desires continued participation in the ICARE Program shall submit to the department:

(a) A written request for renewal of ICARE Program participation;

(b) A complete ICARE Program renewal application; and

(c) Documentation to support eligibility as established in Section 2 of this administrative regulation and 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8.

(3) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of a renewal application for the ICARE Program by:

(a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;

(b) Completing section 3 of the ICARE Program renewal application of the employer; and

(c) If applicable:

1. Collecting employee ICARE Program high-cost condition certifications from employees, as identified in the ICARE Program application; and

2. Protecting personal health information as established in subparagraph 1 of this paragraph pursuant to 806 KAR 3:210

through 806 KAR 3:230.

(4) Within thirty (30) days of receiving a request for renewal, the department shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

Section 5. Termination of ICARE Program Participation. (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

(a) The department determines that the employer ceases to meet an eligibility requirement as established in Section 2 of this administrative regulation or 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8:

1. Upon completion of an annual review for the ICARE Program year reviewed; or

2. Upon review of a request for renewal of ICARE Program Participation;

(b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2010 ES Ky Acts ch. 1, Part XII, sec. 4(5);

(c) The employer or any employee of the employer group performs an act or practice that constitutes fraud or intentionally misrepresents a material fact in the ICARE Program application;

(d) The employer requests termination from the ICARE Program;

(e) The employer ceases business operations in Kentucky; or

(f) The employer fails to cooperate in an annual review as described in Section 8 of this administrative regulation.

(2) Prior to terminating an ICARE Program participating employer, the department shall provide written notification to the employer, which shall include:

(a) The reason for termination as identified in subsection (1) of this section;

(b) The termination date, which shall be:

1. If terminated for fraud or misrepresentation, the date of the written notification; or

2. If terminated for a reason other than fraud or misrepresentation, no less than thirty (30) days from the date of the written notification; and

(c) Instructions for filing an appeal if dissatisfied with the termination.

Section 6. Reconsideration Requests and Appeals. (1) Within thirty (30) days of receiving notification of a determination of ineligibility pursuant to Section 4 of this administrative regulation or termination by the department pursuant to Section 5 of this administrative regulation, an employer may request a reconsideration of the determination of ineligibility or termination in writing. A request for reconsideration shall include: A description of the basis for reconsideration; and Any new relevant information including documentation to support eligibility as established in Section 2 of this administrative regulation and 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8 that was not provided with the written request for renewal.

(2) The department shall provide written notification of its determination to the employer within sixty (60) days of receipt of a request for reconsideration from an employer.

(3) Within sixty (60) days of receiving the department's determination on reconsideration, the employer may appeal by filing a written application for an administrative hearing in accordance with KRS 304.2-310.

Section 7. ICARE Program Health Care Incentive Payment. (1) If confirmation of premium payment by the ICARE Program participating employer is included in the report required by 806 KAR 17:555, Section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The department shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2010 ES Ky Acts ch. 1, Part XII, sec. 4(1) for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the department based on the employer's ICARE Program appli-

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cation or ICARE Program renewal.

(3) The total amount of the monthly health care incentive payment provided to an employer may vary during the ICARE Program year based upon the number of eligible employees enrolled in the qualified health benefit plan as reported by the ICARE Program participating insurer.

(4) If an ICARE Program participating employer is terminated from the ICARE Program, the employer shall not be eligible for a monthly health care incentive payment following the effective date of termination for months remaining after the termination.

(5) If an ICARE Program participating employer is terminated from the ICARE Program due to fraud or material misrepresentation, the employer shall refund to the department all health care incentive payments received by the employer for the period of ineligibility determined by the department.

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that is equal to the health care incentive payment that the employer would have received at the time of renewal in accordance with 2010 ES Ky Acts ch. 1, Part XII, Sec. 4(1).

Section 8. Annual Review. The department may make or cause to be made an annual review of the books and records of an ICARE Program participating employer, insurer, or agent to ensure compliance with:

(1) 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8; 806 KAR 17:540 and 17:555; and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 9. Response to Department Inquiry. If an employer receives an inquiry from the department relating to the eligible employer's participation or application in the ICARE Program, the eligible employer shall respond within fifteen (15) business days.

Section 10. Incorporation by Reference. (1) "ICARE-APP-1", ~~6/2011~~~~[5/2011]~~ ~~[7/2010]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department Web site at <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 14, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, August 15, 2011)

810 KAR 1:005. Racing officials.

RELATES TO: ~~KRS 230.240~~~~[KRS 230.240-230.360]~~

STATUTORY AUTHORITY: ~~KRS 230.215, [KRS] 230.240, [KRS] 230.260~~~~[KRS Chapter 13A]~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~KRS 230.215(2) authorizes the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted in the Commonwealth. [KRS 230.240(1) authorizes the commission to promulgate administrative regulations prescribing the duties and powers of racing officials.] This administrative regulation outlines the qualifications, duties, powers and responsibilities of racing officials. [To regulate conditions under which the roughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the qualifications, duties, powers and responsibilities of the racing officials.]~~

Section 1. **Definition. "Racing official" means those persons serving as steward, racing secretary, assistant racing secretary, clerk of scales, paddock judge, starter, patrol judge, placing judge, timer, identifier, and veterinarian.**

Section 2. Racing Officials. (1) Persons appointed by the association to serve as racing officials during a race meeting shall first be approved by the ~~commission~~~~[authority]~~, shall serve only so long as approved by the ~~commission~~~~[authority]~~, and shall be under the supervision of the stewards. ~~[For purposes of these administrative regulations, racing officials shall include those persons serving as steward, racing secretary, assistant racing secretary, clerk of [the] scales, paddock judge, starter, patrol judge, placing judge, timer, identifier and veterinarian.]~~

(2) ~~A[Ne]~~ person while serving as a racing official, **or as an assistant starter, jockey room custodian, jockey room employee, valet, or outrider, shall not:**

~~(a)[shall:]~~ Indirectly or directly, own a beneficial interest in a thoroughbred, jockey contract, or association under his supervision;

~~(b)[nor shall he]~~ Cause to be bought or sold, for himself or another, any thoroughbred under his supervision;

~~(c)[nor shall he]~~ Buy or sell, for himself or another, any right to or in a contract with a jockey or apprentice jockey under his supervision;

~~(d)[nor shall he]~~ Wager on any race under his supervision; **and**

~~(e)[nor shall he]~~ Write or solicit horse insurance or have any monetary interest in any business which seeks the patronage of horsemen or racing associations. ~~[For the purposes of this subsection, the following racing department employees shall also be deemed racing officials: assistant starter, jockey room custodian, jockey room employees, valets, outriders.]~~

(3) ~~Any racing official~~~~[Racing officials]~~ serving in the capacity of ~~steward~~~~[stewards]~~, placing ~~or~~~~[and]~~ patrol judge~~[judges]~~, clerk of scales, starter, ~~or~~~~[and]~~ horse identifier shall take and satisfactorily pass an optical examination within one (1) year prior to the race meeting at which ~~he serves~~~~[they serve]~~. The examination shall show corrected twenty-twenty (20-20) vision and an ability to distinguish colors correctly.

(4) Any racing official who desires to leave his employment during the race meeting shall first obtain permission from the ~~commission~~~~[authority]~~; if a vacancy occurs among racing officials other than stewards, the association shall promptly appoint a successor, subject to approval of the ~~commission~~~~[authority]~~. If the association does not appoint a successor in time to permit the orderly conduct of racing, then the stewards shall immediately appoint a temporary successor.

Section ~~3~~~~[2]~~. Racing Secretary. The racing secretary shall be responsible for the programming of races during the race meeting, compiling and publishing condition books, assigning weights for handicap races, and shall receive all entries, subscriptions, declarations, and scratches. The racing secretary and his staff shall be responsible for:

(1) Safekeeping of registration certificates and racing permits for horses, recording information required **on the certificates and permits, and returning the certificates and permits** ~~[thereon, and returning same]~~ to owners at the conclusion of the race meeting;

(2) Maintaining a record of all stakes fees received, and all arrears, jockeys' fees, purchase money in claiming races, and all other monies received incident to the race ~~[racing]~~ meeting, **and making available** ~~[and]~~ payment to those persons entitled thereto within fourteen (14) days after ~~the conclusion of the race meeting~~~~[concluded]~~;

(3) Supervision of the horsemen's ~~bookkeeper's~~~~[bookkeeper]~~ handling of the "horseman's account;"

(4) Daily posting of entries for the benefit of the public as soon as possible after~~[the]~~ entries have been closed and declarations have been made;

(5) Assigning stall applicants ~~[such]~~ stabling as he may deem proper after consultation with the stewards, and **maintaining** ~~[to maintain]~~ a record of arrival and departure of all horses stabled on association grounds; **and**

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(6) Publishing the official daily program, and ensuring that it contains accurate information of the following [~~insuring the accuracy therein of the following information~~]:

(a) Sequence of races to be run and post time for the first race;
(b) Purse, conditions, and distance for each race, and current track record for the distance;

(c) The full name of licensed owners of each horse, indicated as leased if applicable, and description of racing colors to be carried;

(d) The full name of the trainer and the full name of the jockey named for each horse together with the weight to be carried;

(e) A notice shall be included in the daily program that all jockeys will carry approximately three (3) pounds more than the published weight to account for safety helmets and safety vests that is not included in required weighing out procedures. A notice shall also be published that, upon approval of the stewards, a jockey may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions;[.]

(f)[(e)] The saddle cloth number or designation for each horse, and the post position for each horse, if there is a variance with the saddle cloth designation;

(g)[(f)] Identification of each horse by name, color, sex, age, sire and dam; and

(h)[(g)] [Such] Other information as may be requested from time to time by the association or the commission including but not limited to changes of equipment, use of permitted race day medications, and wagering types available[authority].

Section 4[3]. Clerk of [the] Scales. One (1) racing official shall serve as clerk of [the] scales who shall be responsible for the security, regulation, and control of the jockeys'[jockeys] room, its equipment, and which personnel is permitted access[the equipment therein, and personnel permitted access thereto]. The clerk of scales shall be responsible for:

(1) Weighing out every jockey no later than fifteen (15) minutes prior to the race [the] in which the jockey is scheduled to ride and recording all overweights[overweights] which shall immediately be posted and announced to the public before each race;

(2) Weighing in every jockey immediately after the finish of each race in which a jockey rode and promptly notifying the stewards whether any jockey weighed in [~~more than two (2) pounds~~]underweight;

(3) Safekeeping of all racing colors;

(4) Reporting all color changes or jockey changes from that listed in the official daily program and causing the changes[same] to be posted and announced to the public before each race;

(5) Supervision of all valets and the issuance of numbered saddle cloths and equipment for each horse;

(6) Accuracy of the scales and periodic tests of them[thereof];

(7) Submitting to the racing secretary at the close of each racing day a statement of weight carried in each race by each jockey, noting overweight, if any; and

(8) Immediately transmitting all complaints, protests, objections, or disputes submitted to the clerk of [the] scales [~~shall be immediately transmitted~~] to the stewards, and if the stewards are unavailable, to the commission[authority].

Section 5[4]. Paddock Judge. One (1) racing official shall serve as paddock judge who shall have general supervision of the paddock. The paddock judge shall be responsible for:

(1) Assembling the horses and jockeys in the paddock no later than fifteen (15) minutes before the scheduled post time for each race;

(2) Maintaining a written record of all equipment for each horse saddled, inspecting all the[said] equipment, and [~~inspecting all equipment of each horse saddled and~~]reporting any changes in the equipment[change] [thereof] to the stewards;

(3) Inspecting the[inspection of] bandages of each[a] horse. The paddock judge may order the[such] bandages removed or replaced;

(4) Paddock schooling of all horses approved for schooling by the stewards; and

(5) Ensuring[Taking such measures as to insure] that the saddling of all horses is orderly, open to public view and free[, free]

from interference, and ensuring that horses are mounted at the same time and[, and] leave the paddock for the post in proper sequence.

Section 6[5]. Starter. (1) The starter shall be responsible for the fair and equal start of all horses in a race at the scheduled starting time by means of a starting gate and bell, or other device activated by his signal. So far as practical, the starter shall cause all horses to be loaded in order of post position, except[but] the starter may in his discretion load an unruly or fractious horse out of order or may start the unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. By permission of the stewards a race may be started without a starting gate. The starter may employ as many[such] assistant starters as needed[he may deem necessary] and shall daily change the gate position of each assistant starter without notice to the assistant starters until the field for the first race comes[shall come] upon the track.

(2) A[No] horse shall not be permitted to start in a race unless approval is given by the starter. The starter shall maintain a schooling list which shall be posted in the racing secretary's office listing the names of all horses ineligible to start due to inadequate training at leaving the gate. Horses shall be schooled under the supervision of the starter or his assistants.

(3) The starter shall report to the stewards any disobedience of his orders or attempts to take unfair advantage at the starting gate and recommend penalties for offenders.

(4) An[No] assistant starter shall not handle a horse until instructed to do so by the starter. An[No] assistant starter shall not strike or use abusive language to a jockey.

(5) A[No] starter or assistant starter shall not accept any gratuity or payment other than his regular salary, directly or indirectly, for services in starting a race, and he shall not[nor shall he] wager on a race.

(6) The starter shall maintain a written record showing the names of all starters during the day and the names of the assistant starters who handled each horse. This[, this] record shall be made available to the stewards upon request.

(7) The starter shall have constant radio or telephone communication with the stewards from the time the horses leave the paddock until the field is sent away.

Section 7[6]. Patrol Judges. At least two (2) racing officials shall serve as patrol judges who shall be stationed in elevated stands at points designated by the stewards to observe the running of each race. Each patrol judge shall have instant radio or telephone communication with the stewards to report observations, particularly as to any suspected foul riding, during the running of each race. Patrol judges shall assist in making up the film list and shall review all patrol films or video tapes before commencement of the next succeeding race program.

Section 8[7]. Placing Judges. Three (3) racing officials shall serve as placing judges who shall occupy a stand directly above the finish line during the running of each race. The placing judges shall take special note of racing colors and distinguishing equipment carried by each horse. The placing judges shall determine the order of the horses as they cross the finish line by consideration of the respective noses of the horses. The placing judges shall cause the numbers of the first four (4) horses to cross the finish line to be flashed on the result board. A photo finish camera approved by the commission[authority] shall be used as an aid by the placing judges in determining the order of the horses as they cross the finish line; placing judges may request a photo to assist in determining margins of less than a half-length.

Section 9[8]. Timer. A racing official shall serve as timer who shall occupy a stand directly above the finish line during the running of each race to record the official time. The timer shall record the fractional time of leading horses during each race and the final time of the first horse to cross the finish line. An electrical or mechanical timing device approved by the commission[authority] may be used as an aid by the timer in determining the official time of each race. The timer shall maintain a written record of fractional

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and finish times of each race and have ~~them~~^{same} available for inspection by the stewards or commission on request.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 13, 2011

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

CONTACT PERSON: Susan B. Speckert, General Counsel,
Kentucky Horse Racing Commission, 4063 Iron Works Parkway,
Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax
(859) 246-2039.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, August 15, 2011)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.215

STATUTORY AUTHORITY: KRS 230.215(2), 230.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260 authorizes the commission to promulgate administrative regulations that regulate conditions under which thoroughbred racing shall be conducted in Kentucky and to establish safety standards for jockeys. This administrative regulation establishes the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey, who has not ridden in a race previously, may ride in three (3) races before applying for a license as a jockey or apprentice jockey if:

- (1) The person is a licensed stable employee, assistant trainer, or trainer with at least one (1) year of service with a racing stable;
- (2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship, as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions, to be permitted the probationary mounts;
- (3) The starter has schooled the person in breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;
- (4) The stewards determine that the person:
 - (a) Intends to become a licensed jockey;
 - (b) Possesses the physical ability to be a jockey; and
 - (c) Has demonstrated his ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race; and
- (5) The person has prior oral or written approval of the stewards.

Section 2. Qualifications for License. In addition to the requirements applicable to licensees under 810 KAR 1:025, a holder of a license as a jockey or apprentice jockey:

- (1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;
- (2) Shall have served at least one (1) year with a racing stable;
- (3) Shall have ridden in at least three (3) races; and
- (4) Shall, if required by the stewards, to protect the health and safety of the jockey, other jockeys, the horses, and the welfare of the betting ~~public~~^{public} provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. (1) An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefore, shall:

- (a) Be approved by the stewards as to competency of horsemanship, as demonstrated by meeting the requirements in Section 1(2), (3), and (4)(b) and (c) of this administrative regulation;
- (b) Be granted an amateur jockey's license; and

(c) Have his amateur status duly noted on the daily race program.

(2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. (1) Any person sixteen (16) years of age or older, who has not been licensed previously as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

- (a) Ten (10) pounds until he has ridden five (5) winners;
- (b) Seven (7) pounds until he has ridden an additional thirty-five (35) winners;
- (c) If he has ridden a total of forty (40) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year; and
- (d) If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year, or until the 40th winning ~~mount~~^{mount} whichever occurs first.

(2)(a) After the completion of conditions in subsection (1) of this section, a contracted apprentice may claim three (3) pounds for one (1) year if riding horses owned or trained by his original contract employer if his contract has not been transferred or sold since his first winner.

(b) The original contract employer shall be the party to the contract who was the employer at the time of the apprentice jockey's first winner.

(c) Apprentice allowance shall not be claimed for a period in excess of two (2) years from the date of the rider's fifth winner unless an extension has been granted in accordance with subsection (4) of this section.

(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years.

(a) These contracts shall be:

1. Approved by the stewards;
2. Filed with the commission; and
3. Binding in all respects on the parties to the contract.

(b) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate.

(4) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more because of service in the armed forces of the United States, physical disablement, attendance in an institution of secondary or higher education, restrictions on racing, or other valid reason, the commission, upon recommendation of the stewards and after consultation with the racing entity which approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. (1) All contracts between an employer owner or trainer and employee rider shall be subject to 810 KAR Chapter 1.

(2) All riding contracts for terms longer than thirty (30) days, and any amendments, cancellation, or transfer, shall be in writing with the signatures of the parties notarized, and shall be approved by the stewards and filed with the commission.

(3) The stewards shall approve a riding contract and permit parties to participate in racing in this state if the stewards find that:

(a) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race when the contract is executed~~[at the time of the execution of the contract]~~;

(b) The contract employer possesses the character, ability, facilities, and financial responsibility conducive to developing a competent race rider; and

(c) If it is a contract for an apprentice jockey, the contract pro-

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vides for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from the date of execution.

Section 6. Restrictions as to Contract Riders. A rider shall not:

- (1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;
- (2) Ride or agree to ride any horse in a race without consent of his contract employer;
- (3) Share any money earned from riding with his contract employer; and
- (4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. (1) Any rider not prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer.

(2) These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the commission.

(3) Any rider employed by a racing stable on a regular salaried basis shall not ride against the stable which employs him.

(4) An owner or trainer shall not employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The fee to a jockey, in the absence of special agreement to the contrary, shall be as follows: ~~[(a) Purse \$599 and under: winning mount, \$33; second place mount, \$33; third place mount, \$33; losing mount, \$33.~~

~~(b) Purse \$600 to \$699: winning mount \$36; second place mount, \$33; third place mount, \$33; losing mount, \$33.~~

~~(c) Purse \$700 to \$1,499: winning mount, ten (10) percent of win purse; second place mount, \$33; third place mount, \$33; losing mount, \$33.~~

~~(d) Purse \$1,500 to \$1,999: winning mount, ten (10) percent of win purse; second place mount, \$35; third place mount, \$33; losing mount \$33.~~

~~(e) Purse \$2,000 to \$3,499: winning mount, ten (10) percent of win purse; second place mount, \$45; third place mount, \$40; losing mount, \$38.~~

~~(f) Purse \$3,500 to \$4,999: winning mount, ten (10) percent of win purse; second place mount, \$55; third place mount, \$45; losing mount, \$40.]~~

~~(g) Purse up to \$5,000 to \$9,999: winning mount, ten (10) percent of win purse; second place mount, \$70 or five (5) percent of place purse, whichever is greater [\$65]; third place mount, \$60[\$50]; fourth place mount, \$55; losing mount, \$50[\$45.]~~

~~(h) Purse, \$10,000 to \$14,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of [second]place purse; third place mount, \$65 or five (5) percent of show [third place]purse, whichever is greater; fourth place mount \$60; losing mount, \$55;[\$50.]~~

~~(i) Purse, \$15,000 to \$24,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of [second]place purse; third place mount, five (5) percent of show [third place]purse; fourth place mount, \$65; losing mount, \$60;[\$55.]~~

~~(j) Purse, \$25,000 to \$49,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of [second]place purse; third place mount, five (5) percent of show [third place]purse; fourth place mount, \$75; losing mount, \$70;[\$65.]~~

~~(k) Purse, \$50,000 to \$99,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of [second]place purse; third place mount, five (5) percent of show [third place]purse; fourth place mount, \$90; losing mount, \$85; and[\$80.]~~

~~(l) Purse, \$100,000 and up: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of [second]place purse; third place mount, five (5) percent of show [third place]purse; fourth place mount, five (5) percent of fourth place purse; losing mount, \$110[\$105].~~

(2) A jockey fee shall be considered earned by a rider if he is weighed out by the clerk of scales, with the following exceptions:

(a) If a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay an appropriate fee to each rider engaged for the race;

(b) If a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, reasonable cause; or

(c) If a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or the commission, after the result has originally been made official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards due to circumstances under which a jockey could not reasonably be expected to be physically present at the required time. A rider shall not be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, except if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards or the clerk of scales due to circumstances under which a jockey could not reasonably be expected to ride; and upon arrival shall report to the clerk of scales his engagements. If a rider fails for any reason to arrive in the jockey room no later than one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. While a rider is outside of the jockey room, a rider shall not have contact or communication with any person other than an owner or trainer for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room to conduct specific business previously approved by the stewards so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and when weighing out, the rider shall declare overweight, if any.

(2)(a) A rider shall not pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; and

(b) A rider shall not pass the scale with more than five (5) pounds overweight.

(3) A horse shall not be disqualified because of overweight carried.

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(4) Riding crops[Whip], blinkers, number cloths[cloth], bridles, bits, reins, over-girth, breast collar,[bridle,] goggles, [rider's] safety helmets[helmet], and [rider's] safety vests[vest] shall not be included in a rider's weight.

Section 13. Wagering. A rider shall not place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all of these wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. (1) Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened.

(2) Each jockey shall wear:

(a) The cap and jacket racing colors registered in the name of the owner of the horse he is to ride;

(b) Stock tie;

(c) White or light breeches;

(d) Top boots;

(e) A safety vest and safety helmet that meet the standards set forth in subsections (4) and (5) of this section; and

(f) A number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program.

(3) The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

(4) A jockey mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his helmet has a tag, stamp, or similar identifying marker indicating that it meets one of the following safety standards:

(a) ASTM International Standard, ASTM F1163-04a;

(b) British Standards, BS EN 1384:1997 or PAS 015:1999; or

(c) Australian/New Zealand Standard, AS/NZS 3838:2006.

(5) A jockey mounted on a horse or stable pony at any location under the jurisdiction of the commission shall wear a safety vest at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his safety vest has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards:

(a) British Equestrian Trade Association (BETA):2000 Level 1;

(b) Euro Norm (EN) 13158:2000 Level 1;

(c) ASTM International Standard, ASTM F2681-08;

(d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or

(e) Australian Racing Board (ARB) Standard 1.1998.

Section 15. Advertising. (1) A jockey shall not wear advertising or promotional material of any kind (whether for a nonprofit or for-profit entity) on clothing within one (1) hour before or after a race, unless:

(a)1. The material advertises or promotes the Jockey's Guild in the form of the picture of a jockey's boot or the picture of a wheelchair, with no additional picture or logo;

2. The material advertises or promotes the Permanently Disabled Jockey's Fund in the form of the pictures of its logo, with no additional picture or logo; or

3. The picture or logo has previously been approved by the current owner, association, and the stewards under the process set forth in this administrative regulation, and this approval is reflected in the commission's official records;

(b) The material complies with the size restrictions of subsection (2)(b) of this section;

(c) The material meets the advertising standards listed in subsection (2) of this section;

(d) Written approval by the following is submitted to the commission:

1. The managing owner of the horse, or authorized agent of the managing owner who acts with actual authority and has been

specifically authorized in writing to sign the written approval on behalf of the managing owner. Written authorization shall be evidenced by completion and return to the commission of the "Authorized Agent License Application" form. If the owner is a business entity, in lieu of filing the "Authorized Agent License Application" form, the owner may file duly adopted resolutions of the business entity authorizing the agent to act on its behalf and remit the twenty-five (25) dollar license application fee;

2. The jockey riding the horse or the authorized agent of the jockey who acts with actual authority and has been specifically authorized in writing to sign the written approval on behalf of the jockey. Written authorization shall be evidenced by completion and return to the commission of the "Authorized Agent License Application" form;

3. The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section; and

4. The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections (2)(b) and (3) of this section; and

(e) Written approval required pursuant to subsection (1)(d) of this section is evidenced by completion and return to the commission of the "Request to Wear Advertising and Promotional Materials" form. The form shall be completed and submitted to the stewards not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn. Other forms[~~No other form~~] of approval shall not be accepted by the commission.

(2) Advertising or promotional material displayed on jockey clothing shall:

(a) Not compete with, conflict with, or infringe upon sponsorship agreements applicable to the racing association race or to the race meet in progress; and

(b) Comply with the following size restrictions:

1. A maximum of thirty-two (32) square inches on each thigh of the pants on the outer side between the hip and knee and ten (10) square inches on the rear of the pant at the waistline at the base of the spine;

2. A maximum of twenty-four (24) square inches on boots and leggings on the outside of each nearest the top of the boot; and

3. A maximum of six (6) square inches on the front center of the neck area (on a turtleneck or other undergarment).

(3) A sponsorship shall not be permitted by a person or entity whose message, business reputation, or ongoing business activity may be considered as obscene or indecent to a reasonable person.

(4)(a) The party presenting the advertising or promotional opportunity to the owner and jockey (including without limitation, the owner and jockey) shall disclose in writing all material terms, including financial, regarding the advertising or promotional opportunity to the owner and the jockey;

(b) The division of proceeds from any advertising or promotional material placed in accordance with this administrative regulation shall be [is] subject to agreement between the owner and the jockey;

(c) The agreement between the owner and jockey shall be made in writing on the "Owner/Jockey Advertising and Promotional Materials Agreement" not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn;

(d) Other forms of agreement or contract shall not be used; and

(e) Any party who fails to comply with this or any other provision provided in this administrative regulation may be subject to penalties by the commission in accordance with KRS Chapter 230 and 810 KAR Chapter 1.

(5) As a condition for approval of advertising or promotional material, either the owners, the stewards, or the licensed racing association may require a personal viewing of the proposed material as it is to be displayed, to determine that the requirements of this section are met.

(6) The sponsor of a licensed racing association race or race meeting may display advertising or promotional material on an association saddlecloth if it does not interfere with the clear visibili-

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ty of the number of the horse.

(7) Advertising content other than that approved in this administrative regulation shall not be permitted.

(8) This administrative regulation shall not infringe upon or limit the common law rights of a racing association to eject or exclude persons, licensed or unlicensed, from association grounds, or to apply the association's internal rules regarding other forms of advertising not addressed in this or any other applicable statute or administrative regulation, if the internal rules have been previously filed with and approved by the commission or its authorized representative.

Section 16. Viewing Films or Tapes of Races. (1) Every rider shall check the film list posted by the stewards in the jockey room the day after riding in a race.

(2) The posting of the film list shall be considered as notice to all riders whose names are listed to present themselves when designated by the stewards to view the patrol films or video tapes of races.

(3) Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

Section 17. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Request to Wear Advertising and Promotional Material", KHRC 009-01, 10/10:[40/40]

(b) "Authorized Agent License Application", KHRC 009-02, 5/10; and

(c) "Owner/Jockey Advertising and/or Promotional Materials Agreement", KHRC 009-03, 5/10.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission Web site at <http://www.khrc.ky.gov/>.

ROBERT M. BECK, Jr., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 13, 2011

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

CONTACT PERSON: Susan Bryson Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, August 15, 2011)

810 KAR 1:012. Horses.

RELATES TO: KRS 230.215

STATUTORY AUTHORITY: KRS 230.215, 230.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 and 230.260 authorize the Kentucky Horse Racing Commission to promulgate administrative regulations regulating horse racing in Kentucky. This administrative regulation establishes requirements for the participation of horses in horse race meetings, protects the safety and welfare of the horse, and creates a level playing field for participants thereby protecting the integrity of pari-mutuel wagering.

Section 1. Definition. "Electronic registration system" means 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.

Section 2. Registration Required. (1) Except as provided by

subsection (2) of this section, a horse shall not be entered or raced in this state unless:

(a) Duly registered in The Jockey Club breed registry; and

(b) 1. The registration certificate or racing permit issued by The Jockey Club for the horse is on file with the racing secretary; or 2. The information contained on the registration certificate or racing permit is available to the racing secretary through the electronic registration system.

(2) The stewards may for good cause waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction.

(3) Upon claim, sale, or any other transfer of ownership, the horse's registration certificate or racing permit shall be given to the new owner. The new owner may report the change in ownership to an association's racing secretary, or his designee, or horse identifier, or his designee, to enter ownership information in the electronic registration system.

(4) If the electronic registration system fails for any reason, the stewards may require presentation of a horse's registration certificate or racing permit prior to a horse being entered or raced in Kentucky.

(5) The stewards may at any time require presentation of a horse's registration certificate or racing permit. Failure to comply with this provision may result in imposition of penalties pursuant to 810 KAR 1:028.

Section 3. Ringers Prohibited. (1) A horse shall not be entered or raced in this state designated by a name other than the name under which the horse is currently registered with The Jockey Club. If a horse's name is changed with The Jockey Club, the horse's former name shall be shown parenthetically in the daily race program the first three (3) times the horse races after the name change.

(2) A person shall not cause or permit the correct identity of a horse to be concealed or altered. A person shall not refuse to reveal the correct identity of a horse he owns or that is in his care to a racing official or member of the regular news media.

(3) A horse shall not race in this state unless the horse has:

(a) A legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau;

(b) An electronic horse identification microchip that accurately identifies the horse and is compliant with the international standards ISO 11784; or

(c) With regards to a horse from a foreign jurisdiction participating in a graded stakes race, has otherwise been correctly identified to the stewards' satisfaction.

(4) A horse shall not be entered or raced in this state if previously involved in a "ringer" case to the extent that:

(a) A person having control of the horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with The Jockey Club; or

(b) The person having control of the horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

Section 4. Denerving. (1) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate, racing permit, or entry in the electronic registration system. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the trainer of the denerved horse to ensure this fact is correctly designated.

(2) A horse whose ulnar, radial, or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed, shall not be entered or raced in this state.

(3) A horse that has had a posterior digital neurectomy (known as low nerved), may be permitted to race if the denerving has been reported by the trainer to the stewards, and the horse has been approved for racing by the commission veterinarian prior to being entered for a race.

(4) If a horse races in violation of this administrative regulation and participates in the purse distribution, then a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

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(5) If a horse races in violation of this administrative regulation and is claimed, then a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours requesting the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all derved horses shall be posted in the racing secretary's office. Only horses that have in fact had a neurectomy shall be so reported.

Section 5. Bleeders. (1) A horse that bleeds either during or after a race or workout and is not on bleeder medication may race on bleeder medication at the discretion of the commission veterinarian.

(2)(a) A horse that bleeds while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the commission veterinarian after consultation with the practicing veterinarian.

(b) If the commission veterinarian and the practicing veterinarian disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the chairman of the commission or his designee.

(c) The opinion of the third veterinarian shall be delivered to the chairman of the commission or his designee who shall make a final decision on the issue.

Section 6. Health Certificate Required. (1) A horse shall not be stabled on the grounds of a licensed association or any training center under the jurisdiction of the commission unless within ten (10) days prior to arrival on the grounds, the horse has been examined by an accredited practicing veterinarian who shall certify:

(a) The horse's identity;

(b) The horse's body temperature when examined;

(c) That, to the best of the examining veterinarian's knowledge and belief, the horse is free from any infectious or contagious disease, or exposure thereto, and observable ectoparasites; and

(d) Any other matters as may be required from time to time by the Kentucky State Veterinarian.

(2) Notice of this requirement shall be included in the stall application of all licensed associations and training centers under the jurisdiction of the commission and all condition books of licensed associations.

Section 7. Workouts. A horse shall not be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 8. Age Restrictions. A maiden six (6) years of age or older that has made five (5) life time starts on the flat shall not be entered or start.

Section 9. Fillies and Mares Bred. (1) A filly or mare that has been covered by a stallion shall be so reported to the racing secretary prior to being entered in a race.

(2) A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office.

(3) A filly or mare that has been covered by a stallion shall not be entered in a claiming race, unless a written release from the stallion owner is attached to the filly's or mare's registration certificate indicating that the stallion service fee has been paid or satisfied.

Section 10. Serviceable for Racing. A horse shall not be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time require a horse on association grounds to be examined by a qualified person;

(2) Is posted on a veterinarian's list, stewards' list, or starter's list, or is suspended, in any racing jurisdiction;

(3) Has been administered any drug in violation of 810 KAR 1:018;

(4) Is blind or has seriously impaired vision in both eyes;

(5) Is not correctly identified to the satisfaction of the stewards; or

(6) Is owned wholly or in part by or is trained by an ineligible person.

Section 11. Equipment. (1) Riding crops and blinkers shall be used consistently on a horse.

(2) Permission to change use of any equipment used on a horse from its last previous start shall be obtained from the stewards.

(3) A horse's tongue may be tied down during a race with a clean bandage or gauze.

(4) A horse's bridle shall not weigh more than two (2) pounds.

(5) Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather.

(6) War bridles and bitless bridles shall not be used.

(7) Bar shoes may be used for racing only with permission of the stewards.

(8) Any goading device, chain, spurs, electrical or mechanical device, or appliance, except for a riding crop, that may be used to alter the speed of a horse shall not be used on a horse in a race or workout.

(9)(a) Any riding crop may be subject to inspection and approval by the stewards or the clerk of the scales to ensure conformity with the specifications of paragraphs (c) through (e) of this subsection.

(b) Only riding crops meeting the specifications of this subsection, including the mandatory shock absorbing characteristics, may be used in thoroughbred racing and training.

(c) A riding crop shall have a:

1. Maximum weight of eight (8) ounces;

2. Maximum length, including flap, of thirty (30) inches; and

3. Minimum diameter of the shaft of three-eighths (3/8) ~~one-half (1/2)~~ inch.

(d)1. The only additional feature that may be attached to the riding crop is a flap that shall have a:

a. Maximum length from the end of the shaft of one-half (1/2) inch; and

b. Maximum width of one and six-tenths (1.6) inches, with a minimum width of eight-tenths (0.8) inch;

2. The flap from the end of the shaft shall not contain any reinforcements or additions;

3. There shall not be binding within seven (7) inches of the end of the flap;

4. The contact area of the shaft shall be smooth, with no protrusion or raised surface, and covered by shock absorbing material throughout its circumference; and

5. The flap shall have **[a]** similar shock absorbing characteristics to that of the contact area.

(e) A riding crop shall not have:

1. Stingers or projections extending through the hole of a popper; and

2. Any metal parts.

(10)(a) The following shall not be used on the front shoes of thoroughbred horses while racing or training on any racing surface:

1. Horse shoes (racing plates) that have toe grabs;

2. Bends;

3. Jar calks;

4. Stickers; and

5. Any other traction device worn on the front shoes of thoroughbred horses.

(b) Wear plates with a height no greater than two (2) millimeters may be used on the front shoes of thoroughbred horses while racing or training.

(11) Indiscriminate or brutal use on a horse of a riding crop or any other equipment, as determined by the stewards, at any time on the grounds of a licensed racing association or training center under the jurisdiction of the commission shall be prohibited.

Section 12. Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary and The Jockey Club promptly. The alteration shall be noted on the horse's registration certificate, racing permit, or entry in the electronic system.

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Section 13. A licensed racing association or training center under the jurisdiction of the commission shall report the death or euthanization of any horse on its grounds immediately to the chief commission veterinarian.

Section 14. Postmortem Examination. A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as follows:

(1) If a postmortem examination is to be conducted, the commission, through its designee, shall take possession of the horse upon death and shall not return the remains of the horse after completion of the postmortem examination. All shoes and equipment on the horse's legs shall be left on the horse;

(2) If a postmortem examination is to be conducted, the commission, through its designee, shall collect blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization occurs. The commission may submit blood, urine, bodily fluids, or other biologic specimens collected before euthanization or during a postmortem examination for analysis. The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation of 810 KAR 1:018; and

(3) All licensees shall comply with postmortem examination requirements. In proceeding with a postmortem examination the commission, through its designee, shall coordinate with the owner or owner's licensed authorized agent to determine and address any insurance requirements.

Section 15. Incorporation by Reference. (1) "ISO 11784", 1996/Amd.1:2004, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 13, 2011

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

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, August 15, 2011)

810 KAR 1:014. Weights.

RELATES TO: KRS 230.215, [KRS] 230.260[KRS 230.240-230.360]

STATUTORY AUTHORITY: KRS 230.215, [KRS] 230.260, [KRS] 230.290[, KRS 230.310][KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission to promulgate administrative regulations prescribing conditions under which all horse racing

is conducted in the Commonwealth.~~[To regulate conditions under which thoroughbred racing shall be conducted in Kentucky.] This~~~~[The function of this]~~ administrative regulation ~~provides~~~~[is to outline]~~ the requirements for assigning weights ~~to a horse in a~~ ~~[for the horse to]~~ race.

Section 1. (1) Weight penalties shall be obligatory. Weight allowance shall be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.

(2) A horse shall start with only the allowance of weight to which it is entitled at the time of starting, regardless of its allowance at time of entry.

(3) ~~A horse~~~~[Horses]~~ incurring ~~a~~ weight ~~penalty~~~~[penalties]~~ for a race shall not be entitled to any weight allowance for that race. ~~A horse~~~~[Horses]~~ not entitled to the first weight allowance in a race shall not be entitled to any subsequent allowance specified in the conditions.

(4) Claim of weight allowance to which a horse is not entitled shall not disqualify the horse, unless protest is made in writing and lodged with the stewards at least one (1) hour before post time.

(5) ~~A~~~~[No]~~ horse shall ~~not~~ incur a weight penalty or be barred from any race for having been placed second or lower in any race. ~~A~~~~[No]~~ horse shall ~~not~~ be given a weight allowance for failure to finish second or lower in any race.

(6)~~(a)~~ **Except as provided in paragraph (b) of this subsection, a**~~[No]~~ horse shall ~~not~~ receive allowance of weight **and shall not**~~[nor]~~ be relieved of extra weight for having been beaten in one (1) or more races.

(b) A horse may receive maiden allowances or allowances if it, however, this subsection shall not prohibit maiden allowances or allowances ~~to a horse that~~ **has**~~[have]~~ not won a race within a specified period or a race of a specified value.

(7) Penalties incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.

(8) In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form and the monthly chart books, or corresponding official publications of any foreign country, shall be considered official, **except they**~~[but]~~ may be corrected until forty-five (45) minutes prior to post time of the race.

(9) Horses winning races at unrecognized meetings shall not be penalized for ~~the~~~~[such]~~ winnings in races run thereafter under the jurisdiction of the commission~~[authority]~~. The maiden allowance, however, shall be lost by the winning of a race at any unrecognized meeting.

(10) ~~Except~~~~[Excepting]~~ in handicaps, fillies two (2) years old shall be allowed three (3) pounds, and fillies and mares three (3) years old and upward shall be allowed five (5) pounds before September 1, and three (3) pounds thereafter in races where **they are** competing against horses of the opposite sex.

(11) In all races of one (1) mile or over, other than maiden races, races for nonwinners at a mile or over, stakes races or handicaps, any horse which has never won at a distance of one (1) mile or over, shall be allowed three (3) pounds weight allowance in addition to any other allowances to which it may be entitled in the race; ~~the~~~~[such]~~ allowance shall be claimed at time of entry.

(12) ~~With the exception of apprentices, a~~~~[no]~~ jockey shall ~~not~~ be assigned a weight of less than 118 pounds.~~[The following is the scale of weights for age, and shall be carried when not otherwise specified in the condition of the race:~~

SCALE OF WEIGHTS										
Distance	Age	January/ February	March/ April	May	June	July	August	September	October	November/ December
One-half Mile	2	---	---	---	---	---	105	108	111	114
	3	117	119	121	123	125	126	127	128	129
	4	130	130	130	130	130	130	130	130	130
	5 and up	130	130	130	130	130	130	130	130	130
Six Furlongs	2	---	---	---	---	---	102	105	108	111
	3	114	117	119	121	123	125	126	127	128

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	4	129	130	130	130	130	130	130	130	130
	5 and up	130	130	130	130	130	130	130	130	130
One Mile	2	---	---	---	---	---	---	96	99	102
	3	107	111	113	115	117	119	121	122	123
	4	127	128	127	126	126	126	126	126	126
	5 and up	128	128	127	126	126	126	126	126	126
One Mile and a Quarter	2	---	---	---	---	---	---	---	---	---
	3	101	107	111	113	116	118	120	121	122
	4	125	127	127	126	126	126	126	126	126
	5 and up	127	127	127	126	126	126	126	126	126
One Mile and a Half	2	---	---	---	---	---	---	---	---	---
	3	98	104	108	111	114	117	119	121	122
	4	124	126	126	126	126	126	126	126	126
	5 and up	126	126	126	126	126	126	126	126	126
Two Miles	3	96	102	106	109	112	114	117	119	120
	4	124	126	126	126	126	125	125	124	124
	5 and up	126	126	126	126	126	125	125	124	124
In race if intermediate lengths, the weights for the shorter distance shall be carried]										

(13) Jockeys shall be weighed out for their respective mounts by the clerk of scales not less than fifteen (15) minutes before post time [(see also 810-KAR 1:009, Section 11(1))].

(14) A jockey's weight shall include his clothing, boots, [goggles,] saddle and its attachments, and [or] any other equipment except as specified in this subsection. [None of] The following items shall not be included in the jockey's weight: riding crop[whip], bridle, bit, [or] reins, safety helmet, safety vest, blinkers, goggles, over-girth, breast collar, and [or] number cloth [see also 810-KAR 1:009, Section 11(4)]. Upon approval of the stewards, jockeys may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions.

(15) Five (5) pounds shall be the limit of overweight any horse is permitted to carry [(see also 810-KAR 1:009, Section 11(2))].

(16) Only valets furnished by the association shall assist jockeys in weighing out.

(17) After a race has been run, the jockey shall ride promptly to the finish line, dismount, and present himself to the clerk of scales to be weighed in. He shall carry over to the scales all pieces of equipment with which he weighed out. The post-race weighing of jockeys shall include[includes] any sweat, dirt, and mud that have accumulated on the jockey, jockey's clothing, jockey's safety helmet, jockey's safety vest, and over-girth. This accounts for additional weight depending on specific equipment, as well as weather, track, and racing conditions.

(18) Each jockey shall weigh in at no less than[the same weight as] that at which he weighed out, and if short[ef it by more than two (2) pounds], the stewards shall investigate and if[when] warranted take disciplinary action against the individual or individuals responsible for the violation. If[When] warranted, the[such] action shall include disqualification of the horse from receiving what would otherwise be its share of the purse. [(19) No jockey shall weigh in at more than two (2) pounds over the weight at which he weighed out, except insofar as said weight may have been affected by the elements.]

(19)[(20)] If a jockey is prevented from riding his mount to the finish line because of an accident or illness either to himself or his mount[horse], he may walk or be carried to the scales, or he may be excused by the stewards from weighing in.

(20) A notice shall be included in the daily program that all jockeys will carry approximately three (3) pounds more than the published weight to account for safety helmets and safety vests that is not included in required weighing out procedures. A notice shall also be published that, upon approval of the stewards, a jock-

ey may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 13, 2011

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

CONTACT PERSON: Susan Bryson Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone 859-246-2040, fax 859-246-2039.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, August 15, 2011)**

810 KAR 1:150, Licensing totalizator companies.

RELATES TO: KRS 230.225, 230.260, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370, 230.380

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.300 [230.340], 230.370, 230.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) and 230.380 vest[vests] the commission with authority over any totalizator company that provides totalizator services to racing associations and simulcast facilities located in the Commonwealth. KRS 230.260(3) further requires the commission to license any totalizator company under its jurisdiction, regardless of whether the company is located in the Commonwealth, or operates from a location or locations outside of the Commonwealth. This administrative regulation establishes the license application procedures and requirements for totalizator companies that provide totalizator services to racing associations located in the Commonwealth that offer thoroughbred racing.

Section 1. Definitions. (1) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(2) "Individual" means a natural person, at least eighteen years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(3) "Nominal change in ownership" is defined in 810 KAR 1:037, Section 1(1)[811-KAR 1:037].

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(4) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(5) "Principal" is defined in KRS 230.210 when used in the context of a licensed association or an applicant for a license to conduct a horse race meeting; when used in the context of any other type of entity, "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(6) "Substantial change in ownership" is defined by 810 KAR 1:037, **Section 1(4)**[811 KAR 1:037].

(7) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of such wagers, and records, displays, and stores pari-mutuel wagering information.

(8) "Totalizator company" means any person providing totalizator services or equipment to a racing association or simulcast facility ~~[- or advanced deposit wagering entity].~~

Section 2. License Required. (1) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in ~~[or that conducts operations in]~~ the Commonwealth shall apply to the commission for a license pursuant to KRS 230.260(3). Deadlines for new license applications shall be as follows:

(a) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in ~~[or that conducts operations in]~~ the Commonwealth prior to {EFFECTIVE DATE OF REG}, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services" on or before {60 DAYS AFTER EFFECTIVE DATE}. Between the time that the license application is submitted and the commission renders a decision, ~~the~~[any such] totalizator company may continue to operate. The license shall be effective upon approval of the commission.

(b) Any other totalizator company shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services." The license shall be effective, and the totalizator company may begin operations, upon approval of the commission.

(2) Renewal applications. A license to provide totalizator services shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Provide Totalizator Services" on or before August 1 of the preceding year. The commission shall render a decision on the application on or before December 20. If approved, a renewal license shall be effective January 1.

(3) The applicant shall provide all information required to be disclosed in the application. If an applicant is unable, despite best efforts, to provide any information required, the applicant shall fully explain and document its reasons to the satisfaction of the commission, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.260(6), the applicant shall pay all costs incurred by the

commission in reviewing an application for an initial license, including legal and investigative costs, including the cost of performing background checks on the applicant's employees, owners and principals, and the cost of other necessary outside professionals and consultants. As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of ten thousand dollars (\$10,000). Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal, or rejection of the initial license application. To the extent additional costs become necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for a renewal license shall pay all reasonable costs incurred by the commission in reviewing a renewal license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. The applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of request. Failure to submit ~~the~~[such] payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(3) The commission may waive the requirements of subsections (1) and (2) of this section, in part or completely, if the applicant has undergone a certification process or other investigative review by a commission-approved industry or regulatory body.

(4) An annual license fee one thousand dollars (\$1,000) shall be payable to the commission upon issuance of the original license and thereafter, if a renewal license is granted, on or before January 1 of each year. A license shall not be issued until receipt of the license fee each year.

Section 4. License Application Procedures. (1) An application for a license shall be in the form and manner prescribed by the commission in accordance with Section 2(1) of this administrative regulation. The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application. The application shall include:

(a) The applicant's legal name;

(b) The location of the applicant's principal office;

(c) The name, address, and date of birth of each principal with a five percent (5%) or greater share of ownership or beneficial interest in the applicant;

(d) Audited financial statements for the last three years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern;

(e) A Standards for Attestation Engagements (SSAE) No. 16 report, or other independent report in a form acceptable to the commission, completed within the preceding 12 months, to assure adequate financial controls are in place and compliance with totalizator standards. The commission may require that a SSAE 16 audit, or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license;

(f) A list of personnel assigned to work in Kentucky, which shall be kept current and be provided to the commission upon request;

(g) A certification of compliance with the Kentucky Horse Racing Commission Totalizator Standards;

(h) An agreement to testing of hardware and software as may be directed by the commission; and

(i) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Provide Totalizator Services."

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available that it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the

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following:

(a) The integrity of the applicant and its principals, including whether the applicant has:

1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;

2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;

3. Been identified in the published reports of any federal or state legislative or executive body, or in an opinion of any judicial body, as being a member or associate of organized crime, or of being of notorious or unsavory reputation;

4. Been charged by any federal, state, or local law enforcement authority with a violation of any federal, state, or local law;

5. Had a gaming or totalizator company license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky; ~~or~~

6. Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto; ~~or~~

7. Been a party to litigation over business practices or disciplinary actions over a business license;

8. Been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

9. Failed to satisfy judgments, orders, or decrees; and

10. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes; ~~or~~

(b) The quality of physical facilities and equipment;

(c) The management ability of the applicant and its principals;

(d) Compliance of the applicant with applicable statutes, charters, ordinances, and administrative regulations; and

(e) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth; ~~or~~

Section 5. Oral Presentation by Applicant. (1) Prior to making its ruling, the commission may require an applicant to make an oral presentation concerning its application in order to clarify or otherwise respond to questions concerning the application. The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(2) If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

Section 6. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including copies of any documents used by the applicant in preparing the application and contracts between the applicant and third parties related to operations.

Section 7. Operations. (1) Before doing business in Kentucky, the licensee shall~~[must]~~ be qualified to do business in Kentucky.

(2) In addition to the information the commission may request under this or any other applicable administrative regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with the Department of Revenue or other regulatory agency.

(3) The licensee shall operate in conformity with the Kentucky Horse Racing Commission Totalizator Standards.

Section 8. Transfers of Licenses. (1) A license issued under

this administrative regulation shall not be~~[is neither]~~ transferable or~~[nor]~~ assignable.

(2) A substantial change in ownership in a licensee shall result in termination of the license unless prior written approval for the change has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Totalizator Change of Control Form." Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change in ownership will~~[shall]~~ be based.

(4) For purposes of subsection (3) of this section, notice is not required for:

(a) A nominal change in ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in an association, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired by a person who will~~[shall]~~ hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless the~~[such]~~ transaction results in the pledge or encumbrance of the assets or any portion of the assets~~[thereof]~~ of the association.

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Penalties and Enforcement. (1) The commission shall have all of the rights, powers, and remedies provided for in KRS Chapter 230, KAR Title 810, and KAR Title 811 to ensure compliance with this administrative regulation, including, but not limited to, revocation, suspension, or modification of a license and the imposition of fines.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial/Renewal License Application to Provide Totalizator Services" KHRC 150-01, 6/11;

(b) "Totalizator Change of Control Form," KHRC 150-02, 6/11; and

(c) "Kentucky Horse Racing Commission Totalizator Standards," KHRC 150-03, 6/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained at the commission's Web site, www.khrc.ky.gov.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at noon

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, August 15, 2011)

811 KAR 1:290, Licensing totalizator companies.

RELATES TO: KRS 230.225, 230.260, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370, 230.380

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.300, ~~[230.340]~~, 230.370, 230.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS

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230.260(3) ~~and 230.380 vest[vests]~~ the commission with authority over any totalizator company that provides totalizator services to racing associations and simulcast facilities located in the Commonwealth. KRS 230.260(3) further requires the commission to license any totalizator company under its jurisdiction, regardless of whether the company is located in the Commonwealth, or operates from a location or locations outside of the Commonwealth. This administrative regulation establishes the license application procedures and requirements for totalizator companies that provide totalizator services to racing associations located in the Commonwealth that offer standardbred racing.

Section 1. Definitions. (1) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(2) "Individual" means a natural person, at least eighteen years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(3) "Nominal change in ownership" is defined in ~~[840-KAR 4:037.] 811 KAR 1:037, Section 1(1).~~

(4) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(5) "Principal" is defined in KRS 230.210 when used in the context of a licensed association or an applicant for a license to conduct a horse race meeting; when used in the context of any other type of entity, "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(6) "Substantial change in ownership" is defined by ~~[840-KAR 4:037.] 811 KAR 1:037, Section 1(4).~~

(7) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of such wagers, and records, displays, and stores pari-mutuel wagering information.

(8) "Totalizator company" means any person providing totalizator services or equipment to a racing association ~~or[.] simulcast facility[.] or advanced deposit wagering entity].~~

Section 2. License Required. (1) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in ~~[or that conducts operations in]~~ the Commonwealth shall apply to the commission for a license pursuant to KRS 230.260(3). Deadlines for new license applications shall be as follows:

(a) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in ~~[or that conducts operations in]~~ the Commonwealth prior to {EFFECTIVE DATE OF REG}, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services" on or before {60 DAYS AFTER EFFECTIVE DATE}. Between the time that the license application is submitted and the commission renders a decision, ~~the[any such]~~ totalizator company may continue to operate. The license shall be effective upon approval of the commission.

(b) Any other totalizator company shall apply to the commission for a license by submitting a completed "Initial/Renewal Li-

cense Application to Provide Totalizator Services." The license shall be effective, and the totalizator company may begin operations, upon approval of the commission.

(2) Renewal applications. A license to provide totalizator services shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Provide Totalizator Services" on or before August 1 of the preceding year. The commission shall render a decision on the application on or before December 20. If approved, a renewal license shall be effective January 1.

(3) The applicant shall provide all information required to be disclosed in the application. If an applicant is unable, despite best efforts, to provide any information required, the applicant shall fully explain and document its reasons to the satisfaction of the commission, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.260(6), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs, including the cost of performing background checks on the applicant's employees, owners and principals, and the cost of other necessary outside professionals and consultants. As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of ten thousand dollars (\$10,000). Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal, or rejection of the initial license application. To the extent additional costs become necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for a renewal license shall pay all reasonable costs incurred by the commission in reviewing a renewal license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. The applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of request. Failure to submit ~~the[such]~~ payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(3) The commission may waive the requirements of subsections (1) and (2) of this section, in part or completely, if the applicant has undergone a certification process or other investigative review by a commission-approved industry or regulatory body.

(4) An annual license fee one thousand dollars (\$1,000) shall be payable to the commission upon issuance of the original license and thereafter, if a renewal license is granted, on or before January 1 of each year. A license shall not be issued until receipt of the license fee each year.

Section 4. License Application Procedures. (1) An application for a license shall be in the form and manner prescribed by the commission in accordance with Section 2(1) of this administrative regulation. The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application. The application shall include:

(a) The applicant's legal name;

(b) The location of the applicant's principal office;

(c) The name, address, and date of birth of each principal with a five percent (5%) or greater share of ownership or beneficial interest in the applicant;

(d) Audited financial statements for the last three years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern;

(e) A Standards for Attestation Engagements (SSAE) No. 16

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report, or other independent report in a form acceptable to the commission, completed within the preceding 12 months, to assure adequate financial controls are in place and compliance with totalizator standards. The commission may require that a SSAE 16 audit, or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license;

(f) A list of personnel assigned to work in Kentucky, which shall be kept current and be provided to the commission upon request;

(g) A certification of compliance with the Kentucky Horse Racing Commission Totalizator Standards;

(h) An agreement to testing of hardware and software as may be directed by the commission; and

(i) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Provide Totalizator Services."

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available that it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:

(a) The integrity of the applicant and its principals, including whether the applicant has:

1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;

2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;

3. Been identified in the published reports of any federal or state legislative or executive body, or in an opinion of any judicial body, as being a member or associate of organized crime, or of being of notorious or unsavory reputation;

4. Been charged by any federal, state, or local law enforcement authority with a violation of any federal, state, or local law;

5. Had a gaming or totalizator company license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky; ~~or~~

6. Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto; ~~or~~

7. Been a party to litigation over business practices or disciplinary actions over a business license;

8. Been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

9. Failed to satisfy judgments, orders, or decrees; and

10. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes; ~~and~~

(b) The quality of physical facilities and equipment;

(c) The management ability of the applicant and its principals;

(d) Compliance of the applicant with applicable statutes, charters, ordinances, and **administrative** regulations; **and**

(e) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth; ~~and~~

Section 5. Oral Presentation by Applicant. (1) Prior to making its ruling, the commission may require an applicant to make an oral presentation concerning its application in order to clarify or otherwise respond to questions concerning the application. The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(2) If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

Section 6. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including copies of any documents used by the applicant in preparing the application and contracts between the applicant and third parties related to operations.

Section 7. Operations. (1) Before doing business in Kentucky, the licensee ~~shall~~**must** be qualified to do business in Kentucky.

(2) In addition to the information the commission may request under this or any other applicable **administrative** regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with the Department of Revenue or other regulatory agency.

(3) The licensee shall operate in conformity with the Kentucky Horse Racing Commission Totalizator Standards.

Section 8. Transfers of Licenses. (1) A license issued under this administrative regulation ~~shall not be~~**is neither** transferable ~~or~~**nor** assignable.

(2) A substantial change in ownership in a licensee shall result in termination of the license unless prior written approval for the change has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Totalizator Change of Control Form." Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change in ownership ~~will~~**shall** be based.

(4) For purposes of subsection (3) **of this section**, notice is not required for:

(a) A nominal change in ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in an association, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired by a person who ~~will~~**shall** hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless ~~the~~**such** transaction results in the pledge or encumbrance of the assets or any portion ~~of the assets~~**thereof** of the association.

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Penalties and Enforcement. (1) The commission shall have all of the rights, powers, and remedies provided for in KRS Chapter 230, KAR Title 810, and KAR Title 811 to ensure compliance with this administrative regulation, including, but not limited to, revocation, suspension, or modification of a license and the imposition of fines.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial/Renewal License Application to Provide Totalizator Services" KHRC 150-01, 6/11;

(b) "Totalizator Change of Control Form," KHRC 150-02, 6/11; **and**

(c) "Kentucky Horse Racing Commission Totalizator Standards," KHRC 150-03, 6/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained at the commission's Web site, www.khrc.ky.gov.

ROBERT M. BECK, Jr., Chairman
ROBERT D. VANCE, Secretary

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APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at noon

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, August 15, 2011)

811 KAR 2:200, Licensing totalizator companies.

RELATES TO: KRS 230.225, 230.260, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370, 230.380

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.300, [230.340-] 230.370, 230.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) and 230.380 vest[vests] the commission with authority over any totalizator company that provides totalizator services to racing associations and simulcast facilities located in the Commonwealth. KRS 230.260(3) further requires the commission to license any totalizator company under its jurisdiction, regardless of whether the company is located in the Commonwealth, or operates from a location or locations outside of the Commonwealth. This administrative regulation establishes the license application procedures and requirements for totalizator companies that provide totalizator services to racing associations located in the Commonwealth that offer quarter horse, appaloosa or Arabian racing.

Section 1. Definitions. (1) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(2) "Individual" means a natural person, at least eighteen years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(3) "Nominal change in ownership" is defined in 811 KAR 2:140, Section 1(1) [810 KAR 1:037, 811 KAR 1:037].

(4) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(5) "Principal" is defined in KRS 230.210 when used in the context of a licensed association or an applicant for a license to conduct a horse race meeting; when used in the context of any other type of entity, "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(6) "Substantial change in ownership" is defined by 811 KAR 2:140, Section 1(4) [810 KAR 1:037, 811 KAR 1:037].

(7) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of such wagers, and records, displays, and stores pari-mutuel wagering information.

(8) "Totalizator company" means any person providing totalizator services or equipment to a racing association or [or] simulcast facility [or advanced deposit wagering entity].

Section 2. License Required. (1) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in ~~[or that conducts operations in]~~ the Commonwealth shall apply to the commission for a license pursuant to KRS 230.260(3). Deadlines for new license applications shall be as follows:

(a) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in ~~[or that conducts operations in]~~ the Commonwealth prior to {EFFECTIVE DATE OF REG}, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services" on or before {60 DAYS AFTER EFFECTIVE DATE}. Between the time that the license application is submitted and the commission renders a decision, the [any such] totalizator company may continue to operate. The license shall be effective upon approval of the commission.

(b) Any other totalizator company shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services." The license shall be effective, and the totalizator company may begin operations, upon approval of the commission.

(2) Renewal applications. A license to provide totalizator services shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Provide Totalizator Services" on or before August 1 of the preceding year. The commission shall render a decision on the application on or before December 20. If approved, a renewal license shall be effective January 1.

(3) The applicant shall provide all information required to be disclosed in the application. If an applicant is unable, despite best efforts, to provide any information required, the applicant shall fully explain and document its reasons to the satisfaction of the commission, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.260(6), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs, including the cost of performing background checks on the applicant's employees, owners and principals, and the cost of other necessary outside professionals and consultants. As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of ten thousand dollars (\$10,000). Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal, or rejection of the initial license application. To the extent additional costs become necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for a renewal license shall pay all reasonable costs incurred by the commission in reviewing a renewal license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. The applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of request. Failure to submit the [such] payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(3) The commission may waive the requirements of subsections (1) and (2) of this section, in part or completely, if the applicant has undergone a certification process or other investigative review by a commission-approved industry or regulatory body.

(4) An annual license fee one thousand dollars (\$1,000) shall be payable to the commission upon issuance of the original license and thereafter, if a renewal license is granted, on or before January 1 of each year. A license shall not be issued until receipt of the license fee each year.

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Section 4. License Application Procedures. (1) An application for a license shall be in the form and manner prescribed by the commission **in accordance with Section 2(1) of this administrative regulation**. The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application. The application shall include:

- (a) The applicant's legal name;
 - (b) The location of the applicant's principal office;
 - (c) The name, address, and date of birth of each principal with a five percent (5%) or greater share of ownership or beneficial interest in the applicant;
 - (d) Audited financial statements for the last three years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern;
 - (e) A Standards for Attestation Engagements (SSAE) No. 16 report, or other independent report in a form acceptable to the commission, completed within the preceding 12 months, to assure adequate financial controls are in place and compliance with totalizator standards. The commission may require that a SSAE 16 audit, or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license;
 - (f) A list of personnel assigned to work in Kentucky, which shall be kept current and be provided to the commission upon request;
 - (g) A certification of compliance with the Kentucky Horse Racing Commission Totalizator Standards;
 - (h) An agreement to testing of hardware and software as may be directed by the commission; and
 - (i) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Provide Totalizator Services."
- (2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available that it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:
- (a) The integrity of the applicant and its principals, including whether the applicant has:
 1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;
 2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;
 3. Been identified in the published reports of any federal or state legislative or executive body, or in an opinion of any judicial body, as being a member or associate of organized crime, or of being of notorious or unsavory reputation;
 4. Been charged by any federal, state, or local law enforcement authority with a violation of any federal, state, or local law;
 5. Had a gaming or totalizator company license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky; ~~or~~
 6. Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto; ~~or~~
 7. Been a party to litigation over business practices or disciplinary actions over a business license;
 8. Been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;
 9. Failed to satisfy judgments, orders, or decrees; and
 10. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes; ~~or~~
 - (b) The quality of physical facilities and equipment;

- (c) The management ability of the applicant and its principals;
- (d) Compliance of the applicant with applicable statutes, charters, ordinances, and **administrative** regulations; **and**
- (e) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth. ~~;~~

Section 5. Oral Presentation by Applicant. (1) Prior to making its ruling, the commission may require an applicant to make an oral presentation concerning its application in order to clarify or otherwise respond to questions concerning the application. The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(2) If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

Section 6. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including copies of any documents used by the applicant in preparing the application and contracts between the applicant and third parties related to operations.

Section 7. Operations. (1) Before doing business in Kentucky, the licensee **shall**~~must~~ be qualified to do business in Kentucky.

(2) In addition to the information the commission may request under this or any other applicable **administrative** regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with the Department of Revenue or other regulatory agency.

(3) The licensee shall operate in conformity with the Kentucky Horse Racing Commission Totalizator Standards.

Section 8. Transfers of Licenses. (1) A license issued under this administrative regulation **shall not be**~~is neither~~ transferable ~~or~~~~not~~ assignable.

(2) A substantial change in ownership in a licensee shall result in termination of the license unless prior written approval for the change has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Totalizator Change of Control Form." Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change in ownership **will**~~shall~~ be based.

(4) For purposes of subsection (3) **of this section**, notice is not required for:

- (a) A nominal change in ownership if the licensee is a publicly traded corporation;
- (b) The transfer of an ownership interest in an association, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired by a person who **will**~~shall~~ hold the voting securities of the publicly traded corporation for investment purposes only; or
- (c) A debt transaction of a publicly traded corporation, unless **the**~~such~~ transaction results in the pledge or encumbrance of the assets or any portion **of the assets**~~thereof~~ of the association.

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Penalties and Enforcement. (1) The commission shall have all of the rights, powers, and remedies provided for in KRS Chapter 230, KAR Title 810, and KAR Title 811 to ensure compliance with this administrative regulation, including, but not limited to, revocation, suspension, or modification of a license and

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the imposition of fines.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial/Renewal License Application to Provide Totalizator Services" KHRC 150-01, 6/11;

(b) "Totalizator Change of Control Form," KHRC 150-02, 6/11; **and**

(c) "Kentucky Horse Racing Commission Totalizator Standards," KHRC 150-03, 6/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained at the commission's Web site, www.khrc.ky.gov.

ROBERT M. BECK, Jr., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at noon

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Heating, Ventilation, and Air Conditioning (As Amended at ARRS, August 15, 2011)

815 KAR 8:030. Apprentice heating, ventilation, and air conditioning (HVAC) mechanic registration and certification requirements.

RELATES TO: KRS 198B.650, 198B.656, 198B.658, 198B.662, 198B.664

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.658(3)(a) NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring~~allowing~~ unlicensed ~~requiring~~ persons engaged in ~~the business of~~ heating, ventilation and air conditioning (HVAC) ~~contracting~~ to be registered. This administrative regulation establishes the requirements for registration and certification of apprentices.

Section 1. Registration of Apprentices. (1) Except for those HVAC apprentices registered with the Division of Employment Standards, Department of Labor, all apprentices ~~apprentices, as~~ defined by KRS 198B.650, shall~~may~~ ~~shall~~ be registered with the board by complying ~~and comply~~ with this administrative regulation.

(2) Each individual who registers ~~registered~~ with the board shall be issued an HVAC certificate of apprenticeship pursuant to KRS 198B.658(3) and this administrative regulation.

(3) The HVAC Apprentice Registration form shall be updated ~~biennially~~ by the apprentice and submitted to the board to update change of address or change of employer. ~~board:~~

(a) ~~To indicate changes of address or employer; and~~

(b) ~~To record work hours under the supervision of a master contractor.]~~

(4) The certificate of registration shall authorize an individual to work in the HVAC trade under: ~~under~~

(a) The ~~the~~ direct supervision of at least one (1) journeyman HVAC mechanic; and ~~mechanic as well as the~~

(b) The general supervision of a master contractor.

(5) The registration application ~~of registration~~ shall include the license number and signature of the supervising master contractor.

Section 2. Initial Application for Apprentice Certificate of Registration. Registration shall be accomplished by filing a completed HVAC Apprentice Registration Form, Form HVAC 3, with the board including a passport-sized photograph. The photograph

shall be taken not more than sixty (60) days prior to submitting the HVAC Apprentice Registration Form" HVAC Apprentice Registration", Form HVAC 3, with the board including a passport sized photograph. The photograph submitted shall be taken within sixty (60) days of submitting application]. ~~[(1) Registration shall be accomplished by:~~

~~(a) Completing and filing the HVAC Apprentice Registration Form HVAC 3 with the board; and~~

~~(b) Submitting a passport-sized color photograph.~~

Section 3. Certificate Renewal Requirements. (1) Each apprentice shall renew the registration biennially by completing and filing the HVAC Apprentice Registration Form HVAC 3 no later than the last day of the certificate holder's birth month.

(2) Failure to be registered with the board shall disqualify an apprentice from work until the apprentice renews the registration.]

Section 3. ~~4.]~~ Minimum Number of Hours of Experience. (1) 3,000 verifiable work hours shall be the ~~[The]~~ minimum number of work hours accepted as ~~[to be completed by an apprentice as part of]~~ the required two (2) years of experience ~~[to apply]~~ for an HVAC journeyman mechanic license pursuant to 815 KAR 8:020 ~~[and shall be 3,000 work hours]~~.

(2) The apprentice shall retain personal records of employment hours to verify ~~[which substantiate]~~ the experience required ~~[necessary to apply]~~ for a journeyman HVAC mechanic license.

Section 4. ~~5.]~~ Incorporation by Reference. (1) "HVAC Apprentice Registration Form", Form HVAC 3, August 2011 ~~[Form HVAC 3, [HVAC Apprentice Registration, Form HVAC 3, March, 2005], is incorporated by reference.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the ~~[Office]~~ of Housing, Buildings and Construction, ~~[HVAC]~~ Division of HVAC, 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 26, 2011

FILED WITH LRC: May 27, 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.

CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (As Amended at ARRS, August 15, 2011)

900 KAR 7:040. Release of public data sets for health care discharge data.

RELATES TO: KRS 216.2920-216.2929

STATUTORY AUTHORITY KRS: 194A.050(1), 216.2923(2)(c), 216.2925(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2923 requires ~~mandates that~~ the Cabinet for Health and Family Services to publish and make available information relating to the health care delivery and finance system that is in the public interest. KRS 216.2927 mandates that personally identifying data collected by the Cabinet for Health and Family Services from health care providers not be released to the general public nor be allowed public inspection under KRS 61.870 to 61.884. This administrative regulation establishes the guidelines for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030 ~~[902 KAR 19:020]~~, while maintaining patient confidentiality and further protecting personally identifying information.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216.2920(2).

(2) "Data" means the information collected pursuant to 900 KAR 7:030 ~~[902 KAR 19:020]~~.

(3) "Encounter-level" means the data record of a single in-

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stance of hospitalization, outpatient service, [1] ambulatory surgery, emergency department, or observation stay billing record contained in a data file.(4) "Health care provider" is defined by KRS 216.2920(5).

(5) "Public" means a person or group not directly responsible for the collection, maintenance, custody, or dissemination of data for purposes of this administrative regulation.

(6) "Report" means a summary or compilation of data disseminated to the public.

Section 2. Encounter-Level Data. [(1) Notwithstanding the provisions of KRS 216.2927(3) regarding single copies of aggregate data.] Encounter-level data shall be released in the following standard file format described in the table below:

Encounter-Level Standard File Format - Data Element Contained in the File if information is available	
File Type	
Provider ID	
Quarter & Year of Discharge	
Patient Gender	
Patient Age Group	
Patient Race/Ethnicity	
Patient Resident County	
Type of Admission	
Source of Admission	
Diagnosis 1 (Primary)	
Diagnosis 2	
Diagnosis 3	
Diagnosis 4	
Diagnosis 5	
Diagnosis 6	
Diagnosis 7	
Diagnosis 8	
Diagnosis 9	
Diagnosis 10	
Diagnosis 11	
Diagnosis 12	
Diagnosis 13	
Diagnosis 14	
Diagnosis 15	
Diagnosis 16	
Diagnosis 17	
Diagnosis 18	
Diagnosis 19	
Diagnosis 20	
Diagnosis 21	
Diagnosis 22	
Diagnosis 23	
Diagnosis 24	
Diagnosis 25	
Procedure 1[(Primary)]	
Procedure 2	
Procedure 3	
Procedure 4	
Procedure 5	
Procedure 6	
Procedure 7	
Procedure 8	
Procedure 9	
Procedure 10	
Procedure 11	
Procedure 12	
Procedure 13	
Procedure 14	
Procedure 15	
Procedure 16	
Procedure 17	
Procedure 18	
Procedure 19	
Procedure 20	

Procedure 21
Procedure 22
Procedure 23
Procedure 24
Procedure 25
Length of Stay
Total Charges
Discharge Status
Payer 1 (Primary)
Payer 2
Payer 3
Diagnostic related group
Medicare Severity - Diagnostic related group
Major Diagnostic Category
Diagnosis Version Qualifier
Event Code 1
Event Code 2
Do not resuscitate indicator
Diagnosis present on admission indicator

Section 3. Summary Data. (1) The cabinet shall not release data ~~if identified in~~ KRS 216.2927 **prohibits its release.**

(2) The cabinet may include the following data elements, in any combination thereof, for encounter-level, aggregate, and summary report formats:

- (a) Diagnoses and procedures, primary, and any other level;
- (b) Diagnosis and procedure groupings, including diagnostic related groups, major diagnostic categories, and agency for health care policy and research clinical classification system;
- (c) Patient gender;
- (d) Age or age grouping;
- (e) Discharge status;
- (f) Payor category, all levels;
- (g) Charge information, total and ancillary;
- (h) County of patient residence;
- (i) County of provider;
- (j) Ancillary department information;
- (k) Length of stay, total, and average;
- (l) External cause of injury;
- (m) Race or ethnicity; or
- (n)[(m)] Mortality rate. Reports including mortality rates shall be adjusted by severity of illness by reputable grouping software, either on a contract basis or by the cabinet.

(3) [At least thirty (30) working days prior to the release or dissemination of the reports identified in subsection (2) of this section, the cabinet shall permit a health care provider identified in the report the opportunity to verify the accuracy of information pertaining to the provider. Within the thirty (30) day period, the provider may submit to the cabinet corrections or errors in the compilation of the data, with supporting evidence.

(4) The cabinet shall correct data found to be in error and shall include additional commentary as requested by the provider for major deviations in the individual provider's data from the statewide average.

(5)] Data shall not be withheld from the public or another interested party based solely on an unfavorable profile of a provider or group of providers, if the data is deemed reliable, accurate, and sufficiently free of error, as determined by the cabinet and pursuant to 900 KAR 7:030 [902-KAR-19:020, Section 5].

Section 4. Release of Data. (1) A person or agency shall, as a condition for receiving data from the cabinet, sign an "Agreement for Use of Kentucky Health Claims Data". A person or agency receiving data shall agree to adhere to the confidentiality requirements established in subsection (2) of this section and KRS 216.2927.

- (2) To protect patient confidentiality:
 - (a) A report or summary of data that consists of five (5) or fewer records shall not be released or made public;
 - (b) A person or agency receiving data shall not redistribute or sell data in the original format;
 - (c) Distribution of data received by the cabinet shall be ap-

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proved by the custodial agency prior to receipt of the data;

(d) The data collected pursuant to 900 KAR 7:030 [~~902-KAR 19:020~~] shall be used only for the purpose of health statistical reporting and analysis or as specified in the user's written request for the data; and

(e) A user shall not attempt to link the public use data set with an individually identifiable record from another data set.

Section 5. Fees. (1) The cabinet shall charge \$1,500 for the purchase of a single copy of an annual, public-use data set.

(2) A public-use data set ~~shall~~will be available for purchase no later than sixty (60) days after the end of the facility reporting period as established in 900 KAR 7:030 [~~902-KAR 19:020, Section 4~~]. Special requests for data shall be prioritized and completed at the discretion of the custodial agency.

Section 6. Incorporation by Reference. (1) "Agreement for Use of Kentucky Health Claims Data", September 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

CARRIE BANAHAN, Executive Director

JANIE MILLER, Secretary

APPROVED BY AGENCY: June 9, 2011

FILED WITH LRC: June 14, 2011 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(Amended After Comments)

201 KAR 5:110. Expanded therapeutic procedures.

RELATES TO: KRS 320.210(2) and 320.240(4), (5), and (7)
STATUTORY AUTHORITY: KRS 320.210(2) and 320.240(4), (5), and (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.240(4) grants the Kentucky Board of Optometric Examiners the authority to promulgate reasonable regulations and the board's administrative regulations shall include the classification and licensure of optometrists by examination and credentials. KRS 320.240(5) requires a therapeutically licensed optometrist to meet educational and competence criteria set forth by the board in order to perform expanded therapeutic procedures, and evidence of proof of continuing competency shall be determined by the board. This administrative regulation establishes the educational and competence criteria necessary for a therapeutically licensed optometrist to perform expanded therapeutic procedures.

Section 1. Qualifications for a Kentucky Licensed Optometrist [licensed optometrists] to be Credentialed [credentialed] to Utilize Expanded Therapeutic Procedures. [utilize expanded therapeutic procedures.] A Kentucky licensed optometrist shall be credentialed to perform expanded therapeutic procedures if:

(1) The applicant provides proof that the applicant: [A Kentucky licensed optometrist shall not be credentialed to perform expanded therapeutic procedures unless:

(a) Holds an active license in good standing by another state: [The optometrist provides proof that the optometrist holds an active license in good standing by another state and is also credentialed by that state to perform expanded therapeutic procedures; or]

(b) Is also credentialed by that state to perform expanded therapeutic procedures; and [The optometrist is currently therapeutically certified in Kentucky and shall:]

(c) The requirements in the state of licensure for performing expanded therapeutic procedures meet or exceed the requirements in this section; or

(2)(a) The optometrist is currently therapeutically licensed in Kentucky; and

(b) [4]. Provides proof of completion of a course approved by the Board that includes: [shall consist of]

1. The following didactic instruction; [and clinical experiences as outlined below:]

Class room instruction covering:

- a. [(a)] Laser Physics, Hazards and Safety;
- b. [(b)] Biophysics of laser;
- c. [(c)] Laser application in Clinical Optometry;
- d. [(d)] Laser Tissue Interactions;
- e. [(e)] Laser Indications, Contraindications and Potential Complications;
- f. [(f)] Gonioscopy;
- g. [(g)] Laser Therapy for Open Angle Glaucoma;
- h. [(h)] Laser Therapy for Angle Closure Glaucoma;
- i. [(i)] Posterior Capsulotomy;
- j. [(j)] Common complications: Lids, Lashes, Lacrimal;
- k. [(k)] Medicolegal Aspects of Anterior Segment Procedures;
- l. [(l)] Peripheral Iridotomy;
- m. [(m)] Laser Trabeculoplasty
- n. [(n)] Minor surgical procedures;
- o. [(o)] Overview of surgical instruments, Asepsis and OSHA;
- p. [(p)] The surgical anatomy of the Eyelids;
- q. [(q)] Emergency Surgical Procedures;
- r. [(r)] Chalazion Management;
- s. [(s)] Epiluminescence Microscopy;
- t. [(t)] Suture techniques;
- u. [(u)] Local anesthesia: techniques and complications;
- v. [(v)] Anaphylaxis and other office emergencies;

w. [(w)] Radiofrequency Surgery;
x. [(x)] Post-operative Wound Care;[(y) Pass a written test utilizing the National Board of Examiners in Optometry format.]

2. Clinical or [7] Laboratory experience including:

a. [(a)] Video Tape Demonstration;

b. [(b)] In Vitro Observation or [7] participation;

c. [(c)] In Vivo Observation; and

d. [(d)] A formal Clinical or [7] Laboratory Practical Examination; and [-]

3. Passage of a written test utilizing the National Board of Examiners in Optometry format.

(3) A board approved course shall be:

(a) Provided by an accredited optometry or medical school;

(b) Taught by full-time or adjunct faculty members of an accredited optometry or medical school;

(c) A minimum of thirty-two (32) clock hours in length; and

(d) Sponsored by an organization that meets the standards of 201 KAR 5:030.[(2) Prior to an optometrist being credentialed to perform an anterior segment laser procedure permitted under KRS 320, qualifications as stated in Section 1(1)(a) or (b) must be met. After observation of anterior segment laser procedures by the optometrist, the following documentation is required to be submitted to the Board:

(a) The anterior segment laser procedure shall be performed by the optometrist in the presence of a Board approved qualified preceptor;

(b) The optometrist shall demonstrate clinical proficiency in the performance of the procedure to the satisfaction of the Board approved qualified preceptor; and

(c) The Board approved qualified preceptor shall document in writing the preceptor's observations of the optometrist's performance and state that the optometrist has satisfactorily demonstrated his knowledge and qualifications in the performance of the procedure.

(3) Board approved courses must be provided in conjunction with an accredited optometry or medical school and the sponsor must meet the standards of 201 KAR 5:030. The content of the course may be updated as necessary as determined by the Board.

(4) It shall be the position of the Board that performing expanded therapeutic procedures without credentialing based upon the education requirements outlined in this administrative regulation Section (1) shall be grounds for discipline under the requirements of the KRS 320.340(1).

(5) Injections into the posterior segment/chamber or retinal tissue to treat any macular or retinal disease are not allowed under KRS 320.210(2)(b)16.

(6) Any eyelid or adnexal lesion found to be malignant shall be referred to a practitioner trained and qualified to treat such lesions.]

Section 2. Qualifications for a New Applicant for Licensure [initial optometric licensees] to be Credentialed [credentialed] to Utilize Expanded Therapeutic Procedures. [utilize expanded therapeutic procedures.] A new applicant for licensure as an optometrist shall [An initial Kentucky license holder shall not] be credentialed to perform expanded therapeutic procedures if: [unless:]

(1) The applicant provides proof that the applicant has graduated from an optometry school whose program includes all of [that demonstrates that the applicant has received] the education, training, and testing requirements established [and training equivalent to that set out] in Section 1; or [of this administrative regulation, above and]

(2) By the end of the first licensure renewal period, the licensee shall provide proof of compliance with Section 1 of this administrative regulation. [The applicant demonstrates proficiency in testing required by the Board, or

(3) By first licensure renewal, licensee must provide proof of compliance with Section 1 of this administrative regulation.]

Section 3. Qualifications for an Applicant [applicants] for Licensure by Endorsement [licensure by endorsement] to be Credentialed [credentialed] to Utilize Expanded Therapeutic Proce-

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dures. [utilize expanded therapeutic procedures.] An applicant for licensure by endorsement shall [not] be credentialed to perform expanded therapeutic procedures in Kentucky if: [unless:]

(1) The applicant provides proof that:

(a) The [the] applicant holds an active license in good standing by another state;

(b) Is [and is also] credentialed by that state to perform expanded therapeutic procedures; and [or]

(c) The requirements in the state of licensure for performing expanded therapeutic procedures meet or exceed the requirements in Section 1; or

(2) By the end of the first licensure renewal period, the licensee shall [must] provide proof of compliance with Section 1 of this administrative regulation.

Section 4. Qualifications for an Optometrist to be Credentialed to Utilize Expanded Therapeutic Laser Procedures. (1) An optometrist credentialed in Kentucky to perform expanded therapeutic procedures shall be credentialed to perform expanded therapeutic laser procedures if the optometrist:

(a) Provides documentation to the board from a board approved preceptor indicating that the optometrist has:

1. Performed the anterior segment laser procedure in the presence of the board approved qualified preceptor; and

2. Demonstrated clinical proficiency in the performance of the procedure on a living human eye to the satisfaction of the board approved qualified preceptor.

(2) The board approved qualified preceptor shall document in writing the preceptor's observations of the optometrist's performance and state that the optometrist has satisfactorily demonstrated his knowledge and qualifications in the performance of the procedure.

(3) A board approved qualified preceptor shall be:

(a) A licensed optometrist or ophthalmologist whose license is in good standing;

(b) A full-time or adjunct faculty member of an accredited optometry or medical school; and

(c) Credentialed in the expanded therapeutic procedure or expanded therapeutic laser procedure that the preceptor is teaching. [Annual course of study.]

(1) In addition to the continuing education credit hours required by 201 KAR 5:030 Section 1(1) and (2)(a) and (b), an optometrist who is credentialed by the Board to perform expanded therapeutic procedures shall attend a minimum of five (5) additional contact credit hours in expanded therapeutic procedures, for a total of twenty (20) continuing education credits.

(2) None of the five (5) required contact credit hours in expanded therapeutic procedures may be obtained through the internet.]

Section 5. Prohibitions and Referrals.

(1) Performing expanded therapeutic procedures without credentialing based upon the education requirements outlined in this administrative regulation shall be grounds for discipline pursuant to the requirements of KRS 320.310(1).

(2) Injections into the posterior segment/chamber or retinal tissue to treat any macular or retinal disease shall not be permitted under KRS 320.210(2)(b)16.

(3) Any eyelid or adnexal lesion found to be malignant shall be referred to a practitioner trained and qualified to treat those lesions.

Section 6. Annual Course of Study. (1) In addition to the continuing education credit hours required by 201 KAR 5:030 Section 1(1) and (2)(a) and (b), an optometrist who is credentialed by the Board to perform expanded therapeutic procedures shall attend a minimum of five (5) additional credit hours in expanded therapeutic procedures, for a total of twenty (20) continuing education credits.

(2) None of the five (5) required contact credit hours in expanded therapeutic procedures may be obtained through the internet.

Section 7. Incorporation by Reference. (1) The following

material is incorporated by reference:

(a) Application for Expanded Therapeutic Procedures Course, August 2011;

(b) Application for Kentucky Licensed Optometrist to be Credentialed to Utilize Expanded Therapeutic Procedures, August 2011;

(c) Application for New Applicant to be Credentialed to Utilize Expanded Therapeutic Procedures, August 2011;

(d) Application for Endorsement to be Credentialed to Utilize Expanded Therapeutic Procedures, August 2011;

(e) Preceptor Approval Form, August 2011;

(f) Preceptor Evaluation of Expanded Therapeutic Laser Procedure, August 2011; and

(g) Application to Utilize Expanded Therapeutic Laser Procedure(s), August 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, telephone (859) 246-2744, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JERALD COMBS, President

APPROVED BY AGENCY: August 15, 2011

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

CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, phone (859) 246-2744, fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the clinical and competence criteria for an optometrist to engage in expanded therapeutic procedures.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 320.240(4) and (5).

(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 clinical and competence criteria before an optometrist may engage in expanded therapeutic procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets out the clinical and competence criteria for an optometrist to engage in expanded therapeutic 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 amendments: (1) List criteria for a board approved course to include that the course is: taught in an optometry or medical school, is taught by full-time or adjunct faculty members, is a minimum of 32 clock hours and sponsored by an organization in 201 KAR 5:030; (2) Require the anterior segment laser procedure to be performed on a living human eye; (3) Require a preceptor to be: a licensed optometrist or ophthalmologist, a full-time or adjunct professor at an optometry or medical school, and credentialed in the procedure taught; and (4) Incorporates by reference seven forms.

(b) The necessity of the amendment to this administrative regulation: To further clarify the regulation and be responsive to the public and written comments considered.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the board to establish clinical and competence criteria.

(d) How the amendment will assist in the effective administration of the statutes: The amendments further clarify the clinical and competence criteria before an optometrist may be credentialed to utilize expanded therapeutic procedures and expanded therapeutic laser procedures.

(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: The board expects approximately 300 optometrists to seek authority to engage in expanded therapeutic procedures.

(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 optometrist shall be permitted to engage in expanded therapeutic procedures if credentialed to perform expanded therapeutic procedures in another state or the optometrist has been therapeutically licensed in Kentucky, has completed a Board approved course, and has satisfied Board required clinical experience components.

(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 didactic education and clinical experience is estimated to be approximately \$2000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The optometrists that comply with the educational and clinical experience requirements shall be permitted to engage in expanded therapeutic procedures.

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

(a) Initially: No new costs will be incurred by the Board to implement the changes.

(b) On a continuing basis: No new costs will be incurred by the Board to implement the changes.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all optometrists seeking the ability to engage in expanded therapeutic procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation would impact the Kentucky Board of Optometric Examiners and its licensees who wish to engage in expanded therapeutic procedures.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.240(4) and (5) require and authorize the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Board does not expect a difference in expenditures and revenues for the first year the administrative regulation is in effect.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Office of the Secretary Kentucky State Nature Preserves Commission (Amendment After Comment)

400 KAR 2:090. Management, use, and protection of nature preserves.

RELATES TO: KRS 146.410, 146.440

STATUTORY AUTHORITY: KRS 146.465, 146.475, 146.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.485(2) authorizes the commission to promulgate administrative regulations for the management, use, and protection of nature preserves. KRS 146.465 authorizes the commission to acquire natural areas for the purpose of dedicating the areas as nature preserves. KRS 146.475 requires that a nature preserve shall be subject to administrative regulations promulgated by the commission. [KRS 146.485 requires the commission to establish rules for the management, use, and protection of nature preserves.] This administrative regulation establishes the requirements for the [sets forth rules to be applied to the] management and use of all nature preserves[,] and to fulfill the purposes of KRS 146.440.

Section 1. Applicability. This administrative regulation [These rules] shall apply to a nature preserve unless a specific exception is [all nature preserves unless exceptions are] set forth in the articles of dedication. The reasons for any exception [exceptions] shall be set forth in the records of the commission.

Section 2. Boundary Markers. (1) Nature preserve [preserves] boundaries shall be made evident by posting boundary markers in a conspicuous manner[, or as approved by the commission].

(2) If a boundary fence or barrier is installed [Boundary fences and barriers may be installed as approved by the commission; such shall not be], it shall not be in a form that will create a detrimental effect on the movement of wildlife or other natural objects.

Section 3. Encroachments [Intrusions]. There shall not be [no] encroachments [intrusions] of structures, easements, rights-of-way, or land uses that [which] do not conform to this administrative regulation [with these rules] and with the purposes and definition of a nature preserve as specified in KRS 146.410 to 146.530 [the Act], except as allowed by the articles of dedication.

Section 4. Emergency Situations. (1) An emergency situation [Emergency situations] shall be reported immediately to the director of the commission [by the custodian of the nature preserve].

(2) An emergency situation that requires [Emergency situations that require] immediate action to prevent injury to persons or damage to property[, as determined by the director or the commission,] shall be handled in a manner that minimizes [such a manner as to cause minimal] damage to natural conditions.

Section 5. Access Lanes. (1) A vehicular access lane [Vehicular access lanes] shall be installed and maintained within a nature preserve only where essential for patrol, fire control, management, [or other management] or research activities and shall be in accordance with the preserve management plan [plans approved by the commission].

(2) A vehicular access lane [Such lanes] shall:

(a) Be limited to [be closed to all except] service vehicles or, in an emergency situation, rescue vehicles; and [except in emergency

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situations]

(b) ~~Provide~~~~They shall provide~~ a single track not to exceed ten (10) feet in width.

Section 6. Fire Control. (1) ~~If a~~~~When~~ boundary firebreak is ~~[firebreaks are]~~ needed, it ~~[they]~~ shall be constructed in a buffer area outside the nature preserve if possible.

(a) A firebreak ~~[Firebreaks]~~ within a nature preserve shall be kept to a minimum and shall be constructed only in accordance with the preserve fire management plan ~~[plans approved by the commission]~~.

(b) A temporary firebreak~~[Temporary firebreaks,]~~ made by mowing, raking, blowing, wetting, or black lining ~~[-]~~ may be used in conjunction with a managed burn.

(2)(a) A wildfire~~[All wildfires]~~ shall be brought under control as quickly as possible if there is imminent danger to lives or adjacent property.

(b) Fire lines shall be constructed with hand tools rather than heavy equipment, to minimize danger to the preserve.

(c) If there is no danger to lives or adjacent property and the fire can be contained at the preserve boundary, the commission may assess the benefit of allowing a wildfire to burn and shall inform the entity having fire suppression responsibility of its decision to suppress a wildfire or to allow it to burn.

(d) There shall be~~[After a fire within a nature preserve, there shall be]~~ no cleanup, fire hazard reduction, or replanting after a fire within a nature preserve, except with the written approval of the commission. Approval shall be based upon health and safety considerations~~[-]~~ or the need for habitat restoration.

(3) If undertaken, prescribed~~[Prescribed]~~ burning shall~~[may]~~ be ~~[undertaken]~~conducted in accordance with a prescribed fire plan prepared for each burn unit and in accordance with the preserve management plan ~~[as approved by the commission. A written plan shall be prepared for each prescribed burn. Approval may be given if the prescribed burning plan is in compliance with this section].~~

(4) During a prescribed burn:

(a) Fire shall be kept away from fences and other structures that may be damaged;

(b) ~~[-]~~Burning shall not be done under conditions more hazardous than specified in the prescribed burn plan;

(c) ~~[-No]~~Firefighting chemicals that are known to cause damage to or alter a natural condition ~~[alteration of natural conditions]~~ shall not be used; and

(d) The use of a vehicle or equipment ~~[-Use of equipment and vehicles]~~ shall:

(1) Be specified in the prescribed burn plan; and

(2) Not~~[-No equipment or vehicles that would]~~ cause permanent damage or alteration to the natural features of the nature preserve ~~[shall be used].~~

Section 7. Trails. (1) A trail system shall conform to the objectives of the nature preserve. A trail~~[Trails]~~ shall:

(a) Be ~~[be]~~ designed ~~[so as]~~ to affect only part of the nature preserve and to have minimal impact on natural features; and

(b) Not~~[Trails shall be designed to]~~ have a ~~[no]~~ significant impact on ~~[species of]~~ animals or plants monitored by the commission or on archaeological resources located within the preserve.

(2) Location and form of a trail ~~[any trails]~~ other than a natural wildlife path ~~[paths]~~ shall be approved or denied by the commission.

(3) A trail~~[Trails]~~ shall be kept to a single file width sufficient to allow one (1) person to pass another but not wide enough to allow two or more people to walk abreast of one another and shall be adequate to provide for permitted use of a nature preserve and to prevent erosion, trampling of vegetation, and other deterioration[-; but otherwise shall be kept to a minimum]. "A wider trail may be constructed when the surrounding vegetation type, such as grasslands would require excessive maintenance to keep the trail open, and shall be specified in the preserve management plan."

(4) Trail construction.

(a) Use of paving materials, footbridges, or~~[and]~~ elevated walks is permissible if~~[when]~~ provided for in the trail plan section of the preserve management plan~~[approved by the commission]~~, but shall

be kept to a minimum in order to limit damage to the preserve.

(b) Synthetic materials, painted or chemically treated wood, or stone or earth materials from outside the nature preserve shall not ~~[may]~~ be used in trail construction unless specified in the preserve management plan.

(5) ~~[(3) No species of]~~Animals or plants monitored by the commission shall not be removed, damaged, or altered in trail construction or maintenance.

Section 8. Other Structures and Improvements. (1) Necessary signs, information kiosks ~~[booths]~~, trash receptacles, and minor structures required to house research instruments or hand tools shall be~~[are]~~ permitted within a nature preserve~~[preserves]~~ if specifically required in the preserve management plan~~[approved by the commission]~~ or permitted by~~[by permission of]~~ the commission for research activities.

(2) Any other structure~~[All other structures and service facilities]~~ shall be located in a service area ~~[areas]~~.

(3) Any sign or structure ~~[Signs and structures]~~ shall be approved or denied by the commission.

Section 9. Service Areas. Service areas may be established within a nature preserve~~[preserves]~~ to provide access and parking, management facilities, and visitor facilities. Provision for a necessary service area~~[areas]~~ may be included in the articles of dedication or after a finding by the commission that the designation is warranted and in accordance with the articles of dedication ~~[as approved on a case specific basis by the commission].~~

Section 10. Scenic and Landscape Management. (1) Measures ~~[No measures]~~ shall not be taken to alter natural growth or features for the purpose of enhancing the beauty, neatness, or amenities of a nature preserve, except as established in this section and sections 2, 5, and 7 through 9 of this administrative regulation. ~~[There shall be no]~~Cutting of grass, brush, or other vegetation, thinning of trees, removal of dead wood, opening of scenic vistas, or planting shall not be performed~~[-]~~ except after a finding by the commission that the action does not irreparably harm the preserve and is in accordance with the preserve management plan ~~[as approved by the commission].~~

(2) Installation of guard rails, fences, steps, and other devices necessary for visitor safety shall~~[may]~~ conform to the preserve management plan ~~[be approved by the commission]~~. Dead trees or branches that constitute a safety hazard to persons on trails or in other authorized use areas may be felled or cleared.

(3) Except as provided in the articles of dedication or as approved by the commission, there shall not be any ~~[no]~~ removal, introduction or consumptive use of any material, product, or object from a nature preserve ~~[and there shall be no introduction of any material, product, or object to a nature preserve], except as established in this administrative regulation. The following activities shall be~~ ~~[are]~~ prohibited ~~[include, but are not limited to:]~~:

(a) Grazing by domestic animals;

(b) Farming;

(c) Gathering of firewood;

(d) Gathering of~~[or other]~~ plant or mushroom products;

(e) Mining, quarrying or mineral extraction, fossil or rock collection;

(f) Dumping, burying or spreading of garbage, trash or other materials;

(g) Logging; and

(h) Any other human activity that results in damage to or loss of natural features of the preserve.

(4) An artifact shall only~~[As approved by the commission, artifacts may]~~ be removed or demolished as follows:

(a) An old interior fence~~[Old interior fences]~~ may be removed. Prior to removal, its location shall be mapped~~[-, giving consideration to]~~ leaving posts to mark boundaries between former land uses; and

(b) Rubbish may be removed~~[-; and]~~

(5)~~[(e)]~~—Structures~~[having]~~ lacking~~[no]~~ utilitarian, historical, scientific, or habitat value may be demolished or removed.

Section 11. Water Level Control. Natural water levels shall not

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be altered. Water levels ~~that~~^[which] have been altered by ~~humans~~^[man] may be changed if identified as being essential for the maintenance ~~or~~ ^[and] restoration of natural conditions.

Section 12. Erosion Control. Erosion and soil deposition due to past or present disturbance by ~~humans~~^[man] or natural conditions within or outside of a nature preserve may be controlled as needed for the maintenance or restoration of natural conditions [approved by the commission].

Section 13. Management of Animals and Plants. (1) Control of plant succession.

(a) Control of plant succession by deliberate manipulation may be undertaken if preservation or restoration of a particular vegetation type or preservation of ~~a species of~~ animals or plants monitored by the commission is designated an objective of the nature preserve by the commission.

(b) If undertaken, plant succession control measures ~~shall~~^[may] be undertaken ~~[in such a manner] as outlined in the preserve management plan to meet objectives referenced in Section 13(a) of this administrative regulation~~ [as approved by the commission].

(c) Vegetation may be managed. If managed, ~~[within]~~ the following limitations shall apply:

1. Plant species not native to the site or vicinity may be eliminated by cutting, girdling, grubbing, ~~cut stump, or~~^[or] basal or ~~[spot]~~ foliar application of specified herbicide;

2. The time of burning during the year, the frequency of burning, and the fractional amount of the area that may be burned each year shall be specified; and

3. Invading native woody species may be eliminated or controlled by cutting, girdling, grubbing, ~~cut stump, or~~^[or] basal or foliar application of specified herbicide.

(d) The use of herbicides ~~shall~~^[may] be specified in the management plan for each preserve~~[by the commission]~~.

(2) Control of noxious species.

(a) ~~[Species of]~~ Plants ~~or~~ ^[and] animals ~~that~~^[which] are noxious in fact shall be controlled only if they are ~~[determined by the commission to be]~~ documented as jeopardizing populations of plants and animals or the natural integrity of the nature preserve.

(b) Except for removal from a trail, access lane, or firebreak as authorized by this administrative regulation~~[trails, access lanes, and firebreaks as approved by the commission]~~, there shall not be any~~[no]~~ control of a native plant that is ~~[native plants which are]~~ not noxious but may otherwise appear undesirable.

(c) There shall not be any~~[no]~~ control of native predators, rodents, insects, snakes, or other animals ~~[except as approved by the commission]~~, even though they may appear harmful or undesirable, unless they are documented as jeopardizing populations of native plants or animals, or the natural integrity of the nature preserve.

(d) There shall not be any~~[no]~~ use of a pesticide~~[pesticides]~~ except as authorized in the preserve management plan [approved by the commission].

(3) Control of exotic species.

(a) Control of exotic plants ~~or~~ ^[and] animals may be undertaken. If control of exotic plants is undertaken, it shall be done in accordance with Section 13(1)(c) of this administrative regulation ~~[in a manner approved by the commission. There may be no attempt to eradicate exotic species that have become a stable part of the biotic community unless this can be accomplished without disturbance of natural conditions]~~.

(b) If control of exotic animals is undertaken it shall be done in accordance with Section 13(2) of this administrative regulation ~~[Control of exotic plants may be undertaken by control of plant succession as provided in this administrative regulation or by management practices allowed in this administrative regulation]~~.

(4) Any measure~~[measures]~~ for population control of any species shall be established~~[to be applied must be provided for]~~ in the preserve management plan ~~[a written plan approved by the commission. Except as provided in the articles of dedication or approved by the commission, control measures shall be undertaken only by the commission staff or others approved by the commission]~~.

(5) Management of ~~[species of]~~ plants ~~or~~ ^[and] animals monitored by the commission and species of management concern.

(a) Habitat manipulations and protective measures in favor of particular species shall be undertaken only as approved by the commission. Approval shall be based upon a finding by the commission that describes the proposed activities and addresses species life history, habitat requirements of the species, characteristics and objectives of the preserve and other relevant information.

(b) Control of plant succession in favor of particular species shall be as provided in this administrative regulation.

(6) Introduction of plants and animals. ~~[No]~~ Plants, ~~[or]~~ animals, or their reproductive bodies shall not be brought into a nature preserve or moved from one (1) place to another within a preserve except with approval of the commission. Approval shall be based upon scientific evidence documenting the species' historical occurrence on the preserve. Restoration shall be performed with caution and based on a finding that the [such] actions shall not adversely affect natural conditions on the preserve.

Section 14. Use Tolerance. (1) Human use of a nature preserve shall be allowed only to ~~the~~^[such] extent and in a~~[such]~~ manner that shall~~[as will]~~ not impair natural conditions.

(2) The articles of dedication may specify the controls and restrictions to be placed on access and use.

(3) The commission as owner, or the landowner and the commission upon agreement, may further restrict access and use as necessary to protect the nature preserve.

Section 15. Character of Visitor Activity. (1) Visitor activity shall be regulated to prevent disturbance of a nature preserve beyond what it can tolerate without permanent deterioration. A visitor without a permit ~~[Visitors without permits]~~ for research or educational activities shall be restricted to trails and areas open to off-trail use and may be otherwise restricted in movement. A person~~[Persons]~~ wishing to traverse a nature preserve elsewhere than on a trail~~[trails]~~ or other area~~[areas]~~ open to visitation shall obtain permission from the commission.

(2) Public use shall be in accordance with the articles of dedication of the preserve ~~[and 400 KAR Chapter 2]~~.

(3) Hunting, fishing, and trapping shall not be allowed unless provided for in the articles of dedication for the nature preserve and shall be subject to 400 KAR Chapter 2 ~~[restrictions approved by the commission. Additional rules, administrative regulations, or restrictions may be adopted by the commission on a preserve basis to ensure that the preserve is protected adequately from an inappropriate overbalance of game species or impending disease problems of game or nongame species]. The commission may approve hunting, fishing, trapping or other control methods if necessary to ensure that the preserve is protected from a documented imbalance of species or impending animal disease.~~

(4) A visitor~~[Visitors]~~ shall not bring an animal~~[pets]~~ into a nature preserve, except for a service animal~~[allowed pursuant to permission to hunt in a nature preserve]~~.

(5) A visitor carrying a deadly weapon on a nature preserve shall not discharge the weapon unless it is necessary for either self-defense or hunting if the visitor has previously obtained permission from the commission to hunt on the nature preserve or hunting is provided for in the articles of dedication ~~[Deadly weapons shall not be carried by visitors to a nature preserve except as allowed pursuant to permission to hunt in a nature preserve]~~.

(6) A preserve that is open to visitors shall be open sunrise to sunset.

(7) Trails shall be open to foot traffic only. Travel on horse, bicycle, or motorized vehicle shall be prohibited at all times.

(8) Rock climbing and rappelling shall be prohibited at all times.

9. Possessing or using non-prescription drugs or alcohol shall be prohibited at all times.

10. Camping, picnicking, building fires, using audio equipment ~~[except if part of research approved by the commission]~~ shall be prohibited at all times.

11. Collecting plants, fungi, animals, minerals, rocks, wood or artifacts shall be prohibited at all times except for approved scientific studies in accordance with Section 19 of this administrative

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regulation.

Section 16. Access Control. (1) Ingress and egress shall be allowed only at ~~at[such] locations and under[such] conditions as may be specified by the commission in the preserve management plan.~~

(2) The owner, custodian, and commission have the authority to further limit access as may be necessary for protection and proper management of the nature preserve.

Section 17. Orientation and Guidance of Visitors. Orientation and guidance of visitors shall be in accordance with the articles of dedication, and as approved by the commission. Interpretive signs, structures or labels shall be of uniform appearance ~~[approved by the commission].~~

Section 18. Permission for Research or Educational Activities.

(1) A person wishing to engage in research or educational activities on a nature preserve ~~[not otherwise permitted by these rules or by the articles of dedication for the nature preserve]~~ shall secure prior permission of the commission. If the activities are to be carried on by a group, permission may be issued to the group leader who shall be responsible for the actions of the group.

(2) Permission shall be ~~is~~ required for educational use of a preserve only if activities ~~are to~~ include collecting or activities other than walking and observation ~~[.] or if the preserve is not open to the public.~~

(3) ~~(a)~~ The application for permission shall be on a form prescribed by the commission ~~and~~ ~~it~~ shall include the:

1. Name of the applicant;
2. Mailing address of the applicant;
3. Occupation of the applicant;
4. Professional qualifications of the applicant;
5. General field of interest of the applicant; and
6. Description of the applicant's proposed activities, including

the:

- a. Objectives, methods and procedures to be followed;
- b. Records to be kept;
- c. Location and duration of the project areas to be visited;
- d. Frequency and length of visits; and
- e. Detailed description of disturbances to be made to the pre-

serve ~~[name, address, position, professional qualifications, and general field of interest of the applicant and a description of the proposed activities including the objective, methods and procedures to be followed, records to be kept, duration of the project areas to be visited, frequency and length of visits, and detailed description of disturbances to be made. If collecting is to be done it shall be in accordance with this administrative regulation].~~

~~(b)~~ Information shall be provided on the:

1. Species or objects to be taken;
2. Number of specimens;
3. Method of taking; and
4. Disposition of specimens ~~[species or objects to be taken,~~

~~number of specimens, method of taking, and disposition of specimens].~~

~~(c)~~ The commission shall provide permission application forms to persons requesting them.

~~(4)~~ ~~(a)~~ The permission may contain specific provisions and restrictions.

~~(b)~~ Permission may be modified, suspended, or revoked by the commission for violations of the conditions of permission, this section, or based upon a determination of the commission that the activity jeopardizes the nature preserve.

~~(c)~~ Each holder of permission shall submit to the commission an annual report or progress report ~~[in such form as may be prescribed by the commission].~~

~~(d)~~ Permission for an activity of no more than the calendar year expires on December 31 of that year. Permission for an activity of longer than one (1) year may be extended annually upon submission of an annual report and request for an extension.

Section 19. Collecting on Nature Preserves. (1) A person ~~[Persons]~~ wishing to collect a scientific specimen ~~[specimens]~~ for deposition in a permanent institutional collection available to the public or for purposes of an approved research project shall ~~[may]~~ do so pursuant to terms of permission as specified in this adminis-

trative regulation.

(2) Permission may restrict the collecting of certain species or specimens. ~~[There shall be no collecting of]~~ Material for classroom laboratory observation or ~~[and]~~ study shall not be collected ~~[or mass collecting by class groups]~~. Exceptions may be provided in the articles of dedication of the nature preserve, or as set forth in the preserve management plan ~~[by the commission]~~.

Section 20. Record. (1) A record shall be kept for each nature preserve.

(2) One (1) copy of the record required by subsection (1) of this section shall be held by the commission at its Frankfort office.

(3) The record shall include annual reports of the custodian and all other pertinent documentary material, studies, reports, and descriptions of significant events.

(4) Responsibility for assembling the record shall be with the commission director, in conjunction with the custodian of the nature preserve.

Section 21. Management Plan. Each nature preserve shall be managed in strict accordance with the most recent approved management plan that sets forth the allowable activities to take place on the preserve as related to:

- (1) Natural community and rare species protection;
- (2) Resource restoration and enhancement;
- (3) Archeological and historical resource protection;
- (4) Staffing;
- (5) Security;
- (6) Safety;
- (7) Public access and interpretation;
- (8) Maintenance of the preserve;
- (9) Coordination of management activities with adjacent landowners and other federal and state resource protection agencies; and
- (10) Research and education.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 15, 2011

FILED WITH LRC: August 15, 2011 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donald S. Dott, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth rules and guidelines for managing, accessing and protecting nature preserves.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the greatest degree of protection possible to lands dedicated as nature preserves, while allowing public access, enjoyment and research activities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.485(2) authorizes the Commission to make and publish policies, rules and regulations for the selection, acquisition, management, protection and use of nature preserves.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the protection of nature preserves as authorized by KRS 146.485(2) by restricting certain activities on nature preserves in an effort to enhance protection.

(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 distinction between what actions are and are not permissible on state nature preserves.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure that the citizens of the Commonwealth are notified of what conduct is permissible on nature preserves.

(c) How the amendment conforms to the content of the authorizing statutes: this amendment assists in the protection of nature preserves, as authorized by KRS 146.485(2), by clarifying activity restrictions for visitors.

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(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in informing visitors of the limitations of their conduct on nature preserves.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will not affect an identifiable number of individuals, businesses, organizations, or state and local governments since nature preserves are open to the public at large.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

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: Not applicable, for the reasons state in the response to question (3). 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 involved in complying with this amendment. As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable, for the reasons stated in the response to question (3).

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

(a) Initially: No cost is associated with implementing this regulation.

(b) On a continuing basis: No cost is associated with implementing this regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because every person who enters a nature preserve is treated the same and bound to the same restrictions on conduct.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There are no particularly identifiable parts or divisions of state or local government because every individual (whether a citizen of the Commonwealth or another state) who enters a nature preserve will be required to adhere to the requirements of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 146.485(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? No cost is involved.

(d) How much will it cost to administer this program for subsequent years? No cost is involved.

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other explanation: Not applicable.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(Amended After Comments)

703 KAR 5:200. Next-Generation Learners.

RELATES TO: KRS 158.6451

STATUTORY AUTHORITY: KRS 158.6453; KRS 158.6455

NECESSITY, FUNCTION, AND CONFORMITY:

KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor and ensures accountability.

Section 1. Kentucky's Accountability System. (1) Kentucky's accountability system to classify schools and districts shall consist of four components:

- (a) Next-Generation Learners;
- (b) Next-Generation Instructional Programs and Support;
- (c) Next-Generation Professionals; and
- (d) Next-Generation Schools/Districts.

Section 2. Next-Generation Learners. (1) The Next-Generation Learners component of Kentucky's accountability system shall report data for schools and districts in the following categories:

- (a) Achievement;
- (b) Gap;
- (c) Individual Student Growth;
- (d) Readiness for College or Career; and
- (e) Graduation Rate.

(2) Data from individual student performance on state assessments administered as required in KRS 158.6451 and KRS 158.6453 shall be included in the Next-Generation Learners component. This data shall include students with disabilities who participate in the alternate assessment program.

(3) Data in reporting categories shall be attributed to grade level spans for schools and districts as follows:

- (a) Elementary schools shall receive a total number of points from Achievement, Gap, and Individual Student Growth;
- (b) Middle schools shall receive a total number of points from Achievement, Gap, Individual Student Growth, and Readiness for College;
- (c) High schools shall receive a total number of points from Achievement, Gap, Individual Student Growth, Readiness for College or Career, and Graduation Rate.

Section 3. Calculations for Reporting Categories. (1) Achievement shall be reported in Next-Generation Learners as follows:

(a) In elementary, [and] middle, and high schools, for each content area of Reading, Mathematics, Science, Social Studies, and Writing one (1) point for each percent of students scoring proficient or distinguished shall be awarded. One-half (.5) point shall be awarded for each percent of students scoring apprentice. Points shall not be awarded for novice students.

(b) A bonus for distinguished performance shall be calculated. The bonus formula shall consider both the percent of students scoring at distinguished and at novice so that a bonus for distinguished student performance shall not overcompensate for novice student performance. Each percent of students scoring distinguished receives an additional one-half (.5) point and each percent of students scoring novice receives a negative one-half (-.5) point. The value generated for novice shall be combined with the value generated for distinguished. For schools and districts with a higher distinguished value, the difference between the two values shall be added to the achievement calculation as a bonus for distinguished. For schools and districts with a higher novice value, points shall not be added to the achievement calculation. The distinguished bonus shall not allow the content area value for a school or district

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to exceed 100 percent. ~~[(c)]~~ In high schools, each state required End of Course test shall earn one (1) point for each percent of students scoring at or above the passing benchmark set by the technical specifications of each test. One-half point (.5) is awarded for each percent of students scoring within a range below the benchmark. Points shall not be awarded for students falling below the minimal range.]

~~(c)](d)]~~ High school end of course test results may be used for a percentage of a student's final grade in the course. If the district or school council's policies do not include end of course grades in the grading policy or if the end of course grade percentage is less than twenty (20) percent, the district shall submit an annual report to the Commissioner that provides justification for not using end of course exams for at least twenty (20) percent of a student's final grade in the course. The report shall be submitted to the Commissioner on or before December 31.

(2) Gap shall be reported in Next-Generation Learners as follows:

(a) A single gap group called the Non-duplicated Gap Group shall be created. This group shall consist of an aggregate, non-duplicated count of students in traditionally lower performing groups. The Non-duplicated Gap Group shall include students in the following demographic categories:

- (1) African American;
- (2) Hispanic;
- (3) American Indian/Native American;
- (4) Limited English Proficiency;

(5) Students in Poverty based on qualification for Free/Reduced Lunch; and

(6) Students with disabilities that have an Individualized Education Plan (IEP).

(b) For each tested content area, students scoring proficient or higher in the Non-duplicated Gap Group shall be summed. The sum shall yield a single gap number of students proficient or higher with no student counting more than one time and all students in the included groups shall be counted once.

(c) The Non-duplicated Gap Group shall have a minimum of 10 students per content area in the school or district in order to report Gap data.

(d) A maximum total of 500 points shall be awarded for gap. The points shall be distributed equally among the content areas tested.

(3) Individual Student Growth shall be reported in Next-Generation Learners as follows:

(a) Individual Student Growth shall be computed based on a Student Growth Percentile model.

(b) At elementary and middle schools, calculations shall include scores from students with data from reading assessments across two years and mathematics assessments across two years.

(c) At high school, calculations shall include scores from students with data from College Readiness reading and mathematics assessments across two years.

(d) One (1) point shall be awarded for each student that shows typical or high growth in reading and one (1) point shall be awarded for each student that shows typical or high growth in mathematics. Typical yearly growth shall be at least the 40th student growth percentile or higher. Points shall not be awarded for students showing lower than typical growth.

(e) For elementary, middle and high schools, total points shall be 100 for each content area of reading and mathematics for a total of 200.

(4) Readiness for College or Career shall be reported in Next-Generation Learners as follows:

(a) A readiness percentage for each high school shall be calculated by dividing the number of high school graduates that have successfully met one indicator of readiness by the total number of graduates. An individual student shall only be attributed to the calculation one time.

(b) The indicators of readiness shall include students meeting:

~~1.](4)]~~ the Kentucky Council on Postsecondary Education's Systemwide Benchmarks on the ACT in Reading, English and Mathematics; or

~~2.](2)]~~ the Kentucky Council on Postsecondary Education's College Placement Test Benchmarks; or

~~3.](3)]~~ the Career Measures as defined by the Kentucky Board of Education.

~~(c)~~ An individual student meeting both Benchmarks on the ACT or College Placement Test and Career Measures shall earn a bonus of one-half (.5) point in the calculation of the readiness percentage. The bonus shall not allow the calculation of the readiness percentage for a school or district to exceed 100 percent.

~~(d)](e)]~~ For middle schools, a college readiness percentage shall be calculated by determining the percentage of students who meet the ACT EXPLORE Benchmarks for Reading, English and Mathematics.

~~(e)](d)]~~ For middle schools, the percent of students in each tested area of Reading, English and Mathematics meeting the benchmark score shall be averaged. This value shall be reported as the middle school college readiness percentage.

(5) Graduation Rate shall be reported in Next-Generation Learners as follows:

(a) Graduation rate shall be computed using the Averaged Freshman Graduation Rate for the years of 2011-2012 and 2012-2013. The Cohort Graduation Rate shall be computed beginning with the 2013-2014 year.

(b) The Graduation Rate for each school and district shall be reported publicly by the Department in the Next-Generation Learners component. Graduation Rate data shall be lagged one year for reporting.

(6) The total points for Next-Generation Learners shall be awarded as follows:

(a) The total number of points earned in each category of Achievement, Gap, Individual Student Growth, Readiness for College or Career, and Graduation Rate shall be weighted in the following manner:

Grade Range	Achievement	Gap	Growth	Readiness for College or Career	Graduation Rate	Total
Elementary	30	30	40	n/a	n/a	100
Middle	28	28	28	16	n/a	100
High	20	20	20	20	20	100

(b) The total number of points in Next-Generation Learners shall classify schools and districts into one of four classifications:

~~1.](4)]~~ Distinguished;

~~2.](2)]~~ Proficient;

~~3.](3)]~~ Needs Improvement; and

~~4.](4)]~~ Persistently Low Achieving – the lowest performing schools as defined by KRS 160.346.

Within each of the four classifications, public reports by the Department shall indicate the direction in which school and district performance is moving compared to the prior year report.

(c) The placement of schools and districts into one of four classifications and the establishment of goals shall use a standard-setting process utilizing results from the first operational administration of new assessments in 2011-2012. The process shall be advised by the National Technical Advisory Panel on Assessment and Accountability, School Curriculum, Assessment and Accountability Council, and the Office of Education Accountability. The process shall use accepted technical procedures and involve Kentucky school and district administrators and teachers. The Kentucky Board of Education shall review the process and approve the final cut scores and goals that determine placement in one of the four classifications.

(d) If data cannot be calculated for any category of Next-Generation Learners, the weights shall be redistributed using an equal proportion to categories that shall be reported for the school or district.

(7) Students enrolled for a full academic year, which shall be 100 instructional days, shall be included in the calculations for Achievement, Gap, Individual Student Growth, and Readiness for College or Career for a school and district. Graduation Rate calculations shall include both students enrolled and students earning diplomas.

This is to certify that the chief state school officer has reviewed

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and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLLIDAY, PH.D., Commissioner

DAVID KAREM, Chairperson

APPROVED BY AGENCY: August 15, 2011

FILED WITH LRC: August 15, 2011 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the first component, Next-Generation Learners, of the Commonwealth's new accountability system to classify schools and districts.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for the statewide accountability component, Next-Generation Learners. The regulation implements the requirements of KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics for the categories of Next-Generation Learners and calculations to report these categories.

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

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The regulation will impact schools and districts by providing the categories and reporting calculations for the Next-Generation Learners component of the accountability system used to classify school and district performance.

(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 a district or school council's policies do not include end of course grades in the grading policy or if the end of course grade percentage is less than twenty percent (20%), the district shall submit an annual report to the Commissioner showing justification for not using end of course exams for at least twenty percent (20%) of a student's final grade in the course. The report shall be submitted to the Commissioner on or before December 31.

(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 new cost to school districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky schools and districts will have defined categories and reporting calculations for the Next-Generation Learners component of the accountability system used to classify school and district performance.

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

(a) Initially: The proposed amendment will require development

of new explanatory materials and data programs for the Next-Generation Learners in the normal course of work for staff. No additional costs are expected.

(b) On a continuing basis: The proposed regulation does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KDE operating 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: Current funding supports implementation and data reporting for school and district accountability.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. No additional costs to school districts are expected since districts are currently complying with the interim assessment and accountability system.

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

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

(c) How much will it cost to administer this program for the first year? The proposed regulation will require no additional cost beyond costs that are currently being expended for the interim assessment and accountability system.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will require no additional cost beyond costs that are currently being expended for the interim assessment and accountability system.

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

Public Service Commission

(Amendment)

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

RELATES TO: KRS Chapter 278.

STATUTORY AUTHORITY: KRS 278.030; KRS 278.040; KRS 278.160; KRS 278.180; KRS 278.185; KRS 278.190; KRS 278.310; KRS 278.380.

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NECESSITY, FUNCTION AND CONFORMITY: This administrative regulation provides a simplified and less expensive procedure for ~~[by which]~~ small utilities to ~~[may]~~ apply to the commission for rate adjustments ~~[increases]~~. A small utility may apply for rate adjustments using the formal procedure outlined in 807 KAR 5:001, Section 10 [Chapter 5] or by using the procedure prescribed in this administrative regulation which is intended to minimize the need for formal hearings, to reduce filing requirements, and in many cases to shorten the time period between application and commission order.

Section 1. Definitions. (1) "Annual Report" means the financial and statistical report that 807 KAR 5:006, Section 3(1), requires a utility to file with the commission;

(2) "Annual report for the immediate past year" means an annual report that covers the applicant's operations for either

(a) the calendar year period prior to the year in which the applicant's application for rate adjustment is filed with the commission, or

(b) the most recent calendar year period that 807 KAR 5:006, Section 3(1), requires the applicant to have on file with the Commission as of the date of the filing of its application for rate adjustment;

(3) "Gross annual revenue" means total revenue that a utility derived during a calendar year, unless the utility operates two (2) or more divisions that provide different types of utility service, in which case, the total amount of revenue derived from the division for which a rate adjustment is sought; and

(4) "Utility" is defined by KRS 278.010(3)."

Section 2. Utilities Permitted to File Application. Any utility with ~~[500 or fewer customers or]~~ \$5,000,000 ~~[\$300,000]~~ or less gross annual revenue in the immediate past calendar year may apply for an adjustment of rates using the procedure in this administrative regulation ~~[described below]~~. The applicant shall have maintained adequate financial records fully separated from any commonly-owned enterprise and shall have on file with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if the applicant has been in existence that long.

Section 3[2]. The Record upon which Decision ~~Shall~~ Will Be Made. Unless a hearing is held the commission shall make its decision based on the:

(1) ~~[(a)]~~ Annual reports of the applicant for the immediate past year and for the two (2) prior years, if the applicant has been in existence that long;

(2) ~~[(b)]~~ Application;

(3) ~~[(c)]~~ Information supplied by the applicant in response to requests for information submitted by other parties to the proceeding or ~~[the intervenors and]~~ the commission; ~~[and]~~

(4) ~~[(d)]~~ Written reports submitted by commission staff; ~~[subsequent to field review, if one (1) is conducted]~~

(5) Stipulations and agreements between the parties and commission staff; and

(6) Written comments and information that the parties to the proceeding submitted in response to the findings and recommendations contained in any written report that commission staff submitted.

Section 4[3]. Application. (1) An application for alternative rate adjustment shall consist of:

(a) A completed alternative rate adjustment application form that is made under oath and signed by the applicant or an officer who is duly designated by the applicant and who has knowledge of the matters set forth in the application;

(b) A copy of all outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, and bond resolutions;

(c) A copy of the amortization schedule for each outstanding bond issuance, promissory note, and debt instrument;

(d) A depreciation schedule of utility plant in service;

(e) A copy of the most recent state and federal tax returns of the applicant, if applicant is required to file returns;

(f) An analysis of customers' bills in such detail that revenues

from the present and proposed rates can be readily determined for each customer class;

(g) A copy of the notice of the proposed rate change that is provided to customers of the applicant; ~~[and,]~~

(h) If the applicant is a corporation ~~[or a limited liability company]~~, a certified copy of its articles of incorporation and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the style and case number of the prior proceeding; ~~[.]~~

(i) If the applicant is a limited liability company, a certified copy of its articles of organization and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the style and case number of the prior proceeding; and,

(j) If the applicant is a limited partnership, a certified copy of limited partnership agreement and all amendments thereto, or a written statement attesting that its partnership agreement and all amendments thereto have been filed with the commission in a prior proceeding and referencing the style and case number of the prior proceeding.

(2) Unless electronic filing procedures are used, the applicant shall submit one (1) original and five (5) paper copies of its application to the executive director of the commission.

(3) When submitting its application to the commission, the applicant shall also deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 or transmit by electronic mail an electronic copy in portable document format to the Office of Rate Intervention at rateintervention@ag.ky.gov ~~[rintervention@ag.ky.gov]~~.

(4)(a) If the application contains certain personal data, including an individual's social security number, taxpayer identification number, birth date, or a financial account number, the applicant shall redact the document so the following information cannot be read:

1. The digits of the Social Security number or taxpayer identification number;

2. The month and day of an individual's birth; and

3. The digits of the financial account number.

(b) Redaction may be made by any method, including but not limited to replacing the identifiers with neutral placeholders or covering the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(5) The application shall not contain any request for relief from the commission other than an adjustment of rates.

(6) An applicant may make written request to the executive director for commission staff assistance in preparing the application. The applicant shall obtain from the Executive Director of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, the alternative rate adjustment application form. The applicant shall complete the form, attach any documents requested and a copy of the notice of the proposed rate change that it provided to its customers, and submit one (1) original and ten (10) copies to the executive director of the commission and one (1) copy to the Public Service Litigation Branch, Office of the Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, together with one (1) copy of each of the three (3) annual reports. An applicant may, in writing, request commission assistance in preparing the application.]

Section 5[4]. Notice to Customers of Proposed Rate Changes.

(1) If the applicant has twenty (20) or fewer customers ~~or is a sewer utility~~, it shall mail written notice of the proposed rate changes ~~[and the estimated amount of increase per customer class]~~ to each customer no later than the date on which the application is filed with the commission. In addition, the applicant shall post at its place of business no later than the filed date of the application a sheet containing the information provided in the written notice to its customers and shall keep this notice posted until the commission has issued a final decision on the application.

(2) An ~~[Except for sewer utilities, which must give notice pursuant to KRS 278.185, an]~~ applicant that has ~~[with]~~ more than

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twenty (20) customers and is not a sewer utility shall post at its place of business a sheet containing the information provided in the notice to its customers [post a sheet stating the proposed rates and the estimated amount of increase per customer class at its place of business;] and shall:

(a) Include notice with customer bills mailed by the date the application is filed; or

[(b) Publish notice in a trade publication or newsletter that will be received by all customers by the date the application is filed; or]

(b) [(c)] Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in its service area, the first publication to be made by the date the application is filed.

(3) Each notice shall contain the following information:

(a) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;

(b) The present rates and the proposed rates for each customer class to which the proposed rates will apply;

(c) The effect upon the average bill for each customer class to which the proposed rate change will apply;

(d) A statement that the rates contained in this notice are the rates proposed by (name of utility) but that, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(e) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days after publication or mailing of this notice of the proposed rate changes request to intervene; intervention may be granted beyond the thirty (30) day period;

(f) A statement that copies of the application may be obtained at no charge from (the name of the utility) at (the utility's address) and that the application and all documents filed with the Public Service Commission may be viewed and downloaded at the Public Service Commission's Web site - <http://psc.ky.gov/> [language: The rates contained in this notice are the rates proposed by (name of utility). However, the Public Service Commission may order rates to be charged that are higher or lower than the rates proposed in this notice. Any corporation, association, body politic or person may request leave to intervene by motion within thirty (30) days after notice of the proposed rate changes is given. A motion to intervene shall be in writing, shall be submitted to the Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 645, Frankfort, Kentucky 40602, and shall set forth the grounds for the motion, including the status and interest of the party movant. Copies of the application may be obtained at no charge from (the applicant) at (the applicant's address). Upon request from an intervenor, the applicant shall furnish to the intervenor a copy of the application and supporting documents.].

(4) Proof of notice. An applicant shall file with the commission no later than forty-five (45) days from the filed date of the application:

(a) If its notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

(b) If the notice is mailed, a written statement signed by the utility's chief executive officer verifying the notice was mailed.

(5) If an applicant maintains a Web site, the applicant shall post on its website within seven (7) days of the filed date of the application a notice containing the information provided in the written notice to its customers and a link to a copy of its application posted on the commission's Web site and shall keep both posted until the commission has finally determined the utility's rates.

Section 6[5]. Except as provided in Section 13[11] of this administrative regulation, no applicant shall be required to provide the commission with advance notice of its intent to file an application for rate adjustment using the procedure set forth in this administrative regulation.

Section 7[6]. Effective Date of Proposed Rates. No applicant may place its proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of its application, whichever occurs first. If the com-

mission has not issued its order within six (6) months from the date of filing of the application, the applicant may place its proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect. The applicant shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom is due a refund if the commission orders a refund. [Motion for Formal Hearing. Within ninety (90) days after the application has been filed, any party may file a written request for a formal hearing setting forth grounds therefore].

Section 8[7]. Test Period. The reasonableness of the proposed rates shall be determined using a twelve (12) month historical test period, adjusted for known and measureable changes, that coincides with the reporting period of the applicant's **annual report for the immediate past year** [most recent annual report on file with the commission].

Section 9[8]. Discovery. Unless the commission otherwise directs, a party may serve written requests for information upon the applicant within twenty-one (21) days of an order permitting that party to intervene in the proceeding. At the time of serving its request upon the applicant, the party shall also file a copy of its request with the commission and serve a copy upon all other parties. Within twenty-one (21) days of service of timely requests for information from a party, the applicant shall serve its written responses upon each party and shall file with the commission one (1) original and five (5) copies. Nothing in this section shall preclude the commission from establishing different arrangements for discovery.

Section 10[9]. Commission Staff Report. Unless the commission directs otherwise,

(1) Commission staff shall prepare and file with the commission and serve a copy on all parties of record a report on the application that contains its findings and recommendations regarding the proposed rates.

(2) Each party shall file with the commission a written response to the report within fourteen (14) days of the filing of the report. This written response shall contain all objections to and other comments on the findings and recommendations of commission staff, any request for hearing or informal conference, and the reasons why a hearing or informal conference is necessary. If a party fails to file a written response with the commission within this time period, it shall be deemed to have waived any objections to the findings and recommendations contained in the report and any right to a hearing on the application.

Section 11[10][6]. Notice of Hearing. If the commission orders a hearing, the applicant shall publish in a newspaper or mail to its customers notice of the hearing give notice as required by KRS 424.300. The notice shall state the purpose, time, place, and date of the hearing. Newspaper notice shall be published once in a newspaper of general circulation in the applicant's service area no fewer than seven (7) and no more than twenty-one (21) days prior to the hearing. [The notice shall state the purpose, time, place, and date of the hearing.]

Section 12[11]. Utility Personnel Participation in Commission Proceedings. (1) An authorized official or employee of the applicant who is not licensed to practice law in Kentucky may on behalf of an applicant that is a **water district**, corporation, partnership, or limited liability company file the application, responses to commission orders and requests for information, as well as appear at conferences related to the application.

(2) Any applicant that is a **water district**, corporation, partnership, or limited liability company shall at any hearing conducted on the application be represented by an attorney who is authorized to practice law in Kentucky.

Section 13[12]. Use of Electronic Filing Procedures in lieu of Submission of Paper Documents. An applicant may elect to use electronic filing procedures in lieu of submission of paper documents to the commission. At least seven (7) days prior to the submission of its application, an applicant shall file with the commis-

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sion written notice of its election and, if it does not have an account for electronic filing with the Commission, register for an account at <http://psc.ky.gov/Account/Register>. Upon electing the use of electronic filing procedures, the following procedures shall be followed in the commission proceeding on the application unless the commission orders otherwise:

(1) All pleadings, documents, and exhibits shall be filed with the commission by uploading an electronic version of the document using the commission's E-Filing System at <http://psc.ky.gov>. In addition, the filing party shall file one (1) original and one (1) paper copy with the commission.

(2) Each file in an electronic submission shall be:

(a) in portable document format;

(b) search-capable;

(c) optimized for viewing over the Internet;

(d) where appropriate, bookmarked to distinguish sections of the pleading or document; and,

(e) if a scanned document, scanned at a resolution of 300 dots per inch.

(3) All electronic submissions shall include an introductory file in portable document format that is named "Read1st" and that contains a general description of the filing, a list of all materials not included in the electronic filing, and a statement attesting that the electronically filed documents are a true representation of the original documents. The "Read1st" file and any other document that normally contains a signature shall contain a signature in the electronically submitted document. The electronic version of the cover letter accompanying the paper filing may be substituted for a general description. If the electronic submission does not include all documents contained in the paper version (e.g., confidential materials, materials that are too large or bulky to transfer by electronic medium), the absence of these documents shall be noted in the "Read1st" document.

(4) An electronic transmission or uploading session shall not exceed twenty (20) files. An individual file shall not exceed fifty (50) megabytes. If a filing party's submission exceeds these limitations, the filer shall make its electronic submission in two (2) or more consecutive electronic transmission or uploading sessions.

(5) When filing any document with the commission, the filing party shall certify that:

(a) The electronic version of the filing is a true and accurate copy of the document(s) filed in paper medium;

(b) The electronic version of the filing has been transmitted to the commission; and

(c) A copy of the filing in paper medium has been mailed to all parties that the commission has excused from participation by electronic means.

(6) Upon completion of a party's uploading of an electronic submission, the commission shall cause an electronic mail message to be sent to all parties of record advising that an electronic submission has been made to the commission. Upon a party's receipt of this message, it shall be the receiving party's responsibility to access the commission's electronic file depository at <http://psc.ky.gov> and view or download a copy of the submission.

(7) Unless it states its objection to the use of electronic filing procedures in its motion for intervention, a party granted leave to intervene shall be deemed to have consented to the use of electronic filing procedures and the service of all documents and pleadings, including orders of the commission, by electronic means and shall file with the commission within seven (7) days of the date of an order of the commission granting its intervention a written statement that it waives any right to service of commission orders by United States mail and that it, or its authorized agent, possesses the facilities to receive electronic transmissions.

(8) If a party objects to the use of electronic filing procedures and the commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001.

(9) A document shall be considered timely filed with the commission if it has been successfully transmitted in electronic medium to the commission within the time allowed for filing. The original document, in paper medium, shall be filed at the commission's offices no later than the second business day following the elec-

tronic filing. Parties shall attach to the top of such submission a paper copy of the electronic mail message from the commission confirming transmission and receipt of its electronic submission.

Section 14[13]. The provisions of 807 KAR 5:001 that do not conflict with the provisions of this administrative regulation shall apply to commission proceedings involving applications filed pursuant to this administrative regulation.

Section 15[14][7]. Upon a showing of good cause, the commission may permit deviations from this administrative regulation.

Section 16[45]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application For Rate Adjustment Before The Public Service Commission For Small Utilities Pursuant to 807 KAR 5:076," August [June] 15, 2011;

(b) "Notice of Election To Use Electronic Filing Procedures," August 15, 2011[. is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov/>.

DAVID L ARMSTRONG, Chairman

HENRY C.A. List, Secretary

For LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 15, 2011

FILED WITH LRC: August 15, 2011 at noon

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a simplified and less expensive procedure by which small utilities may apply to the commission for rate increases. A small utility may apply for rate adjustments using the formal procedure outlined in 807 KAR 5:001 or by using the procedure prescribed in this administrative regulation, which is intended to minimize the need for formal hearings, to reduce filing requirements, and to shorten the time period between application and commission order.

(b) The necessity of this administrative regulation: This regulation will assist the Public Service Commission in timely reviewing applications for rate adjustment, will reduce the expense of rate case proceedings, and is necessary to the Public Service Commission's authority to regulate the rates of small utilities. It provides a structural framework for using electronic filing procedures for small utility rate cases.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a more cost effective and simplified means for small utilities to apply for rate adjustments. It provides clear guidance to small utilities on the documents necessary for a rate adjustment and simplifies the procedures necessary for a rate adjustment.

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(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 expand eligibility to use simplified filing procedures from 107 utilities to 240 utilities. Eligibility requirements, which have been unchanged for more than 15 years, have been revised to reflect the effects of inflation. Elimination of the eligibility provisions related to the number of customers will prevent two electric cooperatives, each of which has annual revenues in excess of \$340,000,000, from using the simplified filing procedures. The amendment clarifies the record upon which the Public Service Commission should base its decision. It specifies actions that applicants should take to protect sensitive personal information that may be contained in such applications. It amends the notice requirements for rate adjustments to conform to the notice requirements in 807 KAR 5:001 and 807 KAR 5:011. It clarifies when a small utility using alternative rate filing procedures may place its proposed rates into effect if the commission fails to make a timely decision. It provides a formal framework for the use of electronic filing procedures and establishes a schedule for discovery and responses to commission staff reports. The regulation eliminates the need for an applicant to include within its application, copies of its annual reports, which are currently on file with the Public Service Commission, and reduces the number of copies of the application that must be filed.

(b) The necessity of the amendment to this administrative regulation: Eligibility requirements for alternative rate filing procedures had not been adjusted for the effects of inflation for 15 years. Current Public Service Commission regulations make no provision for the use of electronic procedures. Provisions in the proposed amendment that are related to discovery and to the record upon which the Commission will base its decision are not addressed in existing regulation and will incorporate Public Service Commission practices developed since the regulation's last amendment in 1996.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service. The proposed amendment eliminates inefficiencies in the rate adjustment process and reduces transactional costs for small utilities that are less able to afford large rate case expenses and that have less expertise in the ratemaking process than larger utilities.

(d) How the amendment will assist in the effective administration of the statutes: Amendment expands the eligibility of alternative rate filing procedures and will allow 133 additional utilities to take advantage of simplified and less costly review procedures. It implements new measures for the protection of sensitive personal information contained in applications, reduces the documents that must be filed with the Public Service Commission and served upon other parties, and allows for the use of electronic filing and notification procedures that are expected to decrease the time and expense necessary to adjudicate rate adjustment applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect 240 water, natural gas, and sewer utilities whose annual gross revenues are \$5 million or less and their customers. The proposed amendment will remove two (2) electric utilities, whose gross annual revenues exceed \$340,000,000, from eligibility for alternative rate filing procedures. Neither electric utility has used alternative rate filing procedures to adjust its rates.

(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 necessary. This amendment enlarges eligibility for alternative rate filing procedures. The use of alternative rate filing procedures is entirely voluntarily. The affected utilities may continue to use the rate filing procedures set forth in 807 KAR 5:001 in lieu of the alternative rate filing procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs to comply. The affected utilities may continue to use the rate filing procedures set forth in 807 KAR 5:001 in lieu of the alternative rate filing procedures. Because the amendment will reduce the number of documents that must be filed and allows for the use of electronic transmission of documents in lieu of service of paper documents, the amendment should reduce the cost of filing an application for rate adjustment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed Amendment will reduce the time necessary for review of rate case applications and the cost of rate case proceedings and thus lessen or reduce rate adjustments. It should enhance public awareness of utility rate adjustment applications made by small utilities. It provides greater certainty and stability in the ratemaking process that the Public Service Commission uses for small utilities. The proposed amendment generally reflects ad hoc practices with which the Public Service Commission has employed over several years and which it found improved and shortened the review process.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

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

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

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

(9) TIERING: Is tiering applied? To the extent that the regulation establishes simplified procedures for utilities with annual revenues of less than \$5 million, tiering has been applied. The Public Service Commission believes that tiering is appropriate because the operations of smaller utilities are less complex, their record-keeping practices are simpler, and the amount of documentary evidence to verify their financial operations is less than that of larger utilities. Moreover, given the smaller number of customers over which small utilities must spread rate case expense, the use of the same procedures as used for larger utilities will result in larger rate increases for smaller utilities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively

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inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

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 direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge. While the proposed amendment may allow for water districts to more easily obtain rate adjustments, water districts would have been able to obtain same level of rate adjustment if the proposed amendment is not enacted.

(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 increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge. While the proposed amendment may allow for water districts to more easily obtain rate adjustments, water districts would have been able to obtain same level of rate adjustment if the proposed amendment is not enacted.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. Water districts that are currently ineligible to use the procedures in 807 KAR 5:076 but that will be eligible if the proposed amendment is adopted will experience lower rate case expenses when filing for rate adjustments as they will file fewer documents with their application and may be able to avoid the need to retain rate case consultants and other professionals to prepare and support their application. The exact amount of any savings is too difficult to quantify.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. Water districts that are currently ineligible to use the procedures in 807 KAR 5:076 but that will be eligible if the proposed amendment is adopted will experience lower rate case expenses when filing for rate adjustments as they will file fewer documents with their application and may be able to avoid the need to retain rate case consultants and other professionals to prepare and support their application. The exact amount of any savings is too difficult to quantify.

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, AUGUST 15, 2011

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 2:040. Interdisciplinary early childhood education, birth to primary.

RELATES TO: KRS 157.3175, 161.020, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires an educator preparation [a teacher education] institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.028(1)(f) requires the Education Professional Standards Board to issue and renew any certificate. This administrative regulation establishes the professional certificate for interdisciplinary early childhood education, birth to primary; the interdisciplinary early childhood education teacher standards; and the standards for approval of a program leading to this certificate.

Section 1. Definitions. (1) "Culturally diverse" means the wide range of differences among individuals that result from cultural and ethnic backgrounds, socioeconomic status, gender, personality traits, physical abilities and disabilities, and the interaction of factors of variability.

(2) "Family-centered services" means services in which family needs and desires determine all aspects of service delivery and resource provisions that promote family decision-making capabilities and competencies.

(3) "Interdisciplinary" means a preparation program combining early childhood and early childhood special education.

(4) "Teacher performance standard" means a set of teaching and managing tasks that an early childhood educator shall be able to demonstrate in early childhood programs.

Section 2. (1) The professional certificate for interdisciplinary early childhood education, birth to primary, shall be issued to an applicant who has completed:

(a) A bachelor's degree and the approved program of preparation for this certificate as described in Sections 6, 7, and 8 [7, 8, and 9] of this administrative regulation at an educator preparation [a teacher education] institution approved by the Education Professional Standards Board with:

1. A cumulative minimum grade point average of 2.50 on a 4.00 scale; or

2. A minimum grade point average of 3.00 on a 4.00 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(b) The approved written assessments established in [subsection (2) of this section and] 16 KAR 6:010; and

(c) The Kentucky Teacher Internship Program established in subsection (3) of this section and 16 KAR 7:010.

(2)(a) ~~In order to satisfy the testing prerequisites for teacher certification as required by KRS 161.030, the applicant shall score at least 150, the minimum passing score, on the Kentucky test of interdisciplinary early childhood.~~

~~(b) The assessment shall be waived for an out-of-state teacher who has two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program on at least a half-time basis and whose preparation corresponds to the interdisciplinary early childhood education outlined in this administrative regulation.~~

~~(3)(a) The Education Professional Standards Board shall issue the one (1) year provisional certificate for the Kentucky Teacher Internship Program established in KRS 161.030 and 16 KAR 7:010~~

~~upon the applicant's confirmation of employment in a position teaching children from birth to entry into a primary program on at least a half-time basis in a school which meets the criteria identified in KRS 161.030.~~

~~(b) A teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial certificate for interdisciplinary early childhood education or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again for issuance of the professional certificate for interdisciplinary early childhood education, birth to primary.~~

~~(4) To apply for the professional certificate for interdisciplinary early childhood education, birth to primary, an applicant shall submit a completed Form TC-1 incorporated by reference in 16 KAR 2:010 to the Education Professional Standards Board.~~

Section 3. The professional certificate for interdisciplinary early childhood education, birth to primary, shall be issued and renewed in accordance with the provisions of KRS 161.030, 16 KAR 2:010, and 16 KAR Chapter 4.

Section 4. (1) The professional certificate for interdisciplinary early childhood education, birth to primary, shall be valid for teaching children from birth to entry into the primary program, including teaching children in kindergarten or another program for five (5) year old children if the program is operated separately from the primary program.

(2) A person holding this certificate shall serve as a primary developer and implementer of an individual program for children with or without disabilities including an individual education plan (IEP) and individual family service plan (IFSP) with consultation and support from a specialist according to the needs of the child.

Section 5. ~~[(1) A teacher serving in a position identified in Section 4 of this administrative regulation as an early childhood teacher during the 1998-99, 1999-2000, 2000-2001, or 2001-2002 school year in a district with an approved preschool program shall:~~

~~(a) Submit a completed Form TC-1-APP to the Education Professional Standards Board; and~~

~~(b) Be eligible to continue serving in the same position without additional certification.~~

~~(2) Upon application to the Education Professional Standards Board, a teacher shall receive an approval letter certifying eligibility.~~

Section 6. An educator preparation [A teacher preparation] institution offering an approved program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall establish an assessment system to judge the performance of a candidate on the interdisciplinary early childhood education teacher performance standards identified for this certificate.

Section 6[7]. Standards for Program of Preparation. In order to receive approval of the Education Professional Standards Board, a program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall meet the following standards:

(1) The program shall be designed to prepare candidates to teach and manage tasks as identified in the teacher standards established in Section 9 of this administrative regulation and as required in the "New Teacher Standards for Preparation and Certification: Interdisciplinary Early Childhood, Birth to Primary - Standards with Criteria and Preamble;"

(2) The program shall include a system of continuous assessment to evaluate a candidate's progress and level of attainment on the interdisciplinary early childhood education teacher standards. The assessments shall include performance on authentic teaching and managing tasks in settings that are inclusive of children across abilities and contexts. ~~[Candidates shall be evaluated by paper and pencil tests and authentic assessments of performance];~~

(3) The program shall ensure that candidates from culturally

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diverse backgrounds are recruited and retained in the program;

(4) The program shall provide the candidate with knowledge and experiences to perform teaching and managing tasks identified in the teacher standards with children from culturally diverse backgrounds;

(5) The program shall include a student teaching experience in accordance with 16 KAR 5:040, which shall be supervised by a teacher who has a:

(a) Letter of approval issued by the Education Professional Standards Board certifying eligibility to continue teaching in an interdisciplinary early childhood position; or

(b) Rank II certification with emphasis in early childhood and three (3) years of teaching experience;

(6) The program shall be based on:

(a) The National Association for the Education of Young Children (NAEYC) Standards for Early Childhood Professional Preparation; and

(b) The Council for Exceptional Children (CEC) content standards for:

1. Beginning special education teachers of early childhood students set out in CEC Content Standards for All Beginning Special Education Teachers; and

2. Beginning special education teacher common core set out in CEC Knowledge and Skill Base for All Beginning Special Education Teachers of Early Childhood Students; and

(7) The program shall adhere to the program guidelines established in 16 KAR 5:010.

Section 7[8]. Application for Program Approval. (1) An educator preparation [A teacher education] institution that proposes to offer a program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall make application for approval to the Education Professional Standards Board. The application for approval shall include a program description including the following:

(a) Program outcomes that include teacher standards for interdisciplinary early childhood education;

(b) Program components that provide a list of coursework, clinical and field experiences, and student teaching related to general education, interdisciplinary specialty studies, and professional studies;

(c) A list of faculty responsible for and involved with the conduct of the specific program and their qualifications;

(d) A description of candidate [student] admission and retention policies and procedures that are specific to this program;

(e) A description of the system of continuous assessment of interdisciplinary early childhood education teacher standards; and

(f) Adherence with the program approval guidelines established in 16 KAR 5:010.

~~[(2) An institution may receive interim program approval for a one (1) year period that may be extended for one (1) additional year while the institution develops the assessments required by Section 7(2) of this administrative regulation. By the end of the period of interim approval, the institution shall apply for full approval to the Education Professional Standards Board.]~~

Section 8[9]. Teacher Standards. (1) Teacher Standard I. The interdisciplinary early childhood education (IECE) educator designs and plans experiences and instruction that support the development and learning of infants, toddlers, preschool children, and kindergarten children, including those with disabilities.

(2) Teacher Standard II. The IECE educator creates and maintains learning environments in a variety of settings that support the development and learning of infants, toddlers, preschool children, and kindergarten children, including those with disabilities.

(3) Teacher Standard III. The IECE educator introduces, implements, and facilitates experiences and instruction that support development and learning for infants, toddlers, preschool children, and kindergarten children, including those with disabilities.

(4) Teacher Standard IV. The IECE educator, in collaboration with others, assesses the development and ongoing learning of infants, toddlers, preschool children, and kindergarten children, including those with disabilities, and communicates the results with partners, including families.

(5) Teacher Standard V. The IECE educator reflects on and evaluates professional practices that support the development and learning of infants, toddlers, preschool children, and kindergarten children, including those with disabilities.

(6) Teacher Standard VI. The IECE educator collaborates and consults with team members including colleagues, families, primary caregivers, agency personnel, and other service personnel to design and implement experiences and instruction that support the development and learning of infants, toddlers, preschool children, and kindergarten children, including those with disabilities.

(7) Teacher Standard VII. The IECE educator engages in self-evaluation of professional practices and implements a professional development plan to improve the educator's performance.

(8) Teacher Standard VIII. The IECE educator supports families through family-centered services that promote independence and self-determination.

(9) Teacher Standard IX. The IECE educator uses technology to support instruction; access and manipulate data; enhance professional growth and productivity; communicate and collaborate with colleagues, families, and community agencies; and conduct research.

Section 9[40]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The Council for Exceptional Children (CEC) Content Standards for All Beginning Special Education Teachers, 2001;

(b) CEC Knowledge and Skill Base for All Beginning Special Education Teachers of Early Childhood Students, 2001;

(c) The National Association for the Education of Young Children (NAEYC) Standards for Early Childhood Professional Preparation, 2001; and

(d) "New Teacher Standards for Preparation and Certification: Interdisciplinary Early Childhood Education, Birth to Primary - Standards with Criteria and Preamble", September 2002, Education Professional Standards Board;

~~[(a) Form TC-1, rev. 10/02, Education Professional Standards Board;~~

~~(b) "New Teacher Standards for Preparation and Certification: Interdisciplinary Early Childhood Education, Birth to Primary - Standards with Criteria and Preamble", September 2002, Education Professional Standards Board;~~

~~(c) Form TC-1-APP, Application for Kentucky Certification or Change in Salary Rank, April 2001;~~

~~(d) NAEYC Standards for Early Childhood Professional Preparation, 2001;~~

~~(e) CEC Content Standards for All Beginning Special Education Teachers, 2001; and~~

~~(f) CEC Knowledge and Skill Base for All Beginning Special Education Teachers of Early Childhood Students, 2001.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: August 1, 2011

FILED WITH LRC: August 10, 2011 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 30, 2011 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed admin-

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istrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the professional certificate for interdisciplinary early childhood education (IECE), birth to primary; the interdisciplinary early childhood education teacher standards; and the standards for approval of a program leading to this certificate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to certification candidates of the requirements for obtaining and maintaining a certificate to teach interdisciplinary early childhood education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the requirements for obtaining and maintaining a teaching certificate in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes language regarding specific IECE testing requirements and references 16 KAR 6:010 which contains the required tests for all teaching certificates issued by the Education Professional Standards Board. This amendment also deletes language which is also found in statute and removes language allowing individuals who previously taught early childhood classes prior to the 2001-2002 school to receive a certificate.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the certification requirements for an IECE certificate are consistent and easily understood by candidates and educator preparation program providers.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the requirements for obtaining and maintaining an IECE certificate.

(d) How the amendment will assist in the effective administration of the statutes: This amendment removes testing requirements that are inconsistent with other regulations and clarifies program and application requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 30 educator preparation programs, and candidates for teacher certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not be required to take any additional action. The educator preparation programs will not need to take any additional action. Applicants will need to continue to refer to this regulation or the Education Professional Standards Board website for current certification requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): There will be no additional cost to any of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and educator preparation programs will have notice of the requirements for obtaining and maintaining an IECE certificate.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for certification will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, regional universities, and the Education Professional Standards Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1) and KRS 161.030

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

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

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

(c) How much will it cost to administer this program for the first year? There should be no cost to administer this program.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a revenue costing regulation, but merely establishes the certification requirements for teacher candidates to obtain certification.

EDUCATION PROFESSIONAL STANDARDS BOARD (Amendment)

16 KAR 5:040. Admission, placement, and supervision in student teaching.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.042

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STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that an educator preparation institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate shall be issued to a person who has completed a program approved by the Education Professional Standards Board. KRS 161.042 requires the Education Professional Standards Board to promulgate an administrative regulation relating to student teachers, including the qualifications for cooperating [supervising] teachers. This administrative regulation establishes the standards for admission, placement, and supervision in student teaching.

Section 1. Definition. "Cooperating teacher" [or "supervising teacher"] means a teacher employed in a public school or a non-public school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association [school in Kentucky] who is contracting with an educator preparation institution to supervise a student teacher for the purpose of fulfilling the student teaching requirement of the approved educator preparation program.

Section 2. Cooperating Teacher Eligibility Requirements. (1) ~~[Except as provided in subsection (2) of this section,]~~ The cooperating teacher, whether serving in a public or nonpublic school, shall have:

(a) A valid ~~[Kentucky]~~ teaching certificate or license for each grade and subject taught; and

(b) ~~[Attained Rank II certification;~~

~~(c)] At least three (3) years of teaching experience as a certified educator, [on a Professional Certificate; and~~

~~(d) Taught in the present school system at least one (1) year immediately prior to being assigned a student teacher.]~~

~~(2) [If a cooperating teacher has not attained Rank II certification, the teacher shall have attained a minimum of fifteen (15) hours of approved credit toward a Rank II within a minimum period of five (5) years.~~

~~(3)] Teachers assigned to a teaching position on the basis of a provisional, probationary, or emergency certificate issued by the Education Professional Standards Board shall not be eligible for serving as a cooperating teacher.~~

~~(3) [(4) In selecting a cooperating teacher,] The district and educator preparation program shall select teachers to be cooperating teacher who demonstrate the following: [give consideration to the following criteria:]~~

~~(a) [A demonstrated ability to engage in] Effective classroom management techniques that promote an environment conducive to learning;~~

~~(b) [An ability to model] Best practices for the delivery of instruction;~~

~~(c) Mastery [A mastery] of the content knowledge or subject matter being taught;~~

~~(d) [The demonstration of an] Aptitude and ability to contribute to the mentoring and development of a preservice educator;~~

~~(e) Usage of [An ability to use] multiple forms of assessment to inform instruction; and~~

~~(f) Creation of learning communities that value and build upon students' diverse backgrounds.~~

~~(4) An educator preparation program shall give a teacher who holds a Teacher Leader Endorsement pursuant to 16 KAR 5:010 Section 12(3) priority consideration when selecting a cooperating teacher.~~

~~(5) Beginning September 1, 2013, prior to student teacher placement, a cooperating teacher shall receive training approved by the Education Professional Standards Board and provided at no cost to the cooperating teacher by the educator preparation institution which shall include the following components:~~

~~(a) Basic responsibilities of a cooperating teacher,~~

~~(b) Best practice in supporting the student teacher, and~~

~~(c) Effective assessment of the student teacher.~~

~~(6) Beginning September 1, 2013, educator preparation pro-~~

grams shall maintain a pool of cooperating teachers who have met the requirements of this section.

(7) Beginning September 1, 2013, each educator preparation institution shall file an electronic report with the Education Professional Standards Board every semester which identifies the following:

(a) Each candidate at the educator preparation institution enrolled in student teaching;

(b) The candidate's assigned school;

(c) The cooperating teacher assigned to each candidate;

(d) The cooperating teacher's area of certification;

(e) The cooperating teacher's years of experience as a certified or licensed educator; and

(f) The date the cooperating teacher completed the training required in subsection (5) of this section. [An ability to create a learning community that values and builds upon students' diverse cultures.]

Section 3. Admission to Student Teaching. In addition to the appropriate sections of the National Council for Accreditation of Teacher Education (NCATE) standards which are incorporated by reference in ~~[under]~~ 16 KAR 5:010, each educator preparation institution shall determine minimum standards for admission to student teaching which shall include the procedures established in this section. Admission to student teaching shall include a formal application procedure for each teacher candidate.

(1) A record or report from a valid and current medical examination, which shall include a tuberculosis (TB) risk assessment, [have included a tuberculosis test,] shall be placed on file with the admissions committee.

(2) Prior to and during the student teaching experience, the teacher candidate shall adhere to the Professional Code of Ethics for Kentucky School Personnel established in 16 KAR 1:020.

(3) Beginning September 1, 2013, prior to admission to student teaching each teacher candidate shall complete a minimum of 200 clock hours of field experiences in a variety of Primary through grade 12 school settings which allow the candidate to participate in the following:

(a) Engagement with diverse populations of students which include:

1. Students from a minimum of two (2) different ethnic or cultural groups of which the candidate would not be considered a member;

2. Students from different socioeconomic groups;

3. English language learners;

4. Students with disabilities; and

5. Students from across elementary, middle school, and secondary grade levels;

(b) Observation in schools and related agencies, including but not limited to:

1. Family Resource Centers, or

2. Youth Service Centers;

(c) Student tutoring;

(d) Interaction with families of students;

(e) Attendance at school board and school-based council meetings;

(f) Participation in a school-based professional learning community; and

(g) Opportunities to assist teachers or other school professionals.

(4) The educator preparation program shall require the candidate to submit a record of all clinical hours for review and confirmation that the candidate has fulfilled the field experiences required in subsection (3) of this section.

(5) The educator preparation program shall maintain electronic records that confirm that all candidates enrolled in student teaching after September 1, 2013, have fulfilled the field experiences required in subsection (3) of this section.

Section 4. Cooperating Teacher to Student Teacher Ratio. ~~[Teacher-student Ratio.]~~ The ratio of student teachers to cooperating teachers shall be one (1) to one (1).

Section 5. University [College] Supervisor. (1) The university

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[college] supervisor shall make periodic observations of the student teacher in the classroom and shall prepare a written report on each observation and share it with the student teacher.

(2) The observation reports shall be filed as a part of the student teacher record and [also] used as a validation of the supervisory function.

(3) A student teacher shall receive periodic and regular on-site observations and critiques of the actual teaching situation a minimum of four (4) times, excluding seminars and workshops.

(4) The university [college] supervisors shall be available to work with the student teacher and personnel in the cooperating school regarding any problems that may arise relating to the student teaching situation.

(5) The educator preparation program shall select a clinical faculty member to serve as a university supervisor who demonstrates the following:

(a) Effective classroom management techniques that promote an environment conducive to learning;

(b) Best practices for the delivery of effective instruction;

(c) Dispositions that contribute to the mentoring and development of a preservice educator;

(d) Knowledge and skills in the use of formative and summative assessments; and

(e) The ability to participate in a community of professionals committed to supporting the effective instructional practice of each student teacher.

(6) Beginning September 1, 2013, university supervisors shall receive training approved by the Education Professional Standards Board and provided at no cost to the university supervisor by the educator preparation institution which shall include the following components:

(a) Basic responsibilities of a university supervisor;

(b) Best practice in supporting the student teacher; and

(c) Effective assessment of the student teacher.

(7) Beginning September 1, 2013, educator preparation programs shall maintain a pool of clinical faculty members who have met the requirements of this section.

Section 6. Professional Experience. (1) In addition to the appropriate NCATE standards incorporated by reference under 16 KAR 5:010, the educator preparation institution shall provide opportunities [an opportunity] for the student teacher to assume major responsibility for the full range of teaching duties, including extended co-teaching experiences, in a real school situation under the guidance of qualified personnel from the educator preparation institution and the cooperating elementary, middle, or high school. [In placing the student teachers in classroom settings.] The educator preparation program and the school district shall make reasonable efforts to place student teachers in settings that provide opportunities for the student teacher to develop and demonstrate the practical skills, knowledge, and professional dispositions essential to help all P-12 students learn and develop.

(2) No student teacher shall be placed in a setting that is not consistent with his or her planned certification content and grade range.

(3) Beginning September 1, 2013, the student teacher placement shall provide the student teacher with the opportunity to engage with diverse populations of students.

(4) Beginning September 1, 2013, each educator preparation institution shall provide a full professional semester to include a period of student teaching for a minimum of seventy (70) full days, or equivalent, in instructional settings that correspond to the grade levels and content areas of the student teacher's certification program.

(a) Candidates pursuing a primary through grade 12 certificate shall have their student teaching balanced between an elementary school placement and middle school or high school placement.

(b) Candidates pursuing an elementary certificate shall have their student teaching balanced between a placement in primary through grade 3 and a placement in grade 4 through grade 5.

(c) Candidates seeking dual certification in either middle school or secondary content areas shall have equal placements in both content areas.

(5) Beginning September 1, 2013, the educator preparation

program shall support the student teacher's placement and classroom experiences by:

(a) Cooperating with the district in determining the specific placement of the student teacher;

(b) Collaborating with the district to provide necessary program resources and expertise;

(c) Using multiple performance assessments to document the student teacher's ability to support learning for all P-12 students;

(d) Requiring the use of technology by the student teacher to:

1. Enrich the learning of P-12 students; and

2. Support the student teacher's professional growth and communication;

(e) Providing opportunities for the student teacher to:

1. Engage in extended co-teaching experiences with an experienced teacher;

2. Engage in reflective self-assessment that informs practice;

3. Maintain regular professional conversations with experienced teachers other than the cooperating teacher;

4. Participate in regular and extracurricular school activities;

5. Participate in professional decision making; and

6. Engage in collegial interaction and peer review with other student teachers.

(6) The educator preparation program may use the Kentucky Teacher Internship Program Teacher Performance Assessment tasks in 16 KAR 7:010 Section 2 or a variation of these tasks to meet the requirement specified in subsection (5) of this section.

(7) At no time shall a student teacher have responsibility for the supervision or instruction of P-12 students without the direct supervision of a certified educator.

(8) A student teacher shall not be permitted to be employed within the school in which he or she is assigned concurrent with student teaching.

(9) The educator preparation program shall maintain electronic records that confirm that all students admitted after September 1, 2013, meet the requirements of this section. [experiences, situations, and challenges similar to those encountered by first-year teachers.]

(2) [Each educator preparation institution shall provide a full professional semester to include a period of student teaching for a minimum of twelve (12) weeks, full day, or equivalent, in school settings that correspond to the grade levels each and content area of the student teacher's certification program.]

Section 7. Compensation of Cooperating Teachers. (1) The Education Professional Standards Board may make arrangements with local school districts to compensate a cooperating teacher [shall contract with the local school district, or make other appropriate arrangements, for the direct service of a cooperating teacher to each student teacher.]

(2)(a) The educator preparation institution shall electronically submit a report of all cooperating teachers and their corresponding student teachers to the Education Professional Standards Board:

1. On or before October 15 for a cooperating teacher supervising a student teacher during the fall semester; or

2. On or before February 15 for a cooperating teacher supervising a student teacher during the spring semester.

(b) Each report shall include:

1. The number of contract weeks that the cooperating teacher is working with each student teacher for that semester;

2. The cooperating teacher's full name and Social Security [certificate] number;

3. The student teacher's full name, Social Security number, demographic data, and contact information;

4. The student teacher's preparation and certification area by assigned certification code;

5. The names [and assigned codes] of the school district and school [district] where the cooperating teacher is employed and the student teaching requirement is being fulfilled. If the certified cooperating teacher is employed in a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association, the institution shall submit the name[, assigned code, and address] of the school.

(c) If an educator preparation institution fails to provide the

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report by the date established in paragraph (a) of this subsection, the Education Professional Standards Board shall not be liable for payment under this administrative regulation.

(3)(a) Upon receipt of the report, the Education Professional Standards Board shall contact each cooperating teacher by electronic mail with instructions on how to create and electronically sign an electronic payment voucher. [~~submit a "Cooperating Teacher Payment Voucher" to each cooperating teacher.~~]

(b) The electronic payment voucher [~~or its electronic equivalent if available;~~] shall be electronically signed by the cooperating teacher, building principal, and the college supervisor as verification of the cooperating teacher's service to the student teacher and submitted to the Education Professional Standards Board. [~~]~~

(c) ~~To be eligible for compensation under this administrative regulation, the cooperating teacher shall submit the completed voucher to the Education Professional Standards Board.~~

1. On or before December 15 [~~for a cooperating teacher supervising a student teacher~~] during the fall semester; or

2. On or before May 1 [~~for a cooperating teacher supervising a student teacher~~] during the spring semester.

(c) [~~(d)~~] If a cooperating teacher fails to provide the completed electronic payment voucher [~~or its electronic equivalent;~~] by the date established in paragraph (b) [~~(c)~~] of this subsection, the cooperating teacher shall not be eligible to receive any compensation available under this administrative regulation.

(4)(a) The payment to a cooperating teacher shall be determined based upon available funding allocated under the biennial budget bill and the total number of weeks served by all cooperating teachers reported for the fiscal year.

(b) The payment shall be allocated to a cooperating teacher based upon the number of weeks the teacher supervised a student teacher as reported in subsections (2) and (3) of this section.

(5) Payments to cooperating teachers shall be disbursed to the school districts or to cooperating teachers in nonpublic schools by the Education Professional Standards Board:

(a) On an annual basis; and

(b) On or before June 30 [45].

(6) [~~Compensation to cooperating teachers shall be provided under this administrative regulation if state funds are appropriated for this purpose.~~] Any payment of state funds under this administrative regulation shall:

(a) Be a supplement to the compensation provided by an educator preparation institution to a cooperating teacher who is supervising an institution's student teacher; and

(b) Not supplant the educator preparation institutions' compensation responsibility. [~~Section 8. Incorporation by Reference. (4) "Cooperating Teacher Payment Voucher", revised 7/2000, is incorporated by reference.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: August 1, 2011

FILED WITH LRC: August 10, 2011 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 30, 2011 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for admission, placement, and supervision in student teaching.

(b) The necessity of this administrative regulation: This administrative regulation provides educator preparation programs with notice of the minimum requirements for candidates to complete student teaching and the qualifications for cooperating teachers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel. KRS 161.042 requires the Education Professional Standards Board to promulgate administrative regulations relating to student teachers, including the qualifications for cooperating teachers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for student teaching and the qualifications for cooperating teachers.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the minimum requirements for cooperating teachers and mandatory training for cooperating teachers prior to the assignment of a student teacher. This amendment creates prerequisite clinical hours for all educator preparation program candidates to complete prior to student teaching. This amendment clarifies the educator preparation program's supervisory responsibilities and delineates the types of professional experiences student teachers should be assigned. This amendment establishes a reporting obligation to ensure compliance with the new student teaching requirements. This amendment also clarifies that student teachers should not be employed by the school in which they are performing their placement and that they are to be supervised by a certified educator at all times. Finally, this amendment incorporates changes to the process by which cooperating teachers may receive stipend payments for their services.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the student teaching provides meaningful professional experience for educator preparation candidates.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel. KRS 161.042 requires the Education Professional Standards Board to promulgate administrative regulations relating to student teachers, including the qualifications for cooperating teachers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that all educator preparation candidates have a meaningful professional experience for student teaching.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 30 Educator Preparation Institutions, any institutions seeking future accreditation for an educator preparation program, 174 school districts, potential cooperating teachers, and any applicant seeking admission to an educator preparation program.

(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: The 30 Educator Preparation Institutions and any institutions seeking future accreditation will have to conform their clinical experiences and student teaching procedures to the mandates of the amendment. Potential cooperating teachers will have to meet the requirements delineated in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment should not impact any of the parties financially.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The school districts will benefit from better prepared first year teachers who have had quality student teaching experiences. Institutions will benefit from a more uniform student teaching process. Candidates will benefit from quality professional experiences.

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

(a) Initially: There will be an additional cost to the Education Professional Standards Board to develop the training for cooperating teachers and university supervisors.

(b) On a continuing basis: There should be no additional cost to the Education Professional Standards Board.

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

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

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

(9) TIERING: Is tiering applied? NO, all educator preparation programs, cooperating teachers, and student teachers will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public colleges and universities, the Education Professional Standards Board, and the 174 school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.030, and KRS 161.042

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 a minimal initial cost to the Education Professional Standards Board to develop the training for cooperating teachers and university supervisors.

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

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

(c) How much will it cost to administer this program for the first year? There will be an additional minimal cost to develop trainings for university supervisors and cooperating teachers. At this time, the cost has not been estimated.

(d) How much will it cost to administer this program for subse-

quent years? There should be no additional cost to administer this program.

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

Revenues (+/-): No additional revenue is anticipated.

Expenditures (+/-): A minimal expenditure is anticipated to develop new training for cooperating teachers and university supervisors, but that cost should be absorbed by the Education Professional Standards Board.

Other Explanation:

PERSONNEL BOARD (Amendment)

101 KAR 1:375. Employee grievances and complaints.

RELATES TO: KRS 18A.075, 18A.0751

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 and 18A.0751 requires the Personnel Board to adopt comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200.

Section 1. Definitions; Grievance. A grievance is a complaint filed by an employee which concerns some aspect of his conditions of employment over which his cabinet or agency has control and which has occurred or of which the employee has become aware, through the exercise of due diligence, within thirty (30) days prior to filing.

Section 2. General Provisions. (1) An employee in the classified service who believes that he has been subjected to unfair or unjust treatment concerning his conditions of employment may file a grievance in accordance with this procedure.

(2) A grievance concerning an action which is appealable directly to the board pursuant to KRS 18A.095 may also be filed with the cabinet or agency. The filing of a grievance with the cabinet or agency shall not prohibit the employee from also filing an appeal with the board, or extend the statutory appeal period.

(3) An employee utilizing this procedure shall be entitled to file a grievance without interference, coercion, discrimination, or reprisal.

(4) An appointing authority shall inform its employees of the provisions of this administrative regulation, or any modifications in the levels of review that have been approved by the Personnel Board for the employee's cabinet or agency pursuant to Section 4(3) of this administrative regulation.

(5) (a) The commissioner shall provide to the employees, through the appointing authorities, a grievance form to be used for the filing a grievance.

(b) "Grievance Form(Revised 8/11)(Revised 12-01-92)" is incorporated by reference.

(c) This form may be inspected, copied or obtained at the Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

Section 3. Procedures. (1) A grievance shall be filed with an employee's immediate supervisor within thirty (30) days following occurrence or the employee becoming aware, through the exercise of due diligence, of the action that is the subject of the grievance. If the action or conduct of the first line supervisor is the basis of an employee's grievance, the grievance may be filed with the second line supervisor.

(2) An employee shall state in writing the basis of his grievance or complaint together with the corrective action desired. If an employee wishes to submit additional information or documentation, he may attach it to the grievance.

(3) If a grievance is filed that alleges discrimination on the basis of race, color, religion, national origin, sex, disability or age forty (40) or over, the recipient of this grievance shall immediately notify the cabinet or agency EEO coordinator to comply with the affirmative action plan.

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(4) Interviews to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle them to compensatory time.

(5) Interviews to evaluate or investigate the grievance held with the grievant or other employees shall not require the use of leave time.

(6) Parties may have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels. (1) Except as provided by Section 3(1) of this administrative regulation, the immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) [five (5)] work days after receipt of the grievance. If the responding supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) [two (2)] work days of receipt of the decision by the next appropriate level.

(2) The next line supervisors shall each have five (5) work days to respond to the grievance. The employee has five (5) work days after each intermediate supervisory review to decide to appeal the grievance to the next level.

(3) [{2}] If the line supervisors are unable to resolve the grievance to the satisfaction of the employee, the employee may request review of the grievance within five (5) [two (2)] work days of receipt of the decision of the final line supervisor by the appointing authority for a final determination. The appointing authority, upon investigation, shall issue findings and a final determination in writing to the employee within twenty (20) [ten (10)] work days.

(4) [{3}] Unless the time limits have been extended by agreement of the parties, failure of supervisory or management personnel to respond within prescribed time limits shall automatically advance the grievance to the next review level.

(5) [{4}] An intermediate grievance level may be waived by written agreement of the parties.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: August 15, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2011, at 9:00 a.m. at the Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 30, 2011. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Boyce A. Crocker, General Counsel, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 564-1693.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Boyce A. Crocker

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth the requirements for an employee to file a grievance, and for the agency to respond to same, with timelines.

(b) The necessity of this administrative regulation: To establish the requirements for filing and answering a grievance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.0751(1)(i) requires the Personnel Board to promulgate an administrative regulation for employee grievances and complaints.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation

sets forth timelines for filing of and responding to grievances, and also revises the Grievance Form.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment increases the number of days for agencies to respond to certain levels of a grievance and for the employee to decide whether to appeal the grievance to the next level.

(b) The necessity of the amendment to this administrative regulation: The Personnel Cabinet and the employee organizations have requested changes for response times by agencies to a grievance. The Board likewise believes, in order to be fair and consistent, that employees should have an increased number of days to decide whether to appeal a grievance to the next level.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment, by giving more time for agencies and employees to make decisions regarding grievances, fulfills the statutory requirement set forth at KRS 18A.0751(4)(i) in providing for a plan for resolution of grievances.

(d) How the amendment will assist in the effective administration of the statutes: This amendment meets the request by the Personnel Cabinet and employee organizations, and the Board's own concern, that agencies and employees should have more time to make decisions regarding grievances than is currently allowed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All classified (merit) employees subject to the provisions of KRS 18A.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Classified (merit) employees and their employing agencies will have more time to make important decisions regarding grievances. This should benefit the grievance process.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

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

(9) TIERING: Is tiering applied? (Explain why or why not) This regulation must apply equally to all classified employees in all state agencies with classified employees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

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(including cities, counties, fire department, or school districts) for the first full year the regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire department, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire department, or school districts) for subsequent years?

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PERSONNEL CABINET (Amendment)

101 KAR 2:046. Applications, qualifications and examinations.

RELATES TO: KRS 18A.030(2), 18A.032, 18A.110(1)(a), (7)(c), 18A.120, 18A.150

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(a), (7)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(a) and (7)(c) requires the Secretary of Personnel to promulgate administrative regulations which govern open competitive exams to determine the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the secretary. This administrative regulation establishes the application and examination requirements.

Section 1. Notices of Examinations. (1) An examination for entrance to the classified service shall be conducted on an open-competitive basis.

(2) The recruitment program shall:

(a) Accept an Application for Employment; and

(b) Hold an examination whenever and wherever the secretary deems it to be in the best interests of the Merit System.

(3) Eligibles shall be listed in rank order upon certification of a register based on their highest valid scores.

(4) The public notice of examination required by KRS 18A.110(7)(c) shall specify:

(a) The title and minimum salary of the job classification;

(b) The minimum qualifications required;

(c) The opening date on which an application will be received for placement of the applicant on the register; and

(d) All other pertinent information and requirements.

Section 2. Minimum Qualifications for Filing Applications. An open-competitive examination shall be available to each applicant who meets the minimum requirements determined by the secretary with regard to:

(1) Education;

(2) Experience;

(3) Training;

(4) Licensure;

(5) Certification; or

(6) Other factors that relate to the ability of the candidate to perform the essential functions of the position with reasonable efficiency.

Section 3. Filing Applications. (1) An Application for Employment shall be electronically submitted.

(2) An application shall require information concerning:

(a) Personal characteristics;

(b) Education;

(c) Experience;

(d) References; and

(e) Other pertinent information.

(3) An application shall be signed by the applicant personally or by electronic means. The truth of the statements contained in the application shall be certified by the applicant's signature.

(4) An applicant shall:

(a) Meet the minimum qualifications established in the class specification as to education and experience; and

(b) Not be guaranteed a passing grade by admission to an examination.

(5) For a job classification for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that an application shall be received until further notice.

Section 4. Advance Examinations. (1) If an applicant does not meet the minimum requirements as to education at the time of application, but will meet these requirements as a result of the completion of currently scheduled educational work in within three (3) months following the date of receipt of the application, the applicant shall be allowed to take the examination.

(2) An applicant taking the examination under subsection (1) of this section shall be eligible to apply for a specific vacancy announcement up to thirty (30) calendar days prior to completing the educational requirements.

Section 5. Character of Examinations. An examination shall:

(1) Be practical in nature;

(2) Be constructed to reveal the capacity of the candidate for the particular job classification for which the applicant is competing;

(3) Consider the applicant's general background and related knowledge; and

(4) Be rated impartially.

Section 6. Conduct of Examinations. (1) An examination shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) Reasonable accommodation in testing shall be provided upon timely request and receipt of verification of need.

(3) The secretary may:

(a) Designate monitors in various parts of the Commonwealth to conduct an examination under instructions prescribed by the secretary;

(b) Provide for the compensation of the monitors; and

(c) Make arrangements for the use of a public building in which to conduct an examination.

(4) Retest procedures.

(a) For open continuous testing, an applicant shall not:

1. Be admitted to the same exam or its alternate more than two (2) times within a regular workweek; or

2. Take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date the test is taken.

Section 7. Rating Examinations. (1) The secretary shall determine the rating or standing of an applicant on the register for each examination at the time of certification of a register.

(2) The secretary shall determine the passing score of each examination.

(3) All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 8. Rating Education and Experience. (1) If the selection method is rating of education and experience, the secretary shall determine a procedure for the evaluation of the education and experience qualifications of an applicant.

(2) The formula used in appraisal shall give due regard to recency and quality as well as quantity of experience and the pertinence of the education.

(3) The secretary shall investigate the candidate's educational documentation.

(4) The secretary shall investigate the candidate's work history.

(5) If the results of this investigation disclose information affecting the rating of education and experience, the secretary shall:

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- (a) Rate the candidate accordingly;
- (b) Make the necessary revision of the rating; and
- (c) Notify the candidate.

(6) The secretary shall determine the selection method for a qualifying job classification based upon the knowledge, skills, and abilities necessary for the classification.

(a) The secretary shall notify the Personnel Board of the classification and the minimum requirements for a qualifying selection method.

(b) The secretary shall maintain for public review a list of those classifications which are qualifying along with the minimum requirements for each classification.

Section 9. Notice of Examination Results. (1) Each applicant shall be notified of the examination score as soon as the rating of the examination has been completed.

(2) An eligible shall be entitled to information concerning his relative position on the register upon request and presentation of proper identification.

Section 10. Adjustment of Errors. (1) The secretary shall correct a clerical error in the rating of an examination, if the error is called to the attention of the secretary within thirty (30) days after receipt of the notice of examination results.

(2) A correction shall not invalidate a certification and appointment previously made.

Section 11. Examination Records. The secretary shall maintain all records pertinent to an application or examination for a period of three (3) years.

Section 12. Incorporation by Reference. (1) "Application for Employment", January 2011 [Fall-2007], is incorporated by reference.

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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: August 12, 2011

FILED WITH LRC: August 12, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2011 at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within 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. 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 September 30, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the application and examination requirements for state employment.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the consistent requirements for application for all state employment positions. This regulation ensures applicants and state employees are aware of the legal require-

ments and manner in which state employment applications are handled.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 requires the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A, to establish general procedures for personnel recruitment, certification, and examination when appropriate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation establishes the procedures for personnel recruitment and certification, as well as improves the efficiency of the recruitment system.

(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 regulation amendment incorporates by reference an updated "Application for Employment." The Application for Employment, revised January 2011, was updated to remove the EEO information (such as race and gender) from the application. This information, if submitted voluntarily, is stored within the Career Opportunities System and not viewable on the Application. Further, the amendment updates the location for inspection of the incorporated forms to the current location of the Personnel Cabinet.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure the correct version of the form is incorporated by regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.110 (1)(a) and (7)(c), and is required pursuant to KRS 13A.2251.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is necessary to ensure the correct version of the form is incorporated by regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for state employment, the Personnel Cabinet and all Commonwealth Executive Branch agencies are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Personnel Cabinet is responsible for utilization of the revised Application, incorporated by reference. Neither the Commonwealth's Executive Branch agencies, nor applicants for state employment, will have additional actions required as a result of this regulation amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs; however, if any costs are associated with this amendment, the costs will be borne by the Personnel Cabinet.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under 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? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110 (1)(d) and KRS 18A.030, as well as KRS 13A.2251.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no estimated 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:

PERSONNEL CABINET (Amendment)

101 KAR 2:056. Registers.

RELATES TO: KRS 18A.005, 18A.110(1)(f), (7) 18A.120

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.040, 18A.110(1)(f), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(f) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the establishment of eligible lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the secretary. This administrative regulation establishes requirements for the state registers.

Section 1. Notification of Vacancies to Be Filed From a Register. An appointing authority shall notify the secretary as far in advance as possible of a vacancy in a full-time or part-time classified position to be filled from a register.

Section 2. Minimum Requirements. (1) The secretary shall review the qualifications of additional applicants who meet the minimum requirements and qualifications for a vacancy if there are insufficient applicants for the vacancy.

(2) The secretary shall, if appropriate, reevaluate an applicant's training and experience on the basis of the minimum qualification required for the job classification in which the vacancy exists.

Section 3. Duration of Registers. (1) A register which has be-

come exhausted shall expire upon the administration of a superseding examination and the establishment of a register on the basis of that examination.

(2) If a new examination is established for a classification, the secretary shall send to each eligible remaining on the current register a notification prior to the administration of a superseding examination.

Section 4. Internal Mobility Program. The internal mobility program shall facilitate the movement of a qualified classified employee to a different position in the state personnel system.

(1) The secretary shall certify a full-time or part-time register which shall include:

(a) The names of eligibles for reemployment and appointment, in accordance with 101 KAR 2:066; and

(b) The names of interested employees with internal mobility full-time or internal mobility part-time status who:

1. Meet the minimum requirements;

2. Seek promotion, demotion, or transfer to a different position; and

3. Have applied for a posted vacancy.

(2) An employee with status interested in internal mobility shall:

(a) Submit an Application for Employment to the Personnel Cabinet; and

(b) Apply for placement on the register.

(3) An appointing authority may request a register consisting of exclusively internal mobility candidates for a time period specified by the appointing authority of at least ten (10) calendar days.

Section 5. Reemployment Registers. The secretary shall prepare a reemployment register, which:

(1) Shall contain the names of former employees, in rank order of seniority, who are exercising their reemployment rights; and

(2) May be combined with the list of current employees in the Internal Mobility Program for the classification.

Section 6. Full-time or Part-time Registers. The secretary shall certify a separate register for full-time and part-time positions.

Section 7. Number of Registers. A person meeting minimum qualifications for job classifications shall be eligible to apply for any posted vacancy.

Section 8. Incorporation by Reference. (1) "Application for Employment", January 2011 [Fall 2007], is incorporated by reference.

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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: August 12, 2011

FILED WITH LRC: August 12, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2011 at 10:30 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for the list of eligible candidates on state employment registers.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth the requirements and different types of state employment registers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A, and requires the secretary to establish eligible lists of candidates for appointment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines how certified registers are established and controlled.

(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 regulation amendment incorporates by reference an updated "Application for Employment." The Application for Employment, revised January 2011, was updated to remove the EEO information (such as race and gender) from the application. This information, if submitted voluntarily, is stored within the Career Opportunities System and not viewable on the Application. Further, the amendment updates the location for inspection of the incorporated forms to the current location of the Personnel Cabinet.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure the correct version of the form is incorporated by regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.110 (1)(a) and (7)(c), and is required pursuant to KRS 13A.2251.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is necessary to ensure the correct version of the form is incorporated by regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for state employment, the Personnel Cabinet and all Commonwealth Executive Branch agencies are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Personnel Cabinet is responsible for utilization of the revised Application, incorporated by reference. Neither the Commonwealth's Executive Branch agencies, nor applicants for state employment, will have additional actions required as a result of this regulation amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs. However, if any costs are associated with this amendment, the costs will be borne by the Personnel Cabinet.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under 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? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110 (1)(d) and KRS 18A.030, as well as KRS 13A.2251.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no estimated 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:

PERSONNEL CABINET (Amendment)

101 KAR 2:105. Sick leave sharing procedures.

RELATES TO: KRS 18A.110(1)(h), (7)(g), 18A.196, 18A.197
STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(h), (7)(g), 18A.197(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.197(9) requires the Secretary of Personnel to promulgate administrative regulations to implement the sick leave sharing program. This administrative regulation establishes the sick leave sharing procedures.

Section 1. Definitions. (1) "Employee" is defined by KRS 18A.196(1).

(2) "Immediate family" means:

(a) The employee's spouse, mother, father, grandparent, son or daughter; or

(b) A person of similarly close relationship:

1. Who has resided with the employee for at least thirty (30) days prior to application; or

2. For whom the employee is legally responsible.

(3) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which has

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rendered or will render the employee completely incapable of performing the essential duties of his job due to:

- (a) The employee's personal illness; or
- (b) The medically certified necessity that the employee care for an eligible family member.

Section 2. Eligibility to Donate or Receive Sick Leave. (1) An employee shall not qualify to donate or receive sick leave under the sick leave sharing program if the employee:

- (a) Is not in active payroll status; or
- (b) Has:
 - 1. Resigned;
 - 2. Retired; or
 - 3. Been placed in unpaid leave status by a personnel action.
- (2) To request donated sick leave, an employee shall complete an Application for Sick Leave Sharing.
- (3) To donate sick leave, an employee shall complete a Sick Leave Donation Form.

Section 3. Procedures and Restrictions. (1) The ten (10) consecutive days of leave required for eligibility shall be leave with or without pay.

(2) Sick leave sharing shall not be authorized for mere convenience or employee preference.

(3) Sick leave shall not be donated in an amount less than seven and one-half (7.5) hours.

(4) If multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(5) The applicant for sick leave sharing shall be responsible for filing:

(a) The appropriate medical certificates certifying the medical necessity; and

(b) The Application for Sick Leave Sharing.

(6) Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted to the employee's supervisor or agency representative and the date of approval by the appointing authority.

(7) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(8) Except as provided by subsection (9) of this section, donated sick leave shall be used:

(a) In the order in which it is donated; and

(b) On consecutive days.

(9) Leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(10) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors in reverse order of donation, unless the recipient provides medical evidence that continued, periodic medical treatment relating to the original condition for which leave was donated is required.

(11) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, the leave shall not be available for use by the recipient.

(12) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(13) An employee receiving workers' compensation benefits shall be eligible to receive shared sick leave to maintain a regular level of pay.

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

(a) Application for Sick Leave Sharing, March 2011 [September 1999]; and

(b) Sick Leave Sharing Donation Form, March 2011. [Sick Leave Donation, September 1999.]

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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: August 12, 2011

FILED WITH LRC: August 12, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2011 at 11:30 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within 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. 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 September 30, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the administration and the requirements for the sick leave sharing program.

(b) The necessity of this administrative regulation: This regulation is necessary for the implementation and administration of the sick leave sharing program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A, as well as KRS 18A.110(1)(h), (7)(g), KRS 18A.025(3)(c), 18A.196 and 18A.197.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is necessary for the proper administration of the sick leave sharing program.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates the revised Application for Sick Leave Sharing (March 2011) and the revised Sick Leave Donation Form (March 2011). Further, the amendment updates the location for inspection of the incorporated forms to the current location of the Personnel Cabinet. The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the appropriate sick leave sharing forms are incorporated in the regulation. The amendments provide for employees to electronically complete the application, as well as request the employee identification number that is utilized within the new HR system, KHRIS (Kentucky Human Resource Information System).

(c) How the amendment conforms to the content of the authorizing statutes: The amended forms are consistent with authority provided in KRS 18A.110(1)(h), (7)(g), 18A.196 and 18A.197, KRS 18A.025(3)(c), as well as KRS 13A.2251.

(d) How the amendment will assist in the effective administration of the statutes: The amended forms are necessary to provide efficient operation and administration of the sick leave sharing program within KHRIS.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

All executive branch agencies and its employees, capable of sharing and accepting sick leave donations pursuant to KRS Chapter 18A, are affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative

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tive regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The executive branch agencies will utilize the revised sick leave sharing forms, which is provided by the Personnel Cabinet. No additional action is necessary.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Benefits include the increased efficiency of the sick leave sharing program, as employees can complete the forms electronically, as well as the additional data fields for use within KHRIS.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs. However, if any costs are associated with this amendment, the costs will be borne by the Personnel Cabinet.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under 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? All executive branch agencies with employees covered under KRS Chapter 18A who are eligible for participation in the sick leave sharing program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110(1)(h), (7)(g), 18A.196 and 18A.197, KRS 18A.025(3)(c), as well as KRS 13A.2251.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no estimated 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:

PERSONNEL CABINET (Amendment)

101 KAR 2:106. Annual leave sharing procedures.

RELATES TO: KRS 18A.025(3), 18A.203

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.110(1)(h), (2), 18A.203(9)

NECESSITY, FUNCTION, and CONFORMITY: KRS 18A.203(9) requires the Secretary of the Personnel Cabinet to promulgate procedural administrative regulations to implement the Annual Leave Sharing Program. This administrative regulation establishes the procedures for the Annual Leave Sharing Program established by KRS 18A.203.

Section 1. Definition. "Employee" is defined by KRS 18A.005(14).

Section 2. Eligibility to Donate or Receive Annual Leave. (1) An employee shall not qualify to donate or receive annual leave under the Annual Leave Sharing Program if the employee:

(a) Is not in active payroll status; or

(b) Has:

1. Resigned;

2. Retired; or

3. Been placed in unpaid leave status by a personnel action.

(2) To request donated annual leave, an employee shall complete an Application for Annual Leave Sharing.

(3) To donate annual leave, an employee shall complete an Annual Leave Donation Form.

Section 3. Procedures and Restrictions. (1) The ten (10) consecutive days of leave required for eligibility by KRS 18A.203 shall be leave with or without pay.

(2) The total amount of shared annual leave that may be received or used by an eligible employee for the purposes specified by this administrative regulation shall be limited to 200 work hours.

(3) Annual leave sharing shall not be authorized for mere convenience or employee preference.

(4) Annual leave shall not be donated in an amount less than seven and one-half (7.5) hours.

(5) If multiple donors donate annual leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient or 200 work hours, whichever is less.

(6) The applicant for annual leave sharing shall be responsible for filing the Application for Annual Leave Sharing.

(7) Donated annual leave shall not be utilized retroactively except to cover the period between the date the request was submitted to the employee's supervisor or agency representative and the date of approval by the appointing authority.

(8) The annual leave sharing recipient shall be responsible for monitoring the amount of annual leave donated and used.

(9) Except as provided by subsection (10) of this section, donated annual leave shall be used:

(a) In the order in which it is donated; and

(b) On consecutive days.

(10) Any leave that an employee accrues while receiving donated annual leave shall be used before donated annual leave.

(11) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors in reverse order of donation, unless the recipient provides evidence that the original condition for which annual leave was donated will continue.

(12) If an annual leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, the leave shall not be available for use by the recipient.

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

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(a) Application for Annual Leave Sharing, March 2011 [December 2000]; and

(b) Annual Leave Sharing Donation Form, March 2011 [December 2000].

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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: August 12, 2011

FILED WITH LRC: August 12, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2011 at 11:45 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures for the Annual Leave Sharing Program.

(b) The necessity of this administrative regulation: This regulation is necessary for the proper administration of the Annual Leave Sharing Program, as required by KRS 18A.203.

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

KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A. This regulation is required pursuant to KRS 18A.203, KRS 18A.025(3)(c), and 18A.110.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is necessary for the proper administration of the Annual Leave Sharing Program.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates the revised Application for Annual Leave Sharing (March 2011) and the revised Annual Leave Donation Form (March 2011). Further, the amendment updates the location for inspection of the incorporated forms to the current location of the Personnel Cabinet. The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the appropriate annual leave sharing forms are incorporated in the regulation. The amendments provide for employees to electronically complete the application, as well as request the employee identification number that is utilized within the new HR system, KHRIS (Kentucky Human Resource Information System).

(c) How the amendment conforms to the content of the authorizing statutes: The amended forms are consistent with authority provided in KRS 18A.203, KRS 18A.025(3)(c), KRS 18A.030(2)(b), KRS 18A.110, as well as KRS 13A.2251.

(d) How the amendment will assist in the effective administration of the statutes: The amended forms are necessary to provide efficient operation and administration of the annual leave sharing

program within KHRIS.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All executive branch agencies and its employees, capable of sharing and accepting annual leave donations pursuant to KRS Chapter 18A, are affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The executive branch agencies will utilize the revised annual leave sharing forms, which is provided by the Personnel Cabinet. No additional action is necessary.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include the increased efficiency of the annual leave sharing program, as employees can complete the forms electronically, as well as the additional data fields for use within KHRIS.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs. However, if any costs are associated with this amendment, the costs will be borne by the Personnel Cabinet.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under 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? All executive branch agencies with employees covered under KRS Chapter 18A who are eligible for participation in the annual leave sharing program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation amendment is authorized by KRS 18A.203, KRS 18A.025(3)(c), 18A.030(2)(b), 18A.110, as well as KRS 13A.2251.

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.

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

(d) How much will it cost to administer this program for subsequent years? There are no estimated 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:

PERSONNEL CABINET (Amendment)

101 KAR 2:180. Employee performance evaluation system.

RELATES TO: KRS 18A.110

STATUTORY AUTHORITY: KRS 18A.110(1)(i), (7)(j)

NECESSITY, FUNCTION and CONFORMITY: KRS 18A.110(1)(i) and (7)(j) requires the Secretary of the Personnel Cabinet to promulgate comprehensive administrative regulations for classified service employees to establish a uniform system of annual employee evaluations for classified employees. This administrative regulation establishes the uniform employee performance evaluation system.

Section 1. General Provisions. (1)(a) Except as provided in paragraph (b) of this subsection, the annual performance period shall be one (1) calendar year beginning on January 1.

(b) For calendar year 2001, the annual performance period shall be the effective date of this administrative regulation until the end of the calendar year.

(2) Performance evaluations shall be completed no later than thirty (30) calendar days after the end of the annual performance period.

(3) All agencies shall use the Annual Employee Performance Evaluation Form.

(4)(a) Except as provided in paragraph (b) or (c) of this subsection, the first line supervisor of an employee at the time the evaluation is due shall be the evaluator. (b) If the first line supervisor has not supervised the employee for ninety (90) calendar days during the performance year, the next line supervisor who meets the ninety (90) day requirement shall be the evaluator.

(c) If an employee changes jobs and reports to a different supervisor after October 1 of the performance year, the annual evaluation shall be completed by the former supervisor prior to the job change.

(5) The first line supervisor (evaluator) shall establish a performance plan for each eligible employee no later than thirty (30) calendar days after the start of the performance period.

(6) The evaluator shall meet with the employee when completing the performance plan to discuss job duties and expectations.

(7) Performance evaluations shall be in writing. The evaluator shall:

(a) Present and explain all documentation relevant to an employee's performance evaluation;

(b) Discuss both the positive and negative aspects of performance with the employee at the annual evaluation;

(c) Elicit the employee's opinions and concerns; and

(d) Discuss measures to improve or enhance performance with the employee.

(8) The Governmental Services Center or agency personnel shall provide training on the performance evaluation system.

(a) The appointing authority shall require that supervisor evaluation training is completed prior to performance evaluation of employees.

(b) The Personnel Cabinet shall monitor and validate compliance with training requirements.

(9) Employees shall complete orientation to the performance evaluation system no later than thirty (30) calendar days after completion of initial probation.

(10) Except as authorized by the appointing authority, an evaluator shall complete required performance planning, interim re-

views and annual evaluations for each eligible employee. If the appointing authority approves the exception, written justification for the decision shall be placed in the employee's personnel file.

Section 2. Employee Eligibility. Performance evaluations shall be completed for all full-time classified employees with status at the beginning of the performance year who have remained in continuous merit status throughout the performance year.

Section 3. Performance Planning. (1) The performance plan shall specify job responsibilities and expectations in the following categories:

(a) Job tasks.

1. The job tasks category shall identify specific duties and expectations of the position held by the employee.

2. The employee's job duties shall be consistent with the position description.

3. Duties and expectations shall be in writing.

4. The evaluator shall assign points to identified duties and expectations, weighted by importance.

(b) Adaptability/initiative.

1. The adaptability/initiative category shall identify job requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points weighted by importance.

(c) Communication/teamwork.

1. The communication/teamwork category shall identify requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points weighted by importance.

(d) Self-management.

1. The self-management category shall identify requirements of the agency relating to workplace standards that shall include:

a. Attendance;

b. Punctuality;

c. Career development;

d. Responsibility; and

e. Dependability.

2. The evaluator shall place each requirement under this category in writing and assign points weighted by importance.

3. Performance goals and objectives shall relate to the agency's mission.

4. The evaluator shall develop the performance plan after consultation with the employee.

a. The employee and evaluator shall certify in writing in the performance planning section of the evaluation form that the employee has met with the evaluator and is aware of the performance plan at the start of the evaluation period.

b. The next line supervisor shall certify that he has reviewed the duties and expectations of the employee and finds them to be reasonable and equitable considering duties of other employees in the same classification.

(2) Total points assigned for all four (4) categories shall equal 100 total points. The evaluator shall distribute points among the four (4) categories as follows:

(a) The job tasks category shall have a minimum of fifty (50) points designated; and

(b) The other three (3) categories shall have a minimum of five (5) points designated to each category.

(3) Points assigned to each job duty within each category shall be multiplied by the numerical rating one (one (1) to five (5)) determined by the evaluator to complete the final point total for each category.

(4) Total points in all four (4) categories shall be added to obtain a final performance evaluation score.

Section 4. Performance Coaching and Feedback. (1) Modification of the performance plan may occur during the performance evaluation period if the changes are consistent with the duties reflected on an employee's position description.

(a) The employee shall be given written notice of changes to the performance plan.

(b) Changes to the performance plan shall be indicated on the evaluation form or on a supplemental sheet attached to the form.

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(c) Changes to the performance plan shall be initialed and dated by the evaluator and the employee when changes become effective.

(2) Two (2) interim reviews shall be required during a performance year.

(a) The evaluator shall document the interim reviews.

1. Interim reviews shall not contain a rating.

2. The interim meeting section of the evaluation form shall contain comments by the evaluator.

(b) The employee and evaluator shall sign the performance evaluation form to certify that the interim reviews occurred.

(c) Except as requested by the appointing authority and authorized by the Secretary of Personnel, the evaluator shall schedule interim reviews during the months of April and August of each performance year.

(d) Interim reviews shall document performance to justify the annual performance rating.

Section 5. Performance Evaluations and Ratings. (1) The evaluator and the employee shall meet no later than thirty (30) calendar days after the performance period ends to discuss the performance ratings.

(2) Eligible employees shall be evaluated in the four (4) categories described in Section 3 of this administrative regulation.

(3) All job duties identified within the categories shall be rated on a scale of one (1) to five (5), with five (5) representing superior performance.

(4) The final performance evaluation shall consist of a defined numerical rating. Point values for the overall performance rating are:

(a) Outstanding: 450 to 500 points;

(b) Highly effective: 350 to 449 points;

(c) Good: 250 to 349 points;

(d) Needs Improvement: 150 to 249 points;

(e) Unacceptable: less than 150 points.

(5) Unresolved disagreements on ratings or any aspect of the performance evaluation shall be reviewed through the reconsideration process established in Section 7 of this administrative regulation.

(6) Signatures of the evaluator, employee and next line supervisor shall be required on the final evaluation.

(a) The next line supervisor shall sign the evaluation after it is completed, signed and dated by the evaluator and the employee.

(b) For the purpose of evaluating or managing the performance of the evaluator, the next line supervisor's signature shall certify that he is aware of the evaluation and has reviewed it.

(c) Exceptions to this requirement may be requested by the appointing authority and shall be subject to the approval of the Secretary of Personnel.

Section 6. Performance Incentives. Employee annual leave shall be awarded as a performance incentive at the following rates:

(1) Two (2) workdays, not to exceed sixteen (16) hours, for an "Outstanding" rating.

(2) One (1) workday, not to exceed eight (8) hours, for a "Highly Effective" rating.

Section 7. Reconsideration and Appeal Process. (1) Within five (5) working days of a performance evaluation, an employee may request initial reconsideration of the performance evaluation by the evaluator.

(2) Within five (5) working days of the receipt of the request for reconsideration, the evaluator shall respond to the request in writing.

(3) If the employee refuses to sign the form in the employee response section, the evaluation shall not be eligible for reconsideration.

(4) Within five (5) working days after the initial reconsideration by the evaluator, an employee may submit a written request for reconsideration of the evaluation by the next line supervisor. If neither the evaluator nor the next line supervisor respond to the request for reconsideration in the designated time period, the employee may submit a written request to the appointing authority for compliance with this administrative regulation.

(5) The next line supervisor shall:

(a) Obtain written statements from both the employee and the evaluator; or

(b) Meet individually with the employee and the evaluator.

(6) The next line supervisor shall inform both the employee and evaluator in writing of the decision no later than fifteen (15) working days after receipt of the employee's request.

(7) Within sixty (60) days after an employee has received the written decision from the next line supervisor, the employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.

Section 8. Evaluation-based Agency Action. If an employee receives an overall rating of unacceptable, the agency shall:

(1) Demote the employee to a position commensurate with the employee's skills and abilities; or

(2) Terminate the employee.

Section 9. Incorporation by Reference. (1) The Annual Employee Performance Evaluation Form, August 2011 [04/04/04], is incorporated by reference.

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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: August 12, 2011

FILED WITH LRC: August 12, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2011 at 11:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the uniform employee performance evaluation system.

(b) The necessity of this administrative regulation: This regulation is necessary to establish a uniform system of annual employee evaluations for classified employees, and fulfills the secretary's statutory requirements to promulgate comprehensive regulations regarding the evaluation system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A, and is required pursuant to KRS 18A.110(1)(i) and (7)(j).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently establishes the uniform employee performance evaluation system.

(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: The existing regulation is changed by this amendment by the incorporation of a revised Annual Employee Evaluation Form, version August 2011. The revised form provides fields for information consistent with the new HR system, KHRIS (Kentucky Human Resource Information System). For example, the KHRIS employee identification number (Personnel Number/PerNr) is now reflected on the form, as well as the information relating to the Organizational and Job titles and identification codes. Additional instructions are provided for the evaluator and employee as to the job duties that should be included in the annual performance review. There is also an additional page provided for performance comments in the months following the second interim. Finally, the correct address for the Personnel Cabinet is provided for inspection of the material incorporated.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the current Annual Employee Performance Evaluation Form is incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030, 18A110(1)(i) and (7)(j), as well as KRS 13A.2251.

(d) How the amendment will assist in the effective administration of the statutes: The amendments within the Annual Performance Evaluation Form are necessary to provide a uniform system of annual employee evaluation for classified employees, with status, that shall be considered in determining eligibility for discretionary salary advancements, promotions, and disciplinary actions. The amendments assist in determining the job categories to be evaluated and a method for rating each category. The amendments also provide for a manner of conducting periodic informal reviews and ensuring that information and pertinent comments are documented on the evaluation form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees, supervisors, and executive branch agencies are required to comply with 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: The Personnel Cabinet is responsible for equipping all executive branch agencies with the revised Evaluation Form. No additional actions are necessary by the other entities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional benefits from the amendments contained in the Evaluation Form include the increased guidance and direction in the instructions, as well as the correct employee information utilized within KHRIS.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs. However, if any costs are associated with this amendment, the costs will be borne by the Personnel Cabinet.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

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

This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under 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? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030, 18A110(1)(i) and (7)(j), and KRS 13A.2251.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no additional estimated 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 Pharmacy (Amendment)

201 KAR 2:170. Computerized recordkeeping.

RELATES TO: KRS Chapters 217, 315

STATUTORY AUTHORITY: KRS 217.215(2), 315.191(1),(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.215(2) provides for the board to establish administrative regulations relating to the storage and retrieval of prescriptions records, including computerized recordkeeping. This administrative regulation will assure uniform compliance for those desiring to use computerized recordkeeping.

Section 1. An automated data processing system may be used for the storage and retrieval of prescription information subject to the following conditions: ~~[(4) Written notification is provided to the Kentucky Board of Pharmacy that an automated data processing center is being utilized to maintain prescription records. Written notification must also be provided to the board that use of an automated data processing system is being discontinued.]~~

(1[2]) All information pertinent to a prescription shall be entered into the system, including, but not limited to, each of the following:

(a) The prescription number;

(b) The patient's name and address;

(c) The prescriber's name and address;

(d) The prescriber's Federal Drug Enforcement Administration number, if appropriate;

(e) Refill authorization;

(f) Any prescriber's instructions or patient's preference permitted by law or administrative regulation;

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(g) The name, strength, dosage form, and quantity of the drug dispensed originally and upon each refill;

(h) The date of dispensing of the prescription and the identifying designation of the dispensing pharmacist for the original filling and each refill.

(2)(3) The entries shall be made into the system at the time the prescription is first filled and at the time of each refill, except that the format of the record may be organized so that the ~~data [information]~~ already entered may appear for the prescription or refill without reentering such ~~data [information]~~. ~~Records that are received or sent electronically may be kept electronically.~~ The dispensing pharmacist is responsible for the completeness and accuracy of the entries. [The original prescription order and a record of each refill shall be preserved by the pharmacy for a period of five (5) years and shall be subject by authorized agents. No original prescription order shall be obstructed in any manner.]

(3) The original prescription and a record of each refill, if received written or oral, shall be preserved as a hard copy for a period of three (3) years and thereafter be preserved as a hard copy or electronically for no less than an additional two (2) years. The original prescription and a record of each refill, if received by facsimile, shall be preserved as a hard copy, the original electronic image, or electronically for a period of three (3) years and thereafter be preserved as a hard copy, the original electronic image, or electronically for no less than an additional two (2) years. The original and electronic prescription shall be subject to inspection by authorized agents. No original prescription shall be obstructed in any manner.

(4) The original prescription and a record of each refill, if received as an e-prescription, shall be preserved electronically for a period of no less than five (5) years. The electronic prescription shall be subject to inspection by authorized agents. No original prescription may be obstructed in any manner.

(5)(4) The required information shall be entered into the system for all prescriptions filled at the pharmacy. ~~[(5) The system shall provide, within the pharmacy, retrieval of all required original and refill prescription information by display screen or hard copy.]~~

(6) The system shall provide adequate safeguards against improper manipulation or alteration of the ~~data [records]~~.

(7) The system shall have the capability of producing a hard-copy printout of all original and refilled prescription data as required in Section 1 of this administrative regulation. A hard-copy printout of the required data shall be made available to an authorized agent within forty-eight (48) hours of the receipt of a written request.

(8) The system shall maintain a record of each day's prescription data;

(a) This record shall be verified, dated, and signed by the pharmacist(s) who filled such prescription orders either:

1. Electronically;
2. Manually; or
3. In a log.

(b) This record shall be maintained for no less than five (5) years; and

(c) This record shall be readily retrievable and shall be subject to inspection by authorized agents ~~[provide a hard-copy printout or log book of each day's prescription data. That printout or log book shall be verified, dated, and signed by the pharmacist(s) who filled such prescription orders. This document shall be maintained for a period of five (5) years. Permission to maintain an alternative system to produce this record may be granted by the board].~~

(9) An auxiliary recordkeeping system shall be established for the documentation of refills if the automated data processing system is inoperative for any reason. The auxiliary system shall insure that all refills are authorized by the original prescription order and that the maximum number of refills is not exceeded. If the automated data processing system is restored to operation, the information regarding prescriptions filled and refilled during the inoperative period shall be entered into the automated data processing system within seventy-two (72) hours.

(10) Controlled substance data ~~shall [contained on a hard-copy printout must be separated, asterisked, or in some manner visually] be identifiable apart from other items appearing in the record [on the printout].~~

(11) The pharmacist is responsible to assure continuity in the

maintenance of records throughout any transition in record systems utilized.

Section 2. A computer malfunction or data processing services provider's negligence is not a defense against charges of improper recordkeeping.

Section 3. This administrative regulation is not applicable to the recordkeeping for drugs prescribed for and administered to patients confined as inpatients in an acute care facility. ~~[Section 4: Violation of any provision of this administrative regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.421.]~~

LARRY HADLEY, President

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: August 10, 2011 at 4 p.m.

PUBLIC HEARING PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday September 28, 2011 at 9:00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Friday September 30, 2011 at 11:59p.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures by which prescription records in pharmacies are stored and retrieved.

(b) The necessity of this administrative regulation: This regulation is necessary to notify pharmacies of the procedures by which prescriptions records are stored and retrieved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding the storage and retrieval of prescription records.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the storage and retrieval of prescription records.

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

(a) How the amendment will change this existing administrative regulation: This will allow prescription records to be stored electronically if received electronically or by facsimile as an electronic image for no less than five years; and if received by written or oral, it must be preserved as a hard copy for three years and thereafter preserved electronically no less than an additional two years.

(b) The necessity of the amendment to this administrative regulation: The Drug Enforcement Administration for controlled substances law now requires prescriptions that are received electronically must be stored electronically.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the storage and retrieval of prescriptions.

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(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow pharmacies to store prescription records in accordance with the Drug Enforcement Administration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that all pharmacies within the Commonwealth will preserve prescriptions electronically if received electronically for no less than five years or if received written or oral will preserve for three years as a hard copy and thereafter be preserved electronically for no less than an additional two 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: Pharmacies that receive prescriptions electronically will preserve them for no less than five years and if the prescriptions are written or oral, then a hard copy must be preserved for no less than three years and thereafter preserved electronically for no more than an additional two years.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacies will not have to print out hard copies of prescriptions that are received electronically and if a prescription is received written or oral then a hard copy must be preserved three years and thereafter it can be preserved electronically for no less than an additional two years.

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

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to any pharmacy.

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 Pharmacy 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 315.191(1)(a)(f) requires or authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Undetermined

(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? Undetermined

terminated

(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

State Board of Licensure for Professional Engineers and Land Surveyors (Amendment)

201 KAR 18:192. Continuing professional development for professional land surveyors.

RELATES TO: KRS 322.290(15)

STATUTORY AUTHORITY: KRS 322.290(4), (15)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(15) requires the board to adopt a program of continuing education for professional land surveyors. This administrative regulation implements the continuing professional development program mandated by KRS 322.290(15) for professional land surveyors.

Section 1. Definitions. (1) "Completion" means the professional land surveyor has satisfactorily met specific requirements of an offering by taking and passing a university course or attending a seminar (e.g., passing a university course or attending a seminar). (2) "Continuing professional development" (CPD) means participation in activities, beyond the basic educational requirements, that;

(a) Provide specific content planned and evaluated to improve the land surveyor's professional competence;

(b) Encourage acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the professional land surveyor's critical inquiry and balanced judgment;

(d) Raise the ethical standards within the professional community; and

(e) Which meet the requirements established by the provisions of this administrative regulation.

(3) "CPDC" means the Continuing Professional Development Committee.

(4) "Professional development hour" (PDH) means not less than fifty (50) minutes of instruction or presentation that meets the requirements of this administrative regulation.

(5) "Provider" means a person, school, association, company, corporation or group who has developed a CPD activity and participates directly in the presentation.

(6) "Sponsor" means a group, such as a professional society, offering activities by providers.

Section 2. Continuing Professional Development Committee.

(1) The chair of the State Board of Licensure for Professional Engineers and Land Surveyors shall appoint a Continuing Professional Development Committee and name its chair.

(2) The CPDC shall consist of three (3) ~~four (4)~~ board of licensure members of which at least two (2) are professional land surveyors. ~~[In addition, the Kentucky Association of Professional Surveyors and the Kentucky Society of Professional Engineers shall each appoint one (1) nonvoting member.]~~

(3) Work of the CPDC shall be considered work of the board and compensation shall be given as provided by KRS 322.270.

(4) The CPDC shall hold regular meetings and a record of its action shall be maintained.

(5) The CPDC shall have the authority to rule on all matters concerning continuing professional development for professional land surveyors. Decisions of the CPDC shall be ratified by the

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board. A licensee who disagrees with a decision of the CPDC may direct his or her concerns to the board for consideration at the board's next meeting.

Section 3. Program Structure. (1) Except as provided otherwise in this administrative regulation, a professional land surveyor shall complete and report to the board a minimum of eight (8) professional development hours for each calendar year.

(2) The requirement for professional development hours shall include a four (4) hour board sponsored course in standards of practice for professional land surveyors, professional ethics, and the code of professional practice and conduct, taken once every four (4) years. In the year that this course is taken, it shall count as four (4) of the required eight (8) hours.

(3) A maximum of four (4) hours in excess of the eight (8) professional development hours required to be earned in a calendar year may be carried forward to the next calendar year.

(4) Failure to earn the eight (8) professional development hours shall make the licensee ineligible for licensure renewal.

Section 4. Criteria for Professional Development. (1) Professional development hours may be earned by successful completion of the following activities subject to approval by the CPDC and board:

- (a) College or university courses;
 - (b) Seminars;
 - (c) Tutorials;
 - (d) In-house programs sponsored by corporations or other organizations;
 - (e) Correspondence courses;
 - (f) Televised or videotaped courses with approved supervision;
 - (g) Distance learning courses with approved supervision;
 - (h) Teaching or instructing courses, programs, or items specified in this subsection. The credit may be claimed at twice the number of hours permitted participants;
 - (i) Making or attending approved presentations at technical or professional meetings; or
 - (j) Publication of papers, articles, or books related to the practice of land surveying.
- (2) Activities described in subsection (1) of this section shall:
- (a) Be relevant to the practice of land surveying;
 - (b) Contain technical, ethical, or managerial subjects;
 - (c) Be an organized program of learning, presented sequentially;

(d) Be conducted by individuals with education, training, or expertise acceptable to the CPDC;

(e) Be offered for the number of professional development hours approved by the CPDC; and

(f) Not include in-service training, orientation to specific institutional policies and practices, or time used to sell or advertise a product.

(3) CPD activities shall earn credit only when substantially different from a course for which credit was granted in the previous two (2) calendar years.

(4) Professional development hours shall be converted as follows:

(a) One (1) university semester hour shall equal fifteen (15) professional development hours.

(b) One (1) university quarter hour shall equal ten (10) professional development hours.

(c) One (1) continuing education unit shall equal ten (10) professional development hours.

(5) Unless stated otherwise in this administrative regulation, credit for courses shall be earned at the rate of one (1) professional development hour for each hour of instruction completed, if approved by the CPDC.

Section 5. Approval of a Continuing Professional Development Activity. Activity approvals may be granted for sponsors, providers, or individual professional land surveyors as follows:

(1) Approval of activities is valid for a specified approval period or until alteration of the activity is approved by the CPDC.

(2) Failure to notify the CPDC of a change in an activity may render approval of the activity null and void.

(3) Prior to approval, an activity shall not be advertised as approved for Kentucky professional land surveyors without a conspicuous notice that the activity has been "submitted for consideration."

(4) If prior approval is desired, a written request for approval of the activity shall be submitted to the CPDC on "Continuing Professional Development Course Approval Form" at least sixty (60) days prior to presentation of the activity. All other requests for approval of an activity shall be submitted to the CPDC on a "Continuing Professional Development Course Approval Form" at least two (2) weeks before the CPDC meeting which considers the activity for approval.

(5) All requests for approval of an activity shall be accompanied by:

- (a) A detailed outline and objectives;
- (b) A time outline including registration, introductions, welcomes, breaks, and meals;
- (c) Handouts or reference materials needed to evaluate the activity; and
- (d) A resume for each instructor or speaker in the activity.

(6) The CPDC or board reserves the right to send a representative to monitor an activity:

(a) The provider or sponsor shall waive all fees for the CPDC or board representative; and

(b) Approval for the activity may be withdrawn for subsequent iterations of the activity, if significant variation is observed from the approved activity.

(7) An evaluation form shall be made available for participants at each presentation.

(8) An individual under disciplinary action from the board or a business entity with a principal who is under disciplinary action from the board shall be prohibited from presenting a CPD activity for credit without specific approval from the board.

(9) When a provider fails to obtain prior approval, a professional land surveyor may request credit for an activity by making a written request to the CPDC and including the items listed in subsection (5) of this section.

(10) Upon approval, an activity shall receive a CPD number which shall be used to identify the activity.

(11) If an activity is not approved by the CPDC, the requestor shall be sent notice of nonapproval within two (2) weeks of its decision. This decision shall be presented to the board at its next meeting for ratification.

Section 6. Exemptions and Extensions. The following professional land surveyors may be exempted from the requirements of this administrative regulation by submitting a written request to the CPDC with supporting documentation for the exemption:

(1) A professional land surveyor shall be exempted for the calendar year in which he or she is initially licensed by the board.

(2) A professional land surveyor who cannot satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance may be exempted for the calendar year in which the disability, illness, or extenuating circumstance occurs. The CPDC may grant an extension of time to fulfill the yearly CPD requirement for an extenuating circumstance.

(3) An exemption or extension request shall be made in writing for each calendar year and the exemption or extension is only valid for that calendar year.

Section 7. Reinstatement. Before a license is reinstated by the board, a former professional land surveyor shall earn the continuing professional development hours required for each year the license was revoked, suspended, or expired, up to a maximum of thirty-two (32) professional development hours.

Section 8. Reporting. (1) On the biennial renewal form, a professional land surveyor shall certify whether or not the requirements of this administrative regulation have been met.

(2) Biennial renewal forms received after September 1 shall be subject to the audit process in Section 9 of this administrative regulation.

Section 9. Audits. (1) Compliance with the annual CPD re-

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quirements shall be determined through an audit process.

(2) Professional land surveyors shall be audited through a random selection process or as the result of information provided to the board. (3) Individuals selected for audit shall provide the board with documentation of the CPD activities claimed for the renewal period. Appropriate documentation shall include:

(a) Verification records in the form of transcripts, completion certificates, or other documents supporting evidence of participation.

(b) Information regarding seminar or course content, instructors, and sponsoring organizations.

(4) Verification records and documentation for audit purposes shall be maintained by individual licensees for a period of three (3) years after completion of the CPD activity.

(5) If continuing professional development credit is disallowed, a professional land surveyor shall have 180 calendar days after notification to substantiate the original claim or earn other credit to meet the requirement.

(4) Failure to comply with the CPD requirements shall be considered a violation of KRS 322.180(3) subjecting the professional land surveyor to disciplinary action.

(5) An audit resulting in a determination of noncompliance shall subject the professional land surveyor to an automatic audit the next reporting period and each subsequent reporting period until a audit results in a determination of compliance.

(6) A professional land surveyor who is under investigation pursuant to KRS 322.190 may be subjected to the audit requirements of this section.

Section 10. Incorporation by Reference. (1) "Continuing Professional Development Course Approval Form", November 1999, State Board of Licensure for Professional Engineers and Land Surveyors is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID COX, Executive Director

APPROVED BY AGENCY: August 3, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2011 at 1:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five workdays prior to the date of the hearing. If no written notification of an individual's intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. If the public hearing is held, 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, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. 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 September 30, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation implements the continuing professional development program

mandated by KRS 322.290(14) for professional land surveyors.

(b) The necessity of this administrative regulation: KRS 322.290(14) mandates a professional development program for professional land surveyors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation contains the details and requirements of the mandated professional development program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets the requirements of the continuing professional development program for professional land surveyors so that the board can administer the program and inform licensees of the requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment contains two changes: First, it adds the words "for professional land surveyors" in the title line of the regulation to distinguish the applicability of this regulation from that of 201 KAR 18:196 which is the regulation that sets out the continuing professional development obligation for engineers; and second, it eliminates the two professional society nonvoting members from the CPDC to avoid the appearance of any conflict of interest that either society may have in participating as a member of the CPDC in matters coming before the CPDC in which they may have a personal interest, including, but not necessarily limited to, matters concerning the approval or disapproval of proposed CPD courses submitted by either their own organizations, or by other providers of continuing professional development courses.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to provide clarity to the title to the regulation, and to eliminate any appearance of any conflict of interest in matters coming before the CPDC in which either society may have an interest, including, but not necessarily limited to, discussions concerning the approval or disapproval of CPD courses submitted by members of either of the professional societies, or by other providers of continuing professional development courses.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 322.290(14) since that statute requires a professional development program for professional land surveyors.

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets the requirements of the professional development program and provides the supporting regulatory language for the board to enforce the requirement of KRS 322.290(14).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximate 1,300 licensed professional land surveyors and the board itself.

(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) A detailed explanation of 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 actions will be required of either the licensees or the board. While either or both of the professional societies affected by this amendment may continue to send representatives to any meetings of the CPDC open to the public, any comments offered such representatives at any meeting of the CPDC will not be made in the context as being made by a member of that committee.

(b) An estimate of the costs imposed on entities identified in question (3) in complying with this administrative regulation or amendment: There is no additional cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will result in clarity of application of the regulation, and the removal of any appearance of conflict of interest on the part of both or either of the professional societies.

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

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(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: Restricted Agency Funds. The board receives no general or federal funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

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 State Board of Licensure for Professional Engineers and Land Surveyors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 201 KAR 18:192; KRS 322.290(14)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue or expenditure to any agency as a result of this amendment.

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional cost involved in administering this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost involved in administering this program for the 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: There is no additional cost or revenue generated by this amendment.

GENERAL GOVERNMENT Board of Physical Therapy (Amendment)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 214.615(1), 327.050, 327.060, 327.070(2)(f), 327.080

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327, and 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist

assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant based on successful completion by the applicant of one (1) of the following processes:

- (1) Examination;
- (2) Endorsement; or
- (3) Reinstatement.

Section 2. Examination Candidate. (1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(b) Submit certification of completion by the educational administrator of that program;

(c) Have completed an educational course at least two (2) hours in length that has been approved by the Cabinet for Health and Family Services (CHFS) [(CHS)] on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS;

(d) Have successfully completed the Jurisprudence Exam;

(e) Submit a complete and notarized application for credentialing that includes a photo taken within one (1) year;

(f) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;

(g) If applicable, submit on an Applicant Special Accommodations Request Form, a request for a reasonable accommodation in testing due to a documented disability; and

(h) Register for the NPTE examination.

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(b) Complete the requirements of Section 2(1)(b) through (h) of this administrative regulation.

(3) After three (3) failed attempts in taking the examination, an applicant shall complete a board-approved remediation plan based on identified deficits as provided on the Federation of State Boards of Physical Therapy (FSBPT) Examination Performance Feedback report prior to registering for each subsequent examination.

(4) Effective July 1, 2012, after six failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and

(2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. Physical therapist applicants who meet the qualifications for physical therapy licensure by examination may become special candidates for physical therapist assistant certification by examination.

Section 5. To be eligible for credentialing by endorsement, the applicant shall:

(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(2) Meet the requirements established in Section 2(1)(b) through (f) [Section 2(1) (a) through (f)] of this administrative regulation;

(3) [(2)] Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

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(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75).

(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;

(4) [(3)] Have an active credential in this profession in another jurisdiction; and

(5) [(3)] Have verification of credentials showing the credential has never been revoked, suspended, on probation, or under disciplinary review in another jurisdiction.

Section 6 [5]. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 7 [6]. A credential issued by the board shall be in effect until March 31 of the next uneven-numbered year.

Section 8 [7]. A foreign-educated physical therapist shall comply with this administrative regulation and 201 KAR 22:070.

Section 9 [8]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Credentialing", August 15, 2011 [August 2010]; and

(b) "Applicant Special Accommodations Request Form", February 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: July 21, 2011

FILED WITH LRC: August 21, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2011, at 3:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and application procedures for physical therapists and physical therapist assistants.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the qualifications and procedures for applying for a credential to practice physical therapy in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the

qualifications and procedures for applying for a credential to practice physical therapy 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: The amendment limits the number of times an applicant may take the national examination and allows the physical therapist to take the physical therapist assistant examination. It also revised the "Application."

(b) The necessity of the amendment to this administrative regulation: To protect the public, this amendment will limit the number of times a candidate may take the exam. It also allows for a person educated as a physical therapist to be eligible to take the physical therapist assistant exam.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards and procedures for licensing.

(d) How the amendment will assist in the effective administration of the statutes: This amendment also protects the public by limiting the number of times an applicant can take the exam.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 physical therapists and physical therapist assistants.

(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: Physical therapist candidates will be able to register and schedule for the physical therapist assistant exam.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): To allow those physical therapy candidates that have been unsuccessful in passing the national exam to take the physical therapist assistant exam.

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

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.

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

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

(9) TIERING: Is tiering applied? Tiering was not used 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? Physical therapist and physical therapist assistant applicants.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 and KRS 327.050

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

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the first full year the administrative regulation is to be in effect. No 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 Department of Agriculture Division of Agriculture Marketing (Amendment)

302 KAR 45:010. Ginseng, general provisions.

RELATES TO: KRS 246.650, 246.660, 246.990(9), 50 C.F.R. Part 23.51

STATUTORY AUTHORITY: KRS 246.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 246.660 requires the Department of Agriculture to promulgate administrative regulations relating to the administration of a program for American Ginseng. This administrative regulation establishes general provisions which apply in this chapter with regard to definitions, harvest season, and cooperative agreements.

Section 1. Definitions. (1) "Ginseng" means American ginseng (*Panax quinquefolius*)

(a) "Artificially Propagated" means grown from seeds or root-lets that are either exempt from the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or have been derived from cultivated parental stock, and grown as either

(1) "Woodsgrown" means grown under natural canopy and has been purposefully managed or

(2) "Cultivated" means grown under artificial shade and in tilled soil.

(b) "Wild Simulated" means ginseng grown from seed not as required in Section 3 of this administrative regulation, with minimal interference by humans, under natural canopy.

(c) "Wild" means growing with minimal inference by humans, under natural canopy in forest or woodlands. If seeds of wild ginseng are planted as required by Section 3 of this administrative regulation, those mature plants shall be considered wild.

(2) "Dealer" means any person or agent of an entity buying ginseng for resale or export.

(3) "Certified ginseng" means ginseng that has been issued an American Ginseng Export Certificate by the department or other governmental certifying organization.

(4) "Uncertified ginseng" means ginseng that has been harvested, but has not been issued a certificate for export.

(5) "Harvest" means to take any part of the ginseng plant while the plant is living.

(6) "Purchase" means to take possession of ginseng in exchange for cash, cash equivalents, or barter.

(7) "Sell" means to transfer possession of ginseng to another person or entity in exchange for cash, cash equivalents, or barter.

(8) "Department" means the Kentucky Department of Agriculture.

(9) "Green ginseng" means ginseng roots retaining moisture, not dried.

(10) "Dry ginseng" means ginseng roots that have been dried to remove moisture.

(11) "Export" means to transport, ship, carry, haul, take or otherwise move ginseng collected in Kentucky outside of Kentucky.

Section 2. Dealer License Requirements. No person shall purchase uncertified ginseng for resale or export unless they possess a ginseng dealers license.

(1) Annual application. All persons or agents of entities purchasing uncertified ginseng in any amount at any time shall be required to file a complete application for a Ginseng Dealers License.

(2) Fee. An annual fee of seventy-five (75) dollars for Kentucky residents or \$150 for non-residents shall be submitted to the Department prior to issuance of a Ginseng Dealers License. Residency will be determined by the state of issuance of a driver's license or other government issued identification.

(3) Licensing Period. The Ginseng Dealer License shall be valid from September 1 until August 31 of the following calendar year. The Department shall not issue a license if an applicant has outstanding penalties due under Section (9) of this regulation.

Section 3. Record Keeping. (1) Purchase and sale of ginseng. Ginseng dealers shall document all purchases and sales of ginseng on forms to be provided by the Department. The forms shall be legible and completed in their entirety by the dealer, other than the seller's signature or mark, in the presence of the seller and include:

(a) Printed name, signature or mark and address of the seller;

(b) Month purchased;

(c) Month harvested;

(d) County where harvested;

(e) Weight of purchase or sale;

(f) Designation of ginseng as cultivated, woodsgrown, wild, or wild simulated and whether dried or green at the time of the transaction; and

(2) Records of sales between dealers. Ginseng dealers purchasing ginseng from other dealers shall complete a Dealer to Dealer Transaction Form to document the purchase and submit the documents to Department along with the Ginseng Purchase Form obtained from the dealer of origin. The form for sales between dealers shall include:

(a) The month of purchase from a dealer;

(b) The weight of the ginseng purchased at the time of the transaction;

(c) The signature and registration number of the dealer from whom the purchase is made; and

(d) the designation of ginseng as artificially propagated, wild, or wild simulated and whether dried or green at the time of the transaction.

(3) Dealers shall record identification numbers from the Purchase Record Form used to export certified ginseng from the state.

(4) It is unlawful for anyone to include false information on any certificate or form required to be completed or maintained by this section.

(5) It is unlawful to sell or purchase ginseng without accurately documenting the information required in subsection (1) of this section on a Ginseng Purchase Form.

(6) Ginseng shall not be certified until the purchase forms are filed with the department.

(7) Retention. A person required to maintain records under this section shall retain the forms for a period of three (3) years from the end of that year's growing season.

(8) Availability. Records required to be maintained under this section shall be made available to the department upon request.

Section 4. Harvest. (1) Ginseng shall only be harvested between September 1 and December 1 of each year.

(2) It is unlawful to harvest ginseng which is less than five (5) years old or has less than three (3) five (5) leafed prongs.

(3) Seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger.

Section 5. Sale of Ginseng. (1) Uncertified Ginseng may only be sold between September 1 for green ginseng and September

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15 for dry ginseng of each year until March 31 of the following year.

(2) Ginseng Dealers may obtain American Ginseng Export Certificates from department during the ginseng selling season.

(3) A ginseng dealer may sell certified ginseng at any time.

Section 6. Unsold Ginseng. (1) Uncertified ginseng not sold by March 31 of the year after harvest shall be weighed and issued a weight receipt, or reported on an export certificate.

(2) Possession of undocumented ginseng (documented by either an export certificate or a weight receipt) by a ginseng dealer, is unlawful from April 1 to September 14.

(3) Uncertified weighed ginseng shall not be sold until the following season selling period.

Section 7. Certification of Ginseng. (1) Ginseng dealers holding Kentucky Ginseng Dealer's License shall obtain an American Ginseng Export Certificate issued by the department after filing of associated purchase forms and undergoing random sample inspection of roots by an official of the department.

(2) The certificate shall include the following information:

(a) State of origin;

(b) Serial number of certificate;

(c) Dealer's state license number;

(d) Dealer's shipment number for the harvest season;

(e) Year of harvest;

(f) Designation as dried or green ginseng;

(g) Designation as cultivated, woodsgrown, wild or wild simulated;

(h) Weight of ginseng;

(i) Statement of state or tribal certifying official that the ginseng was obtained in that state or on those tribal lands in accordance with all relevant laws for that harvest year; and

(j) Name and title of state or tribal certifying official.

(3) A copy of certification shall be enclosed with the shipment subject of the certification. A copy of a certificate shall be retained for a minimum of three (3) years by the licensed ginseng dealer and a copy of the certificate shall be retained by the certifying agent of the department for seven (7) years.

(4) At the time of issuance of the certificate, the department official shall receive from the ginseng dealer copies of all Ginseng Purchase Forms covering the amount of ginseng certified. The Ginseng Purchase Form for ginseng purchased from other dealers and accompanying Dealer to Dealer forms shall be submitted the department prior to a certificate being issued.

(5) The fee for certification and processing by the department shall be two (2) dollars per pound. Payment shall be made prior to the release of the certification of the ginseng to the dealer, and shall be tendered by check or money orders only. Cash shall not be accepted.

(6) The department may obtain samples of roots in order to obtain a root count.

Section 8. Prohibition on Uncertified Non-Kentucky Grown Ginseng. Ginseng that is harvested outside the border of Kentucky and not certified in its state of origin shall not be allowed to enter Kentucky.

Section 9. Violations and Penalties. (1) The following acts shall be considered a violation of this administrative regulation, and shall carry an administrative penalty of \$100 to \$1,000 dollars:

(a) Harvesting ginseng out of season;

(b) Selling uncertified ginseng out of season;

(c) Possessing underage ginseng;

(d) Seed Collection, not relocating within fifty (50) feet of parent;

(e) Purchasing uncertified ginseng out of season;

(f) Falsification of records, applications or contents thereof; and

(g) Reselling or exporting ginseng without a license.

(h) Failure of dealers to certify or obtain weight receipt of ginseng at the end of the uncertified ginseng selling season.

(i) Transporting or exporting of uncertified ginseng in or out of Kentucky

(j) Possession of uncertified ginseng by a ginseng dealer be-

tween April 1 and September 14.

(2) Persons who commit the same violation within thirty (30) days of being cited for the first violation shall be assessed up to double the civil penalty assessed in Section 9(1) of this administrative regulation, not to exceed \$1,000.

(3) Persons who commit a third same violation within sixty (60) days of being cited for the first violation shall be assessed up to triple the civil penalty assessed in Section 9(1) of this administrative regulation, not to exceed \$1,000.

(4) This section shall not prohibit the department from suspending or revoking a license or certificate at any time in accordance with KRS 246.650.

Section 10. Ginseng Dealer License Suspension or Revocation. (1) A ginseng dealer shall have ten (10) days upon the receipt of the notification of a proposed suspension or revocation to request a hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

(2) If a hearing is not requested as provided for in subsection (1) of this section, the department may suspend or revoke the license once the ten (10) day hearing request filing period has passed.

(3) The department may suspend a license for up to one calendar year, or revoke a dealer license after the provisions of part one (1) and two (2) of the section have been satisfied.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Ginseng Dealer Application" (Revised 7/13/2011);

(b) "American Ginseng Export Certificate" (Revised 7/13/2011);

(c) Dealer to Dealer Transaction Form (Revised 7/13/2011); and

(d) Ginseng Purchase Form (Revised 7/13/2011).

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Value-Added Foods, 100 Fair Oaks, Suite 252, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Section 1. Definitions. (1) "Ginseng dealer" means a person engaged in the business of buying ginseng roots from ginseng collectors, ginseng cultivators, and other ginseng dealers for resale to ginseng exporters or to other ginseng dealers or any person who sells ginseng in a form in interstate commerce.

(2) "Commissioner" is defined at KRS 246.010(2).

(3) "Department" is defined at KRS 246.010(2).

(4) "State" means the Commonwealth of Kentucky.

Section 2. Registration. (1) A person shall complete a "Kentucky Ginseng Dealer Application" and return it to the Department prior to June 30 of each year.

(2) An applicant for renewal of a certificate of registration shall meet the department's recordkeeping and reporting requirements.

(3) Certificates of registration shall be issued for a period of one (1) year and shall expire on April 30 of each year.

Section 3. Recordkeeping. (1)(a) Purchase and sale of ginseng. Ginseng dealers shall keep records on forms furnished by the department of purchases and sales of ginseng. The records shall include:

1. Month purchased;

2. Month dug;

3. County where dug;

4. Weight of purchase; and

5. Signature and address of digger or seller.

(b) Records of sales between dealers. Ginseng dealers shall keep records of purchases from other dealers. Records of sales between dealers shall include:

1. The month of purchase from a dealer;

2. The weight of the ginseng purchase; and

3. The signature and registration number of the dealer from whom the purchase is made.

(c) All purchase records shall be submitted to the department on a monthly basis.

(d) No ginseng shall be certified until the purchase records are recorded by the department.

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(2) Retention. A person required to maintain records under this section shall retain the records for a period of three (3) years.

(3) Availability. Records required under this section shall be made available to the department upon request.

Section 4. Annual Report. A ginseng dealer shall file an annual report with the department by April 30th. The annual report shall include the listing of each purchase and sale of ginseng made by the dealer since July 1 the previous year.

Section 5. Reporting Ginseng Originating Outside of Kentucky. A ginseng dealer shall file a report with the department at least every calendar year quarter if the dealer has any commerce in ginseng originating from any state other than Kentucky. The report shall be sent within fifteen (15) days of the end of any calendar year quarter and shall list each purchase and sale of out-of-state ginseng made by the dealer during that quarter.

Section 6. Harvest Season. Beginning September 1, 1988 and each year thereafter, wild ginseng shall only be dug between August 15 and December 1 of each year. Seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger. Ginseng growers will not longer be able to harvest the ginseng until it is five (5) years old or has three (3) prongs.

Section 7. Certification for Sale. Sales of ginseng by dealers shall be certified for sale during the ginseng selling season beginning September 1 of each year and extending until March 31 of the following year.

Section 8. Unsold Ginseng. Ginseng unsold by March 31 of the year after harvest shall be weighed by the department and the dealer given a weight receipt. A future export certification of this stock shall only be issued against the weight receipt.

Section 9. Exportation of Ginseng. (1) Ginseng dealers holding a certificate of registration shall obtain a certificate of legal taking issued by the department after inspection by an official of the department identifying the origin, year of taking, and weight of a shipment of ginseng to a destination outside the Commonwealth of Kentucky. The certificate shall also state whether the ginseng is Wild American Ginseng or whether the ginseng has been cultivated or propagated by a grower. Certification shall be issued to the dealer on triplicate forms issued by the department. A copy of certification shall be enclosed with the shipment subject of the certification. A copy of a certificate shall be retained for a minimum of three (3) years by the licensed ginseng dealer and a copy of the certificate shall be retained by the certifying agent of the department.

(2) At the time of issuance of the certificate, the department official shall receive from the ginseng dealer copies of all purchase records covering the amount of ginseng certified. Records of ginseng purchased from other dealers shall be recorded with the department prior to a certificate being issued.

Section 10. Ginseng dug outside the borders of Kentucky and not certified in its state of origin shall not be allowed to enter Kentucky.

Section 11. (1) Protection of Species, Violation of Law. Ginseng which is obtained in contravention of laws for the protection of the species or in violation of any other law shall not be purchased, sold, shipped, or transported within the Commonwealth of Kentucky.

(2) The Kentucky Department of Agriculture may enforce the provisions of Section 11 of this administrative regulation herein as provided in KRS 260.030.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "2000-20001 Kentucky Ginseng Dealer Application" (2000-2001 edition);

(b) "American Ginseng Export Certificate" (December 2000);

(c) Dealer Transaction Log – Sales (December 2000);

(d) Ginseng Dealer Purchase Record (December 2000); and

(e) Wild Ginseng Purchase Record (December 2000).

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Value-Added Foods, 400 Fair Oaks, Suite 252, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHEL FARMER, Commissioner of Agriculture

APPROVED BY AGENCY: August 1, 2011

FILED WITH LRC: August 2, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, at 10 am at 100 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14th, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30. 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the licensing requirements for dealers of ginseng, and modifies the harvesting season.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate to establish licensing requirements. Additionally, the change in harvesting season is need to provide the ginseng plants in the commonwealth more time to mature and produce viable seeds prior to harvest.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 246.660 establishing the licensing requirements for dealers of ginseng, and modifies the harvesting season.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with the statutory mandate to establish licensing requirements. Additionally, the change in harvesting season is need to provide the ginseng plants in the commonwealth more time to mature and produce viable seeds prior to harvest.

(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 amends dealer requirements to make the business of dealing in ginseng more understandable. The regulation details exactly what records are needed to document transactions. Additionally, the amendment adds detail to the definitions sections, which allows dealers to clearly define what products they are purchasing and in what amounts.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary change the harvest date to allow the plants to produce more viable seeds for future reproduction. Additionally, the records that will be kept are necessary for the Commonwealth to be able to document harvest or a natural crop the Federal government has expressed interest in regulating further.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS

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246.660 by amending dealer requirements to make the business of dealing in ginseng more understandable. The regulation details exactly what records are needed to document transactions. Additionally, the amendment adds detail to the definitions sections, which allows dealers to clearly define what products they are purchasing and in what amounts.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation is necessary to alter the harvesting period and records needed for sales or ginseng.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture has approximately 160 licensed dealers. The KDA estimate that approximately eight to ten thousand (8000-10000) persons harvest ginseng in the Commonwealth annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Ginseng Dealers will be required to keep modified records and to pay a certification fee for each pound of ginseng. Dealers will be required to pay a fee 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 a dealers license is seventy five dollars (\$75) for dealers located in Kentucky, and one hundred fifty dollars (\$150) for all others. Additionally, the fee to certify ginseng is two dollars (\$2) per pound.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The continuation of the ginseng certification program will be vastly improved by providing a dedicated funding source to offset part of the cost the KDA. The certification and monitoring portions of the program are critical for federal reporting requirements.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees collected from dealer licensure and certification of ginseng will provide partial funding for the staff required to administer the program. The portion not covered by fees will be supplied by the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The funding increase from licenses and certification fees are necessary to allow the KDA to have a sustainable program that provided timely response to the ginseng industry. Timely federal reporting requirements must be met to allow Kentucky to export ginseng under 50 C.F.R. 23.68.

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture will be impacted as the KDA will be administering the program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 246.660 requires the KDA to promulgate this regula-

tion.

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 program is projected to generate approximately \$48,000 each 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? The program is projected to generate approximately \$48,000 each fiscal year.

(c) How much will it cost to administer this program for the first year? The program will cost approximately \$100,000 annually to operate.

(d) How much will it cost to administer this program for subsequent years? The program will cost approximately \$100,000 annually to operate.

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 Natural Resources Division of Mine Reclamation and Enforcement (Amendment)

405 KAR 5:085. Enforcement.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300
STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 350.028, 350.029, 350.240, 350.300, 350.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 [~~in pertinent part,~~] requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation establishes [~~sets forth~~] provisions governing the issuance of the various notices and orders to be issued by authorized representatives of the cabinet. This [~~The~~] administrative regulation establishes [~~directs~~] that there be issued a notice of noncompliance and order for remedial measures if there is a violation. This [~~The~~] administrative regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of an imminent danger to the health or safety of the public or significant, imminent environmental harm to land, air, or water resources. This [~~The~~] administrative regulation establishes [~~sets forth~~] the general form of the notices and orders and authority to vacate, modify, or terminate the orders or notices.

Section 1. General. (1) The secretary of the cabinet may from time to time or for a definite period designate, by written order or by other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the administrative regulations contained in 405 KAR Chapter 5.

(2) Unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the Commissioner of the Department for Natural Resources shall be [~~are deemed~~] the authorized representatives of the cabinet for the purposes of this administrative regulation.

Section 2. Inspections. (1) General. In accordance with the provisions of 405 KAR Chapter 5 [~~this chapter~~], the cabinet shall conduct or cause to be conducted [~~such~~] inspections, studies, investigations, or other determinations as it deems reasonable and necessary to obtain information and evidence to [~~which will~~] ensure that mineral operations shall be [~~are~~] conducted in accordance with the provisions of all applicable statutes and administrative regula-

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tions, and all terms and conditions of the permit.

(2) Right of entry and access. Authorized employees of the cabinet shall have unrestricted right of entry to all parts of the mineral operation for any purpose ~~[associated with their proper duties]~~ pursuant to 405 KAR Chapter 5 ~~[this chapter]~~, including ~~[but not limited to]~~, making inspections, and delivering documents or information of any kind to persons associated with the mineral operation.

(3) Timing and frequency of inspections.

(a) The cabinet shall conduct periodic inspections of all mineral operations.

(b) Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night or on weekends or holidays when the cabinet deems these inspections necessary to properly monitor compliance ~~[with all applicable laws and administrative regulations]~~.

(c) The cabinet shall not have ~~[a]~~ obligation to give prior notice that an inspection will be conducted or to obtain a warrant.

(4) Citizens request for inspections.

(a) Any citizen may request that the cabinet conduct an inspection by furnishing to the cabinet, a signed, written statement, or an oral report followed by a signed written statement, giving the cabinet reason to believe that a violation, condition, or practice in violation of KRS Chapter 350, administrative regulations promulgated pursuant thereto, or permit conditions exists, and setting forth a telephone number and address at which the person can be contacted.

(b) The identity of any person supplying information to the cabinet relating to a possible violation or imminent danger or harm shall remain confidential with the cabinet if requested by that person, unless disclosure is required by law.

(c) Within a reasonable time, the cabinet shall send to the person the following:

1. If an ~~[a]~~ inspection was not conducted, an explanation of the reason or reasons why ~~[no inspection was conducted]~~; or
2. If an inspection was conducted, a description of the enforcement action taken, if any, or an explanation of why ~~[a]~~ enforcement action was not taken.

Section 3. Notice of Noncompliance and Order for Remedial Measures. (1) An ~~[Any]~~ authorized representative of the cabinet shall issue a notice of noncompliance and order for remedial measures if, on the basis of an inspection, he finds a violation of KRS Chapter 350, 405 KAR Chapter 5, a ~~[any]~~ permit condition, or another ~~[any other]~~ applicable requirement.

(2) A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized employee who issued it. The notice shall contain the following information:

(a) The nature of the violation ~~[violations]~~;

(b) The remedial measures required, if any, which may include accomplishment of interim steps, if appropriate;

(c) A reasonable time table for remedial action, if any, which may include a time table for accomplishment of interim steps, if appropriate; and

(d) An adequate description of the portion of the mineral operation to which the notice applies.

(3) An authorized employee may modify an order for remedial measures for good cause ~~[causes]~~.

(4) Extensions and modifications of notices for remedial action. An authorized employee may extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued.

(a) 1. The total time for remedial action under the notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice except upon a showing by the mineral permittee that it is not feasible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances established ~~[set forth]~~ in paragraph (b) of this subsection. 2. An abatement period exceeding ninety (90) days pursuant to this subsection shall not be granted for a situation ~~[situations]~~ in which the mineral permittee's failure to abate within ninety (90) days has

been caused by a lack of diligence or intentional delay by the mineral permittee in completing the remedial action required.

(b) The following circumstances may qualify mineral operations for an abatement period of more than ninety (90) days:

1. The mineral permittee of the ongoing mineral operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but the permit or approval, for reasons not within the control of the mineral permittee, has not been and will not be issued prior to ninety (90) days after the valid permit or approval expires or is required;

2. There is a valid judicial order precluding abatement within ninety (90) days to which the mineral permittee has diligently pursued all rights of appeal and to which he has no other effective legal remedy;

3. The mineral permittee cannot abate within ninety (90) days due to a labor strike; or

4. Weather conditions that would clearly cause more environmental harm than abatement measures would prevent; or

5. Require action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

~~[Weather conditions preclude abatement within ninety (90) days; due to weather conditions abatement within ninety (90) days would clearly cause more environmental harm than it would prevent; or abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.]~~

(c) If an abatement period in excess of ninety (90) days is approved by the cabinet, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public and the environment.

(d) 1. If any of the conditions in paragraph (b) of this subsection exist, the mineral permittee may request the authorized representative of the cabinet to grant an abatement period exceeding ninety (90) days. 2. The authorized representative of the cabinet shall not grant ~~[such]~~ an abatement period without the approval of the Director of the Division of Mine Reclamation and Enforcement ~~[Field Services]~~ or his designee, and the ~~[abatement]~~ period granted shall not exceed the shortest possible time necessary to abate the violation. The mineral permittee shall have the burden of establishing by clear and convincing proof that he is entitled to an extension under the provisions of this subsection.

3. In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative of the cabinet may consider relevant written or oral information from the mineral permittee and other sources.

4. The authorized representative of the cabinet shall promptly and fully document in the applicable file his recommendation for granting or denying the request and the reasons ~~[therefor]~~.

5. The authorized representative's immediate supervisor shall review this document before approving or disapproving the extended abatement period and shall promptly and fully document the reasons for his approval or disapproval in the applicable file.

(e) A determination made pursuant to ~~[under]~~ paragraph (d) of this subsection shall be in writing and shall be subject to administrative and judicial review pursuant to 405 KAR 5:095.

(f) An extension granted pursuant to this subsection shall not ~~[No extension granted under this subsection may]~~ exceed ninety (90) days in length. For a situation ~~[situations]~~ in which the condition or circumstance that prevented abatement within ninety (90) days exists at the expiration of the extension, the mineral permittee may request a further extension in accordance with the procedures of this subsection.

(5) Based upon the written recommendation of authorized representative of the cabinet who issued the notice or noncompliance and order for remedial measures, the director of the Division of Mine Reclamation and Enforcement ~~[Field Services]~~ may vacate a notice of noncompliance and order for remedial measures determined to be issued in error.

Section 4. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the person to whom a notice of noncompliance and order for remedial measures has been issued fails to comply with the

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terms of the notice within the time for remedial action established in the notice or as subsequently extended, an authorized representative of the cabinet shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he finds, on the basis of an inspection, a [any] condition or practice; a [any] violation of KRS Chapter 350; a [any] violation of 405 KAR Chapter 5; or a [any] violation of a term or condition of the applicable permit that [which]:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he finds, on the basis of an inspection, that mineral operations are being conducted by a person without a valid mineral operations permit for the activities in accordance with this chapter.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The order shall establish [set-forth] with [reasonable] specificity:

1. The nature of the violation;

2. A reasonable description of the portions of the mineral operations to which it applies;

3. The remedial measures, if any, necessary to abate the violation in the most expeditious manner possible; and

4. The time established for abatement, if appropriate, including the time for complying with any interim steps.

(b) At the same time that the authorized representative of the cabinet issues an order for cessation and immediate compliance pursuant to subsection (1)(b) or (c) of this section, ~~he shall also issue~~ a notice of noncompliance and order for remedial measures.

(3) Effect.

(a) 1. The order for cessation and immediate compliance shall require the cessation of all mineral operations or the portions or operations thereof relevant to the condition, practice, or violation covered by the order. 2. The order shall require the person to whom it is issued to take [any] affirmative steps that [which] the authorized representative of the cabinet deems necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the condition, practice, or violation has been abated; until the order is vacated, modified, or terminated in writing pursuant to subsection (4) of this section; or until it is vacated, modified, or terminated by a hearing officer.

(c) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of an [any] order unless the order states that the reclamation operations and other activities shall cease.

(4) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet may, by written notice, modify or terminate an order for cessation and immediate compliance issued under this section for good cause and may extend the time for abatement if the failure to abate within the time previously established [set] was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his authorized representative shall terminate an order for cessation and immediate compliance, by written notice to the person to whom the order was issued, if [when] he determines that all conditions, practices, and violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations or to impose [any] other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet who issued the order for cessation and immediate compliance, the Director of the Division of Mine Reclamation and Enforcement [director of the division of field services] may vacate an order for cessation and immediate compliance determined to have been issued in error.

(5) Within sixty (60) days after issuing an order for cessation and immediate compliance, the cabinet shall notify in writing a person who has been identified as owning or controlling the mineral permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Section 5. Notice of Inspection of Noncompliance. (1) Issuance. If an authorized representative of the cabinet issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, the authorized representative [he] shall reinspect the area [areas] affected by the mineral operations on or soon after the date established [given] in the notice or order for completion of remedial measures. At the time of [this] reinspection, the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. (a) The notice of inspection of noncompliance shall establish if [set-forth whether]:

1. ~~[(a)]~~ The remedial measures have been completed, and the notice or order is therefore terminated;

2. ~~[(b)]~~ The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

3. ~~[(c)]~~ The remedial measures have not been completed.

(b) Following [such] a determination that the remedial measures have not been completed, the cabinet shall:

1. For situations in which the inspection was a reinspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a reinspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated, initiate:

a. An administrative hearing for suspension or revocation of the permit or approval;

b. An administrative hearing for bond forfeiture; or

c. Administrative hearings for other appropriate relief.

[an administrative hearing for suspension or revocation of the permit or approval, initiate an administrative hearing for bond forfeiture, or initiate administrative hearings for other appropriate relief.]

Section 6. Service of Notices and Orders. (1) A [Any] notice of noncompliance and order for remedial measures, an [any] order for cessation and immediate compliance, and a [any] notice of inspection of noncompliance shall be served on the person to whom it was issued or the person's designated agent promptly after issuance.

(2)(a) Each notice or order shall be served [; to the person to whom the notice or order has been issued or to his designated agent for service, by:

1. Hand;

2. Electronic mail with electronically generated receipt;

3. Certified mail, return receipt requested; or

4. Registered mail.

[hand, by certified mail (return receipt requested), or by registered mail to the person to whom the notice or order has been issued or to his designated agent for service.]

(b) The notice or order shall also be served [by hand] to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the mineral operations referred to in the notice or order. If the individual cannot [no such individual can] be located at the site, a copy of the notice or order may be tendered to an [any] individual at the site who appears to be an employee or agent of the person to whom the notice or order has been issued.

(c) Service, whether by electronic mail, hand, or standard mail [hand or by mail], shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(d) For mineral operations, service by mail shall be addressed to the designated agent for service; to the electronic or permanent address of the mineral permittee as identified on the permit or in the application; or, if an address is unavailable [no address is identified] for the mineral permittee in the application, to another [such other] address as is known to the cabinet. If a person cannot be found [no person is] present at the site of the mineral operations,

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services by mail shall by itself be sufficient notice.

(3) Designation by a [any] person of an agent for service of notices and orders issued pursuant to this administrative regulation and notices of hearing issued pursuant to 405 KAR 5:095 [405 KAR 5:085], shall be made a part of the applicable permit application. The person shall continue as agent for service of process until written revision of the permit is approved that [which] designates another person as the agent.

(4) The cabinet may furnish copies of notices and orders to any person having an interest which is or may be adversely affected by the mineral operations and any person having an interest in the permit.

Section 7. Penalties. The cabinet may assess penalties pursuant to KRS 350.990.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 29, 2011

FILED WITH LRC: August 9, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2011 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing September 14, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 September 30, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth provisions governing the issuance of the various notices and orders to be issued by authorized representatives of the cabinet. The administrative regulation directs that there be issued a notice of noncompliance and order for remedial measures if there is a violation. The administrative regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of an imminent danger to the health or safety of the public or significant, imminent environmental harm to land, air, or water resources. The administrative regulation sets forth the general form of the notices and orders and authority to vacate, modify, or terminate the orders or notices.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information to the regulated community regarding the issuance of the various notices and orders to be issued by authorized representatives of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.130 authorizes the cabinet to conduct enforcement procedures including transmission of notices of enforcement procedures. This administrative regulation sets forth hearing, notice and other procedural and due process provisions for the permanent regulatory program.

(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 establishing the procedures for hearings and notices and other procedural and due process provisions for the permanent regulatory program.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows service of documents to be achieved electronically in addition to current methods.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enable the department to send enforcement documents required to be served by electronic mail.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 350.130 authorizes the cabinet to deliver documents electronically as a means of service. This amendment places this option in administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by providing a more efficient means of delivery.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation could potentially impact any non-coal permit holders within the Commonwealth of Kentucky. The current number of permits is 232.

(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 require entities interested in receiving enforcement notification by email to provide a current email address.

(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 the regulated entities. The amendment to this administrative regulation includes optional criteria.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities which comply with the amendment to this administrative regulation will benefit by receiving enforcement documents by email.

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

(a) Initially: There will be no costs to the agency associated with implementation.

(b) On a continuing basis: There will be no continuing costs to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund dollars will be used to fund these provisions.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding to administer this administrative regulation. A cost savings will be realized by the passage of this administrative regulation.

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

(9) TIERING: Is tiering applied? No. All entities that sign up for electronic notification will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Michael Mullins

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 Mine Reclamation and Enforcement as well as the Office of Administrative Hearings.

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

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regulation. KRS 350.028, 350.029, 350.240, 350.300, 350.990.

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 amendment will generate funds by way of a cost savings to the department.

(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? Since this proposal is optional it is difficult to predict the savings that could be realized by this amendment because it is uncertain, how many enforcement documents would be sent out under this proposal.

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

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

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

Revenues (+/-): This amendment will generate additional savings to the department resulting from sending out enforcement notifications by email.

Expenditures (+/-): NA

Other Explanation: NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Reclamation and Enforcement (Amendment)

405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions.

RELATES TO: KRS 224.10-410, 350.010(2), 350.130, 350.240, 350.300, 350.990[~~224.10-440~~]

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 350.028, 350.029, 350.0301, 350.050, [~~350.0304,~~] 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 [~~in pertinent part,~~] requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation establishes [~~sets forth~~] provisions governing requests for administrative hearings, initiation of administrative hearings by the cabinet, informal settlement conferences, procedures for the conduct of administrative hearings, service, and administrative hearings for orders to abate and alleviate.

Section 1. Conduct of Administrative Hearings. (1)(a)1. Requests for an administrative hearing by persons other than the cabinet. A [Any] person aggrieved by an order or determination of the cabinet may request in writing that an administrative hearing be conducted by the cabinet. The request shall be filed with the Office of Administrative Hearings in Frankfort and [~~The request for an administrative hearing~~] shall include a short and plain statement identifying the basis of the request and the order or determination being contested.

2. The request for an administrative hearing shall plainly identify the notice or order being contested if the request involves:

a. A notice of noncompliance;

b. An order for cessation and immediate compliance; or

c. A proposed penalty assessment [~~If the request for an administrative hearing involves a notice of noncompliance, order for cessation and immediate compliance or proposed penalty assessment, the request shall plainly identify the notice or order being contested. The request shall not operate as a stay of any order or~~

notice].

3. The right to demand an administrative hearing shall be limited to a period of thirty (30) days after the requester has had actual notice of the action, or could reasonably have had the notice.

(b) Burden of proof.

1. The cabinet shall have the burden of establishing a prima facie case as to the propriety of:

a. Notices of noncompliance and orders for remedial measures;

b. Orders for cessation and immediate compliance; or

c. The modification, vacation, or termination as established in this section [~~In review of notices of noncompliance and orders for remedial measures or orders for cessation and immediate compliance or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice, order, or modification, vacation, or termination thereof.~~].

2. The ultimate burden of persuasion shall rest with the petitioner. In all other cases in which [~~where~~] the administrative hearing is requested by persons other than the cabinet, the petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

(2) Initiation of an administrative hearing by the cabinet.

(a) The cabinet may initiate an administrative hearing and may seek suspension or revocation of the permit and forfeiture of the bond if:

1. It has reason to believe that a violation of KRS Chapter 350, 405 KAR Chapter 5, or a permit condition has occurred or is occurring; [~~or~~]

2. A mineral permittee has failed to:

a. Pay a civil penalty assessed in a final order of the cabinet;

b. Undertake remedial measures mandated by a final order of the cabinet; or

c. Abate violations it was determined to have committed by final order of the cabinet; [~~pay a civil penalty assessed in a final order of the cabinet or to undertake remedial measures mandated by a final order of the cabinet or to abate violations it was determined to have committed by a final order of the cabinet; or~~]

3. The cabinet has reason to believe that additional remedies should be sought or that an order should be entered against a [~~any~~] person to protect the environment or the health and safety of the public; [~~or~~]

4. The criteria of 405 KAR 5:082 [~~405 KAR 5:080~~] apply.

(b) Burden of proof. If the cabinet initiates an administrative hearing, the cabinet shall have the ultimate burden of persuasion. The responding party shall have the burden of persuasion to establish an affirmative defense.

(3) At an [~~any~~] administrative hearing held pursuant to subsection (1) or (2) of this section, the cabinet may seek any combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalties;

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future mineral operations; or

(e) Any other relief to which it may be entitled by KRS Chapters 224 and 350.

(4) If the cabinet revokes or suspends the permit, then mining operations on the permit area shall immediately cease, and the mineral permittee shall:

(a) Complete [~~If the permit is revoked, complete~~] reclamation within the time specified in the order, if the permit is revoked; or

(b) Complete [~~If the permit is suspended, complete~~] all affirmative obligations to abate all conditions, practices, and violations as specified in the order, or the permit is suspended.

(5) Informal settlement conferences. As an alternative to the administrative hearings provided at subsection (1) of this section, a permittee or other person issued a notice of noncompliance, order for cessation and immediate compliance, or proposed penalty assessment may request an informal conference with the Director, Division of Mine Reclamation and Enforcement, [~~director, Division~~

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of Field Services,] by submitting a written request [for an informal conference to the office of the director].

(a) The time for requesting an informal conference shall be limited to a period of thirty (30) days following issuance of the notice of noncompliance, order for cessation and immediate compliance or proposed penalty assessment.

(b) A request for informal conference shall not toll the time for requesting an administrative hearing pursuant to subsection (1) of this section.

(6) Administrative summons. (a) Upon request pursuant to subsection (1) of this section, or upon initiation by the cabinet pursuant to subsection (2) of this section, the cabinet shall schedule an administrative hearing [before the cabinet] to be held not less than twenty-one (21) days after the notice of demand for an administrative hearing, unless the person complained against waives, in writing, the twenty-one (21) day period.

(b) The administrative summons, including a notice of administrative hearing, shall be served in accordance with Section 2 of this administrative regulation and shall include the following:

1. A statement of the time, place, and nature of the administrative hearing;

2. A statement of the legal authority for the administrative hearing;

3. Reference to the statutes and administrative regulations involved; and

4. A short statement of the reason for granting of the administrative hearing.

(c) ~~For all administrative hearings initiated pursuant to subsection (2) of this section, notice shall also be mailed to intervenors and shall be posted at the department's appropriate regional office. [a statement of the time, place, and nature of the administrative hearing; a statement of the legal authority for the administrative hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for granting of the administrative hearing. For all administrative hearings initiated pursuant to subsection (2) of this section, notice shall also be mailed to any intervenors, and shall be posted at the department's appropriate regional office.]~~

(7) Prior to an administrative hearing as provided in [under] this administrative regulation, and upon seven (7) days' written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification of the issues, consolidation of actions, admission of facts and documents to [which will] avoid unnecessary proof, limit [limitation] of the number of witnesses, and other matters that [as will] aid in the disposition of the matter. Final disposition of the matter may be made at the conference by stipulation, settlement, agreed order, summary disposition, or default for nonappearance. The parties may hold additional conferences as necessary [may be proper] to resolve an [any] issue in dispute.

(8)(a) Any party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas.

(b) An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing in accordance with reasonable administrative practice.

(c) Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 and [400 KAR] 1:040 shall apply to cases before the cabinet, consistent with KRS Chapters 224 and 350.

(d) The hearing officer shall permit a [any] party to represent himself, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel, without good cause, shall be grounds for default.

(e) Failure to appear without good cause or failure to comply with a [any] prehearing or interlocutory order of the hearing officer shall be grounds for default.

(9) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. (a) If necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except if precluded by statute, if it is of a type commonly relied upon by reasonable and

prudent persons in the conduct of their affairs.

(b) Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record.

(c) Subject to these requirements, if an administrative hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts.

(d) Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge.

(e) Parties shall be notified either before or during the administrative hearing, or by reference in preliminary reports or otherwise, of the material noticed, including a [any] staff memoranda or data, and the parties [they] shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(10)(a) Each administrative hearing shall be recorded, and a transcript made available on the motion of a [any] party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay copying costs [the cost thereof].

(b) The record of the administrative hearing shall be open to public inspection and copies thereof shall be made available to a person upon payment of the actual cost of reproducing the original except as provided in KRS Chapter 224. The record shall consist of:

1. All pleadings, motions, and rulings;
2. Documentary and physical evidence received or considered;
3. A statement of matters officially noticed;
4. Questions and offers of proof, objections, and rulings thereon;

5. Proposed findings and recommended orders; and

6. Legal briefs. ~~[The record of the administrative hearing, consisting of: all pleadings, motions, and rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon; proposed findings and recommended orders; and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS Chapter 224.]~~

(c) If certified by the cabinet as a true and correct copy of the testimony, the transcript shall constitute the official transcript of the evidence.

(11)(a) After the administrative hearing, the hearing officer shall issue a determination based on the preponderance of evidence appearing in the record as a whole. The determination shall establish in [set forth whether, in fact,] the violation did occur. If the violation occurred, the determination shall specify a recommended penalty and recommended remedial or compliance actions to be taken by the mineral permittee or the person conducting the mineral operation.

(b) In addition to the requirements of paragraph (a) of this subsection:

1. The hearing officer may recommend suspension or revocation of the permit or forfeiture of the bond if the mineral permittee has violated any provision of KRS Chapter 350; 405 KAR Chapter 5; a permit condition; or a final order, including failure to pay a civil penalty assessed in a final order of the cabinet;

2. The hearing officer may recommend, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future mineral operations;

3. The hearing officer may recommend that a person ~~[or persons]~~ be required to abate, repair, alleviate, or prevent violations of KRS Chapter 350; 405 KAR Chapter 5; or a permit condition, if the violations are found to exist on the basis of a preponderance of the evidence; and

4. For permit determinations, the hearing officer may recom-

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mend that a permit was issued in violation of applicable statutory and regulatory criteria, and may recommend suspension or revocation of the permit and may further recommend remedial or compliance actions to be taken by the mineral permittee.

(12) The hearing officer shall recommend the amount of a civil penalty pursuant to KRS 350.990(1) and (2) and the recommendation shall be based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of a [any] computation offered by a [any] party, and shall state with specificity [particularity] the reason, supported by the record of the administrative hearing, for the penalty assessed in the final written report.

(13)(a) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and a recommended order to the secretary. The report and recommended order shall contain the appropriate findings of fact and conclusions of law.

(b) If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension.

(c) The hearing officer shall mail, postage prepaid, a copy of the report and recommended order to all parties. The parties may file, within fourteen (14) days of receipt of the hearing officer's report and recommended order, exceptions to the report and recommended order. There shall not be [ae] other or further submissions.

(14) The secretary shall consider the report and recommended order and any exceptions filed and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the cabinet's final order, or issue a [his or her own] final order.

(15) The cabinet shall mail the final decision of the cabinet to the parties. If an [any] extension of time is granted by the secretary for a hearing officer to complete the report, the cabinet shall notify all parties upon [at the time of] the granting of the extension.

(16) The secretary shall not grant an extension of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) extensions shall be granted.

(17) A final order of the cabinet shall be based on [substantial] evidence appearing in the record as a whole and shall establish [set forth] the decision of the cabinet and the facts and law upon which the decision is based.

(18) There shall not be [ae] ex parte communications between the parties or representatives of the parties and the hearing officer.

(19) Any person aggrieved by a final order of the cabinet may seek judicial review as established [set forth] in KRS 224.10-470 (pertaining to abate and alleviate orders), 350.0305(2) and 350.032(2).

(20) Nothing in this administrative regulation [herein] shall prevent the cabinet from taking appropriate action in circuit court.

Section 2. Service. (1) Except as provided in subsections (3) and (4) of this section, any proposed penalty assessment, notice of administrative hearing, or other document required to be served in accordance with this section shall be served by one (1) of the following methods:

(a) The cabinet shall send copies of documents to the person to be served or instructed to be served by the initiating party, by certified mail or electronic mail pursuant to KRS 350.130.

1. The cabinet shall enter this occurrence into the record. [The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received.]

2. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

3. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (2) of this section. The return receipt shall be proof of the time, place and manner of service.

To the extent that the United States postal regulations permit authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by the authorized representative shall constitute service on the addressee; or

(b) The cabinet may cause the document, with necessary copies, to be transferred for service to a [any] person authorized by the secretary or by a [any] statute to deliver them, or to a [any] person authorized to deliver service for the purpose of an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service.

(2)(a) Service is effective upon acceptance of the document by a [any] mineral permittee at the permit address, upon refusal to accept the document by a [any] person at the permit address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, inability to deliver, or failure to claim the document.

(b) Service of documents by electronic mail shall be effective pursuant to KRS 350.130(7).

(3) Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) In addition to the provisions of subsections [subsection] (1) through (3) of this section, the provisions of 400 KAR 1:030, shall apply to service resulting from or attendant to administrative hearings established in [under] this administrative regulation.

Section 3. Temporary Relief. (1)(a) Pending completion of the investigation and administrative hearings provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a notice or order issued pursuant to KRS Chapter 350 or the administrative regulations or a determination by the cabinet to issue a permit or release a bond.

(b) A petition for temporary relief shall be made in writing and filed with the Office of Administrative Hearing with notice to the Office of Legal Services. The petition shall contain the following: [A petition for temporary relief shall be in writing, shall be filed with the Office of Administrative Hearings, with notice to the Department of Law, and shall contain the following:]

1. A detailed statement establishing the [setting forth] reasons [why] temporary relief should be granted;

2. A showing that there is a substantial likelihood that the petitioner will prevail on the merits upon a final determination of the proceeding;

3. A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources;

4. If the petition relates to an order for cessation and immediate compliance, a statement of whether the requirement for a decision on the petition within five (5) working days is waived; and

5. A statement of the specific relief requested.

(2) A hearing officer may grant temporary relief after making a written finding that the relief is warranted, and shall state the reasons for the finding. The hearing officer shall grant or deny relief expeditiously. If [expeditiously; however, if] the petition relates to an order for cessation and immediate compliance, relief shall be granted or denied within five (5) working days of receipt by the office of the petition. A hearing officer may grant temporary relief from notices and orders issued pursuant to 405 KAR Chapter 5 or a determination by the cabinet to issue a permit or release a bond. Temporary relief may be granted upon a finding that: [- upon conditions as are deemed appropriate, only upon a finding that:]

(a) The parties were given an opportunity to be heard in a location acceptable to both the cabinet and the petitioner;

(b) The petitioner has shown that there is a substantial likelihood that the findings on the merits in an administrative hearing conducted before the cabinet will be favorable to the petitioner;

(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources; and

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(d) The relief sought is not the issuance of a permit if a permit has been denied, in whole or in part, by the cabinet, nor the release of a bond if a bond release request has been denied.

Section 4. Orders to Abate and Alleviate. (1) If the secretary issues an order to abate and alleviate pursuant to KRS 224.10-410 the cabinet shall provide the permittee or person to whom the order was issued an opportunity to be heard not more than ten (10) days following issuance of the order, unless waived in writing by the permittee or person.

(2) The order to abate and alleviate shall be filed with the Office of Administrative Hearings, which shall issue an administrative summons pursuant to Section 1(6) of this administrative regulation. Neither the scheduling nor holding of an administrative hearing pursuant to this section shall operate to terminate or stay the order, nor operate to relieve the permittee or person or persons [person(s)] named in the order from performing the affirmative obligations imposed in the order to abate and alleviate, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 29, 2011

FILED WITH LRC: August 9, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2011 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing September 14, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 September 30, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth provisions governing requests for administrative hearings, initiation of administrative hearings by the cabinet, informal settlement conferences, procedures for the conduct of administrative hearings, service, and administrative hearings for orders to abate and alleviate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information to the regulated community regarding requests for administrative hearings, initiation of administrative hearings by the cabinet, informal settlement conferences, procedures for the conduct of administrative hearings, service, and administrative hearings for orders to abate and alleviate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028 authorizes the cabinet to conduct enforcement procedures including notices. This administrative regulation sets forth hearing, notice and other procedural and due process provisions for the permanent regulatory program.

(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 establishing the procedures for hearings and notices and other procedural and due process provisions for the permanent regulatory program.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows service of documents to be achieved electronically in addition to current methods.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enable the department to send enforcement documents required to be served by electronic mail.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 350.130 authorizes the cabinet to deliver documents electronically as a means of service. This amendment places this option in administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by providing a more efficient means of delivery.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation could potentially impact any non-coal permit holders within the Commonwealth of Kentucky. The current number of permits is 232.

(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 require entities interested in receiving enforcement notification by email to provide a current email address.

(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 the regulated entities. The amendment to this administrative regulation includes optional criteria.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities which comply with the amendment to this administrative regulation will benefit by receiving enforcement documents by email.

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

(a) Initially: There will be no costs to the agency associated with implementation.

(b) On a continuing basis: There will be no continuing costs to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund dollars will be used to fund these provisions.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding to administer this administrative regulation. A cost savings will be realized by the passage of this administrative regulation.

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

(9) TIERING: Is tiering applied? No. All entities that sign up for electronic notification will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (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 Mine Reclamation and Enforcement as well as the Office of Administrative Hearings.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.029, 350.050, 350.0301, 350.240,

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350.300.

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 funds by way of a cost savings to the department.

(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? Since this proposal is optional it is difficult to predict the savings that could be realized by this amendment because it is uncertain, how many enforcement documents would be sent under this proposal.

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

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

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

Revenues (+/-): This amendment will generate additional savings to the department resulting from sending out enforcement notifications by email.

Expenditures (+/-): NA

Other Explanation: NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Reclamation and Enforcement (Amendment)

405 KAR 7:091. General practice provisions.

RELATES TO: KRS 350.028, 350.0301, 350.0305, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS [Chapter 13A], 350.020, 350.028, 350.0301, 350.0305, 350.255, 350.465, 350.610[—30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255]

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 [in pertinent part] requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation establishes [sets forth] hearing, notice and other procedural and due process provisions for the permanent regulatory program. [This administrative regulation and 405 KAR 7:092 contain the substance of 405 KAR 7:090 which has been repealed.]

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350, including those pending at the time this administrative regulation becomes effective, and provide for public participation, pertaining to the review of determinations on permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of a [any] permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4); determinations on performance bond amount, duration, release, and forfeiture; administrative hearings on orders to abate or alleviate issued pursuant to KRS 224.10-410 to surface coal mining and reclamation operations; and all other matters including participation in administrative hearings by a [any] person adversely affected by a determination of the cabinet which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet or arise by virtue of an order or determination of the cabinet pursuant to the

permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as establishes [set forth] in KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 2. [Construction. This administrative regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this administrative regulation.

Section 3.] General Provisions for Conducting Administrative Hearings. (1)(a) Hearings generally. All administrative hearings shall be de novo as to all issues of fact and law, provided that those findings previously adjudicated by a final order of the secretary shall be binding against a [any] party to the administrative hearing leading to the final order. A party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. An independent hearing officer shall preside at the administrative hearing, [shall] keep order, and [shall] conduct the administrative hearing in accordance with reasonable administrative practice and Section 2 of this administrative regulation. Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 and [400 KAR] 1:040 shall apply to cases before the cabinet, consistent with KRS Chapter 350 and 405 KAR Chapters 7 through 24. The hearing officer shall permit a [any] party to represent himself, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel, without good cause, shall be grounds for default.

(b)1. Evidence. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. If [When] necessary to ascertain facts not reasonably susceptible to proof under rules of evidence, evidence not admissible thereunder may be admitted, except if [where] designated as confidential by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. A hearing officer [Hearing officers] shall give effect to the rules of privilege recognized by law.

2. Objections may be made and shall be noted in the record.

3. Subject to these requirements, if [when] a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original.

4. A party may conduct cross-examinations required for a full and true disclosure of the facts.

5. Notice may be taken by the hearing officer of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the administrative hearing, or by reference in reports or otherwise, of the material noticed, including any staff memoranda or data, and the parties shall have [they shall be afforded] an opportunity to contest the material so noticed.

6. The cabinet's experience, technical competence, and specialized knowledge may be utilized by the hearing officer in the evaluation of the evidence.

(2) Hearing officer's duties. The hearing officer shall in his discretion:

(a) Administer oaths and affirmations;

(b) Issue subpoenas in accordance with Section 9 of this administrative regulation;

(c) Issue appropriate orders relating to discovery in accordance with 400 KAR 1:040;

(d) Rule on procedural requests or similar matters;

(e) Hold prehearing conferences for settlement or simplification of the issues;

(f) Regulate the course of the administrative hearing;

(g) Rule on offers of proof and receive relevant evidence;

(h) Take any other action authorized by administrative regulation, KRS Chapter 350 and 405 KAR Chapters 7 through 24 [7-24]; and

(i) Make or recommend decisions or reports in accordance with

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KRS Chapter 350 and 405 KAR Chapters 7 through 24 [the administrative regulations].

(3) Prehearing conference. A hearing officer may order a prehearing conference:

(a) To simplify and clarify issues;

(b) To receive stipulations and admissions;

(c) To explore the possibility of agreement disposing of any or all of the issues in dispute; and

(d) For any other purposes as may be appropriate, including but not limited to summary disposition of the case.

(4) Summary disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or part of a case, in which event the following procedure shall apply:

(a) The moving party shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon:

1. Depositions;

2. Answers to interrogatories;

3. Admissions; or

4. Documents produced upon request to verify allegations.

[depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.]

(b) A hearing officer may grant a motion and render a report and recommended order to the secretary under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows that:

1. There is no disputed issue as to any material fact; and

2. The moving party is entitled to a summary disposition as a matter of law.

(c) If a motion for a summary disposition is not granted for the entire case or for all the relief requested and an evidentiary hearing on some or all of the issues is necessary, the hearing officer shall, [if practicable, and] upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. The hearing officer[He] shall issue an interim report specifying the facts that appear without substantial controversy and direct further proceedings as deemed appropriate.

(5) Hearing officer's report.

(a) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and recommended order to the secretary, except that the administrative hearing officer shall, within twenty (20) days of the close of the hearing record, make a report and recommended order in administrative hearings on permit determinations in accordance with [under] 405 KAR 7:092, Section 8.

(b) The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and shall contain appropriate findings of fact and conclusions of law.

(c) If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. If granted by the secretary, all parties shall be notified upon [at the time of] the granting of the extension.

(d) The hearing officer's report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record. The parties may file exceptions and responses to the exceptions as provided under KRS 350.0301(2). There shall be no other or further submissions.

(6) [(b)] The hearing officer shall recommend the amount of a civil penalty based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of a [any] computation offered by a [any] party, and shall consider the same factors set forth in 405 KAR 7:092, Section 3(2) for consideration in setting proposed penalty assessments. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty recommended in his report.

(7) [(6)] Secretary's order.

(a) The secretary shall consider the report and recommended order, an [any] exceptions filed, and a [any] responses to exceptions, and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as a final order, or

issue his own final order.

(b) The final order of the secretary shall be mailed postage prepaid to parties and their attorneys of record.

(c) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall establish [set forth] the decision of the secretary and the facts and law upon which the decision is based.

Section 4. Standards of Conduct. (1) Ex parte communications.

(a) Prohibition. Except to the extent required for the disposition of ex parte matters as authorized by law, there shall not be communication concerning the merits of a proceeding between office personnel and:

1. A party to the proceeding;

2. A person interested in the proceeding; or

3. A representative of a party or interested person.

(b) If communication is made then it shall be made in the presence of all other parties or their representatives if oral, or, if written, furnished to all other parties. [there shall be no communication concerning the merits of a proceeding between a party to the proceeding or a person interested in the proceeding or a representative of a party or interested person and office personnel involved or who may reasonably be expected to become involved in the decision-making process of an administrative hearing or conference, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties.]

(c) Communications concerning case status or advice concerning compliance with procedural requirements shall not be [are not] prohibited unless the area of inquiry is in fact an area of controversy in the administrative hearing or conference.

(d) Oral communications made in violation of this administrative regulation shall be reduced to writing in a memorandum by the person receiving the communication and shall be included in the record.

(e) Written communications made in violation of this administrative regulation shall be included in the record. Copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

(2) [(b)] Sanctions. The hearing officer, who has responsibility for the matter in which a prohibited communication has been knowingly made, may impose appropriate sanctions on the offending person or persons, which may include requiring an offending party to show cause why his claim, motion, or interest should not be dismissed, denied, or otherwise adversely affected; and invoking the [such] sanctions against other offending persons as appropriate.

(3) [(2)] Disqualification. The hearing officer shall withdraw from a case if he deems himself disqualified pursuant to [under] the recognized canons of judicial ethics. If prior to a decision of the hearing officer an affidavit of personal bias or disqualification with substantiating facts is filed, and the hearing officer concerned does not withdraw, the secretary shall determine the matter of disqualification.

Section 5. Service. (1) A proposed penalty assessment, notice of assessment conference, notice of administrative hearing, or other documents required to be served, including administrative summonses, shall be served either as established in [under] 400 KAR 1:030 or pursuant to [by] one (1) of the following methods:

(a) The cabinet may send copies of documents to the person to be served or instructed to be served by the initiating party, by certified mail or by electronic mail pursuant to KRS 350.130. The cabinet shall enter this occurrence into the record. [The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received.] If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

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(b) The cabinet shall file the return receipt, electronically generated receipt, or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (2) of this section. The return receipt, return envelope, or electronically generated receipt shall be proof of the time, place, and manner of service.

(c) To the extent the United States postal regulations allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by an [such] authorized representative shall constitute service on the addressee; [or]

(d) [(b)] The cabinet may cause the document, with necessary copies, to be transferred for service to a person authorized by the secretary or by a statute to deliver them, or to a person authorized to serve an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(e) [(d)] Service may be made upon a person issued a permit by the cabinet, upon a person specified as an operator in the permit application, or upon a person who has submitted an exploration notice or application pursuant to 405 KAR 8:020 by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permittee or the operator specified in the permit application (at the address specified on the face of the permit, at the permanent address for the permittee or operator specified in the permit application, or at a [any] new address that has been specified in writing by the permittee or operator), or in the case of coal exploration, by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the person authorized to conduct the coal exploration and addressed to said person's permanent address as noted in the exploration notice or application.

(2) Service shall be effective upon:

(a)1. Acceptance of the document by a person eighteen (18) years of age or older;

2. Refusal to accept the document by a person at the permanent address;

3. The United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) or (c) of this section; or

4. Upon failure to claim the document prior to its return to the cabinet by the United States Postal Service; or

(b) Delivery of the document to the recipient's inbox by electronic mail as electronically communicated to the cabinet by an electronic registered receipt; upon acceptance of the document by any person eighteen (18) years of age or older at the permanent address, upon refusal to accept the document by any person at the permanent address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) or (c) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document.]

(3) An [Any] other method of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to [any of] the methods of service specified in this section.

(4) A copy of each document filed in a proceeding pending before the office shall [must] be served by the filing party on all other parties in the case. In all cases in which [where] a party is represented by an attorney, the [such] attorney shall [will] be recognized as fully controlling the case. Service of a [any] document relating to the proceeding shall be made upon the attorney in addition to an [any] other service specifically required by law or by order of the cabinet.

(5) Service shall be made upon the cabinet by serving the Office of General Counsel [commissioner of the Department of Law] and shall be effective upon receipt by the Office of General Counsel [the Department of Law].

Section 6. Administrative Summons and Public Notice of Hearing. (1) Upon receipt of an initiating document, the office shall promptly serve in accordance with Section 5 of this administrative

regulation, a copy of the document upon all parties designated to be served along with an administrative summons notifying the responding party that an initiating document has been filed against him and unless a written defense is timely served, action adverse to his interests may be taken. At [If appropriate and at] the direction of the hearing officer, the administrative summons may also designate that a prehearing conference or administrative hearing shall be held along with the date, time, and place of the prehearing conference or administrative hearing. An administrative summons shall also include a statement of the legal authority for the hearing and reference to the statutes and regulations involved.

(2) For all administrative hearings initiated pursuant to 405 KAR 7:092, Section 5, notice of the scheduled hearing shall be:

(a) Mailed to interveners;

(b) Posted at the department's appropriate regional office; and

(c) Published in a newspaper of general circulation in the area of the surface coal mining and reclamation operations or coal exploration operations, if practicable. [also be mailed to any interveners, shall be posted at the department's appropriate regional office and, if practicable, shall be published in a newspaper of general circulation in the area of the surface coal mining and reclamation operations or coal exploration operations.]

Section 7. Filing and Retention of Documents. (1) Filing of documents. A document is considered filed in the office when the document is received and stamped by the office.

(2)(a) Retention of documents. All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in a proceeding before the cabinet shall [will] be retained with the official record of the proceedings. The withdrawal of original documents may be permitted while the case is pending upon terms and conditions as may be directed by the hearing officer.

(b) When an order of the secretary becomes [has become] final, the hearing officer in his discretion may, upon request and after notice to the other parties, authorize the withdrawal of original exhibits or any part by the authorized party.

(c) The substitution of true copies of exhibits or any part may be required by the hearing officer in his discretion as a condition of granting permission for withdrawal.

(3) Record address. A person who files a document for the record in connection with an administrative hearing shall state his mailing address, email address, facsimile number, and telephone number at the initial filing in the matter. If a person has a change of mailing address, email address, facsimile number, or telephone number then the new information shall be promptly served to the office with the file number relating to all matters in which he has made a filing. [A person who files a document for the record in connection with an administrative hearing before the office shall at the time of initial filing in the matter state his mailing address and telephone number. Thereafter, he shall promptly inform the office of a change in mailing address or telephone number, giving the file number relating to all matters in which he has made a filing.] The successor [successors] of the person, who filed the document, shall likewise promptly inform the office of their interest in the matter [matters] and state their address and telephone number [addresses and telephone numbers]. A person who [If a person] fails to furnish a record address and telephone number as required, shall [he will] not be entitled to notice in connection with the proceedings.

(4) Transcripts. All administrative hearings shall [will] be recorded verbatim and transcripts [thereof] shall be made if [when] requested by interested parties. Costs of transcripts shall be borne by the requesting parties. Fees for transcripts prepared from recordings by office employees shall [will] be at rates that [which] cover the cost of manpower, machine use and materials. If the reporting is done pursuant to a contract between the reporter and the cabinet, costs of transcripts shall [will] be at rates established by the contract.

Section 8. Time. (1) Computation of time for the initiation of an administrative proceeding or the subsequent filing of a document shall be in accordance with KRS 446.030 and 400 KAR 1:030, Section 3 [-Section 4].

(2) The time for filing or serving a [any] document may be ex-

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tended by a hearing officer except for the time for filing a petition for an administrative hearing under 405 KAR 7:092 or if an extension is contrary to law or administrative regulation.

(3) A request for an extension of time shall be filed within the time allowed for filing or serving the document.

Section 9. Subpoenas. The office shall issue subpoenas requiring the attendance of witnesses or production of books, papers, documents, or tangible things designated therein, or both, at administrative hearings to be held before or at the taking of depositions to be held before other officers. Subpoenas shall be issued on a form approved by the office. A subpoena may be served by a person who is not less than eighteen (18) years of age. The original subpoena bearing a certificate of service shall be filed with the office or the subpoena may be served by certified mail, return receipt requested. The return receipt if signed by the addressee or his authorized agent shall constitute proof of service of the subpoena.

Section 10. Location of Administrative Hearings and Penalty Assessment Conferences. (1) A penalty assessment conference shall be held in the department's regional office for the mine site, unless a closer location is approved by the conference officer.

(2) Administrative hearings shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the petition or other initiating document or answer upon the filing with the office of ~~[at the time]~~ the petition or other initiating document or answer ~~[is filed with the office]~~. The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.

Section 11. Intervention and Consolidation. (1) ~~[Who may file.]~~ A person may petition in writing for leave to intervene at any stage of a proceeding under 405 KAR 7:092. A petitioner shall establish ~~[set forth]~~ a statement indicating ~~[setting forth]~~ the interest of the petitioner and, if required, a showing of why the interest is or may be adversely affected.

(2) Criteria to intervene.

(a) The hearing officer shall grant intervention if the petitioner:

1. Had a statutory right to initiate the proceeding in which he wishes to intervene; or
2. Has an interest that ~~[which]~~ is or may be adversely affected by the outcome of the proceeding.

(b) If the criteria established ~~[set forth]~~ in paragraph (a) of this subsection does not apply, the hearing officer shall consider the following in determining if ~~[whether]~~ intervention is appropriate:

1. The nature of the issues;
2. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;
3. The ability of the petitioner to present relevant evidence and argument; and
4. The effect of intervention on the cabinet's implementation of its statutory mandate.

(3) Effect of ruling. A person granted leave to intervene in a proceeding may participate in the proceeding as a full party or ~~[if desired,]~~ in a limited capacity. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the hearing officer.

(4) Consolidation. If ~~[When]~~ proceedings involving the same parties or a common question of law or fact are pending before the cabinet, the proceedings shall be ~~[are]~~ subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section 12. Judicial Review, Effect, and Subsequent Proceedings. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 350.0305 as applicable.

(2) Effect of final order pending judicial review. The commencement of proceedings for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remands from courts. If ~~[Whenever]~~ a matter is remanded from a ~~[any]~~ court for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the appropriate hearing officer, a report recommending procedures to be followed in order to comply with the court's order. The hearing officer shall ~~[will]~~ review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by a ~~[any]~~ court.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 29, 2011

FILED WITH LRC: August 9, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2011 at 10:00 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing September 14, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 September 30, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS Chapter 350 requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth hearing, notice and other procedural and due process provisions for the permanent regulatory program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information to the regulated community on the hearing, notice and the other procedural and due process provisions for the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028 authorizes the cabinet to conduct investigations and hearings under the provisions of KRS Chapter 350 or regulations adopted pursuant thereto. This administrative regulation sets forth hearing, notice and other procedural and due process provisions for the permanent regulatory program.

(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 establishing the procedures for hearings and notices and other procedural and due process provisions for the permanent regulatory program.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows service of documents to be achieved electronically in addition to current methods.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enable the department to send proposed penalty assessments, notice of assessment conferences, notice of administrative hearings, or other documents required to be served, including administrative summonses by electronic mail.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 350.130 authorizes the cabinet to deliver documents by electronically as a means of service. This amendment

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places this option in administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by changing the location for holding the hearings and assessments.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation could potentially impact any permit holders within the Commonwealth of Kentucky. The average number of permit holders from December 2000 to December 2010 is 448.

(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 is optional and will only require the entities listed in (3) to provide an email address if they are interested in receiving notices by email.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This cost will vary depending on the number of entities sign up for this service.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities which sign up for this service will benefit by receiving enforcement notifications in a timely manner.

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

(a) Initially: There will be no costs to the agency associated with implementation.

(b) On a continuing basis: There will be no continuing costs to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund dollars will be used to fund this 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: There will not be a need to increase fees or funding to administer this administrative regulation.

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

(9) TIERING: Is tiering applied? No. The procedures for hearings and penalty assessments will be the same for all entities that are involved in the hearing process.

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 Mine Reclamation and Enforcement as well as the Office of Administrative Hearings.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.0301, 350.255, 350.465, 350.610, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255.

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 funds by way of a cost savings to the department. The passage of HB 215 from the 2010 Legislative

Session dealing with coal related enforcement notifications resulted in a savings to the Division of Mine Reclamation and Enforcement of \$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? Since this proposal is optional it is difficult to predict the savings that could be realized by this amendment because it is uncertain, how many enforcement documents would be sent out under this proposal.

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

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

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

Revenues (+/-): This amendment will generate additional savings to the department resulting from sending out enforcement notifications by email.

Expenditures (+/-): NA

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F.R. 840 and 30 C.F.R. 843.14.

2. State Compliance Standards. KRS 350.990 and KRS 350.130

3. Minimum or uniform standards contained in the federal mandate. The standards within the listed regulations are related to enforcement and service of documents.

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 standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Reclamation and Enforcement (Amendment)

405 KAR 12:020. Enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990, 30 C.F.R. Parts 730-733, 735, 840.13-14, 840.16, 843, 30 U.S.C. 1253, 1255, 1271

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.020, 350.028, 350.050, 350.130, 350.465[; 30 C.F.R. Parts 730-733, 735, 840.13-14, 840.16, 843, 30 U.S.C. 1253, 1255, 1271]

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 [in pertinent part] directs the cabinet to [rigidly] enforce administrative regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This administrative regulation establishes [sets forth] various kinds of notices and orders to be issued by authorized representatives of the cabinet. The administrative regulation establishes [directs] that there shall be issued a notice of noncompliance and order for remedial measures. The administrative regulation establishes [requires] that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of imminent harm. The administrative regulation establishes [sets forth] the general form of the notices and orders and authority to vacate, modify, or terminate the orders or notices. This administrative regulation sets forth procedures for an informal hearing. The administrative regulation establishes [sets forth] requirements if a permit is suspended or revoked and procedures for a determination of a pattern of violations. [This administrative regulation con-

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tains a portion of 405 KAR 7:090 which has been repealed.]

Section 1. General. (1) The secretary of the cabinet may ~~[from time to time or for a definite period]~~ designate, by written order or by other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the administrative regulations contained in 405 KAR Chapters 7 through 24.

(2) Subject to 405 KAR Chapters 7 through 24 or unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the commissioner of the department ~~shall be~~ ~~[are deemed the]~~ authorized representatives of the cabinet for the purposes of Sections 2, 3, and 4 of this administrative regulation.

Section 2. Notice of Noncompliance and Order for Remedial Measures. (1) Issuance. An authorized representative of the cabinet shall issue a notice of noncompliance and order for remedial measures if, on the basis of inspection, he finds a violation of:

(a) KRS Chapter 350;

(b) 405 KAR Chapters 7 through 24;

(c) A term or condition of a permit;

(d) A term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval); or

(e) Any other applicable requirement [a violation of KRS Chapter 350; 405 KAR Chapters 7 through 24; any term or condition of a permit; any term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval); or any other applicable requirement.]

(2) Form and content. A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The notice shall establish ~~[sets forth]~~ with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, if any, which may include accomplishment of interim steps if appropriate;

(c) A reasonable time for remedial action, if any, which may include time for accomplishment of interim steps if appropriate; and

(d) A reasonable description of the portions of the surface coal mining and reclamation operations or coal exploration and reclamation operations to which the notice applies.

(3) Service. Service of a notice of noncompliance and order for remedial measures shall be in the manner established ~~[sets forth]~~ in Section 5 of this administrative regulation.

(4) Extension. An authorized representative of the cabinet may, by written notice, extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued.

(a) 1. The total time for remedial action under the notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice except upon a showing by the permittee or the person conducting the coal exploration and reclamation operations that it is not feasible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances establishes [sets forth] in paragraph (b) of this subsection.

2. An abatement period exceeding ninety (90) days pursuant to this subsection shall not be granted for situations in which the permittee's failure or the failure of the person conducting the coal exploration and reclamation operations to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the permittee or the person conducting the coal exploration and reclamation operations in completing the remedial action required.

(b) The following circumstances may qualify surface coal mining and reclamation operations or coal exploration and reclamation operations for an abatement period of more than ninety (90) days:

1. The permittee of the ongoing surface coal mining and reclamation operations or the person conducting the coal exploration and reclamation operations has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but the permit or approval, for reasons not within the control of the permittee or the person conducting the coal exploration and reclamation operations, has not been and will not be issued

prior to ninety (90) days after the valid permit or approval expires or is required;

2. There is a valid judicial order precluding abatement within ninety (90) days to which the permittee or the person conducting the coal exploration and reclamation operations has diligently pursued all rights of appeal and to which he has no other effective legal remedy;

3. The permittee or the person conducting the coal exploration and reclamation operations cannot abate within ninety (90) days due to a labor strike; or

4. Weather conditions that would clearly cause more environmental harm than abatement measures would prevent; or

5. Require action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act. ~~Weather conditions preclude abatement within ninety (90) days; due to weather conditions abatement within ninety (90) days would clearly cause more environmental harm than it would prevent; or abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.]~~

(c) If an abatement period in excess of ninety (90) days is approved by the cabinet, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public and the environment.

(d) 1. If any of the conditions in paragraph (b) of this subsection exist, the permittee or the person conducting the coal exploration and reclamation operations may request the authorized representative of the cabinet to grant an abatement period exceeding ninety (90) days.

2. The authorized representative of the cabinet shall not grant [such] an abatement period without the approval of the Director of the Division of Mine Reclamation and Enforcement [Division of Field Services] or his designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation.

3. The permittee or the person conducting the coal exploration and reclamation operations shall have the burden of establishing by clear and convincing proof that he is entitled to an extension under the provisions of this subsection. In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative of the cabinet may consider relevant written or oral information from the permittee, the person conducting the coal exploration and reclamation operations, and other sources. The authorized representative of the cabinet shall promptly and fully document in the applicable file his recommendation for granting or denying the request and the reasons therefor.

4. The authorized representative's immediate supervisor shall review this document before approving or disapproving the extended abatement period and shall promptly and fully document the reasons for his approval or disapproval in the applicable file.

(e) A determination made pursuant to [under] paragraph (d) of this subsection shall be in writing and shall be subject to administrative and judicial review pursuant to 405 KAR 7:092.

(f) No extension granted pursuant to [under] this subsection may exceed ninety (90) days in length. In situations in which the condition or circumstance that prevented abatement within ninety (90) days exists at the expiration of the extension, the permittee or the person conducting the coal exploration and reclamation operations may request a further extension in accordance with the procedures of this subsection.

(5) Modification. An authorized representative of the cabinet may, by written notice, modify an order for remedial measures for good cause.

(6) Termination. An authorized representative of the cabinet shall, by issuance of a notice of inspection of noncompliance, provide written notice to the person to whom a notice of noncompliance and order for remedial measures has been issued that the notice is terminated when the authorized representative of the cabinet determines that all violations listed therein have been corrected. The termination shall not affect the right of the cabinet to assess civil penalties for those violations pursuant to 405 KAR 7:092 or to impose other applicable sanctions as authorized by law.

(7) Vacation. Based upon the written recommendation of the

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regional administrator and the authorized representative of the cabinet who issued the notice of noncompliance and order for remedial measures, the Director of the Division of Mine Reclamation and Enforcement ~~[Field Services]~~ may vacate a notice of noncompliance and order for remedial measures determined to have been issued in error.

Section 3. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the person to whom a notice of noncompliance and order for remedial measures has been issued fails to comply with the terms of the notice within the time for remedial action established in the notice or as subsequently extended, an authorized representative of the cabinet shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he finds, on the basis of an inspection, a ~~[any]~~ condition or practice; a ~~[any]~~ violation of KRS Chapter 350; a ~~[any]~~ violation of 405 KAR Chapters 7 through 24; or a ~~[any]~~ violation of a term or condition of the applicable permit or exploration approval that ~~[which]~~:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) An authorized representative of the cabinet shall immediately issue an order for a cessation and immediate compliance if he finds, on the basis of an inspection, that surface coal mining and reclamation operations are being conducted by a person without a valid surface coal mining and reclamation operations permit for the activities or that coal exploration and reclamation operations are being conducted without proper notice of intention to explore or approval for the operations, as applicable, in accordance with 405 KAR 8:020.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The order shall establish ~~[set forth]~~ with reasonable specificity:

1. The nature of the violation;

2. A reasonable description of the portions of the operations in which it applies;

3. The remedial measures, if any, necessary to abate the violation in the most expeditious manner possible; and

4. The time established for abatement, if appropriate, including the time for complying with ~~[any]~~ interim steps.

(b) At the same time that the authorized representative of the cabinet issues an order for cessation and immediate compliance pursuant to subsection (1)(b) or (c) of this section, he shall also issue a notice of noncompliance and order for remedial measures.

(3) Service. Service of an order for cessation and immediate compliance shall be in the manner established ~~[set forth]~~ in Section 5 of this administrative regulation.

(4) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of:

1. All surface coal mining and reclamation operations;

2. All coal exploration and reclamation operations; or

3. The portions or operations thereof relevant to the condition, practice, or violation covered by the order. ~~[all surface coal mining and reclamation operations, all coal exploration and reclamation operations, or the portions or operations thereof relevant to the condition, practice, or violation covered by the order.]~~

(b) The order shall require the person to whom it is issued to take ~~[any]~~ affirmative steps which the authorized representative of the cabinet deems necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(c) ~~[(b)]~~ The order shall remain in effect until the condition, practice, or violation has been abated; until the order is vacated, modified, or terminated in writing pursuant to subsection (5) of this section; until it is vacated, modified, or terminated by a hearing officer pursuant to 405 KAR 7:092; or until the order expires pursuant to Section 6 of this administrative regulation.

(d) ~~[(e)]~~ Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of an ~~[any]~~ order unless the order states that the reclamation operations and other activities shall cease.

(5) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet may, by written notice, modify or terminate an order for cessation and immediate compliance issued under this section for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his authorized representative shall terminate an order for cessation and immediate compliance, by written notice to the person to whom the order was issued, when he determines that all conditions, practices, and violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations under 405 KAR 7:092 or to impose ~~[any]~~ other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet who issued the order for cessation and immediate compliance, the Director of the Division Mine Reclamation and Enforcement ~~[of Field Services]~~ may vacate an order for cessation and immediate compliance determined to have been issued in error.

(6) Within sixty (60) days after issuing an order for cessation and immediate compliance, the cabinet shall notify in writing a person who has been identified under 405 KAR 8:010, Section 18(5) and either 405 KAR 8:030, Section 2(3) and (4) or ~~[405-KAR]~~ 8:040, Section 2(3) and (4) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Section 4. Notice of Inspection and Noncompliance. (1) Issuance. If an authorized representative of the cabinet issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, he shall reinspect the areas affected by the surface coal mining and reclamation operations or the coal exploration and reclamation operations on or soon after the date given in the notice or order for completion of remedial measures. At the time of reinspection, the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall establish if ~~[set forth whether]~~:

(a) The remedial measures have been completed~~[-]~~ and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed. Following this ~~[such-a]~~ determination, the cabinet shall:

1. For the situations in which the inspection was a reinspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a reinspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated, initiate an administrative hearing for suspension or revocation of the permit or approval, initiate an administrative hearing for bond forfeiture, or initiate administrative hearings for other appropriate relief.

(3) Service. Service of a notice of inspection for noncompliance shall be in the manner established ~~[set forth]~~ in Section 5 of this administrative regulation.

Section 5. Service of Notices and Orders. (1) A notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, or notice of inspection of noncompliance shall be promptly served on the person to whom it is issued or the person's designated agent.

(2)(a) Each order of noncompliance and order for remedial measures, order for cessation and immediate compliance, and notice of inspection of noncompliance shall be served by:

1. Hand;

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2. Certified mail (return receipt requested);

3. Registered mail; or

4. Electronic mail, [hand, by certified mail (return receipt requested), or by registered mail to the person to whom the notice or order has been issued or to his designated agent for service.]

(b) The notice or order shall also be served by hand to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the surface coal mining and reclamation operations or coal exploration and reclamation operations referred to in the notice or order.

(c) If no such individual can be located at the site, a copy of the notice or order may be tendered to an individual at the site who appears to be an employee or agent of the person to whom the notice or order has been issued.

(3) Service, whether by hand, electronic mail or by mail, shall be complete upon tender of the notice or order and shall not be [deemed] incomplete because of refusal to accept.

(a) For surface coal mining and reclamation operations, service by electronic mail or mail shall be addressed to the designated agent for service; to the permanent or electronic address of the permittee as identified on the permit or in the application; or, if no address is identified for the permittee in the application, to an [any] other address as is known to the cabinet.

(b) For coal exploration and reclamation operations, service by electronic mail or mail shall be addressed to the designated agent for service; to the permanent or electronic address of the person conducting the coal exploration and reclamation operations as identified in the notice of intention to explore or in the application for coal exploration and reclamation approval submitted pursuant to 405 KAR 8:020; or, if no address is identified for the person conducting the coal exploration and reclamation operations in the notice or the application submitted pursuant to 405 KAR 8:020, to an [any] other address as is known to the cabinet.

(c) If no person is present at the site of the surface coal mining and reclamation operations or the coal exploration and reclamation operations, service by electronic mail or mail shall by itself be sufficient notice.

(4) [(3)] Designation by a person of an agent for service of notices and orders issued pursuant to this administrative regulation and notices of hearing issued pursuant to 405 KAR 7:092 shall be made a part of the applicable permit application, notice of intention to explore, or application for coal exploration and reclamation approval. The person shall continue as agent for service of process until written revision of the permit, a notice of intention to explore, or coal exploration and reclamation approval is made that [which] designates another person as agent.

(5) [(4)] The cabinet may furnish copies of notices and orders to a person having an interest that [which] is or may be adversely affected by the coal exploration and reclamation operations or by the surface coal mining and reclamation operations and a person having an interest in the permit or exploration area.

Section 6. Expiration. (1)(a) Except as provided in subsection (2) of this section, if a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance requires cessation of coal removal expressly or by implication, the notice or order shall expire thirty (30) days after it is served unless an informal hearing is held at or near the mine site or the exploration site within that time except that notices or orders shall not expire if the condition, practice, or violation in question has been abated or if the person to whom the notice or order has been issued has waived the informal hearing or has agreed to its postponement.

(b) Expiration of the notice or order shall not affect the rights of the cabinet to assess appropriate penalties and to impose applicable sanctions with respect to the time period during which the notice or order was in effect for the violations for which the notice or order was issued. The granting or waiver of an informal public hearing shall not affect the right of a person to an administrative hearing.

(2)(a) The informal public hearing shall [will] be [deemed] waived if the person to whom the notice or order was issued is informed by written notice served in the manner provided in paragraph (b) of this subsection that he shall [will] be deemed to have

waived an informal public hearing unless the hearing is requested within thirty (30) days after service of the notice, and an informal public hearing is not requested within that time.

(b) The written notice referred to in paragraph (a) of this subsection shall be delivered by an authorized representative or sent by certified mail, return receipt requested, no later than five (5) days after the notice or order is served.

(c) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if the request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(3)(a) The cabinet shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to the person to whom the notice or order was issued, and the [a] person who filed a report that [which] led to the issuance of the notice or order.

(b) The cabinet shall also post notice of the informal public hearing at the department's regional office for the mine site and, if practicable, publish it in a newspaper of general circulation in the area of the mine.

(4) Requirements for administrative hearings shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the cabinet who shall [may] accept oral or written arguments and other relevant information from a [any] person attending.

(5) Within five (5) days after the close of the informal public hearing, the cabinet shall affirm, modify, or vacate in writing the notice or order. The decision shall be sent to the person to whom the notice or order was issued, and a [any] person who filed a report that [which] led to the issuance of the notice or order.

(6) The person conducting the informal public hearing for the cabinet shall determine if the mine site shall be viewed during the informal public hearing. In making this determination the only consideration shall be if [whether] viewing the mine site will assist the person conducting the informal public hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

Section 7. Suspension and Revocation of Permits and Exploration Approvals. (1) The cabinet may initiate:

(a) Administrative hearings for suspension or revocation of permits, coal exploration and reclamation approvals;

(b) Administrative hearings for bond forfeitures; and

(c) Administrative hearings or judicial proceedings for other appropriate relief. ~~[administrative hearings for suspension or revocation of permits and coal exploration and reclamation approvals, may initiate administrative hearings for bond forfeitures, and may initiate administrative hearings or judicial proceedings for other appropriate relief.]~~

(2) If the cabinet revokes or suspends the permit or exploration approval, surface coal mining operations on the permit area or disturbances on the exploration area shall immediately cease, and the permittee or person conducting coal exploration operations shall:

(a) Complete reclamation within the time specified in the order, if the permit or exploration approval is revoked; or

(b) Complete all affirmative obligations to abate all conditions, practices, and violations as specified in the order, if the permit or exploration approval is suspended. ~~[If the permit or exploration approval is revoked, complete reclamation within the time specified in the order; or~~

~~(b) If the permit or exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices, and violations as specified in the order.]~~

Section 8. Pattern of Violations. (1) If the cabinet determines that a pattern of violations of the requirements of KRS Chapter 350, the administrative regulations, or a permit condition imposed under KRS Chapter 350 or administrative regulations exists or has existed and that the violations are caused by the unwarranted failure of the permittee or were willful violations, the cabinet shall issue an order to the permittee to show cause why the permit should not be suspended or revoked.

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(2) The cabinet may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area within any twelve (12) month period, after considering the circumstances, including:

(a) The number of violations, cited on more than one (1) occasion, of the same or related requirements of KRS Chapter 350; 405 KAR Chapters 7 through 24; or permit conditions;

(b) The number of violations, cited on more than one (1) occasion, of different requirements of KRS Chapter 350; 405 KAR Chapters 7 through 24; or permit conditions; and

(c) The extent to which the violations were isolated departures from lawful conduct.

(3) The cabinet shall promptly review the history of violations of a permittee who has been cited for violations of the same or related requirements of KRS Chapter 350; 405 KAR Chapters 7 through 24 or permit conditions during three (3) or more inspections of the permit area within any twelve (12) month period. If after the review the cabinet determines that a pattern of violations exists or has existed, the cabinet shall issue a show cause order pursuant to this section and 405 KAR 7:092, Section 10.

(4) In determining the number of violations within any twelve (12) month period, the cabinet shall only consider violations cited as a result of inspections carried out on or after May 3, 1978.

(5) If a permittee fails to abate a violation cited in a notice of noncompliance or cessation order within the abatement period established [set] in the notice of order or as subsequently extended, then the cabinet shall review the permittee's history of violations to determine if [whether] a pattern of violations exists or has existed pursuant to this section and shall initiate a show cause order as provided in this section and 405 KAR 7:092, Section 10.

Section 9. Inability to Comply. (1) No notice or order issued pursuant to the administrative regulations of 405 KAR may be vacated because of inability to comply.

(2) Inability to comply may not be considered in determining if [whether] a pattern of violations exists.

(3) Rapid compliance, good faith, diligence, and inability to comply may be considered in mitigation of proposed penalty assessments in accordance with [under] 405 KAR 7:092.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 29, 2011

FILED WITH LRC: August 9, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2011 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing September 14, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 September 30, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth various kinds of notices and orders to be issued by authorized representatives of the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information to the regu-

lated community on the hearing, notice and the other procedural and due process provisions for the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028 authorizes the cabinet to conduct investigations and hearings under the provisions of KRS Chapter 350 or regulations adopted pursuant thereto. This administrative regulation sets forth hearing, notice and other procedural and due process provisions for the permanent regulatory program.

(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 establishing the procedures for hearings and notices and other procedural and due process provisions for the permanent regulatory program.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows service of documents to be achieved electronically in addition to current methods.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enable the department to send proposed penalty assessments, notice of assessment conferences, notice of administrative hearings, or other documents required to be served, including administrative summonses by electronic mail.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 350.130 authorizes the cabinet to deliver documents by electronically as a means of service. This amendment places this option in administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by changing the location for holding the hearings and assessments.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation could potentially impact any permit holders within the Commonwealth of Kentucky. The average number of permits, based on a ten year average, is 1,083.

(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 is optional and will only require the entities listed in (3) to provide an email address if they are interested in receiving notices by email.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This cost will vary depending on the number of entities sign up for this service.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities which sign up for this service will benefit by receiving enforcement notifications in a timelier manner.

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

(a) Initially: There will be no costs to the agency associated with implementation.

(b) On a continuing basis: There will be no continuing costs to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund dollars will be used to fund this 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: There will not be a need to increase fees or funding to administer this administrative regulation.

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

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(9) TIERING: Is tiering applied? No. The procedures for hearings and penalty assessments will be the same for all entities that are involved in the hearing process.

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 Mine Reclamation and Enforcement as well as the Office of Administrative Hearings.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.050, 350.130, 350.465, 30 C.F.R. Parts 730-733, 735, 840.13-14, 840.16, 843, 30 U.S.C. 1253, 1255, 1271

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 funds by way of a cost savings to the department. The passage of HB 215 from the 2010 Legislative Session dealing with coal related enforcement notifications resulted in a savings to the Division of Mine Reclamation and Enforcement of \$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? Since this proposal is optional it is difficult to predict the savings that could be realized by this amendment because it is uncertain, how many enforcement documents would be sent out under this proposal.

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

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

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

Revenues (+/-): This amendment will generate additional savings to the department resulting from sending out enforcement notifications by email.

Expenditures (+/-):

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F.R. 840 and 30 C.F.R. 843.14.

2. State Compliance Standards. KRS 350.990 and KRS 350.130

3. Minimum or uniform standards contained in the federal mandate. The standards within the listed regulations are related to enforcement and service of documents.

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 standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections Sex Offender Risk Assessment Advisory Board (Amendment)

501 KAR 6:220. Treatment for sex offenders.

RELATES TO: KRS 17.550-17.991

STATUTORY AUTHORITY: KRS 17.564

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.564 authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish the minimum requirements for treatment of sex offenders. This administrative regulation establishes minimum treatment requirements for providers.

Section 1. Definitions. (1) "Approved provider" is defined in KRS 17.550(3).

(2) "Board" is defined in KRS 17.550(1).

(3) "Community standards of care" means the standards of care generally accepted by sex offender treatment professionals within the Commonwealth of Kentucky and taking into account the general standards of care for the mental health profession for which the approved provider is licensed or certified.

(4) "Department" is defined in KRS 197.010(3).

(5) "Treatment services" is defined in KRS 197.420(2)(b).

Section 2. General Procedures for Treatment of All Sex Offenders [~~Procedures for Treatment of Sex Offenders~~]. (1) Treatment shall conform to community standards of care, and shall include: (a) A diagnosis; and

(b) A written treatment plan, which shall include:

1. Goals and objectives; and

2. Modalities of treatment and the rationale therefore.

(2) Treatment shall be conducted in a psychotherapy format.

(3) Treatment may utilize psychoeducational components if indicated.

(4) Prior to providing treatment, an approved provider shall:

(a) [~~Submit a general treatment curriculum to the board that shall include the required elements in subsection 5(b) of this section; thereafter, proposed changes in the general treatment curriculum shall be submitted to the board for prior approval;~~

(b)] Obtain written informed consent for treatment from the offender;

(b) [(c)] Contact the offender's supervising probation and parole officer to discuss the offender and obtain offender information; [and]

(c) [(d)] Make a good faith effort to obtain the offender's mental health records; and [-]

(d) Submit a general treatment curriculum to the board that includes the required elements in Section 3(1). If the approved provider intends to treat an offender who has already completed a sex offender treatment program, then the approved provider shall also submit a treatment curriculum that includes the required elements in Section 4(2) of this administrative regulation. If an approved provider proposes changes in his submitted treatment curriculum, the approved provider shall submit a treatment curriculum with the changes to the board for approval.

(5) An approved provider shall:

(a) Provide psychological or pharmacotherapy services or testing as needed or make the appropriate referral and act as liaison for the provision of services; [(b) Utilize a treatment curriculum which, at a minimum, shall include:

1. ~~Treatment services as may be necessary to meet the needs of the individual offender;~~

2. ~~An emphasis on acceptance of responsibility by the offender for present and past sexual offending behavior;~~

3. ~~Gender and culture specific programming; and~~

4. ~~Education of the offender in:~~

a. ~~The cycle of sexual abuse;~~

b. ~~Human sexuality;~~

c. ~~Deviant arousal and its reduction;~~

d. ~~Cognitive restructuring;~~

e. ~~Relapse prevention;~~

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f. Partner and family interactions and support, if applicable;
g. Victim empathy awareness; and
h. Relationship skills.]

(b)(c) Provide treatment consistent with current professional literature which minimizes the risk of reoffending and emphasizes community safety; (d) Provide eighty (80) face-to-face sessions of at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session for a minimum of twenty-four (24) months with at least forty (40) face-to-face sessions conducted during the first twelve (12) months;]

(c)(e) Maintain an individual record which shall include documentation of the offender's attendance and evaluative progress notes;

(d)(f) Obtain a release of information signed by the sex offender which allows the approved provider to release information to probation and parole personnel responsible for the sex offender's supervision and the Sex Offender Risk Assessment Advisory Board;

(e)(g) Notify the offender's supervising probation and parole officer in writing if the offender fails to attend a treatment session or fails to make a good faith effort to participate in the treatment;

(f)(h) Provide the Required Monthly Progress Report to the supervising probation and parole officer each month;

(g)(i) Cooperate fully with the probation and parole supervision team responsible for a sex offender under the approved provider's treatment;

(h)(j) Prepare a treatment summary at discharge from treatment; and

(i)(k) Provide written notice of the sex-offender's discharge from treatment and the reason for discharge to the supervising probation and parole officer within ten (10) days of discharge.

Section 3. Procedures for Treatment of Sex Offenders Who Have Not Completed a Sex Offender Treatment Program. If a sex offender has not completed a sex offender treatment program, an approved provider shall:

(1) Use a treatment curriculum which, at a minimum, shall include:

(a) Treatment services as may be necessary to meet the needs of the individual offender;

(b) An emphasis on acceptance of responsibility by the offender for present and past sexual offending behavior;

(c) Gender and culture specific programming; and

(d) Education of the offender in:

1. The cycle of sexual abuse;

2. Human sexuality;

3. Deviant arousal and its reduction;

4. Cognitive restructuring;

5. Relapse prevention;

6. Partner and family interactions and support, if applicable;

7. Victim empathy awareness; and

8. Relationship skills.

(2) Provide eighty (80) face-to-face sessions of at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session for a minimum of twenty-four (24) months with at least forty (40) face-to-face sessions conducted during the first twelve (12) months.

Section 4. Procedures For Treatment of Sex Offenders Who Have Completed a Sex Offender Treatment Program. (1) If a sex offender has completed a sex offender treatment program, an approved provider shall:

(a) Obtain documentation from the sex offender treatment program showing completion of the program;

(b) Document that the offender can demonstrate acceptable levels of skills and knowledge of treatment areas listed in Section 3(1)(d);

(c) Require the offender to repeat the areas in Section 3(1)(d) in which he has not demonstrated competence; and

(d) Provide fifty (50) face-to-face sessions of at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session for a minimum of eighteen (18) months with at least forty (40) face-to-face sessions conducted during the first twelve (12) months;

(2) If an offender has completed a sex offender treatment program, the approved provider shall use a treatment curriculum which, at a minimum, shall include:

(a) Dynamic risk factors assessment;

(b) Basic ownership, which means a component for offender responsibility for sexual offending behavior;

(c) Relapse prevention;

(d) Development of treatment partner relationship, including partner alert sessions;

(e) Collaborative development of a practical living skills plan;

(f) Commitment to follow-up with adjunct therapies where needed, including the following: Substance abuse; Domestic violence; Anger management; and Psychotropic medications; and

(g) A plan for family and children reintegration.

(3) Reintegration.

(a) Reintegration with a victim shall not comply with treatment requirements unless it is approved by the approved provider and the probation and parole officer.

(b) If the offender victimized a child, reintegration with other children shall not comply with treatment requirements unless approved by the approved provider and the probation and parole officer.

(c) The approved provider and probation and parole officer shall address at a minimum the following when considering reintegration of an offender with a child victim or other children:

1. Assessment of age and sex of child victims and offender potential for cross-over;

2. Assessment of how the offender accessed prior child victims and similarities to situations and persons with whom he is currently considering to reside;

3. Assessment of adult partner's knowledge and insight into offender's dynamics; and

4. A gradual reintegration process plan.

Section 5. Incorporation by Reference. (1) The Sex Offender Risk Assessment Advisory Board form [from] "Required Monthly Progress Report", 4/12/05 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, [Department of Corrections,] Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686 [2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, (502) 564-2024, fax (502) 564-6494], Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

JAMES J. VAN NORT, Chairperson

APPROVED BY AGENCY: August 1, 2011

FILED WITH LRC: August 12, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 21, 2011 at 10:00 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by the close of business September 30, 2011 to:

CONTACT PERSON: Amy V. Barker, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum treatment requirements for providers as authorized by the Sex Offender Risk Assessment Advisory Board.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 17.550 -17.991.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes procedures and minimum treatment requirements for providers as set forth by the Sex Offender Risk Assessment Advisory Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing direction to approved providers who are authorized to provide court-ordered assessment and treatment for sex offenders.

(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 a definition for "Department". It adds an additional section to provide for differences in treatment curriculum and length for offenders who have already completed a sex offender treatment program.

(b) The necessity of the amendment to this administrative regulation: To provide minimum treatment requirements for offenders who have already completed a sex offender treatment program and address specific treatment issues for released offenders.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes give the board regulatory authority concerning the minimum requirements for treatment of sex offenders by approved providers.

(d) How the amendment will assist in the effective administration of the statutes: It provides more efficient administration of sex offender treatment for individuals who have already completed a sex offender treatment program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 49 approved providers; the sex offenders that approved providers treat or evaluate, and may potentially affect circuit courts and probation and parole officers, if treatment issues become an issue for the court as releasing authority.

(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: Approved providers who treat offenders who have already completed a sex offender treatment program will have to submit a new treatment curriculum to the board. Treatment length will be shorter for providers and offenders, if the offender demonstrates competence in specific areas of previous treatment. Approved providers will have to address additional areas in treatment that are pertinent for released offenders.

(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 Department of Corrections or the board. Approved providers will have to spend a number of hours revising curriculum and planning for additional areas of treatment, but will not have out-of-pocket direct costs to them. Offenders may have treatment costs decreased by having fewer required treatment sessions if they have already completed a sex offender treatment program. The saving will depend on the charges to them for each treatment session.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will provide more effective treatment to the sex offenders who have already completed a sex offender treatment program.

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

(a) Initially: None

(b) On a continuing basis: None

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

(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 established by this regulation.

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

(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? This regulation may impact circuit courts and the Department of Corrections through its probation and parole officers and approved providers who are employed the department.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 17.550-17.991.

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

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

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

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

JUSTICE AND PUBLIC SAFETY CABINET Department of Kentucky State Police (Amendment)

502 KAR 11:010. Application for license to carry concealed deadly weapon.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080, [47.080], 237.110(7) [237.110(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(7) [237.110(4)] requires the Department of Kentucky State Police to establish the application form for a license to carry a concealed deadly weapon. This administrative regulation establishes the application form and procedures.

Section 1. Definitions [Definition]. (1) "Application form" means the "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License."

(2) "Department" means the Department of Kentucky State Police.

Section 2. (1) Application forms shall not be stored in an area

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accessible to the public.

(2) Except as permitted by Section 10 of this administrative regulation, an application form shall not be removed from the office of the sheriff.

Section 3. An application form shall be identified by a unique number that shall be:

- (1) Expressed on the application form as a bar code that contains the application number;
- (2) Used as the identifying number for the applicant; and
- (3) Machine and human readable.

Section 4. A sheriff shall issue an application form to an applicant and accept an application fee if:

- (1) An applicant meets the requirements established by KRS 237.110 (4)(b), (c), and (i);
- (2) Unless exempted by KRS 237.110(6) and (7), an applicant has submitted the material required by KRS 237.110(7);
- (3) Verification that an applicant is a resident is made by:
 - (a) Submission of a valid Kentucky operator's license or personal identification card issued by a circuit court clerk pursuant to KRS 186.412;
 - (b) Personal knowledge of the sheriff; or
 - (c) Confirmation by another governmental agency;
- (4) Verification of an applicant's Social Security number is made by the submission of:
 - (a) The applicant's Social Security card; or
 - (b) A governmental agency document that contains an applicant's name and Social Security number;
- (5) Verification of an applicant's age is made by submission of:
 - (a) An item specified by subsection (3) of this section; or
 - (b) A birth certificate or other evidence of birth issued by a governmental agency; and
- (6) Verification of an applicant's U.S. immigration status [citizenship] is made by submission of a completed CCDW License Citizenship/Immigration Status [Application—Citizenship] Affidavit (KSP 131) if the applicant has indicated on the application form that the applicant is not a U.S. citizen.

Section 5. An applicant who is exempt from the training requirement established by KRS 237.110(4)(i) shall submit documentation establishing that he or she:

- (1)(a) Was a peace officer on the date of his or her retirement; and
- (b) Is a member of a retirement system specified by KRS 237.110(6)(a);
- (2) Is currently certified as a peace officer by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404; or
- (3) Is a current or retired peace officer of one (1) of the federal agencies listed in KRS 237.110(6)(b).

Section 6. Completion of Application Form. An applicant shall:

- (1) Complete an application in the presence of the sheriff;
- (2) Sign the application in the applicant signature block of the application form in ink in the presence of the sheriff;
- (3) Provide the information required by KRS 237.110(7)(a) through (e) on the application form [and the CCDW License Application Citizenship Affidavit (KSP 131)];
- (4) Not fold or tear the form;
- (5) Use a black ink pen to complete the form;
- (6) Not mark or otherwise make an entry in the "For Sheriff's Dept. Use Only" portion;
- (7) Fill each bubble completely;
- (8) Fill in or enter information, as appropriate, within a column block or bubble;
- (9) Write within the constrained areas; and
- (10) Use upper case (capital) letters.

Section 7. The sheriff shall complete the lower [upper] right hand portion of the application form titled "For Sheriff's Dept. Use Only" by:

- (1) Completing the ORI Number;
- (2) Filling in the date of application;
- (3) Indicating if the applicant is an active or retired peace officer

or a judicial officer in accordance with KRS 527.020(5)(a)1. to 4.; and

(4) Signing in the portion labeled "Authorizing Official Signature."

Section 8. If an applicant fails to follow the instructions for completion of an application, the sheriff shall:

- (1) Destroy the improperly completed application; and
- (2) Require the applicant to complete a new application form.

Section 9. The sheriff shall place the following material in a single applicant packet:

- (1) The applicant's completed application form;
- (2) A photograph of the applicant complying with the provisions of 502 KAR 11:020;
- (3) The CCDW License Citizenship/Immigration Status [Application—Citizenship] Affidavit (KSP 131) if the applicant has indicated on the application form that the applicant is not a U.S. citizen;
- (4)(a) A photocopy of the certificate of completion, or notarized affidavit of completion, of the training or safety course or class required by KRS 237.110(4)(i); or
- (b) Material provided by an applicant to the sheriff establishing that the applicant is exempt from the training requirement on the grounds that he or she is:
 1. Currently certified as a peace officer by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404;
 2. A current or retired peace officer of one of the federal agencies listed in KRS 237.110(6)(b) and successfully completed the basic law enforcement training course required by that agency; or
 3. A retired peace officer and is a member of a retirement system specified in KRS 237.110(6)(a); and
- (5) Material provided by an applicant to the sheriff establishing that the applicant is exempt from payment of the application fee pursuant to KRS 237.110(7).

Section 10. (1) The sheriff shall mail single applicant packets to the department:

- (a) In a bulk mailer; and
 - (b) On dates established by the "CCDW - LEOSA Application Mailing Schedule for Sheriffs."
- (2) The sheriff shall pay the cost of mailing a bulk mailer.

Section 11. (1) If the department issues an original license pursuant to KRS 237.110(4), it shall:

- (a) Transmit the license to the sheriff; and
 - (b) Send an Issuance Notice to the applicant, informing him or her that the license is being conveyed to the sheriff of the county where the applicant resides and what date the license will be available from the sheriff.
- (2) The sheriff shall issue the license to the applicant upon:
- (a) Verification of the identity of the applicant by:
 1. Submission of a valid Kentucky operator's license or personal identification card issued by a circuit court clerk pursuant to KRS 186.412; or
 2. Personal knowledge of the sheriff; and
 - (b) Signature on the Issuance Notice by the applicant in the presence of the sheriff or the sheriff's designee.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License November 2009 [July 2005];
 - (b) "CCDW - LEOSA Application Mailing Schedule for Sheriffs," July 2006;
 - (c) "CCDW License Citizenship/Immigration Status [Application—Citizenship] Affidavit", KSP 131, November 2009 [July 2006]; and
 - (d) "Issuance Notice," December, 2008 [04/09/07].
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Kentucky State Police, 1266 [4250] Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BREWER, Commissioner

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APPROVED BY AGENCY: August 15, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 30th day of September, 2011 at 9:00 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 25th day of September, 2011, five work-days prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide accommodations, please notify us of your requirement by the 25th day of September, 2011. 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 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 30th day of September, 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 M. Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 782-1784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily M. Perkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the provisions regarding applications for licenses to carry a concealed deadly weapon pursuant to KRS 237.110.

(b) The necessity of this administrative regulation: KRS 237.110 provides for licensing of individuals to carry a concealed deadly weapon in the Commonwealth of Kentucky. KRS 237.110(7) requires the Kentucky State Police to promulgate administrative regulations to implement the application form to obtain a license to carry a concealed deadly weapon.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements for the application form for a license to carry a concealed deadly weapon pursuant to KRS 237.110(7) and the administrative procedures for issuance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the application form for a license to carry a concealed deadly weapon and provides guidance to the Department of Kentucky State Police, the Sheriffs of the Commonwealth of Kentucky, and applicants in regard to the application process and issuance of a 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: Updates forms utilized in conjunction with an application; revises method of verification of immigration status of non-U.S. citizen applicants; updates material sheriffs are required to provide to the Department of Kentucky State Police; and provides guidelines for issuance of a license.

(b) The necessity of the amendment to this administrative regulation: Updated application and forms are required because U.S. citizenship is no longer required to obtain a CCDW license.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation reflects the changes in the application requirements and process as well as the forms utilized by applicants, sheriffs, and the Department of Kentucky State Police.

(d) How the amendment will assist in the effective administration of the statutes: The application process for non-U.S. citizens has changed, so a revised method of verification of immigration status is required. In addition, updates regarding the material she-

riffs are required to provide to the Department of Kentucky State Police are needed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who seek to obtain a license to carry a concealed deadly weapon pursuant to KRS 237.110, all county sheriffs, and the Department of Kentucky State Police.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All applicants will have to complete a revised application; non-U.S. citizen applicants will have to complete a revised "CCDW License Citizenship/Immigration Status Affidavit" (KSP 131); Sheriffs will have to provide revised documentation to the Department of Kentucky State Police.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments will result in minimal if any additional costs to the applicants, sheriffs, or state police.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be considered for licensure; and the application process will be clarified and updated for Sheriffs and the Department of Kentucky State Police.

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

(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(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, see response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a).

(9) TIERING: Is tiering applied?: No. The process is applied equally to all that receive the service.

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 Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 237.110

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation. The amount of revenue generated by the concealed deadly weapon license program is authorized by KRS 237.110 and is directly dependent on the number of applicants for licensure or renewal. By statute, each applicant pays a \$60 application or renewal fee, which is apportioned in

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accordance with KRS 237.110(7).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue is directly dependent on the number of applicants for licensure. By statute, each applicant pays a \$60 application fee, which is apportioned in accordance with KRS 237.110(7).

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by money generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police. The CCDW program is revenue and cost neutral. If revenue exceeds costs for a particular year, it is rolled over to cover equipment upgrades in future years which would otherwise greatly exceed annual revenue.

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: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET Department of Kentucky State Police (Amendment)

502 KAR 11:050. Updating, replacement, and renewal of license to carry concealed deadly weapon.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080, 36.450, [47.080], 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(11) requires a licensee to notify the department if there is a change in the licensee's permanent address. KRS 237.110(12) authorizes a licensee to obtain a duplicate license if the original is lost, stolen, or destroyed. KRS 237.110(14) requires an applicant to renew a license to carry a concealed deadly weapon by submitting the department's renewal form. KRS 36.450 authorizes a carry concealed deadly weapon (CCDW) licensee that is a member of the United States Armed Forces, including a member of the Kentucky National Guard or Reserve on federal active duty, whose license expires while that licensee is deployed overseas to apply for renewal. This administrative regulation establishes the forms and procedures for updating, replacing, and renewing a license to carry a concealed deadly weapon.

Section 1. Definitions. (1) "Department" means the Department of Kentucky State Police.

(2) "Licensee" means an individual with a current and valid license to carry a concealed deadly weapon in the Commonwealth of Kentucky.

(3) "Overseas military deployment" means an overseas deployment of a licensee that is a member of the United States Armed Forces, including a member of the Kentucky National Guard or Reserve on federal active duty.

(4) "Personal information" means the name, date of birth, Social Security Number and address of a licensee.

Section 2. Change of Personal Information. (1) If the [address or] personal information of a licensee has changed, the licensee shall notify the department of the change on the Carry Concealed Deadly Weapons License Request for Change of Personal Information Form (KSP 121).

(2) The request form shall be completed and signed by the licensee in the presence of the sheriff.

(3) The sheriff shall verify the change of personal information as provided by:

(a) Submission of a valid Kentucky operator's license or personal identification card issued by a circuit court clerk pursuant to KRS 186.412;

(b) Personal knowledge of the sheriff; or

(c) Confirmation by another governmental agency.

(4) The completed request form shall be:

(a) Signed by the sheriff; and

(b) Transmitted by the sheriff to the department pursuant to 502 KAR 11:010, Section 10.

(5) Upon approval by the department of the change of personal information, the department shall:

(a) Issue an updated license;

(b) Transmit the updated license to the sheriff; and

(c) Notify the licensee in writing that the updated license may be obtained by the licensee at the office of the sheriff.

Section 3 [2]. Lost, Stolen, or Destroyed Carry Concealed Deadly Weapon License. (1) If a Carry Concealed Deadly Weapon license is lost, stolen, or destroyed, a licensee shall notify the department on a Request For Duplicate CCDW License Form (KSP 126).

(2) The request form shall be:

(a) Notarized; and

(b) Completed and signed by the licensee in the presence of the sheriff.

(3) The licensee shall attach to the request form a check or money order, payable to the Department of Kentucky State Police, in the amount of fifteen (15) dollars.

(4) The completed request form shall be:

(a) Signed by the sheriff; and

(b) Transmitted by the sheriff to the department pursuant to 502 KAR 11:010, Section 10.

(5) Upon approval by the department of the request for a duplicate license, the department shall:

(a) Issue a duplicate license that contains a license number that differs from the license number on the lost, stolen, or destroyed license;

(b) Transmit the duplicate license to the sheriff; and

(c) Notify the licensee in writing that the duplicate license may be obtained by the licensee at the office of the sheriff.

Section 4 [-3]. Notice of Renewal. Except as provided in KRS 36.450, the [The] department shall mail to each licensee, not less than 120 days prior to the expiration date of the license, a Renewal Notice.

Section 5. [4-] License Renewal for a Licensee Whose License Did Not Expire during an Overseas Military Deployment.

(1) The Renewal Notice shall be:

(a) Notarized;

(b) Signed by the licensee in the presence of the sheriff;

(c) Signed by the sheriff; and

(d) Accompanied by:

(i) A recent photograph of the licensee that meets the requirements of 502 KAR 11:020;

(ii) A copy of the CCDW License Citizenship/Immigration Status Affidavit (KSP 131) if the licensee is not a U.S. citizen; and

(iii) A check or money order, payable to the Department of Kentucky State Police, in the amount of forty (40) dollars and a check or money order, payable to the sheriff of the licensee's county of residence, in the amount of twenty (20) dollars.

(2) The sheriff shall:

(a) Verify the address of the licensee as provided by 502 KAR 11:010, Section 4; and

(b) Transmit the completed Renewal Notice and Renewal Affidavit to the department pursuant to 502 KAR 11:010, Section 10.

[Section 4. License Renewal. (1) The Renewal Notice shall be:

(a) Signed by the licensee in the presence of the sheriff;

(b) Signed by the sheriff; and

(c) Accompanied by a CCDW License Renewal Affidavit (KSP 125), a copy of which shall be provided by the sheriff to the applicant upon request.

(2) The Renewal Affidavit shall be:

(a) Notarized; and

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(b) Signed by the licensee in the presence of the sheriff.

(3) The sheriff shall:

(a) Verify the address of the licensee as provided by 502 KAR 11:010, Section 4; and

(b) Transmit the completed Renewal Notice and Renewal Affidavit to the department pursuant to 502 KAR 11:010, Section 10.]

Section 6. License Renewal for a Licensee Whose License Expires During an Overseas Military Deployment and Requests Renewal Pursuant to KRS 36.450.

(1) Upon receipt of the request, the Department shall mail a renewal application and an "Armed Forces Overseas Deployment CCDW License Renewal Affidavit" (KSP 154) to the licensee at the active duty military address specified by the licensee and notify the sheriff of the licensee's county of residence that the licensee has requested overseas renewal.

(2) Upon receipt of the renewal application and "Armed Forces Overseas Deployment CCDW License Renewal Affidavit" (KSP 154) the licensee shall:

(a) Complete and sign the forms in ink;

(b) Have his signature on the forms notarized;

(c) Attach the following:

(i) Documentation of his or her overseas deployment, including the dates of that deployment;

(ii) A copy of the licensee's valid Kentucky operator's license or personal identification card issued by a circuit court clerk pursuant to KRS 186.412;

(iii) A copy of the CCDW License Citizenship/Immigration Status Affidavit (KSP 131) if the licensee is not a U.S. citizen;

(iv) A recent photograph of the licensee that meets the requirements of 502 KAR 11:020;

(v) A check or money order, payable to the Department of Kentucky State Police, in the amount of forty (40) dollars and a check or money order, payable to the sheriff of the licensee's county of residence, in the amount of twenty (20) dollars; and

(d) Return the completed forms to the sheriff of the licensee's county of residence by mail or facsimile.

Section 7. Late Fee Waiver for a Licensee Whose License Expires During an Overseas Military Deployment.

(1) If a licensee allows his or her license to expire and, upon return to the county of residence, wishes to apply for renewal of the license pursuant to KRS 36.450(6)(b), he or she may request a waiver of the late fee by:

(a) Completing and signing in ink the "Armed Forces Overseas Deployment CCDW License Renewal Late Fee Waiver Request" (KSP 154A) in the presence of the sheriff of the county of the licensee's residence.

(b) Attaching documentation of my overseas deployment, including the dates of that deployment, to the "Armed Forces Overseas Deployment CCDW License Renewal Late Fee Waiver Request" (KSP 154A).

(2) The completed form shall be:

(a) Signed by the sheriff; and

(b) Transmitted by the sheriff to the department pursuant to 502 KAR 11:010, Section 10.

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

(a) "Carry Concealed Deadly Weapons Licensee Request for Change of Personal Information", KSP 121, 07/06;

(b) "Request for Duplicate CCDW License," KSP 126, 05/06;

(c) "Renewal Notice", 01/09/07; [and]

(d) "CCDW License Citizenship/Immigration Status Affidavit (KSP 131), 04/08["CCDW License Renewal Affidavit" KSP 125, 07/06;]

(e) "Armed Forces Overseas Deployment CCDW License Renewal Affidavit" (KSP 154), 01/11; and

(f) "Armed Forces Overseas Deployment CCDW License Renewal Late Fee Waiver Request" (KSP 154A), 01/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Kentucky State Police, 1266 [1250] Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BREWER, Commissioner

APPROVED BY AGENCY: August 15, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 30th day of September, 2011 at 9:00 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 23th day of September, 2011, five work-days prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide accommodations, please notify us of your requirement by the 23th day of September, 2011. 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 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 30th day of September, 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 M. Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 782-1784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily M. Perkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms and procedures for updating the personal information of a carry concealed deadly weapon licensee, replacing a lost, stolen, or destroyed license, and renewing a license to carry a concealed deadly weapon.

(b) The necessity of this administrative regulation: KRS 237.110(11) requires carry concealed deadly weapon licensees to notify the Department of Kentucky State Police of a change of address or other personal information on the license within thirty days of the change. KRS 237.110(12) authorizes a licensee to obtain a duplicate license if the original is lost, stolen, or destroyed. KRS 237.110(14) establishes the requirements for renewal of a carry concealed deadly weapon license. KRS 36.450 authorizes a carry concealed deadly weapon (CCDW) licensee that is a member of the United States Armed Forces, including a member of the Kentucky National Guard or Reserve on federal active duty, whose license expires while that licensee is deployed overseas to apply for renewal. KRS 36.450 further authorizes a carry concealed deadly weapon (CCDW) licensee that is a member of the United States Armed Forces, including a member of the Kentucky National Guard or Reserve on federal active duty, whose license expired while that licensee was deployed overseas to apply for a license renewal late fee waiver. This administrative regulation establishes the forms and procedures for updating the personal information, for replacing a lost, stolen, or destroyed license, renewal of a license to carry a concealed deadly weapon in the Commonwealth of Kentucky, and requesting a late fee waiver.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the procedures to be followed by the licensees, county sheriffs, and the Department of Kentucky State Police for changing licensee personal information, replacing lost, stolen, or destroyed licenses, renewing a carry concealed deadly weapon license and requesting a late fee waiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures to be followed by the licensees, county sheriffs, and the Department of Kentucky State Police for changing licensee personal information, replacing lost, stolen, or destroyed licenses, renewing a carry concealed deadly weapon license and requesting a late fee waiver.

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(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 the required forms and clarifies the procedures used to renew a CCDW license and request a late fee waiver.

(b) The necessity of the amendment to this administrative regulation: To add a requirement that licensees seeking renewal must provide their citizenship and immigration status to enable the Department of Kentucky State Police to conduct the background checks required prior to issuance or renewal of a license pursuant to KRS 237.110(3). Clarify the license renewal procedure for licensees whose license expires during an overseas military deployment.

(c) How the amendment conforms to the content of the authorizing statutes: It updates the required forms and clarifies the procedures used to renew a CCDW license and request a late fee waiver.

(d) How the amendment will assist in the effective administration of the statutes: It updates the required forms and clarifies the procedures used to renew a CCDW license and request a late fee waiver.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who seek to renew a license to carry a concealed deadly weapon pursuant to KRS 237.110 and KRS 36.450, all county sheriffs, and the Department of Kentucky State Police.

(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 of Kentucky State Police will use updated forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): By statute, there is a \$60 fee for license renewal, apportioned in accordance with KRS 237.110(7); a \$15 late fee for license renewal (except for those that are statutorily exempt); and a \$15 fee for license replacement. There is no fee for updating personal information by a licensee. There are no additional fees established by this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A licensee will obtain a renewed or replacement license or obtain a late fee waiver.

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

(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(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, see response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a).

(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

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 Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 237.110; KRS 36.450.

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 amount of revenue is directly dependent on the number of license replacements or renewals. By statute, there is a \$60 fee for license renewal, apportioned in accordance with KRS 237.110(7); a \$15 late fee for license renewal; and a \$15 fee for license replacement. There is no fee for updating personal information by a licensee.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue is directly dependent on the number of license replacements or renewals. By statute, there is a \$60 fee for license renewal, apportioned in accordance with KRS 237.110(7); a \$15 late fee for license renewals; and a \$15 fee for license replacement. There is no fee for updating personal information by a licensee.

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by money generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police. The CCDW program is revenue and cost neutral.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by money generated by the concealed deadly weapon license program and collected by the Department of State Police. The CCDW program is revenue and cost neutral. If revenue exceeds costs for a particular year, it is rolled over to cover equipment upgrades in future years which would otherwise greatly exceed annual revenue.

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: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Kentucky State Police

Technical Services Division

(Amendment)

502 KAR 13:010. Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

RELATES TO: KRS 15.383, 61.365, 186.412, 237.138-237.142, 446.010(25), 18 U.S.C. 926C, Pub.L. 108-277

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for certification.

Section 1. Definitions. (1) "Applicant" means an honorably

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retired peace officer who has applied to the Kentucky State Police to be certified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C.

(2) "Application form" means the "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License."

(3) "Honorably retired" means an elected or appointed peace officer who:

(a) Separated [Retired] in good standing from service with a public agency as a law enforcement officer [~~other than for reasons of mental instability~~];

(b) Before separation [retirement], was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(c) 1. Before separation, served as a law enforcement officer for an aggregate of 10 years or more [retirement, was regularly employed as a law enforcement officer for an aggregate of fifteen (15) years or more]; or

2. Separated [Retired] from service with an agency, after completing any applicable probationary period of service, due to a service-connected disability, as determined by the agency;

(d) 1. Has not been officially found by a qualified medical professional employed by the agency from which the applicant separated from service to be unqualified for reasons relating to mental health; or

2. Has not entered into an agreement with the agency from which the applicant separated from service in which the applicant acknowledged that he or she is not qualified under 18 U.S.C. 926C for reasons relating to mental health; [Has a nonforfeitable right to benefits under the retirement plan of the agency];

(e) During the most recent twelve (12) month period, has met, at the expense of the retired peace officer, Kentucky's standards for training and qualifications for active law enforcement officers to carry firearms, as set out in KRS 15.383;

(f) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(g) Is not prohibited by Federal law from receiving a firearm.

(4) "Peace Officer" is defined by KRS 446.010(25) and 61.365.

Section 2. An application form shall be identified by a unique number that shall be:

(1) Expressed on the application form as a bar code that contains the application number;

(2) Used as the identifying number for the applicant; and

(3) Machine and human readable.

Section 3. Application forms shall:

(1) Not be stored in an area accessible to the public; and

(2) Not be removed from the office of the sheriff except as permitted by Section 6(4) of this administrative regulation.

Section 4. A sheriff shall issue an application form to an applicant if:

(1) An applicant meets the requirements established by KRS 237.138 to 237.142;

(2) The sheriff has verified that an applicant is qualified for certification pursuant to KRS 237.138 to 237.142 and this administrative regulation;

(3) An applicant has submitted the material required by KRS 237.138 to 237.142 and this administrative regulation;

(4) Verification that an applicant is a Kentucky resident is made by:

(a) Submission of a valid Kentucky operator's license or personal identification card issued by a circuit court clerk pursuant to KRS 186.412;

(b) Personal knowledge of the sheriff; or

(c) Confirmation by another governmental agency; and

(5) Verification of an applicant's Social Security number is made by submission of:

(a) The applicant's Social Security card; or

(b) A governmental agency document that contains the applicant's name and Social Security number.

Section 5. Completion of Application Form. An applicant shall:

(1) Complete an application in the presence of the sheriff;

(2) Sign the application in the applicant signature block of the application form in ink;

(3) Provide the information required by KRS 237.110(7)(a) through (e) on the application form;

(4) Not fold or tear the form;

(5) Use a black ink pen to complete the form;

(6) Not mark or otherwise make an entry in the "For Sheriff's Dept. Use Only" portion;

(7) Fill each bubble completely;

(8) Fill in or enter information, as appropriate, within a column block or bubble;

(9) Write within the constrained areas;

(10) Use upper case (capital) letters;

(11) Provide a photograph of the applicant complying with the provisions of 502 KAR 13:070;

(12) Submit the following completed forms to the sheriff to be attached to the application form:

(a) A Peace Officer Range Qualification Certification-LEOSA (KSP 123); [and]

(b) LEOSA Applicant Certification (KSP 124A) [A-Certification Of Law Enforcement Retirement-LEOSA (KSP 124)]; and

(c) LEOSA Law Enforcement Retirement Certification (KSP 124B);

(13) Not be required to pay an application fee.

Section 6. Sheriff's Duties. (1) If an applicant fails to follow the instructions for completion of an application, the sheriff shall:

(a) Destroy the improperly completed application; and

(b) Require the applicant to complete a new application form.

(2) The sheriff shall complete in black ink the upper right hand portion of the application form titled "For Sheriff's Dept. Use Only" by:

(a) Completing the ORI Number;

(b) Filling in the date of application;

(c) Indicating the applicant is a retired peace officer;

(d) Indicating the applicant is seeking LEOSA certification; and

(e) Signing in the portion labeled "Authorizing Official Signature."

(3) The sheriff shall place the following material in a single applicant packet:

(a) The applicant's completed application form;

(b) A photograph of the applicant complying with the provisions of 502 KAR 13:070; and

(c) A completed KSP 123, 124A and 124B [and 124].

(4) The sheriff shall mail single applicant packets:

(a) In a bulk mailer; and

(b) On dates established by the "CCDW-LEOSA Application Mailing Schedule For Sheriffs."

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

(a) "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License" November 2009 [July 2005];

(b) "CCDW-LEOSA Application Mailing Schedule For Sheriffs," July 2006;

(c) "Peace Officer Range Qualification Certification-LEOSA," KSP 123, 07/05; [and]

(d) LEOSA Applicant Certification, KSP 124A, November 2010; and ["Certification Of Law Enforcement Retirement-LEOSA," KSP 124, 08/06]

(e) LEOSA Law Enforcement Retirement Certification, KSP 124B, November 2010;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1266 Louisville [.] Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m., phone, (502) 227-8700.

RODNEY BREWER, Commissioner

APPROVED BY AGENCY: August 15, 2011

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

VOLUME 38, NUMBER 3 – SEPTEMBER 1, 2011

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 30th day of September, 2011 at 9:00 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 23th day of September, 2011, five work-days prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide accommodations, please notify us of your requirement by the 23th day of September, 2011. 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 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 30th day of September, 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 Perkins, Department of Kentucky State Police, Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1784, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Perkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the provisions regarding applications for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

(b) The necessity of this administrative regulation: KRS 237.138 to 142 provide for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. KRS 237.140 also authorizes the Department of Kentucky State Police to promulgate administrative regulations to implement the 18 U.S.C. 926C certification provisions of the bill.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth conditions under which honorably retired elected or appointed peace officers are certified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides guidelines for the Department of Kentucky State Police and informs the public of the requirements and conditions under which the certification pursuant to 18 U.S.C. 926C may be obtained from the Department of Kentucky State Police.

(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: Updates forms utilized in application process and revises language to reflect recent revisions to 18 U.S.C. 926C.

(b) The necessity of the amendment to this administrative regulation: Congress recently revised 18 U.S.C. 926C. This amendment revises language of this regulation to reflect those changes.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation reflects the changes in 18 U.S.C. 926C as well as the forms utilized by applicants, sheriffs, and the Department of Kentucky State Police.

(d) How the amendment will assist in the effective administration of the statutes: Updates regarding documentation of eligibility for certification and the material sheriffs are required to provide to the Department of Kentucky State Police are needed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who seek to obtain 18 U.S.C. 926C certification to carry a concealed deadly weapon, all county sheriffs, and the Department of Kentucky State Police.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants and Sheriffs will be required to use updated forms. The duties of the Department of Kentucky State Police are not significantly different than currently required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments will result in minimal if any additional costs to the applicants, sheriffs, or the Department of Kentucky State Police.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be considered for licensure; and the application process will be clarified and updated for Sheriffs and the Department of Kentucky State Police.

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

(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(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, see response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a).

(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

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 Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 18 U.S.C. 926C; KRS 237.138; KRS 237.140; KRS 237.142.

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 fee for application for LEOSA certification is authorized by statute. 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 fee for application for LEOSA certification is authorized by statute. No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

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(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

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: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET Department of Kentucky State Police Technical Services Division (Amendment)

502 KAR 13:040. Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

RELATES TO: KRS 186.412, 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for the issuance, expiration, and renewal of a LEOSA license.

Section 1. Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

Section 2. Issuance of License. (1) The department shall issue a LEOSA license if it confirms that the applicant is qualified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C after the department has received the documentation required by 502 KAR 13:010.

(2) If the department issues a LEOSA license, it shall:

(a) Transmit the license to the sheriff; and

(b) Send an issuance notice to the applicant, informing him or her that the license is being conveyed to the sheriff of the county where the applicant resides and what date the license will be available from the sheriff.

(3) The sheriff shall issue the license to the applicant upon:

(a) Verification of the identity of the applicant by:

1. Submission of a valid Kentucky operator's license or personal identification card issued by a circuit court clerk pursuant to KRS 186.412; or

2. Personal knowledge of the sheriff; and

(b) Signature of the issuance notice by the applicant in the presence of the sheriff or the sheriff's designee.

Section 3. Expiration. A LEOSA license shall expire one (1) year from the date of the range qualification listed on the "Peace Officer Range Qualification Certification-LEOSA", "KSP 123, submitted with the application.

Section 4. Renewal. Not less than one hundred twenty (120) days prior to the expiration date of the license, the department shall mail to each licensee a "Notice of Expiration - LEOSA." Any licensee wishing to renew the license shall apply and be approved in the manner described in 502 KAR 13:010 and this administrative regulation for first time applicants except that a licensee shall not have to submit a copy of the "LEOSA Law Enforcement Retirement Certification", KSP 124B, if the licensee previously submitted a retirement certification that was accepted by the department in the

eighteen (18) month period immediately preceding the renewal application. [may submit a copy of the Certification Of Law Enforcement Retirement-LEOSA (KSP 124) that was previously provided with the licensee's original or renewal LEOSA application.]

Section 5. Identification. A LEOSA license issued by the department to a successful applicant shall consist of a photographic identification card containing the following:

(1) The front of the photographic identification card shall include the following information for the certified retired peace officer:

(a) Name;

(b) Address;

(c) Date of birth;

(d) Law enforcement agency retired from;

(e) Expiration date of certification;

(f) LEOSA license number; and

(g) Photograph.

(2) The back of the photographic identification card shall be substantially in the following form: The Commonwealth of Kentucky hereby certifies that the licensee identified on the front of this card is a qualified retired law enforcement officer as defined in the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C, and has, within one (1) year prior to the expiration date shown on the front of this card, been tested or otherwise found by the Commonwealth of Kentucky to meet the marksmanship qualification requirement established by the Commonwealth for peace officers.

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

(a) "Peace Officer Range Qualification Certification-LEOSA", KSP 123, 07/05;

(b) "Notice of Issuance", 1/9/07; [and]

(c) "Notice of Expiration - LEOSA", 6/21/07; and [-]

(d) "LEOSA Law Enforcement Retirement Certification", KSP 124B, November 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1266 [1250] Louisville [-] Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.

RODNEY BREWER, Commissioner

APPROVED BY AGENCY: August 15, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 30th day of September, 2011 at 9:00 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 23th day of September, 2011, five work-days prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide accommodations, please notify us of your requirement by the 23th day of September, 2011. 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 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 30th day of September, 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 Perkins, Department of Kentucky State Police, Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1784, fax (502) 573-1636.

VOLUME 38, NUMBER 3 – SEPTEMBER 1, 2011

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Perkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the provisions regarding the issuance, expiration and renewal of a LEOSA license.

(b) The necessity of this administrative regulation: KRS 237.138 to 142 provide for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. KRS 237.140 also authorizes the Department of State Police to promulgate administrative regulations to implement the 18 U.S.C. 926C certification provisions of the bill.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth conditions for the issuance, expiration and renewal of a LEOSA license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the guidelines for the Department of State Police and informs the public of the requirements and conditions for the issuance, expiration and renewal of a LEOSA license.

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

(a) How the amendment will change this existing administrative regulation: This amendment will simplify the renewal process for LEOSA licensees by not requiring them to re-submit previously submitted retirement certification that was accepted by the Department.

(b) The necessity of the amendment to this administrative regulation: This amendment will simplify the renewal process for LEOSA licensees by not requiring them to re-submit previously submitted retirement certification that was accepted by the Department.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment will simplify the renewal process for LEOSA licensees by not requiring them to re-submit previously submitted retirement certification that was accepted by the Department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will simplify the renewal process for LEOSA licensees by not requiring them to re-submit previously submitted retirement certification that was accepted by the Department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who possess 18 U.S.C. 926C certification to carry a concealed deadly weapon, all county sheriffs and the Department of Kentucky State Police.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for a renewal LEOSA license will not be required to re-submit previously submitted retirement certification that was accepted by the Department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will result in minimal, if any, costs to the Department of Kentucky State Police or county sheriffs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be considered for issuance or renewal of a LEOSA license; the renewal process will be simplified and clarified for sheriffs and the Department of Kentucky State Police.

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

(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(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, see response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a).

(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

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 Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 18 U.S.C. 926C; KRS 237.138; KRS 237.140; KRS 237.142.

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 fee for issuance or renewal is authorized by statute. 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 fee for issuance or renewal is authorized by statute. No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

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: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET Department of Kentucky State Police (Amendment)

502 KAR 13:070. Applicant photograph requirements for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18

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U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes applicant photograph requirements for LEOSA certification.

Section 1. Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

Section 2. The photograph of an applicant for a LEOSA license shall not be an image produced by a copier or copy equipment and shall:

(1) Be an original color photograph or a color photographic copy developed from the negative of an original photograph and:

(a) Be no less than three and one-half (3 1/2) inches by four (4) inches;

(b) Not exceed four (4) inches by six (6) inches;

(3) Be a color photograph from a digital camera, rated for seven (7) megapixels or greater, printed on photograph quality paper; or

(4) Be an original color passport style photograph that is:

(a) 2 x 2 inches in size; and

(b) Between 1 inch and 1 3/8 inches from the bottom of the chin to the top of the head.

(5) Display the full front of the head and the facial features of the applicant; and

(6) Not be a photograph of the applicant wearing:

(a) Sunglasses;

(b) A hat; or

(c) Attire that obscures a facial feature, hair or hairline. [(4) Be a color photograph;

(2) Be no less than three and one-half (3 1/2) inches by four (4) inches;

(3) Not exceed four (4) inches by five (5) inches;

(4) Display the full front of the head and the facial features of the applicant;

(5) Not be a photograph of the applicant wearing sunglasses or attire that obscures a feature of the applicant's face;

(6) Be an original photograph or a photographic copy developed from the negative of an original photograph; and

(7) Not be an image produced by a digital camera, computer, or a copier or other copy equipment or copy machine.]

Section 3. The department shall:

(1) Consider an application incomplete if an applicant submits a photograph that it determines does not comply with the requirements of Section 1 of this administrative regulation; and

(2) Notify the sheriff who transmitted the application form and the applicant pursuant to the provisions of 502 KAR 13:080.

RODNEY BREWER, Commissioner

APPROVED BY AGENCY: August 15, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 30th day of September, 2011 at 9:00 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 25th day of September, 2011, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide accommodations, please notify us of your requirement by the 25th day of September, 2011. 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 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 30th day of September, 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 Perkins, Department of Kentucky State Police, Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1784, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Perkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the provisions regarding the requirements for photographs that must be submitted with applications for a Law Enforcement Officers Safety Act (LEOSA) license.

(b) The necessity of this administrative regulation: KRS 237.138 to 142 provide for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. KRS 237.140 also authorizes the Department of State Police to promulgate administrative regulations to implement the 18 U.S.C. 926C certification provisions of the bill.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements for photographs that must be submitted with applications to obtain a LEOSA license

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation gives guidance to the Department of Kentucky State Police and the Sheriffs of the Commonwealth of Kentucky in regard to the photographs that must be submitted with applications to obtain a LEOSA 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: It adds additional options to allow passport style photographs or digital photographs of a specified quality to be submitted with an application for a LEOSA license.

(b) The necessity of the amendment to this administrative regulation: To clarify the photograph requirements for a LEOSA license application.

(c) How the amendment conforms to the content of the authorizing statutes: LEOSA requires photographic identification.

(d) How the amendment will assist in the effective administration of the statutes: It adds additional options to allow passport style photographs or digital photographs of a specified quality to be submitted with an application for a LEOSA license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who apply for 18 U.S.C. 926C and KRS 237.138 to 142 certification to carry a concealed deadly weapon, all county sheriffs and the Department of Kentucky State Police.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be allowed to use digital photographs or passport photographs of a specified quality in conjunction with an application for a LEOSA license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will result in minimal, if any, costs to applicants, the Department of Kentucky State Police or county sheriffs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be considered for certification.

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

(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of

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Kentucky State Police.

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police. The cost of producing a photograph for submission with application for licensure will be borne by the applicant.

(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, see response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a).

(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Emily Perkins

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 Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 18 U.S.C. 926C; KRS 237.138; KRS 237.140; KRS 237.142.

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 fee for applications is authorized by statute. 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 fee for applications is authorized by statute. No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of Kentucky State Police.

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: See (4)(a)-(d) for explanation.

PUBLIC PROTECTION CABINET

Department Of Housing, Buildings, And Construction Division Of Building Codes Enforcement (Amendment)

815 KAR 7:120. Kentucky Building Code.

RELATES TO: KRS 132.010(9), (10), 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990, 227.300, 227.550(7)

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Commissioner" is defined by KRS 198B.010(9).

(4) "Farm" means property:

(a) Located outside the corporate limits of a municipality on at least ten (10) acres;

(b) Used for purposes set forth in the definitions of "agricultural land" and "horticultural land", established in KRS 132.010(9) and (10), respectively; and

(c) Qualified by and registered with the property valuation administrator in that county.

(5) "Fire Code Official" means the State Fire Marshal, fire chief, or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety as established in 815 KAR 10:060.

(6) "Industrialized building system" or "building system" is defined by KRS 198B.010(16).

(7) "KBC" means the Kentucky Building Code as established in this administrative regulation.

(8) "Kentucky Residential Code" means the International Residential Code, 2006, as amended for application in Kentucky by 815 KAR 7:125.

(9) "Kentucky Standards of Safety" means the requirements established in 815 KAR 10:060, which serve as the fire prevention code for existing buildings as well as a supplement to this code.

(10) "Manufactured home" is defined by KRS 227.550(7).

(11) "Modular home" means an industrialized building system, which is designed to be used as a residence and that is not a manufactured or mobile home.

(12) "Department" is defined by KRS 198B.010(11)

(13) "Ordinary repair" is defined by KRS 198B.010(19).

(14) "Single-family dwelling" or "one (1) family dwelling" means a single unit which:

(a) Provides complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) Shall not be connected to any other unit or building.

(15) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(16) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Administration and Enforcement of the Building Code. (1) Notwithstanding the requirements of the International Building Code 2006, the Kentucky changes established in the 2007 Kentucky Building Code shall be mandatory and shall supersede any conflicting provision of the international code.

(2)(a) Except as provided in paragraph (b) of this subsection and as superseded by the provisions of this administrative regulation and the 2007 Kentucky Building Code, the International Building Code 2006, shall be the mandatory state building code for Kentucky for all buildings.

(b) One (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 7:125.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the office.

(1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table

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121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings.

(a) The office's inspection fees shall be calculated by:

1. Multiplying the total building area under construction by the cost per square foot of each occupancy type as listed in subsection (3) of this section; and

2. Computing the square footage by the outside dimensions of the building.

(b) The fee for buildings with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.

(3) Table 121.3.1, Basic Office Fee Schedule. The basic plan review or inspection fee shall be:

(a) Assembly occupancies, fourteen (14) cents;

(b) Business occupancies, thirteen (13) cents;

(c) Day care centers, thirteen (13) cents;

(d) Educational occupancies, thirteen (13) cents;

(e) High hazard occupancies, twelve (12) cents;

(f) Industrial factories, twelve (12) cents;

(g) Institutional occupancies, fourteen (14) cents;

(h) Mercantile occupancies, thirteen (13) cents;

(i) Residential occupancies, thirteen (13) cents;

(j) Storage, eleven (11) cents; or

(k) Utility and miscellaneous, eleven (11) cents.

(4) Additions to existing buildings.

(a) Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition.

(b) The minimum fee for review of plans under this subsection shall be \$250.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions.

(b) The minimum fee for review of plans under this subsection shall be \$250.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of:

1. Multiplying the cost for the alterations or repairs by 0.0025; or

2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans under this subsection shall be \$275.

(7) Specialized fees. In addition to the fees listed in subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule:

1. An inspection of four (4) through twenty-five (25) sprinklers shall be a fee of \$150;

2. An inspection of twenty-six (26) through 100 sprinklers shall be a fee of \$200;

3. An inspection of 101 through 200 sprinklers shall be a fee of \$250;

4. An inspection of 201 through 300 sprinklers shall be a fee of \$275;

5. An inspection of 301 through 400 sprinklers shall be a fee of \$325;

6. An inspection of 401 through 750 sprinklers shall be a fee of

\$375; and

7. An inspection of over 750 sprinklers shall be a fee of \$375 plus thirty (30) cents per sprinkler over 750.

(b) Fire detection system review fee:

1. Zero to 20,000 square feet shall be \$275; and

2. Over 20,000 square feet shall be \$275 plus thirty (30) dollars for each additional 10,000 square feet in excess of 20,000 square feet.

(c) The standpipe plan review fee shall be \$275. The combination stand pipe and riser plans shall be reviewed under the automatic sprinkler review fee schedule.

(d) Carbon dioxide suppression system review fee:

1. One (1) through 200 pounds of agent shall be \$275; and

2. Over 200 pounds of agent shall be \$275 plus five (5) cents per pound in excess of 200 pounds.

(e) Clean agent suppression system review fee:

1.a. Up to thirty-five (35) pounds of agent shall be \$275;

b. Over thirty-five (35) pounds shall be \$275 plus ten (10) cents per pound in excess of thirty-five (35) pounds.

2. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than \$150.

(f) Foam suppression system review fee.

1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed under the automatic sprinkler review fee schedule.

3. The fee for review of plans under subparagraph 1 of this paragraph shall not be less than \$275 or more than \$1,500.

(g) The commercial range hood review fee shall be \$225 per hood.

(h) Dry chemical systems review fee (except range hoods).

The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be \$275; and

2. Over thirty (30) pounds of agent shall be \$275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds.

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and over-fill detection, cathodic protection, or associated components.

(j) Boiler and unfired pressure vessel fees. Plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

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

(a) "International Building Code, 2006", First Edition, International Code Council, Inc.; and

(b) "2007 Kentucky Building Code", Ninth Edition, 2007, revised August 2011 [December 2010].

(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 LUNSFORD, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 15, 2011

FILED WITH LRC: August 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2011, at 9:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2011 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an oppor-

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tunity 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 September 30, 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 uniform Kentucky Building Code as required pursuant to KRS 198B.050.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to adopt the Kentucky Building Code as required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation utilizes the International Building Code as the basis for construction standards and allows the Board of Housing, Buildings and Construction to make amendments unique to Kentucky after due consideration of equivalent safety measures as required by KRS 198B.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth standards authorized by the statute for the enforcement of the building code, incorporating all applicable laws into its processes. 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: Amends the Kentucky Building Code, Chapter 30 to update elevator standards and Chapter 35 to employ the most current provisions applicable to fuel gas piping and electrical installation standards.

(b) The necessity of the amendment to this administrative regulation: To implement code changes approved by the Board of Housing, Buildings and Construction on during November 2010, February 2011 and May 2011 meetings.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B mandates the Board of Housing, Buildings and Construction to establish a uniform Kentucky Building Code. These amendments were approved by the Board to update and amend the current 2007 Kentucky Building Code.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Building Code are intended to enhance public safety and to allow the construction industry to utilize an updated version of the National Electric Code (NFPA 70), various elevator standards, and the National Fuel Gas Code (NFPA 54).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Construction projects subject to the Kentucky Building Code will be affected by the amendments to this regulation; architects; engineers; contractors; project managers; businesses; and local government.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The identified entities must comply with the new amendments to the building code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities will incur the expense of obtaining newly incorporated electrical, mechanical and elevator codes and stan-

dards.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include enhanced safety features, flexibility in building design and increased clarity of standards.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments are anticipated to result in no additional costs to the agency beyond cost of code books incorporated by reference.

(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 will not necessitate an increase in fees or require funding to the Department for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Established fees within this regulation are not being amended nor are new fees created. Any agency costs resulting from these administrative amendments will be met with existing agency funds.

(9) TIERING: Is tiering applied? Tiering is not applied as all builders, contractors, local governments and owners will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and local jurisdiction inspection and plan review programs.

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.040(7) and KRS 198B.050.

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 regulatory amendments are not anticipated to generate additional revenues for the agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The regulatory amendments are not anticipated to generate additional revenues for the agency.

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

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer these regulatory amendments.

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

815 KAR 7:125. Kentucky Residential Code.

RELATES TO: KRS 132.010(9), (10), 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990, 227.550(7)

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform state building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses.

Section 1. Definitions. (1) "Board of Housing" or "Board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Commissioner" means the commissioner of the Department of Housing, Buildings, and Construction.

(4) "Department" means the Department of Housing, Building, and Construction.

(5) "Farm" means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) that is qualified by and registered with the property valuation administrator in the county in which the property is located.

(6) "KBC" means the Kentucky Building Code as established in 815 KAR 7:120.

(7) "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(8) "Modular home" means an industrialized building system, which is designed to be used as a residence and that is not a manufactured or mobile home.

(9) "Ordinary repair" is defined by KRS 198B.010(19).

(10) "Single-family dwelling" or "one-family dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, and which shall not be connected to any other unit or building.

(11) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Mandatory Building Code Requirements for Dwellings. (1) Except as provided in subsection (2) of this section, a single-family dwelling, two (2) family dwelling, or townhouse shall not be constructed unless it is in compliance with the International Residential Code, 2006 for one (1) and two (2) Family Dwellings, as amended by this administrative regulation and the 2007 Kentucky Residential Code.

(2) Exceptions.

(a) Permits, inspections, and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies which are not single-family, two-family, or townhouses shall comply with the International Building Code for one (1) and two (2) Family Dwellings, 2006, and the 2007 Kentucky Building Code.

(3) The International Residential Code for one (1) and two (2) Family Dwellings, 2006, shall be amended as established in the 2007 Kentucky Residential Code.

(4) Plans for single-family or one (1) family dwellings, two (2) family dwellings, and townhouses shall be designed and submitted to conform to this administrative regulation.

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

(a) "International Residential Code for One(1)- and Two(2)-Family Dwellings, 2006", International Code Council, Inc., February

2006; and

(b) "2007 Kentucky Residential Code", August 2008, revised August 2011~~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, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY LUNSFORD, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 15, 2011

FILED WITH LRC: August 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2011, at 9:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2011 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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 uniform Kentucky Residential Code as required pursuant to KRS 198B.050. The necessity of this administrative regulation: This administrative regulation is necessary in order to adopt the Kentucky Residential Code as required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation utilizes the International Residential Code as the basis for construction standards and allows the Board of Housing, Buildings and Construction to make amendments unique to Kentucky after due consideration of equivalent safety measures as required by KRS 198B.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth standards authorized by the statute for the enforcement of the residential code, incorporating all applicable laws into its processes. 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: Amends the Kentucky Residential Code, Chapter 5 to clarify and implement deck related code details; Chapters 11 and 43 to update by adoption of the 2009 International Energy Conservation Code (2009 IECC); Chapter 43 to adopt the 2009 NFPA 54 (National Fuel Gas Code) to replace the 2006 code; and Chapter 43 to adopt the 2011 NFPA 70 (National Electric Code) updating from the 2008 edition of NFPA 70.

(b) The necessity of the amendment to this administrative regulation: To implement code changes approved by the Board of Housing, Buildings and Construction on during November 2010, February 2011 and May 2011 meetings.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B mandates the Board of Housing, Buildings and Construction to establish a uniform Kentucky Building

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Code. These amendments were approved by the Board to update and amend the current 2007 Kentucky Residential Code.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Residential Code are intended to enhance public safety and to allow the construction industry to utilize an updated version of the National Electric Code (NFPA 70) and the National Fuel Gas Code (NFPA 54), as well as clarify confusing language regarding deck installations currently in the Kentucky Residential Code.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Construction projects subject to the Kentucky Building Code will be affected by the amendments to this regulation; architects; engineers; contractors; project managers; businesses; and local government.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The identified entities must comply with the new amendments to the residential code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities will incur the expense of obtaining newly incorporated electrical and mechanical codes and standards.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include enhanced safety features, flexibility in building design and increased clarity of standards.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments are anticipated to result in no additional costs to the agency beyond cost of code books incorporated by reference. Any agency costs resulting from these administrative amendments will be met with existing 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: The amendments will not necessitate an increase in fees or require funding to the Department for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all builders, contractors, local governments and owners will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and local jurisdiction inspection and plan review programs.

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.040(7) and KRS 198B.050.

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 regulatory amendments are not anticipated to generate additional revenues for the agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The regulatory amendments are not anticipated to generate additional revenues for the agency.

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

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer these regulatory amendments.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

900 KAR 6:030. Certificate of need expenditure minimums.

RELATES TO: KRS 216B.015-216B.130, 216B.455, 216B.990(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 216B.040(3)(a), 216B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

Section 1. (1) The U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130.

(2) The change in the price index for the twelve (12) month period ending December 31, 2010 [2009], represents 0.81 [2.79] percent decrease.

Section 2. (1) The capital expenditure minimum established in KRS 216B.015(7) shall be \$2,648,150 [\$2,669,775].

(2) The major medical equipment minimum established in KRS 216B.015(16) shall be \$2,648,150 [\$2,669,775].

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: August 5, 2011

FILED WITH LRC: August 8, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 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 September 14, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regula-

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tion. You may submit written comments regarding this proposed administrative regulation until close of business September 30, 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 Venetozzi,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

(b) The necessity of this administrative regulation: KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation adjusts the capital expenditure minimums for capital expenditures and major medical equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment of the regulation is in compliance with KRS 216B.130.

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

(a) How the amendment will change this existing administrative regulation: The amendment will provide for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

(b) The necessity of the amendment to this administrative regulation: KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.130 which requires that capital minimums be adjusted.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the most current capital and major medical equipment expenditure amounts use in processing Certificate of Need Applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The modifications will any Certificate of Need Applicant with a capital expenditure of major medical expenditure that exceeds the minimum.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The facilities will have access to the most current information regarding capital expenditure and major medical expenditure minimums when completing their applications for Certificate of Need.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

funding is necessary since there is no cost to implementing this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B.

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

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

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(Amendment)

907 KAR 1:595. Model Waiver II service coverage and reimbursement(services and payments).

RELATES TO: KRS 314.011, 42 C.F.R. 440.70, 440.185, 42 U.S.C. 1396

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1315[~~EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health~~]

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Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions relating to Model Waiver II services provided to a Medicaid-eligible recipient. These services are provided pursuant to a waiver granted by the U. S. Department for Health and Human Services in accordance with 42 U.S.C. 1396n(c).

Section 1. Definitions. (1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "Department" means the Department for Medicaid Services or its designee.

(3) [and its designated agent or representative.

(2) "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081;

(b) Medicare certified; and

(c) Medicaid certified.

(4) "Licensed practical nurse" is defined by KRS 314.011(9).

(5) [a facility licensed by the Office of the Inspector General to provide home health services.

(3) "Model Waiver II services" means 1915(c) home and community based waiver program [community-based waiver] in-home ventilator services provided to a Medicaid-eligible recipient who:

(a) Is dependent on a ventilator; and

(b) Would otherwise require a nursing facility (NF) level of care in a hospital based NF which will accept a recipient who is dependent on a ventilator.

(6) "Private duty nursing agency" means a facility licensed to provide private duty nursing services:

(a) By the Cabinet for Health and Family Services Office of Inspector General; and

(b) Pursuant to 902 KAR 20:370.

(7) "Recipient" is defined by KRS 205.8451(9).

(8) [(4)] "Registered nurse" [(RN)] is defined by [in] KRS 314.011(5).

(9) "Registered respiratory therapist" is defined by KRS 31A.010(3).

(10) "Ventilator" means a respiration stimulating mechanism.

(11) [(5)] "Licensed practical nurse" (LPN) is defined in KRS 314.011.

(6) "Respiratory therapist" (RT) is defined by KRS 314A.010(3)(a).

(7) "Ventilator dependent" means the condition or state of an individual who requires the aid of a ventilator [(respiration stimulating mechanism)] for respiratory function and meets the high intensity nursing facility patient status criteria established in 907 KAR 1:022, Section 4.

Section 2. Model Waiver II Recipient Eligibility and Related Policies. (1) To be eligible to receive Model Waiver II services, an individual shall:

(a) Be eligible for Medicaid pursuant to 907 KAR 1:605;

(b) Require ventilator support for at least twelve (12) hours per day;

(c) Meet ventilator dependent patient status requirements established in 907 KAR 1:022;

(d) Submit an application packet to the department which shall contain:

1. A MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form;

2. A MAP-351A, Medicaid Waiver Assessment Form; and

3. A MAP109 -MWII, Plan of Care/Prior Authorization for Model Waiver II Services, which shall be signed and dated by a physician; and

(e) Receive notification of an admission packet approval from the department.

(2) To remain eligible for Model Waiver II services:

(a) An individual shall:

1. Maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

2. Remain ventilator dependent pursuant to 907 KAR 1:022;

(b) A Model Waiver II level of care determination confirming that the individual qualifies shall be performed and submitted to the department every six (6) months; and

(c) A MAP 109, Plan of Care/Prior Authorization for Model Waiver II Services shall be:

1. Signed and dated by a physician every sixty (60) days on behalf of the individual; and

2. Submitted to the department, after being signed and dated in accordance with subparagraph 1 of this paragraph, every sixty (60) days.

(4) A Model Waiver II service shall not be provided to a recipient who is:

(a) Receiving a service in another 1915(c) home and community based waiver program; or

(b) Is an inpatient of a:

1. Nursing facility;

2. Intermediate care facility for individuals with mental retardation or a developmental disability; or

3. Other facility.

(5) The department shall not authorize a Model Waiver II service unless it has ensured that:

(a) Ventilator-dependent status has been met;

(b) The service is:

1. Available to the recipient; and

2. Will meet the need of the recipient; and

3. Does not exceed the cost of traditional institutional ventilator care.

Section 3. Provider Participation Requirements. To participate in the Model Waiver II program, a:

(1) Home health agency shall:

(a) Be:

1. Licensed in accordance with 902 KAR 20:081;

2. Medicare and Medicaid certified;

3. A currently participating Medicaid provider in accordance with 907 KAR 1:671;

4. Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

(b) Meet the home and community based waiver service provider requirements established in 907 KAR 1:160;

(2) Private duty nursing agency shall:

(a) Be:

1. Licensed in accordance with 902 KAR 20:370;

2. Medicare and Medicaid certified;

3. A currently participating Medicaid provider in accordance with 907 KAR 1:671; and

4. Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

(b) Meet the home and community based waiver service provider requirements established in 907 KAR 1:160. General Coverage Provisions. (1) A service shall be provided to a Medicaid eligible recipient:

(a) Who meets the NF level of care determination for ventilator dependency; and

(b) For whom the cost of Model Waiver II services does not exceed the cost of traditional institutional ventilator care.

(2) The department shall make the level of care determination.

(3) A Medicaid eligible recipient may choose Model Waiver II services as an alternative to traditional institutional services. (4) A Medicaid eligible recipient Requesting to receive Model Waiver II services shall choose a qualified home health agency which has obtained a valid provider number for provision of services pursuant to 907 KAR 1:672.

Section 3. Provider Participation. a home health agency participating in the Model Waiver II program shall meet the applicable certification requirements for providing home- and community-based waiver services in accordance with 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:675 and 907 KAR 1:030.]

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Section 4. Covered Services. (1) The following shall be covered Model Waiver II services:

- (a) Skilled nursing provided by:
 1. A registered nurse[(RN)]; or
 2. A licensed practical nurse[(LPN)]; or
- (b) Respiratory therapy[(RT)].

(2) Model Waiver II services shall be provided by an[a qualified] individual employed by or under contract through a private duty nursing agency or [the]home health agency as a:

- (a) A registered nurse[(RN)]; or
- (b) A licensed practical nurse[(LPN)]; or
- (c) Registered respiratory therapist. [Section 5. Prior Authorization for a Service. (1) Prior to authorizing a Model Waiver II service, the department shall ensure that:
 - (a) Client ventilator-dependent status is met;
 - (b) Service is available to meet the need of a recipient; and
 - (c) The service does not exceed the cost of traditional institutional ventilator care.
- (2) A physician shall:
 - (a) Evaluate the need for continuation of service; and
 - (b) Submit a completed MAP-9, Prior Authorization for Health Services, and a signed plan of treatment at least once every sixty (60) days.]

Section 6. Payment for Services. The department shall reimburse a participating home health agency or private duty nursing agency for the provision of covered Model Waiver II services as follows:

- (1) Reimbursement shall be based on a fixed fee for a unit of service provided for each covered service referenced[defined] in Section 4 of this administrative regulation with one (1) hour equal to one (1) unit of service.
- (2) The fixed fee for skilled nursing services provided by:
 - (a) A registered nurse [(RN)]shall be thirty-one (31) dollars and ninety-eight (98) cents for each unit of service.
 - (b) A licensed practical nurse [(LPN)]shall be twenty-nine (29)[(20)] dollars and ten (10) cents for each unit of service.
 - (c) A registered respiratory therapist [(RT)]shall be twenty-seven (27) dollars and forty-two (42) cents for each unit of service.
- (3) Reimbursement shall not exceed sixteen (16) units of service per day.
- (4) Payment shall not be made for a service to an individual for whom it can reasonably be expected that the cost of the 1915(c) home and community based waiver program[home- and community-based] service furnished under this administrative regulation would exceed the cost of the service if provided in a hospital-based NF.

Section 7. Maintenance of Records. (1) A Model Waiver II service provider shall maintain:

- (a) A clinical record for each HCB recipient which contain the following:
 1. Pertinent medical, nursing, and social history;
 2. A comprehensive assessment entered on a MAP-351A, Medicaid Waiver Assessment Form and signed by the:
 - a. Assessment team; and
 - b. Department;
 3. A completed MAP109 -MWII, Plan of Care/Prior Authorization for Model Waiver II Services;
 4. A copy of the MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form signed by the recipient or his legal representative at the time of application or reapplication and each recertification thereafter;
 5. Documentation of all level of care determinations;
 6. All documentation related to prior authorizations including requests, approvals, and denials;
 7. Documentation that the recipient or legal representative was informed of the procedure for reporting complaints; and
 8. Documentation of each service provided that shall include:
 - a. The date the service was provided;
 - b. The duration of the service;
 - c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the recipient's home;

d. Progress notes which shall include documentation of changes, responses, and treatments utilized to evaluate the recipient's needs; and

e. The signature of the service provider; and
(b) Service records or incident reports regarding services provided.

- (2) A service record or incident report shall be retained:
 - (a) For at least six (6) years from the date that a covered service is provided; or
 - (b) For a minor, at least for three (3) years after the recipient reaches the age of majority under state law, whichever is longest.
- (2) Upon request, an HCB provider shall make information regarding service and financial records available to the:
 - (a) Department;
 - (b) Cabinet for Health and Family Services, Office of Inspector General or its designee;
 - (c) United States Department for Health and Human Services or its designee;
 - (d) General Accounting Office or its designee;
 - (e) Office of the Auditor of Public Accounts or its designee; or
 - (f) Office of the Attorney General or its designee.

Section 8. Incident Reporting. A Model Waiver II service provider shall:

- (1) Implement a procedure or procedures to ensure that the following is reported:
 - (a) Abuse, neglect, or exploitation of a Model Waiver II recipient in accordance with KRS Chapters 209 or 620;
 - (b) A slip or fall;
 - (c) A transportation incident;
 - (d) Improper administration of medication;
 - (e) A medical complication; or
 - (f) An incident caused by the recipient, including:
 1. Verbal or physical abuse of staff or other recipients;
 2. Destruction or damage of property; or
 3. Recipient self-abuse.
- (2) Ensure that a copy of each incident reported in this subsection is maintained in a central file subject to review by the department; and
- (3) Implement a process for communicating the incident, the outcome, and the prevention plan to:
 1. The Model Waiver II service recipient involved, his or her family member, or his or her responsible party; and
 2. The attending physician, physician assistant, or advanced practice registered nurse.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

- (2) A Model Waiver II service provider that chooses to use electronic signatures shall:
 - (a) Develop and implement a written security policy that shall:
 1. Be adhered to by each of the provider's employees, officers, agents, and contractors;
 2. Identify each electronic signature for which an individual has access; and
 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
 - (b) Develop a consent form that shall:
 1. Be completed and executed by each individual using an electronic signature;
 2. Attest to the signature's authenticity; and
 3. Include a statement indicating that the individual has been notified of his responsibility in allowing the use of the electronic signature; and
 - (c) Provide the department with:
 1. A copy of the provider's electronic signature policy;
 2. The signed consent form; and
 3. The original filed signature immediately upon request.

Section 10.[Section 7.] Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be appealed in

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accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding a Medicaid beneficiary's eligibility shall be appealed in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be appealed in accordance with 907 KAR 1:671.

Section 11.[8-] Incorporation by Reference. (1) The following material is incorporated by reference into this administrative regulation:

(a) A "MAP109 -MWII, Plan of Care/Prior Authorization for Model Waiver II Services", April 2004 edition;

(b) A "MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition; and

(c) A "MAP-351A, Medicaid Waiver Assessment Form", June 15, 2002 edition.

(2) The material referenced in subsection (1) of this section["MAP-9, Prior Authorization for Health Services", December 1995 edition, is incorporated by reference.

(2)-H] may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

NEVILLE WISE, Acting Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 18, 2011

FILED WITH LRC: July 21, 2011 at noon.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2011 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by September 14, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business September 30, 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: Karen Martin, Ellenore Callan or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service coverage and reimbursement policies for the Medicaid Model Waiver II services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the service coverage and reimbursement policies for the Medicaid Model Waiver II services.

(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 service coverage and reimbursement policies for the Medicaid Model Waiver II services.

(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 service coverage and reimbursement policies for the Medicaid Model Waiver II services.

(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 primary amendment authorizes private duty nursing agencies to provide Model Waiver II services. Additional amendments establish maintenance record requirements, incident reporting requirements and electronic signature usage requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that an adequate base of providers of Model Waiver II services exists and to ensure that the regulation is consistent with the version of the corresponding "waiver" approved by the Centers for Medicare and Medicaid Services.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by expanding the type of providers authorized to provide Model Waiver II services in order to ensure that recipients have adequate access to the services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by expanding the type of providers authorized to provide Model Waiver II services in order to ensure that recipients have adequate access to the services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Model Waiver II service recipients will be affected by the amendment and private duty nursing agencies who wish to provide Model Waiver II services will be affected by the amendment. The Department for Medicaid Services (DMS) anticipates that approximately ten (10) private duty nursing agencies may qualify to provide Model Waiver II services to Medicaid 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: A private duty nursing agency which wishes to become a Model Waiver II service provider will have to enroll as a Medicaid provider and meet the home and community based waiver provider requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Private duty nursing agencies wishing to provide Model Waiver II services may experience some administrative cost associated with becoming a provider.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Private duty nursing agencies who become Model Waiver II service providers will be able to be reimbursed by DMS for providing services. Model Waiver II service recipients will be expected to benefit by the increased number of Model Waiver II service providers available to provide services.

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

(a) Initially: DMS anticipates the net result will no increase in cost because individuals who might be unable to receive Model Waiver II services, due to lack of access to providers, could have to be admitted to a nursing facility or intermediate care facility for individuals with mental retardation or a developmental disability (ICF MR DD.) Model Waiver II services cost less than institutional care; thus, authorizing private duty nursing agencies to provide Model Waiver II services helps prevent DMS from experiencing more institutional care cost.

(b) On a continuing basis: DMS anticipates the net result will no increase in cost because individuals who might be unable to receive Model Waiver II services, due to lack of access to providers, could have to be admitted to a nursing facility or intermediate care facility for individuals with mental retardation or a developmental disability (ICF MR DD.) Model Waiver II services cost less than institutional care; thus, authorizing private duty nursing agencies to provide Model Waiver II services helps prevent DMS from experiencing more institutional care cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under

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Title XIX of the Social Security Act and state matching funds of general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the requirements apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Model Waiver II services are not federally mandated.

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

3. Minimum or uniform standards contained in the federal mandate. Model Waiver II services are not federally mandated.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS anticipates no increased cost will result from the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no increased cost will result from the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

922 KAR 1:490. Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, and reporting requirements.

RELATES TO: KRS 17.500-17.580, 199.011(7), 199.462(1), 600.020(55), (56) [600.020(54), (55)], 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, 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 program. KRS 199.462(4) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, and a caretaker relative. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including:

(1) KRS 605.120(5) and (6) by which the cabinet is authorized to establish a program for kinship care; and

(2) KRS 605.130(4) by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. This administrative regulation establishes background check requirements for caretaker relatives, kinship caregivers, or applicants seeking to provide foster or adoptive services. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

Section 1. Definitions. (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.

(2) "Adolescent member of the household" means a youth who:

(a) Resides in the home of;

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A caretaker relative or kinship caregiver;

(b) Is age twelve (12) through age seventeen (17); and

(c) Is not placed in the home by a state agency.

(3) [(2)] "Adult member of the household" means an adult who:

(a) Resides in the home of;

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A caretaker relative or kinship caregiver; and

(b) Is eighteen (18) years of age or older.

(4) [(3)] "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child in the custody of the state under:

(a) 922 KAR 1:350, Family Preparation; or

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(b) 922 KAR 1:310, Standards for Child-Placing Agencies.

(5) [(4)] "Caretaker relative" means a relative:

(a) With whom the child is, or shall be, placed by the cabinet; and

(b) Who is seeking to qualify as a kinship caregiver in accordance with 922 KAR 1:130.

(6) [(5)] "Child-placing agency" is defined by KRS 199.011(7).

(7) "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the cabinet as alternative to foster care in accordance with 922 KAR 1:130.

(8) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(9) [(6)] "Sexual abuse" is defined by KRS 600.020(55) [600.020(54)].

(10) [(7)] "Sexual exploitation" is defined by KRS 600.020(56) [600.020(55)].

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants. (1) An applicant, and each adult member of the household, shall complete a DPP-157, Background Checks for Applicants or Foster/Adoptive Parents, and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or
2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years; ~~and~~

(c) A criminal records check conducted by means of a fingerprint check of the National Crime Information Database; ~~and~~

(d) An address check of the Sex Offender Registry.

(2) Prior to approval of an applicant, each adolescent member of the household shall complete a DPP-157 and submit to a child abuse or neglect check conducted by the cabinet.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has been found by the cabinet to have:

(a) Committed sexual abuse or sexual exploitation of a child;

(b) Been responsible for a child fatality related to abuse or neglect;

(c) Abused or neglected a child within the seven (7) year period immediately prior to the application; or

(d) Had parental rights terminated.

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has [a]:

1. A felony conviction involving:

a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20); or

b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;

2. Criminal conviction relating to child abuse or neglect; or

3. Civil judicial determination related to child abuse or neglect;

~~or~~

(b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or

(c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.

Section 3. Procedure for Requesting a Cabinet Child Abuse or Neglect Check, a Criminal Record Check, and an Address Check of the Sex Offender Registry. Prior to approval of an applicant, a child-placing agency shall request a child abuse or neglect check, a criminal records check, and an address check of the Sex Offender Registry by submitting to the cabinet:

(1) A completed form, DPP-157 [~~Child Abuse or Neglect~~

Check]; and

(2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years.

Section 4. Request for a Child Abuse or Neglect Check from Another State.

(1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) when a:

(a) Completed DPP-157 or DPP-159, Background Checks for Caretaker Relatives or Kinship Caregivers, is submitted to the cabinet; or

(b) Request is received on agency letterhead and includes two (2) numeric identifiers.

(2) The cabinet shall:

(a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the requirements specified in 922 KAR 1:470, Section 3(4).

Section 5. Background Checks Required for a Caretaker Relative.

(1) A caretaker relative, and each adult member of the household, shall complete a DPP-159 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) and in accordance with 922 KAR 1:130, by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts; ~~and~~

(b) A child abuse or neglect check conducted by the cabinet;

(c) An address check of the Sex Offender Registry; and

(d) A criminal records check conducted by means of a fingerprint check of the National Crime Information Database if the caretaker relative has lived outside the state of Kentucky during the past five (5) years.

(2) An adolescent member of a caretaker relative's household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet in accordance with 922 KAR 1:130.

(3) A child abuse and neglect check conducted by the cabinet in accordance with subsection (1)(b) or (2) of this section shall include any finding consistent with Section 2(3) of this administrative regulation.

(4) A caretaker relative shall not be approved if an in-state criminal records check, a ~~or~~ child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 2(4) of this administrative regulation.

Section 6. Approval.

(1) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, approval of an applicant or caretaker relative who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, an applicant or caretaker relative may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

(a) An adolescent member of the household has:

1. Been found by the cabinet to have abused or neglected a child;

2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or

(b) An adult member of the household has ~~been~~:

1. Been convicted of a nonviolent felony or misdemeanor;

2. Been found to have abused or neglected a child; or

3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

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Section 7. Reevaluation. (1) An approved foster or adoptive parent and each adult member of the household shall submit annually, prior to or during the anniversary month of initial approval, to [a]:

(a) A criminal records check as described in Section 2(1)(a) of this administrative regulation; and

(b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry.

(2)(a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 2(1)(a) through (d) [(e)] of this administrative regulation.

(b) If an adult becomes a new member of a kinship caregiver's [an approved caretaker relative's] household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 5(1) of this administrative regulation.

(3) If an adolescent becomes a new member of an approved foster or adoptive parent or a kinship caregiver's [caretaker relative's] household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 5(2) of this administrative regulation.

(4) An annual address check of the Sex Offender Registry shall be completed for a kinship caregiver's eligibility redetermination in accordance with 922 KAR 1:130, Section 13(2).

(5) If an annual address check indicates a match with the Sex Offender Registry, a referral of abuse, neglect, or dependency shall be made in accordance with 922 KAR 1:330.

Section 8. Maintenance of Records. (1) A completed copy of each criminal records check conducted pursuant to Section 2(1) or 7(1) of this administrative regulation and the DPP-157 shall be maintained on behalf of each:

(a) Applicant;

(b) Foster or adoptive parent; and

(c) [(b)] Adult member of an applicant or foster or adoptive parent's [the applicant's] household.

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent member of [(the)]:

(a) An applicant's household; or

(b) A foster or adoptive parent's [Caretaker relative's] household.

(3) A completed copy of the DPP-159 [DPP-157] and criminal records check conducted pursuant to Section 5 or 7(4) of this administrative regulation shall be maintained for each:

(a) [1-] Caretaker relative; and

(b) [2-] Kinship caregiver; and

(c) Adult member of a [(the)] caretaker relative or kinship caregiver's [relative's] household.

(4) A completed copy of the DPP-159 submitted pursuant to Section 5(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent household member of a:

(a) Caretaker relative; or

(b) Kinship caregiver.

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

(a) "DPP-157, Background Checks for Applicants or Foster/Adoptive Parents [Child Abuse or Neglect Check]", edition 09/11 [02/08 is incorporated by reference]; and

(b) "DPP-159, Background Checks for Caretaker Relatives or Kinship Caregivers", edition 09/11.

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

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: August 5, 2011

FILED WITH LRC: August 8, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 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 September 14, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business September 30, 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 procedure by which the Cabinet conducts background checks for foster or adoptive parents, caretaker relatives, kinship caregivers, and their household members and related reporting requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish background check procedures and reporting requirements for the approval of prospective foster/adoptive parents, caretaker relatives, and kinship caregivers for the provision of out-home-care services to children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by providing background check procedures and related reporting requirements for the approval of foster/adoptive parents, caretaker relatives, and kinship caregivers.

(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 requirements of background checks for foster or adoptive parents, caretaker relatives, and kinship caregivers to preserve the safety of children in said out-of-home care placements.

(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 requires an address check of the Sex Offender Registry for each out-of-home care provider type governed by the administrative regulation as a condition of the providers' initial and ongoing approval. Additionally, if a caretaker relative has lived out-of-state in the past five years, the amendment requires the caretaker relative to undergo a criminal background check of the National Crime Information Database (NCID). 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 strengthen monitoring of foster/adoptive parents, caretaker relatives, and kinship caregivers and to decrease the possible risk of harm to children who have been removed from the parental home and placed with the out-of-home care providers. The amendment is consistent with recommendations from the Kentucky Auditor of Public Accounts' report released in September 2010.

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

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rizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statute by enhancing safety measures for the children placed in out-of-home care.

(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 statute through its inclusion of additional safety measures for children in out-of-home care.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet processes an average of 1,300 background checks for foster/adoptive applicants and caretaker relatives monthly.

(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 require foster/adoptive parents, caretaker relatives, and kinship caregivers to submit to an address check of the Sex Offender Registry initially and annually thereafter. In addition, if a caretaker relative has lived out-of-state in the last five years, the caretaker relative will submit to a criminal background check of the NCID.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Impacted entities (i.e., foster/adoptive parents, caretaker relatives, and kinship caregivers) will not incur any additional costs associated 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, measures to enhance the safety of children placed with out-of-home care providers will be improved.

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

(a) Initially: The Sex Offender Registry is available without charge to the public online, and address checks of this registry will be absorbed by existing staff. Because the majority of caretaker relatives has not lived out-of-state within the past five years and would not be subject to the criminal checks of the NCID, the new requirement for criminal background checks of the NCID for caretaker relatives will involve a minimal cost and will be offset by improved safety of children placed with the out-of-home care provider types. This amendment will be implemented within existing federal allocations.

(b) On a continuing basis: There will be minimal new ongoing costs as a result of the new NCID requirement for caretaker relatives included within this regulatory amendment. This amendment will be implemented within the existing federal allocations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E of the Social Security Act and State General Funds support Kentucky's foster/adoptive parents and related administrative support. The Temporary Assistance for Needy Families Block Grant or TANF (Title IV-A of the Social Security Act) and general funds used for maintenance of effort support the consideration of caretaker relatives and kinship caregivers.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 671(a)(20)

2. State compliance standards. KRS 194A.050(1), 199.462(4), 199.640(5), 605.150

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(20)

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 imposes a stricter requirement than the federal mandate because the Cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the Cabinet reveals that a household member, age twelve (12) or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements have been imposed in Kentucky for the safety of the children in out-of-home care.

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 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), 199.462(4), 199.640(5), 605.150, 42 U.S.C. 671(a)(20), 45 C.F.R. 1356.30

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 new state or local 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 new state or local revenues.

(c) How much will it cost to administer this program for the first year? There will be minimal new initial costs as a result of the new NCID requirement for caretaker relatives included within this regulatory amendment. Costs will be offset by improved safety of children placed with the out-of-home-care provider types. This amendment will be implemented within existing federal allocations.

(d) How much will it cost to administer this program for subsequent years? There will be minimal new ongoing costs as a result of the new NCID requirement for caretaker relatives included within this regulatory amendment. Costs will be offset by improved safety of children placed with the out-of-home-care provider types. This amendment will be implemented within existing federal allocations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, AUGUST 15, 2011

EDUCATION PROFESSIONAL STANDARDS BOARD
(New Administrative Regulation)

16 KAR 9:090. University-based alternative certification program for teachers of world languages.

RELATES TO: KRS 161.020, 161.028, KRS 161.030, KRS 161.048, KRS 161.1221

STATUTORY AUTHORITY: KRS 161.028, KRS 161.030, KRS 161.048

NECESSITY, FUNCTION, AND CONFORMITY: 161.028 and KRS 161.030 authorize the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards to approve and evaluate educator preparation programs. KRS 161.048 (7) authorizes the Education Professional Standards Board to approve alternative programs that enroll students in post baccalaureate educator preparation programs concurrently with employment as a teacher in a local school district. This administrative regulation establishes the program requirements and candidate qualifications for the university-based alternative certification program for teachers of world languages and the requirements for issuance of a temporary provisional certificate to teach world languages.

Section 1. Definitions. (1) "University-based alternative certification program" means post baccalaureate educator preparation program that enrolls teacher candidates concurrently with employment as a teacher in a local school district.

(2) "World language" means any currently spoken and written language other than English.

Section 2. An accredited college or university, or a consortium of such institutions may apply to the Education Professional Standards Board for approval to provide a university-based alternative certification program for teachers of world languages.

Section 3. Admission Requirements. (1) Admission to a post baccalaureate educator preparation program that enrolls candidates concurrently with employment as a teacher of world languages shall require the following:

(a) A bachelor's degree from an accredited college or university with the cumulative grade point average established in 16 KAR 4:020 Section 1(2); and

(b) Successful completion of the program's approved assessments to measure proficiency for program admission as established in Section 4(1)(a) of this regulation.

Section 4. University Requirements. (1) In addition to the standards for program approval established in 16 KAR 5:010, the university-based alternative certification program for teachers of world languages shall:

(a) Select assessments to measure proficiency for program admission, which shall include:

1. A nationally recognized assessment for written and oral proficiency in the world language area in which the candidate is seeking certification; and

2. A nationally recognized assessment for oral and written proficiency in English language usage;

(b) Establish a protocol to assess a candidate's educational background to develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grades that correspond with the candidate's school placement;

(c) Design coursework and mentoring to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including internship programs, within a period of three (3) years;

(d) Develop an agreement to provide, in collaboration with the administration of a candidate's employing school, mentoring to the candidate in the employment setting which includes:

1. Prior to the candidate's enrollment in the Kentucky Teacher

Internship pursuant to KRS 161.030 and 16 KAR 7:010, a minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;

3. An acknowledgement by the employing school district that the school district shall be responsible for all costs associated with providing school district mentors for the teacher;

4. The name, contact person, and role for the collaborating educator preparation institution mentor; and,

5. The names and roles of the school district mentor teachers;

(e) Require the candidate to begin course work no later than ninety (90) days from the date the eligibility notice is issued; and

(f) Establish a process to maintain regular communications with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement.

(2) Student teaching shall not be required for program completion.

Section 5. Temporary Provisional Certificate for World Language. (1) The temporary provisional certificate for world language shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional certificate for world language may be renewed a maximum of two (2) times.

(3) The temporary provisional certificate for world language shall be:

(a) Issued in accordance with a grade level and specialization as recommended by the educator preparation institution on Form TC-WL; and

(b) Valid for the world language and all grades listed on the face of the certificate.

(4) The temporary provisional certificate for world language shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in 16 KAR 8:020.

Section 6. Issuance of a Temporary Provisional Certificate for World Language. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the university alternative certification program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate for world language.

(3) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.

(4) All transcripts from institutions outside of the United States shall be accompanied by a course-by-course evaluation from an Education Professional Standards Board approved evaluation agency.

(5) The employing school district shall submit with Form TC-WL a completed and signed copy of the mentoring collaboration agreement with the university-based alternative certification program referenced in Section 4(1)(d) of this administrative regulation.

Section 7. Requirements for renewal of the temporary provisional certificate for world language. (1) A candidate shall be eligible for the first renewal of the temporary provisional certificate for world language upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional world language certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program;

(c) Completion of Form TC-WL.

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(2) A candidate shall be eligible for the final renewal of the temporary provisional certificate for world language upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional world language certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program;

(c) The required assessments as established in 16 KAR 6:010; and

(d) Completion of Form TC-WL.

Section 8. (1) Upon completion of all program requirements of the university-based alternative certification program for teachers of world languages, including successful completion of the Kentucky Teacher Internship Program established in KRS 161.030 and 16 KAR 7:010, the candidate may make application to the Education Professional Standards Board for the professional certificate on the form TC-1 which is incorporated by reference in 16 KAR 2:010.

(2) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate.

Section 9. Incorporation by Reference. (1) "Application for World Language Temporary Provisional Certification" Form TC-WL, September 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: August 1, 2011

FILED WITH LRC: August 10, 2011 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 30, 2011 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 September 30, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for university-based alternative certification programs for teachers of world languages and the procedures to obtain a temporary provisional certificate for teacher of world language.

(b) The necessity of this administrative regulation: This administrative regulation delineates the standards and procedures for gaining teacher certification in accordance with KRS 161.048(7) by establishing standards and requirements for obtaining and maintaining teaching for world languages under this option and setting the standards for approving university programs for the preparation of teachers of world languages under this option.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 and KRS 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. KRS 161.048(d) requires the Education Professional Standards Board to establish standards and procedures for alternative certification programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for completing course work and assessments related to the temporary provisional certificate so that candidates, districts, and universities will have clear understanding of each party's role in the certification of educators under alternative certification programs.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation, not an amendment.

(b) The necessity of this amendment to this regulation: This is a new regulation, not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation, not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation, not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 30 educator preparation programs, and educators seeking temporary provisional certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The university and district which utilize alternative route educators must comply with the responsibilities as outlined in the regulation, including, but not limited to, use of appropriate application forms, providing adequate staff and resources to support these educators, and ensuring that all certification requirements are met by the educator. The educator certified via an alternative route must ensure that he/she meets applicable requirements including, but not limited to, employment, assessment, and internship.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All parties will be positively affected by the clearly defined standards, procedures, and new application materials outlined in the regulation. In addition, the districts will benefit from a new source of teachers of various world languages not currently available.

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

(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to certified educators, preparation programs, or school districts.

(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation. There is no additional cost to certified educators, educator preparation programs, or school districts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for alternative route certificates will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact school districts and public universities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028 and KRS 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. KRS 161.048(d) requires the Education Professional Standards Board to establish standards and procedures for alternative certification programs.

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? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation should not have any fiscal impact since it merely establishes a new method of certifying teachers of world languages pursuant to KRS 161.048.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (New Administrative Regulation)

703 KAR 5:220. School and district accountability recognition, support and consequences.

RELATES TO: KRS 158.6453, KRS 158.6455

STATUTORY AUTHORITY: KRS 158.6453; KRS 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education, following the revision of academic standards and development of a student assessment program, to create an accountability system to classify schools and districts, including a formula for accountability, goals for improvement, and rewards and consequences.

Section 1. Statewide System of Accountability Recognition, Support and Consequences. (1) The accountability system shall be called Unbridled Learning: College and Career Ready for All.

(2) An Overall Score shall be used to classify schools and districts for recognition, support and consequences. The Overall Score shall be a compilation of the following three accountability

components:

(a) Next-Generation Learners;

(b) Next-Generation Instructional Programs and Support; and

(c) Next-Generation Professionals

Section 2. Weighting of Components Comprising the Overall Score. (1) The total number of points earned in each component of Next-Generation Learners, Next-Generation Instructional Programs and Support, and Next-Generation Professionals shall be weighted in the following manner to obtain the Overall Score:

Grade Range	Next-Generation Learner	Next-Generation Instructional Programs and Support	Next-Generation Professionals	Total Overall Score
Elementary	70	20	10	100
Middle	70	20	10	100
High	70	20	10	100

(2) The total number of points in the Overall Score shall classify schools and districts into one of three classifications:

(a) Distinguished

(b) Proficient

(c) Needs Improvement, which shall be divided into three levels:

1. Low;

2. Medium; and

3. High.

(3) The placement of schools and districts into one of three classifications and the establishment of goals shall follow a standard-setting process. The process shall be advised by the National Technical Advisory Panel on Assessment and Accountability, School Curriculum Assessment and Accountability Council and the Office of Education Accountability. The process shall use accepted technical procedures and involve Kentucky school and district administrators and teachers. The Kentucky Board of Education shall review the process and approve the final cut scores and goals that determine placement in one of the three classifications.

(4) If data cannot be calculated for any component, the weights shall be redistributed equally to components that shall be reported for the school or district.

(5) Reporting of component scores and the Overall Score shall include the numeric score and the classification resulting from that score. A directional indicator shall also be reported with the overall and component scores to indicate whether the scores are advancing or declining from previous year scores.

Section 3. Timelines and Conditions for Recognition and Support. (1) Timelines for implementing elements of the Unbridled Learning: College and Career Ready for All Accountability System shall be as follows:

(a) Using the Overall Score from the 2011-12 school year and each school year thereafter, all schools and districts shall be placed into one of the three classifications within the Unbridled Learning: College and Career Ready for All Accountability System.

(b) Beginning with the 2011-12 school year, schools qualifying as persistently low-achieving schools shall receive consequences as outlined in KRS 160.346.

(c) Using the Overall Score from the 2011-2012 school year and each school year thereafter, all eligible schools and districts shall receive recognition, support and consequences as outlined in this regulation.

(2) Schools and districts identified in Section 4 shall continue to meet eligibility criteria in order to retain their designation and receive recognition for that category.

Section 4. Categories for Recognition, Support and Consequences. Schools and districts shall be placed in categories for the purposes of recognition, support, and consequences based upon their Overall Score and classification. Categories for the purposes

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of recognition, support and consequences shall be as follows:

(1) "Kentucky Schools or Districts of High Distinction" shall include Kentucky Schools or Districts of Distinction that score within the top five (5) or five (5) percent, whichever is greater, of elementary schools, middle schools, high schools or districts in the Distinguished classification on the Overall Score.

(2) "Kentucky Schools or Districts of Distinction" shall include schools and districts that are classified as Distinguished based on their Overall Score that have also received school or district accreditation from a recognized accreditation organization. Districts shall not qualify as a District of Distinction if any of their schools are rated as persistently lowest-achieving schools.

(3) "Kentucky Proficient Schools or Districts" shall include schools or districts that score in the Proficient classification of schools or districts on the Overall Score.

(4) "Kentucky Schools or Districts On the Move" shall include schools or districts that score in the Proficient or Needs Improvement classification of schools or districts on the Overall Score that also:

(a) Move from low to middle or middle to high levels within the Needs Improvement classification;

(b) Show improvement in the areas of

1. Next-Generation Learners;

2. Next-Generation Instructional Programs and Support; and

3. Next-Generation Professionals; or

(c) Attain an Overall Score indicating the school or district is in the top ten (10) percent of improvement.

(6) "Needs Improvement Schools or Districts" means schools or districts that score in the Needs Improvement classification of schools or districts on the Overall Score. Needs Improvement Schools or Districts shall be divided into three (3) levels:

(a) Low;

(b) Middle; and

(c) High.

Section 5. Recognition. Schools and districts shall receive recognition based on the attainment of one or more of the recognition categories described in Section 4. Each recognized school or district shall be authorized to use a KDE-approved web logo and other promotional materials as may be designated by KDE reflecting the category of recognition earned. Kentucky Schools and Districts of High Distinction shall receive special recognition as determined by the Commissioner.

Section 6. Support and Consequences for Districts. (1) Supports and consequences shall be applied to the lowest scoring twenty (20) percent of districts in the Needs Improvement classification. Districts will receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data, identifying them as one of the lowest twenty (20) percent and the required supports and consequences that will apply.

(2) A district that is classified in the lowest twenty (20) percent of the Needs Improvement classification for the first time shall revise the comprehensive district improvement plan (CDIP) within ninety (90) days of receiving the notice from the Commissioner. The district shall use a variety of relevant sources that shall include perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions to inform the needs assessment required by the plan. The plan shall include the support to be provided to schools by the district. The CDIP shall be posted to the district website, and shall address the following areas:

(a) Curriculum alignment within the school(s);

(b) Evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;

(c) Professional development to address the goals of the plan;

(d) Parental communication and involvement;

(e) Attendance improvement and dropout prevention;

(f) Activities to target the underperforming areas of achievement, gap, growth, college/career readiness and/or graduation rate;

(g) Activities to target demonstrators of weakness in program reviews;

(h) Activities to target areas of need identified in teacher and leader effectiveness measures; and

(i) Technical assistance that will be accessed.

(3) A district that is classified in the lowest twenty (20) percent of the Needs Improvement classification for the second or more consecutive times shall revise the CDIP as specified in subparagraph (a) of this paragraph and submit it for approval by KDE within ninety (90) days of receiving the notice from the Commissioner. Upon approval by KDE, the CDIP shall be posted to the district website.

(4) In addition to the requirements of subsection (3) of this section, a district that is classified in the lowest twenty (20) percent in the Need Improvement classification for third or more consecutive time shall engage in the following:

(a) Participate in a set of improvement strategies outlined by a district-wide accreditation process.

(b) If directed by the KDE, receive the assignment of a high-achieving partner district of similar demographics for mentor activities as directed by KDE.

(c) Accept ongoing resources throughout the year as assigned or approved by the KDE.

(5) Supports and consequences shall be applied to all the remaining districts within the classification of Needs Improvement not identified in Section 6. Districts will receive notification from the Commissioner of Education within 5 days of release of the annual accountability data, identifying them as one of the remaining districts within the classification of Needs Improvement and the required supports and consequences that will apply.

(a) A district that is classified in the Needs Improvement classification for the first time shall revise the CDIP within ninety (90) days of receiving the notice from the Commissioner. The district shall use a variety of relevant sources including perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions to inform the needs assessment required by the plan. The plan shall include the support to be provided to schools by the district. The district plan shall be posted to the district website and shall address the following areas:

1. Curriculum alignment within the school(s);

2. Evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;

3. Professional development to address the goals of the plan;

4. Parental communication and involvement;

5. Attendance improvement and dropout prevention;

6. Activities to target the underperforming areas of achievement, gap, growth, college/career readiness and/or graduation rate;

7. Activities to target demonstrators of weakness in program reviews;

8. Activities to target areas of need identified in teacher and leader effectiveness measures; and

9. Technical assistance that will be accessed.

(6) If a district remains in the Needs Improvement classification and does not meet the definitions of being a Kentucky District On the Move for three consecutive compilations of the Overall Score, it shall comply with the strategies outlined in Section 6(3) of this administrative regulation. If a district remains in the Needs Improvement classification and does not meet the definition of being a Kentucky District On the Move for four consecutive compilations of the Overall Score, it shall comply with the strategies outlined in Section 6(4) of this administrative regulation.

(7) The Department of Education shall review and approve all submissions required by this Section, monitor implementation of district plans and provide necessary guidance based upon information gathered from sources such as, but not limited to, the following:

(a) Progress reports from the district

(b) Data reviews

(c) On-site observations

Section 7. Support and consequences for schools. In addition to compliance with the requirements of KRS 160.346, identified schools shall receive the following supports and consequences. The Commissioner of Education shall notify those districts contain-

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ing identified schools of the required supports and consequences within 5 days of release of annual accountability data.

(1) Schools identified pursuant to KRS 160.346 as "Persistently low-achieving schools" shall receive assistance and support as required by that statute.

(2) A district containing a school(s) in the lowest twenty (20) percent of elementary, twenty (20) percent of middle or twenty (20) percent of high schools in the Needs Improvement classification shall require the school(s) to comply with the following:

(a) A school that is classified in the lowest twenty (20) percent of the Needs Improvement classification for the first time shall revise the comprehensive school improvement plan (CSIP) and submit it for approval by the district within ninety (90) days of receiving notice from the Commissioner. The school shall use a variety of relevant sources that shall include perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions to inform the needs assessment required by the plan. The school's plan shall include the support that will be provided by the district. Upon approval by the district, the school plan shall be posted to the appropriate school Web site, and shall address the following areas:

1. Curriculum alignment within the school;
2. Evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;
3. Professional development to address the goals of the plan;
4. Parental communication and involvement;
5. Attendance improvement and dropout prevention;
6. Activities to target the underperforming areas of achievement, gap, growth, college/career readiness and/or graduation rate;
7. Activities to target demonstrators of weakness in program reviews;
8. Activities to target areas of need identified in teacher and leader effectiveness measures; and
9. Technical assistance that will be accessed.

(b) A school that is classified in the lowest twenty (20) percent of the Needs Improvement classification for the second or more consecutive times shall revise the CSIP as specified in subparagraph (a) of this paragraph and submit it for approval by the district prior to submission for approval by KDE within ninety (90) days of receiving notice from the Commissioner. Upon approval by KDE, the CSIP shall be posted to the school website.

(c) In addition to the requirements of subparagraph (b) of this paragraph, a school that is classified in the lowest twenty (20) percent in the Need Improvement classification for third or more consecutive time shall engage in the following:

1. Participate in a set of improvement strategies outlined by either a school-level or a district-wide accreditation process.
2. If directed by the KDE, receive the assignment of a high-achieving partner school of similar demographics for mentor activities as directed by KDE.
3. Accept ongoing resources throughout the year as assigned or approved by the KDE.

(3) Districts shall receive notification from the Commissioner of Education of all other schools in the Needs Improvement classification, not identified under Section 7(a) of this administrative regulation, that shall be required to carry out the following:

(a) Revise the CSIP and submit it for approval by the district within ninety (90) days of receiving notice from the Commissioner. The school shall use a variety of relevant sources that shall include perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions to inform the needs assessment required by the plan. The school's plan shall include the support that will be provided by the district. The school plan shall be posted to the appropriate school website and shall address the following areas:

1. Curriculum alignment within the school;
2. Evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;
3. Professional development to address the goals of the plan;
4. Parental communication and involvement;
5. Attendance improvement and dropout prevention;

6. Activities to target the underperforming areas of achievement, gap, growth, college/career readiness and/or graduation rate;

7. Activities to target demonstrators of weakness in program reviews;

8. Activities to target areas of need identified in teacher and leader effectiveness measures; and

9. Technical assistance that will be accessed.

(4) If a school remains in the Needs Improvement classification and does not meet the definitions of being a Kentucky School On the Move for three consecutive compilations of the Overall Score, it shall comply with the strategies outlined in Section 7(2)(b) of this administrative regulation. If a school remains in the Needs Improvement classification and does not meet the definitions of being a Kentucky School On the Move for four consecutive compilations of the Overall Score, it shall comply with the strategies outlined in Section 7(2)(c) of this administrative regulation.

(5) KDE shall review and approve all submissions required by this Section, monitor implementation of district plans and provide necessary guidance based upon information gathered from sources such as, but not limited to, the following:

- (a) Progress reports from the district
- (b) Data reviews
- (c) On-site observations

Section 8. Student group performance measure. (1) The Kentucky Department of Education shall create an annual report for all schools and districts showing the individual achievement scores in each assessed subject for student groups that form the Non-Duplicated Gap Group defined in 703 KAR 5:200. Student groups with more than twenty-five (25) students within assessment grades in a school or district shall have a reported score. The Kentucky Department of Education shall identify all student group performance that falls below the second and third standard deviation compared to all students in the state. Schools and districts with any identified student groups falling below the third standard deviation shall revise the school and district improvement plans to implement the steps outlined in KRS 158.649. Schools and districts shall utilize guidance from The Commissioner's Raising Achievement/Closing Gaps Council when developing the revised plans.

(2) If a school's or district's same student group score remains below the third standard deviation compared to all students in the state for two (2) or more consecutive years, the following additional actions shall occur:

(a) Continue actions undertaken during the first year of identification;

(b) If directed by the Kentucky Department of Education, receive the assignment of a high achieving partner school/district or focus team for mentor activities as directed by the Kentucky Department of Education; and

(c) Accept ongoing resources throughout the year as assigned or approved by the Kentucky Department of Education.

(3) If a school's or district's same student group remains below the third standard deviation compared to all students in the state for three (3) consecutive years, the following shall occur:

(a) The Kentucky Commissioner of Education shall designate schools and districts with continuous low performance of three years or more in any specific student group as a targeted school for assistance; and

(b) The school or district shall undergo a targeted audit focusing on the specific group of students with low scores. The targeted audit shall provide a report outlining the strengths and deficiencies of the school or district in relation to the group and provide specific support to help the school improve achievement of its student group.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson

APPROVED BY AGENCY: August 15, 2011

VOLUME 38, NUMBER 3 – SEPTEMBER 1, 2011

FILED WITH LRC: August 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 28, 2011, at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates an accountability system to classify schools and districts for recognition, supports and consequences as required by KRS 158.6455.

(b) The necessity of this administrative regulation: KRS 158.6455 requires the Kentucky Board of Education to promulgate regulations to identify successful schools and establish appropriate consequences for schools failing to meet their accountability measures.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes the elements of the above-referenced systems that the Kentucky Board of Education was statutorily directed to provide.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific standards and procedures to be used to identify schools and districts for recognition, supports, and consequences and outlines the activities schools and districts must undertake as a result of their identification in a specific category.

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

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public schools and school districts 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: The proposed regulation will identify all schools and districts in an accountability classification and will direct specific school improvement activities to be undertaken as a result of their identification.

(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: Upon identification in a specific accountability classification, lower-performing schools and districts will be required to implement school improvement activities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to schools and districts will vary widely based on the category of identification and the activities included in their im-

provement plans. Higher-performing schools and districts may have very little or no cost. Lower-performing schools and districts will have costs associated with activities needed to improve student achievement. Schools and districts that remain low-performing over time will have additional costs due to the additional requirements placed upon them by regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Schools and districts will be aware of their assessment results and the classification of the school and district based on those results. Schools and districts will assess their weaknesses and address needed changes in the instructional programs and supports being provided to their schools. The schools and districts will have the opportunity to access additional supports designed to improve the quality of their instructional program.

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

(a) Initially: The proposed regulation results in additional staff costs to the Kentucky Department of Education to calculate the Overall Score and place schools and districts in categories, to provide promotional materials and to review, monitor and provide assistance to identified lower-performing schools and districts. Additional financial expenditures that will be needed for implementation are not known at this time.

(b) On a continuing basis: The proposed regulation results in additional staff costs to the Kentucky Department of Education to calculate the Overall Score and place schools and districts in categories, to provide promotional materials and to review, monitor and provide assistance to identified lower-performing schools and districts. Additional financial expenditures that will be needed for implementation are not known at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current staff will be used and other financial resources will be required to be found.

(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: Yes, once the cost of implementing the program is ascertained.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453, 158.6455, 20 U.S.C. secs.6301 et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. The amount of dollars expended by the State and by local school districts depends on the numbers of schools and districts classified in an accountability category that require supports and consequences.

(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.

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(c) How much will it cost to administer this program for the first year? The proposed regulation results in additional staff costs to the Kentucky Department of Education to calculate the Overall Score and place schools and districts in categories, to provide promotional materials and to review, monitor and provide assistance to identified lower-performing schools and districts. Additional financial expenditures that will be needed for implementation are not known at this time.

(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. The proposed regulation results in additional staff costs to the Kentucky Department of Education to calculate the Overall Score and place schools and districts in categories, to provide promotional materials and to review, monitor and provide assistance to identified lower-performing schools and districts. Additional financial expenditures that will be needed for implementation are not known at this time.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The Kentucky Board of Education was tasked by the legislature (KRS 158.6455(1) and (4)) to promulgate regulations to create an accountability system to classify schools and districts for recognition, supports and consequences. This regulation outlines that system. Once schools and districts have been placed in an accountability classification, lower-performing schools and districts are required to undertake school improvement activities and the Kentucky Department of Education is required to monitor implementation and provide guidance. Undertaking the activities in the new system will require additional expenditures by KDE, schools and districts that are as yet unknown.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (New Administrative Regulation)

703 KAR 5:230. Next Generation Instructional Programs and Support.

RELATES TO: KRS 158.6451

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor and ensures accountability.

Section 1. Next-Generation Instructional Programs and Support. Data from program reviews administered as required in KRS 158.6451 and 158.6453 shall be included in the Next-Generation Instructional Programs and Support component.

Section 2: Field Testing and Public Reporting of Raw Scores.

(1) Program reviews shall be field tested for the purpose of establishing validity and reliability and the results publicly reported before inclusion in the accountability model.

(2) Beginning in the 2011-2012 academic year, field testing and public reporting shall be conducted in the following program review areas:

- (a) Arts and Humanities;
- (b) Practical Living/Career Studies; and
- (c) Writing.

(3) Beginning in the 2012-2013 academic year, field testing and public reporting shall be conducted in the following areas:

- (a) Kindergarten through 3rd Grade Program Evaluation, and
- (b) World Language.

Section 3. Accountability. (1) After program reviews have been field tested to determine reliability and validity, program review scores shall be included in the accountability model.

(a) Beginning in the 2012-2013 academic year and thereafter,

the following program reviews shall be included in accountability:

- a. Arts and Humanities,
- b. Practical Living/Career Studies, and
- c. Writing.

(b) Beginning in the 2013-2014 academic year and thereafter, the following program reviews shall be included in accountability:

- a. Kindergarten through 3rd Grade Program Evaluation, and
- b. World Language.

(2) Performance on program reviews shall be reported in Next Generation Instructional Programs and Support as follows:

(a) Elementary, middle and high schools shall receive points at the demonstrator level within each of the four standards of the program review;

(b) Elementary, middle and high school's demonstrator points shall be added together to achieve a total number of points for each standard;

(c) Elementary, middle and high school's standard points shall be added together to achieve an overall raw score for each program review; and

(d) A school's points shall be multiplied by the appropriate weight to determine program classification.

Section 3. Weights. (1) The total number of points earned for each program review shall be weighted in the following manner:

Beginning in 2012-13

Grade Range	Arts/Humanities	Practical Living	Writing	Year 1 Total
Elementary	33.3	33.3	33.3	100
Middle	33.3	33.3	33.3	100
High	33.3	33.3	33.3	100

Beginning in 2013-14

Grade Range	Arts/Humanities	Practical Living	Writing	K-3	World Language	Year 2 and beyond Total
Elementary	20	20	20	20	20	100
Middle	25	25	25	NA	25	100
High	25	25	25	NA	25	100

(2) If data cannot be calculated for any program review or additional program reviews are added, the weights shall be redistributed proportionally.

Section 4. Classification of Schools. (1) The appropriate weights shall be applied to the school's raw score calculated to determine the school's classification in the Instructional Programs and Support component of the Accountability Model within 703 KAR 5:220.

(2) Cut Scores established for Next Generation Instructional Programs and Support shall classify schools and districts into one of three classifications:

- (a) Distinguished;
- (b) Proficient; and
- (c) Needs Improvement.

(3) The placement of schools and districts into one of three classifications shall be based on the establishment of cut scores through a standard-setting process utilizing results from the first operational administration of program reviews. The process shall be advised by the National Technical Advisory Panel on Assessment and Accountability, School Curriculum Assessment and Accountability Council and the Office of Education Accountability. The process shall use accepted technical procedures and involve Kentucky school and district administrators and teachers. The Kentucky Board of Education shall review the process and approve the final cut scores that determine placement in one of the three classifications.

Section 5. Audit Process. District program reviews shall be audited using a process and timeline determined by the Kentucky Department of Education. The audit process and timeline shall annually be provided to the district.

This is to certify that the chief state school officer has reviewed

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and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson

APPROVED BY AGENCY: August 15, 2011

FILED WITH LRC: August 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 28, 2011, at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of: This regulation describes how Program Reviews will be included in the district and school accountability model and defines a timeline for implementation.

2011-12 school year – field testing and public reporting of Program Reviews in arts and humanities, practical living/career studies and writing

2012-13 school year – field testing and public reporting of Program Reviews in kindergarten through 3rd grade program evaluation and world language; inclusion of Program Reviews in arts and humanities, practical living/career studies and writing in accountability calculations

2013-14 school year – inclusion of Program Reviews in kindergarten through 3rd grade program evaluation and world language in accountability calculations

(a) What this administrative regulation does: 703 KAR 5:230 describes the Next Generation Instructional Programs and Support component of the new accountability model.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6451 that set forth the requirement for the program reviews to be part of accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for including the program reviews will be included in the accountability system as mandated in KRS 158.6451

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics for how program reviews will count in the accountability system.

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

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

regulation: All public school districts 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: The proposed regulation will impact all schools and districts by providing the detail necessary to carry out the requirements of KRS 158.6451.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts must implement program reviews in arts and humanities, writing and practical living/career studies in the 2011-12 academic year for field testing and public reporting purposes. These program reviews will be counted into accountability in 2012-13 academic year. In the 2012-13 academic year, schools will implement world language and Kindergarten – 3 program reviews for field testing and public reporting purposes and those reviews will be included in accountability the 2013-14 academic year.

(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 an undetermined cost to the school districts to implement program reviews in the form of staff time. Also, if their programs are determined to need improvement, additional school and district resources will be required.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The program reviews are based on research-based best practices and the implementation of program reviews will lead to program improvement in arts and humanities, writing, practical living/career studies, world language and K-3.

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

(a) Initially: By the time the program reviews are fully implemented in schools, the proposed regulations will have resulted in an expenditure by the Kentucky Department of Education of approximately \$200,000 for both development and implementation support.

(b) On a continuing basis: The proposed regulation results in additional costs to the Kentucky Department of Education to conduct the audit process. That process is being incorporated as part of the ASSIST project.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department funds have been used to support the program review development and implementation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts and the Kentucky Department of Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6451, 158.6453, 158.6455

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative

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tive regulation. The amount of dollars expended by the State for this administrative regulation depends on the number of schools identified as persistently low-achieving. No additional costs are expected.

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

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

(c) How much will it cost to administer this program for the first year? The proposed regulation results in additional staff costs to the Kentucky Department of Education to calculate the Overall Score and place schools and districts in categories, to provide promotional materials and to review, monitor and provide assistance to identified lower-performing schools and districts. Additional financial expenditures that will be needed for implementation are not known at this time.

(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. The proposed regulation results in additional staff costs to the Kentucky Department of Education to calculate the Overall Score and place schools and districts in categories, to provide promotional materials and to review, monitor and provide assistance to identified lower-performing schools and districts. Additional financial expenditures that will be needed for implementation are not known at this time.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The Kentucky Board of Education was tasked by the legislature (KRS 158.6455 (1) and (4)) to promulgate regulations to create an accountability system to classify schools and districts for recognition, supports and consequences. This regulation outlines that system. Once schools and districts have been placed in an accountability classification, lower-performing schools and districts are required to undertake school improvement activities and the Kentucky Department of Education is required to monitor implementation and provide guidance. Undertaking the activities in the new system will require additional expenditures by KDE, schools and districts that are as yet unknown.

PUBLIC PROTECTION CABINET Department Of Housing, Buildings and Construction Division Of Heating, Ventilation and Air Conditioning (New Administrative Regulation)

815 KAR 8:007. Kentucky Board of Heating, Ventilation, and Air Conditioning (HVAC) Contractors budget review and responsibility.

RELATES TO: KRS 198B.654, 198B.676

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 198B.654, the Kentucky Board of Heating, Ventilation, and Air Conditioning (HVAC) Contractors shall promulgate regulations to administer the provisions of KRS 198B.650 to 198B.689. Additionally, the Kentucky Board of HVAC Contractors is directed by KRS 198B.676 to pay all fees and charged collected into a state and agency account in the State Treasury and to pay all expenses incurred by the board out of same trust and agency account. This administrative regulation establishes quarterly reviews of the Division of HVAC's budget and fee schedule by the Kentucky Board of HVAC Contractors for the administration of KRS 198B.650 to 198B.689.

Section 1. Budget Review. (1) The following shall be provided at least quarterly to each member of the Kentucky Board of HVAC Contractors by the Division of HVAC:

(a) A current fiscal year detailed financial report consisting of current balances;

(b) A revenue report showing all revenue sources of the division;

(c) Expenditure summaries showing expenditures including total personnel costs and operating expenses; and

(d) Any transfers made or scheduled, either to or from the division's trust and agency funds established in KRS 198B.676.

(2) The detailed report shall be delivered to each committee member at least ten (10) business days prior to each quarterly meeting of the Kentucky Board of HVAC Contractors.

Section 2. If the division's trust fund balance exceeds \$500,000:

(1) The Kentucky Board of HVAC Contractors shall:

(a) Review the division's staffing;

(b) Review the following fees:

1. Examination;

2. License; and

3. Heating, ventilation, and air conditioning permitting;

(c) Review the division's current level of service; and

(d) Recommend changes needed to maintain or improve the division's level of service and accurately balance revenues with expenditures.

(2) The division shall prepare for the Kentucky Board of HVAC Contractors' review:

(a) A staffing report detailing personnel levels, personnel costs, and personnel goals; and

(b) Fee proposals with projected effects to the division's balances from each fee.

JERRY T. LUNSFORD, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: August 15, 2011

FILED WITH LRC: August 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2011, at 10:00 am, local time, 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 September 14, 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 September 30, 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 quarterly reviews of the Division of HVAC's budget and fee schedule by the Kentucky Board of HVAC Contractors for the administration of KRS 198B.650 to 198B.689.

(b) The necessity of this administrative regulation: This administrative regulation establishes the minimum schedule for budget reviews of the Division of HVAC's programs by the Kentucky Board of HVAC contractors for the efficient and effective administration of KRS 198B.650 to 198B.689.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to the statutes by establishing the standards and procedures to be followed for the administration of KRS 198B.650 to 198B.689.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-

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trative regulation sets forth the standards and procedures authorized by statutes for the Kentucky Board of HVAC Contractors review and oversight of KRS 198B.650 to 198B.689.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of HVAC, and members of the Board of HVAC 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 Board will review the Division's budget and fiscal documentation at least quarterly. If the board determines that expenditures are not balancing efficiently with revenues, the board will make recommendations to the Department for consideration and amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated additional cost associated with this new administrative regulation; this amendment merely establishes the process and schedule for the Kentucky Board of HVAC Contractors to review the program's budget.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits anticipated from this regulation include maximizing efficiency and balancing of expenditures with revenues.

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

(a) Initially: No additional costs anticipated to implement.

(b) On a continuing basis: No additional costs anticipated to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds of the Division of HVAC.

(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 this new administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation.

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes no revenues nor creates expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. There are no revenues associated with this new 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. There are no anticipated increases or decreases as there are no fees associated with this new administrative regulation.

(c) How much will it cost to administer this program for the first year? The program's costs will not be impacted by the implementation of this new administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The program's costs will not be impacted by the continued implementation of this administrative regulation.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation:

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 HVAC will be impacted by this new 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.654 and relates to KRS 198B.676.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of August 15, 2011**

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Monday, August 15, 2011 at 1:30 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 July 2011 meeting were approved.

Present were:

Members: Senators Joe Bowen, David Givens, and Joey Pendleton, and Representative Johnny Bell, Robert Damron, Danny Ford, and Jimmie Lee.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, Betsy Cupp, and Laura Napier.

Guests: Diana Barber, Becky Gilpatrick, Kentucky Higher Education Assistance Authority; Alicia Sneed, Education Professional Standards Board; Dinah Bevington, Personnel Cabinet; Jennifer Jones, Brian Thomas, Kentucky Retirement Systems; Brett Antle, DeVon Hankins, Tom Howard, Travis Powell, Finance and Administration Cabinet; Brian Bishop, Board of Dentistry; Karen Greenwell, Hartsel H. Stovall, Board of Barbering; Clint Quarles, Department of Agriculture; Abby Powell, Division of Water; Anthony Hatton, Lori Terry, Division of Waste Management; Rodney Ballard, Amy Barker, Jeff Burton, Kristie Willard, Department of Corrections; Ann D'Angelo, Doug Sutton, Tom Zawacki, Transportation Cabinet; Lisa K. Lang, James Maxson, Deanna Tackett, Kentucky Department of Education; Bob Elkins, Labor Cabinet; Kristi Redmon, Department of Workplace Standards; Sandy Chapman, Bill Nold, DJ Wasson, Department of Insurance; Greg Lamb, Susan Speckert, Tim West, Kentucky Horse Racing Commission; Dawn M. Bellis, Timothy R. House, Department of Housing, Buildings and Construction; Chandra Venetozzi, Cabinet for Health and Family Services; Chad Frizzel, Hickman County Jail; Greg Pruitt, Hickman County Judge Executive; Norma Pruitt, Kentucky Great River Region Organization Inc.; Chris McCrane, Lewis County Detention Center Jail; and Thomas Massie, Lewis County Judge Executive.

The Administrative Regulation Review Subcommittee met on Monday, August 15, 2011, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY:
Division of Student and Administrative Services: Kentucky Loan Program**

11 KAR 3:100. Administrative wage garnishment. Diana Barber, general counsel, and Becky Gilpatrick, director, student aid services, represented the authority.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Commonwealth Merit Scholarship Program

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) Program.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3 through 6, 9, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 4 to align course requirements to the curriculum standards established in 704 KAR 3:305 by the Department of Education; and (3) to amend Section 6 to establish a new table for converting SAT scores to ACT scores for exams taken during or after the 2011-2012 academic year. Without objec-

tion, and with agreement of the agency, the amendments were approved.

EDUCATION PROFESSIONAL STANDARDS BOARD: Teaching Certificates

16 KAR 2:010. Kentucky teaching certificates. Alicia A. Sneed, director of legal services, represented the board.

In response to a question by Co-Chair Bowen, Ms. Sneed stated that the literacy program was managed by endorsement, rather than licensure. The literacy program did not require a master's degree; however, requirements were equally, and in some cases, more stringent than those for a master's degree.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 5, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Certification Procedures

16 KAR 4:060. Certificate renewals and successful teaching experience.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Classified

101 KAR 2:095 & E. Classified service administrative regulations. Dinah Bevington, general counsel, represented the cabinet.

In response to a question by Senator Pendleton, Ms. Bevington stated that these ordinary administrative regulations were filed with accompanying emergency administrative regulations because the requirements needed to be in place when the Kentucky Human Resource Information System (KHRIS) went "live," which took place before these ordinary administrative regulations could become effective.

In response to questions by Senator Givens, Ms. Bevington stated that these administrative regulations conformed to state and federal requirements, including provisions pertaining to overtime pay and furlough matters.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Sections 1, 2, 6, 8, 9, and 11 to comply with the drafting requirements of KRS Chapter 13A; (3) to amend Section 8 to require that an organization submit the Kentucky Employees Charitable Campaign Requirements for Eligibility and Application if it wants to participate in the Kentucky Employees Charitable Campaign; and (4) to amend Section 11 to incorporate by reference the application form and a revised "Personnel Action Notification." Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY

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paragraphs and Sections 1 through 6, 8 through 11, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 8 to specify that an employee may request to use more than three (3) leave days following the loss of an immediate family member; and (3) to amend Section 13 to incorporate by reference a revised "Overtime Compensation Form." Without objection, and with agreement of the agency, the amendments were approved.

Unclassified

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

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6, 8 through 11, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 8 to specify that an employee may request to use more than three (3) leave days following the loss of an immediate family member; and (3) to amend Section 13 to incorporate by reference a revised "Overtime Compensation Form." Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 1:140. Employer's administrative duties. Jennifer Jones, interim general counsel, and Brian Thomas, staff attorney, represented the systems.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Sections 1(6) and 5 to delete provisions for an annual waiver from electronic reporting for which there did not appear to be statutory authority. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:190. Qualified domestic relations orders.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 through 7, 9 through 12, 14, 15, 18 through 21, and 24 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to replace the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT because question (9), pertaining to tiering, was inadvertently omitted. Without objection, and with agreement of the agency, the amendments were approved.

Office of Financial Management: Underwriter and Bond Counsel Selection Process

200 KAR 21:010. Procedure for prequalification of underwriters and bond counsel for state bond issues. Tom Howard, executive director, Office of Financial Management, and Travis Powell, deputy general counsel, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, 3, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

200 KAR 21:031. Repeal of 200 KAR 21:030.

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board

201 KAR 8:008E. Repeal of 201 KAR 8:390. Brian K. Bishop, executive director, represented the board.

201 KAR 8:532 & E. Licensure of dentists.

In response to a question by Senator Givens, Mr. Bishop stated that 201 KAR 8:532 and 8:562 were not amended after comments because the commenter requested clarification regarding a national examination that had yet to be created. This administrative regulation will be amended for clarification after the national examination is created.

A motion was made and seconded to approve the following amendments: (1) to amend the titles of Sections 4 and 5 for clarity; and (2) to amend Section 7(2)(b) to make a grammatical correction. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 8:562 & E. Licensure of dental hygienists.

A motion was made and seconded to amend Sections 1 and 8 to correct a cross-reference citation. Without objection, and with agreement of the agency, the amendments were approved.

Board of Barbering: Board

201 KAR 14:015. Retaking of examination. Karen Greenwell, administrator, and Hartsel H. Stovall, chair, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a drafting error; and (2) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

DEPARTMENT OF AGRICULTURE: Structural Pest Control

302 KAR 29:061E. Temporary suspension of Category 8, public health, certification requirement. Clint Quarles, staff attorney, represented the department.

In response to a question by Senator Pendleton, Mr. Quarles stated that this administrative regulation targeted mosquito larvae in standing water. The emergency administrative regulation was put into place because, after the spring flooding, there were not enough licensed insect pesticide applicators to treat the mosquito problem. This administrative regulation temporarily suspended licensure requirements for insect pesticide applicators treating mosquito larvae in standing water.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply

401 KAR 8:020. Public and semipublic water systems; general provisions. Abby Powell, regulation coordinator, represented the division.

In response to a question by Co-Chair Bell, Ms. Powell stated that the changes to this administrative regulation did not affect bottled water facilities. New recordkeeping requirements were placed on the division, not the water supply facilities.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Class D and Class C Felons

501 KAR 2:020. Definitions for 501 KAR Chapter 2. Rodney Ballard, deputy commissioner; Amy Barker, assistant general counsel; and Jeff Burton, director, Division of Local Facilities, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 to update statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend Section 7(2) to clarify the types of information required for external movements; (2) to amend Section 12(3) to include sentencing credit for participation in an approved substance abuse program; (4) to amend the RELATES TO paragraph to include additional relevant citations; (5) to amend Sections 4 and 12 to update statutory citations; and (6) to amend Sections 3, 7, 8, 12, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 2:070. Work release.

Jail Standards for Full-Service Facilities

501 KAR 3:010. Definitions for 501 KAR Chapter 3.

In response to a question by Senator Givens, Ms. Barker stated that this administrative regulation defined terms for clarification and for consistency with other agencies. The definitions for "telehealth" and "telemedicine" were not substantive.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) include definitions for "security vestibule" and "telehealth;" and (2) clarify existing definitions. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:020. Administration; management.

A motion was made and seconded to approve the following amendments: to amend the TITLE and Sections 1, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:030. Fiscal management.

A motion was made and seconded to approve the following amendment: to amend Section 4(2)(c) to use the term "audit," rather than "examination." Without objection, and with agreement of the agency, the amendment was approved.

501 KAR 3:060. Security; control.

A motion was made and seconded to approve the following amendments: to amend Section 3(14)(h) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:070. Safety; emergency procedures.

In response to a question by Representative Ford, Mr. Ballard stated that as of April 4, 2012, all institutions would be tobacco

free.

In response to questions by Senator Pendleton, Mr. Ballard stated that facilities currently prohibited cigarettes, but not all tobacco products. Tobacco products, other than cigarettes, could be a health hazard to facility employees.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:080. Sanitation; hygiene.

A motion was made and seconded to approve the following amendment: to amend Section 1(6)(b) for clarification. Without objection, and with agreement of the agency, the amendment was approved.

501 KAR 3:100. Food services.

A motion was made and seconded to approve the following amendments: to amend Section 1(3) to specify that if the jailer elects to serve only two (2) meals on a holiday, Saturday, or Sunday, more than sixteen (16) hours shall not elapse between any two (2) meals. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:110. Classification.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:120. Admission; searches and release.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:130. Prison programs; services.

In response to a question by Representative Ford, Ms. Barker stated that this administrative regulation established the same policies as the Department of Corrections policies. Mr. Burton stated that these policies did not restrict religious observance.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to update a citation; and (2) to amend Sections 1, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:150. Hearings, procedures, disposition.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to include a reference to KRS Chapter 13B which governs administrative hearings; (2) to amend Sections 3, 5, 16, 20, 21, 24, 25, and 27 to conform to KRS Chapter 13B; and (3) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 8, 10, 11, 14, 16 through 19, 22, 23, and 26 to update citations, for clarification, and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:160. Training.

A motion was made and seconded to approve the following amendments: to revise Sections 3 to 6 for clarification and to be in

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conformity with 501 KAR 7:150. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:170. Classifications.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Jail Standards for Restricted Custody Center Facilities

501 KAR 7:010. Definitions for 501 KAR Chapter 7.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) include a definition for "telehealth;" and (2) clarify existing definitions. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:020. Administration; management.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 for clarification and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:030. Fiscal management.

A motion was made and seconded to approve the following amendment: to amend Section 2(2)(b) to use the defined term. Without objection, and with agreement of the agency, the amendment was approved.

501 KAR 7:040. Personnel.

A motion was made and seconded to approve the following amendments: to amend Section 6 for clarification. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:060. Security; control.

A motion was made and seconded to approve the following amendments: to amend Section 3 for clarification and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:070. Safety; emergency procedures.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 for clarification and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:080. Sanitation; hygiene.

A motion was made and seconded to approve the following amendments: to amend Section 1 for clarification. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:090. Medical services.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) use the term "telehealth," rather than "tele-medicine technology;" and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:100. Food services.

501 KAR 7:110. Classification.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 for clarification. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:120. Admission; searches and release.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to be in conformity with 501 KAR 3:120; and (2) to amend Sections 2, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:130. Prisoner programs; services.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to update a citation; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:150. Training.

A motion was made and seconded to approve the following amendments: to amend Section 2 for clarification. Without objection, and with agreement of the agency, the amendments were approved.

Jail Standards for Life Safety Facilities

501 KAR 13:010. Life safety issues.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to include a definition for "telehealth;" (2) to amend Section 8(4) to specify that if the jailer elects to serve only two (2) meals on a holiday, Saturday, or Sunday, more than sixteen (16) hours shall not elapse between any two (2) meals; and (3) to amend Sections 1, 3, 6, and 8 for clarification and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Commercial Driver's License

601 KAR 11:035. Waiver of skills test for military personnel. Ann D'Angelo, assistant general counsel, and Doug Sutton, assistant director, Division of Driver Licensing, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to insert statutory citations in lieu of citations to the Kentucky Acts; and (2) to amend Section 3 to update the form incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: Food Service Programs

702 KAR 6:110. Claim reimbursement for school and community nutrition programs. Lisa K. Lang, assistant general counsel, and Deanna Tackett, assistant director, School and Community Nutrition, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AU-

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THORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Sections 1 through 4 to: (a) comply with the drafting and formatting requirements of KRS Chapter 13A; and (b) clarify the claims reimbursement process; and (3) to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Department of Workforce Investment: Office of Employment and Training: Unemployment Insurance

787 KAR 1:090. Unemployed worker's reporting requirements. James Maxson, attorney, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to clarify the system availability for filing claims online or by telephone. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

803 KAR 2:304. Exit routes and emergency planning. Bob Elkins, safety standards specialist, and Kristi Redmon, occupational safety and health standards specialist, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Section 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to make a CONFORMING AMENDMENT to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by the agency. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:308. Personal protective equipment.

803 KAR 2:309. General environmental controls.

In response to a question by Co-Chair Bowen, Mr. Elkins stated that this administrative regulation provided for a seamless process, without undue burden for stakeholders.

A motion was made and seconded to approve the following amendment: to amend Section 2 for clarification. Without objection, and with agreement of the agency, the amendment was approved.

803 KAR 2:313. Materials handling and storage.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1(2) to cite to a statutory definition; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 for clarification. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:319. Commercial diving operations.

803 KAR 2:320. Toxic and hazardous substances.

803 KAR 2:403. Occupational health and environmental controls.

803 KAR 2:407. Adoption of 29 C.F.R. Part 1926.250-252.

803 KAR 2:425. Toxic and hazardous substances.

A motion was made and seconded to approve the following amendments: to amend Section 1(1) to make a CONFORMING

AMENDMENT to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by the agency. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:500. Maritime employment.

803 KAR 2:505. Cranes and Derricks in construction.

A motion was made and seconded to approve the following amendments: to amend Section 3 to make a CONFORMING AMENDMENT to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by the agency. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:600. Occupational safety and health standards for agriculture.

PUBLIC PROTECTION CABINET: Department of Insurance: Division of Agent Licensing: Agents, Consultants, Solicitors and Adjusters

806 KAR 9:220. Continuing education. Sandy Chapman, acting director, represented the division.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Health and Life Division: Health Insurance Contracts

806 KAR 17:180. Standard health benefit plan. Bill Nold, director, represented the division.

In response to questions by Senator Givens, Mr. Nold stated that the Affordable Care Act and the Mental Health Parity Act both affected this administrative regulation. Co-pays for preventative care were eliminated, and certain policy limits, lifetime and annual, would gradually be removed. State law required a standard health benefit plan, and federal law required insurers to comply with certain guidelines. The division decided to include the federal changes in the standard health benefit plan during this revision, rather than waiting. Gradual removal of certain policy limits, lifetime and annual, would raise costs, but only for those plans that have existing limits. Elimination of co-pays for preventative care could lower costs because expensive illnesses could be prevented by early detection.

Division of Kentucky Access: Health Insurance Contracts

806 KAR 17:545. ICARE program employer eligibility, application process, and requirements. D. J. Wasson, acting director, Division of Kentucky Access, represented the division.

A motion was made and seconded to approve the following amendment: to amend Section 10(1) to correct the date on the application form. Without objection, and with agreement of the agency, the amendment was approved.

Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:005. Racing officials. Greg Lamb, supervisor of pari-mutuel wagering; Susan B. Speckert, general counsel; and Tim West, assistant general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 3, 4, 5, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with

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agreement of the agency, the amendments were approved.

810 KAR 1:009. Jockeys and apprentices.

A motion was made and seconded to approve the following amendment: to amend Section 17 to correct the name of a form incorporated by reference. Without objection, and with agreement of the agency, the amendment was approved.

810 KAR 1:012. Horses.

A motion was made and seconded to approve the following amendment: to amend Section 11(9) to correct a typographical error. Without objection, and with agreement of the agency, the amendment was approved.

810 KAR 1:014. Weights.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:150. Licensing totalizator companies.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add additional relevant citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 for clarification; and (3) to amend the TITLE and Sections 2, 3, 4, 7, 8, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Harness Racing

811 KAR 1:290. Licensing totalizator companies.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add additional relevant citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 for clarification; and (3) to amend the TITLE and Sections 2, 3, 4, 7, 8, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Quarter Horse, Appaloosa, and Arabian Racing

811 KAR 2:200. Licensing totalizator companies.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add additional relevant citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 for clarification; and (3) to amend the TITLE and Sections 2, 3, 4, 7, 8, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Housing, Buildings and Construction: Division of Heating, Ventilation, and Air Conditioning: Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:030. Apprentice heating, ventilation, and air conditioning (HVAC) mechanic registration and certification requirements. Dawn M. Bellis, general counsel, and Timothy R. House, acting director, Division of Heating, Ventilation, and Air Conditioning, represented the division.

In response to a question by Senator Givens, Mr. House stated that many changes to continuing education requirements in the department were for the benefit of license holders and allowed some continuing education credits to count toward multiple licenses.

Senator Pendleton thanked Mr. House for his hard work for the agency and stated that Mr. House would be missed as he leaves the department.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Section 2 for clarity; and (4) to amend Section 4 to update the form incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Data Reporting and Public Use Data Sets

900 KAR 7:040. Release of public data sets for health care discharge data. Chandra Venettozzi, health data administrator, represented the office.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the September 13, 2011, meeting of the Subcommittee:

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 Physical Therapy: Board

201 KAR 22:045. Continued competency requirements and procedures.

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

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 action.

201 KAR 39:070. Application and qualifications for temporary licensure.

201 KAR 39:080. Reciprocity.

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201 KAR 39:090. Continuing education requirements.

201 KAR 39:100. Complaint procedure.

201 KAR 39:120. Code of ethics.

Board of Licensure for Massage Therapy: Board

201 KAR 42:035. Application process, exam, and curriculum requirements.

Kentucky Applied Behavior Analysis Licensing Board: Board

201 KAR 43:040 & E. Code of ethical standards and standards of practice.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Waste Management: Underground Storage Tanks

401 KAR 42:005. Definitions related to 401 KAR Chapter 42. Anthony Hatton, director; Bruce Scott, commissioner; and Lori Terry, underground storage tank specialist, represented the division.

In response to questions by Representative Ford, Mr. Hatton stated that some administrative regulations in this group package were the result of federal guidelines and others were an effort to streamline the process. The streamlining process began in 2006, and this was the second phase of that endeavor. During early vetting with stakeholders, environmental cleanup companies requested an increase in reimbursement rates based on increases in cleanup costs. If the underground storage tank qualifies, the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) covered cleanup costs for a property owner, including for a newly found tank.

In response to questions by Senator Pendleton, Mr. Hatton stated that administrative regulations in this group package would help small business owners with cleanup costs for underground storage tanks.

Senator Pendleton stated that an eight (8) percent increase in the reimbursement rate for cleanup could encourage stalling on removing sites from the cleanup list. Taxpayers should not have to pay an eight (8) percent "cost of living" adjustment while most industries did not receive any cost of living raise this year.

Representative Lee stated that underground storage tanks that did not pose a risk to human health or the environment were still costing the state significantly. In such cases, there should be a limit on what can be built on the site without financially damaging existing small businesses that have met the \$1,000,000 cleanup maximum established in the fund structure.

In response to questions by Senator Pendleton and Representative Lee, Mr. Scott stated that this administrative regulation group package resolved the concerns expressed. The package would close and clean up "stagnant" underground storage tank sites, without risk to human health or the environment.

In response to a question by Representative Damron, Mr. Hatton stated that there was a limit to the number of contractors willing to perform clean up of underground storage tanks. If the proposed rate increase did not become effective, contractors dealing solely with underground storage tanks could delay cleanup. Contractors who performed broader cleanup services would probably not be affected. Mr. Scott stated that the fund was "upside down" in 2006, when the streamlining process began. The first streamlining phase corrected the fiscal problems with the fund. This second phase was intended to expedite cleanup and closure.

Senator Givens requested that the division follow up with historical information pertaining to the fund, including the viability and safety of the program, the number of sites added and closed each year, the average price per site to close, and potential savings if these administrative regu-

lations become effective. Mr. Scott stated that the rate of new sites had slowed recently compared with the number of sites closed.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to delete Section 2; and (3) to amend the definition for "operator" for clarity. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to defer consideration of this group of administrative regulations as amended to the September meeting of the Subcommittee. Without objection, and with agreement of the agency, these administrative regulations as amended were deferred.

401 KAR 42:011. Scope of underground storage tank program.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a punctuation correction; and (3) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:020. UST systems: design, construction, installation, and registration.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (2) to amend Sections 1, 3, 6, 7, 9, 10, 11, 12, 13, 15, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:030. UST system general operating requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2, 3, 7, 10, 11, 12, 14, and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:040. UST system release detection.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (2) to amend Sections 1, 4, 5, 6, 7, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:045. Delivery prohibition.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the STATUTORY AUTHORITY paragraph, and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:050. UST system release reporting, investigation, and confirmation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A.

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Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:060. UST system release response and corrective action for UST systems containing petroleum or hazardous substances.

A motion was made and seconded to approve the following amendments: to amend the TITLE and Sections 1 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:070. Out-of-service UST systems, temporary closure and permanent closure of UST systems, and change in service of UST systems.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; and (2) to amend Sections 1, 2, 3, 5, 7, 8, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:080. Classification of UST systems containing petroleum and listing of associated cleanup levels.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1, 3, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:090. Financial responsibility.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 2, 11, 27, and 28 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:095. Lender liability.

In response to a question by Representative Ford, Ms. Terry stated that this administrative regulation added federal requirements to eliminate lender liability.

A motion was made and seconded to approve the following amendments: to amend Sections 3 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:200. Annual fee for underground storage tanks.

A motion was made and seconded to approve the following amendments: to amend Section 3(3) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:250. Petroleum storage tank environmental assurance fund reimbursement procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend the TITLE and Sections 1 through 10,

12 through 16, and 18 through 20 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to revise forms incorporated by reference for consistency with requirements in this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:290. Ranking system.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Sections 2 and 3 to clarify requirements pertaining to the ranking of groundwater contamination. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:300. Third-party claims.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 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.

401 KAR 42:315. Repeal of 401 KAR 42:314.

401 KAR 42:316. Petroleum storage tank environmental assurance fund eligibility criteria for contracting companies and partnerships.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:320. Hearings.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:330. Small owners tank removal account.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 4, 5, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to revise a form incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:335. Financial audits.

A motion was made and seconded to approve the following amendments: to amend Section 4(3) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:340. Laboratory certification.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Solid Waste Facilities

401 KAR 47:205. Contents of the application for petroleum

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contaminated soil treatment facilities.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1, 2, 4, 5, 6, 8, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 47:207. Public information procedures for petroleum contaminated soil treatment facilities.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend the TITLE and Sections 1 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Standards for Solid Waste Facilities

401 KAR 48:205. Technical requirements for petroleum contaminated soil treatment facilities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend the TITLE and Sections 1 through 9 to: (a) comply with the drafting and formatting requirements of KRS Chapter 13A; and (b) make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 48:206. Petroleum contaminated soil treatment facility liner soil layer quality assurance and quality control.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend the TITLE and Sections 1 and 3 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 48:207. Petroleum contaminated soil treatment facility liner geosynthetic quality assurance and quality control.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend the TITLE and Sections 1 and 3 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 48:208. Petroleum contaminated soil treatment facility liner high-permeability layer quality assurance and quality control.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend the TITLE and Sections 1 through 5 to comply with the

drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Jail Standards for Full-service Facilities

501 KAR 3:040. Personnel. Rodney Ballard, deputy commissioner; Amy Barker, assistant general counsel; and Jeff Burton, director, Division of Local Facilities, represented the department. Greg Pruitt, judge executive, Hickman County, and Thomas Massie, judge executive, Lewis County, appeared in opposition to this administrative regulation.

Judge Pruitt stated that Hickman County was among the smallest counties in Kentucky, with about 5,000 people. The state closed its jail facilities in Hickman County in 1991 and the county took its prisoners to Fulton County for detention over the next three (3) years. Following a feasibility study and based on a good relationship with the department, the county opened its own facility. Due to the cost of jail operations continuing to rise, the detention center expected to be in the "red" in 2012. Additionally, other fiscal matters were also causing jail cost increases for the county, including a twenty-five (25) percent reduction in income. Adding staff, as required by this administrative regulation, would further put pressure on strained county funds. Judge Pruitt requested that this administrative regulation be deferred or found deficient so that it could be tiered to provide for smaller counties.

Judge Massie stated that Lewis County had the same fiscal challenges as Hickman County with regard to the county jail. This administrative regulation would force Lewis County to add five (5) full-time employees at a facility that currently employs sixteen (16). The added burden could cause the facility to close. Judge Massie requested that this administrative regulation be amended to tier for smaller counties. He stated that minimum staffing requirements should be tied to the number of inmates, the size of the facility, and the size of the county. Having the requirements the same for all institutions was similar to having a minimum staffing requirement for all schools without regard to the number of students or size of the school.

Senator Pendleton, Senator Givens, and Representative Ford requested that the department amend this administrative regulation to establish tiering for smaller counties.

Mr. Ballard agreed to defer and revisit this administrative regulation regarding smaller counties; however, he stated that ninety-five (95) percent of staffing analyses demonstrated a need for more, not less, staffing at detention facilities, and a staffing analysis did not vitiate the minimum staffing requirements established by statute.

A motion was made and seconded to approve the following amendment: to amend Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

A motion was made and seconded to defer consideration of this administrative regulation as amended to the September meeting of the Subcommittee. Without objection, and with agreement of the agency, this administrative regulation as amended was deferred.

501 KAR 3:050. Physical plant.

501 KAR 3:090. Medical services.

In response to questions by Senator Givens, Mr. Burton stated that telehealth and telemedicine was not currently available in jails; however, this administrative regulation would provide requirements if remote care became feasible. Involuntary commitments were handled in face-to-face examinations, and physicians had independent guidelines for those examinations.

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Senator Givens stated that the department should look at limiting the scope of services and uses available for telehealth while implementing cost saving measures.

In response to questions by Co-Chair Bell, Ms. Barker stated that the only change to requirements pertaining to dispensation of medication was for medication dispensed upon prisoner release. After Co-Chair Bell described several accounts of prisoners whose medication was withheld, Mr. Burton stated that the medical staff, not the department, had the authority to dispense medications, generic or otherwise.

Co-Chair Bell stated that the problem arose mostly if a registered nurse, rather than a physician, was charged with decisions regarding prescription dispensation.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to use the term "telehealth" rather than "telemedicine technology;" (2) to amend the RELATES TO paragraph to include an additional relevant citation; and (3) to amend Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to defer consideration of this administrative regulation as amended to the September meeting of the Subcommittee. Without objection, and with agreement of the agency, this administrative regulation as amended was deferred.

501 KAR 3:140. Prisoner rights.

Jail Standards for Restricted Custody Center Facilities

501 KAR 7:050. Physical plant.

501 KAR 7:140. Prisoner rights.

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 3:30 p.m. until September 13, 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 NATURAL RESOURCES AND ENVIRONMENT
Meeting of August 4, 2011

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of August 4, 2011, having been referred to the Committee on August 3, 2011, pursuant to KRS 13A.290(6):

301 KAR 2:095
401 KAR 51:052 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 4, 2011 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of August 17, 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 August 17, 2011, having been referred to the Committee on August 3, 2011, pursuant to KRS 13A.290(6):

201 KAR 20:056
201 KAR 20:062
201 KAR 20:070
201 KAR 20:110
201 KAR 20:215
201 KAR 20:225
201 KAR 20:240
201 KAR 20:310
201 KAR 20:411
201 KAR 20:470
902 KAR 8:160
902 KAR 8:165
902 KAR 8:170

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

201 KAR 20:470

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 17, 2011 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

C - 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

C -

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

C -

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

C -

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.

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 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2011 bound Volumes were published.					
SYMBOL KEY:			101 KAR 2:102		
* Statement of Consideration not filed by deadline			Amended	2672	(See 38 Ky.R.)
** Withdrawn, not in effect within 1 year of publication			101 KAR 3:015		
*** Withdrawn before being printed in Register			Amended	2677	(See 38 Ky.R.)
**** Emergency expired after 180 days			102 KAR 1:178	2303	
(r) Repealer regulation: KRS 13A.310-on the effective			103 KAR 3:010		
date of an administrative regulation that repeals another,			Amended	2258	
the regulations compiler shall delete the repealed			As Amended	2543	
administrative regulation and the repealing administrative			103 KAR 3:030		
regulation.			Amended	2263	
			As Amended	2547	
EMERGENCY ADMINISTRATIVE REGULATIONS:			103 KAR 3:040		
(Note: Emergency regulations expire 180 days from the date			Amended	2273	
filed; or 180 days from the date filed plus number of days of			As Amended	2556	
requested extension, or upon replacement or repeal, whi-			103 KAR 3:050		
chever occurs first.)			Amended	760	
31 KAR 5:010E	2128	2-1-11	103 KAR 15:195	2769	(See 38 Ky.R.)
31 KAR 6:030E	2352	3-10-11	201 KAR 3:045		
Replaced	2828	7-1-11	Amended	2891	
32 KAR 1:030E	1381	11-2-10	201 KAR 3:081(r)	3020	
32 KAR 1:190E	1382	11-2-10	201 KAR 3:090	3021	
32 KAR 2:130E	2130	2-7-11	201 KAR 8:532	3022	(See 38 Ky.R.)
101 KAR 2:095E	2522	3-31-11	201 KAR 8:550	2308	
101 KAR 2:102E	2525	3-31-11	Amended	2876	8-5-11
101 KAR 3:015E	2530	3-31-11	201 KAR 8:560	626	
103 KAR 15:195E	2535	4-1-11	201 KAR 8:562	3027	(See 38 Ky.R.)
Replaced		(See 38 Ky.R.)	201 KAR 12:083		
201 KAR 8:008E	2807	4-21-11	Amended	2282	
201 KAR 8:532E	2808	4-21-11	As Amended	2829	7-1-11
201 KAR 8:550E	2143	2-2-11	201 KAR 20:056		
Replaced	2876	8-5-11	Amended	2892	(See 38 Ky.R.)
201 KAR 8:562E	2812	4-21-11	201 KAR 20:059		
201 KAR 43:010E	2817	4-29-11	Amended	2046	
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16 KAR 3:050			Amended	2911	8-17-11
Amended	1500		201 KAR 20:411		
As Amended	1963		Amended	2913	8-17-11
16 KAR 6:030			201 KAR 20:470		
Amended	2665		Amended	2915	(See 38 Ky.R.)
31 KAR 5:010			201 KAR 26:115		
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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		
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32 KAR 2:130					

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Amended	1523		Amended	1020	
201 KAR 26:180			Amended	1704	
Amended	1526		As Amended	1993	
201 KAR 26:185			201 KAR 42:080	1113	
Amended	1527		Amended	1705	
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As Amended	1983		Amended	1022	
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Amended	1532		201 KAR 43:010	3031	
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Amended	1533		201 KAR 43:040	3035	
201 KAR 26:230			301 KAR 1:152	2772	
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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	
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201 KAR 39:010	2507		Amended	2065	
201 KAR 39:030			As Amended	2568	
Amended	2451		301 KAR 2:300		
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201 KAR 39:060			Amended	2920	
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201 KAR 39:070			Amended	1757	
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As Amended	1987		401 KAR 42:020		
201 KAR 42:010			Amended	2693	(See 38 Ky.R.)
Amended	1009		401 KAR 42:030		
Amended	1695		Amended	2696	(See 38 Ky.R.)
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201 KAR 42:020			Amended	2700	(See 38 Ky.R.)
Amended	1011		401 KAR 42:045	2773	(See 38 Ky.R.)
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Amended	1012		Amended	2704	(See 38 Ky.R.)
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201 KAR 42:035			Amended	2706	(See 38 Ky.R.)
Amended	1013		401 KAR 42:080		
Amended	1697		Amended	2709	(See 38 Ky.R.)
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201 KAR 42:040			Amended	2711	(See 38 Ky.R.)
Amended	1015		401 KAR 42:095	2775	(See 38 Ky.R.)
Amended	1699		401 KAR 42:200		
As Amended	1991		Amended	2713	(See 38 Ky.R.)
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Amended	1016		Amended	2715	(See 38 Ky.R.)
Amended	1700		401 KAR 42:290		
As Amended	1992		Amended	2726	(See 38 Ky.R.)
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401 KAR 42:330 Amended	2735	(See 38 Ky.R.)	501 KAR 7:070 Amended	2978	(See 38 Ky.R.)
401 KAR 42:335 Amended	2738	(See 38 Ky.R.)	501 KAR 7:080 Amended	2979	(See 38 Ky.R.)
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401 KAR 47:205	2778	(See 38 Ky.R.)	501 KAR 7:100 Amended	2982	(See 38 Ky.R.)
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401 KAR 48:205	2784	(See 38 Ky.R.)	501 KAR 7:120 Amended	2985	(See 38 Ky.R.)
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501 KAR 3:060 Amendment	2943		As Amended	2994	
501 KAR 3:070 Amendment	2949	(See 38 Ky.R.)	806 KAR 2:150 Amended	2996	(See 38 Ky.R.)
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808 KAR 10:200			815 KAR 20:034		
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808 KAR 10:240			815 KAR 20:070		
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808 KAR 10:260			Amended	3000	(See 38 Ky.R.)
Amended	2493		815 KAR 35:100		
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808 KAR 10:280			900 KAR 5:020		
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808 KAR 10:410			Amended	2762	(See 38 Ky.R.)
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808 KAR 10:450			Amended	3010	(See 38 Ky.R.)
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808 KAR 10:480			902 KAR 20:410	1142	
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808 KAR 10:490			As Amended	2019	
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811 KAR 1:240			Amended	1863	
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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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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

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 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: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

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