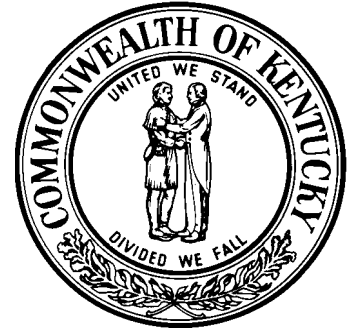


# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 38, NUMBER 4  
SUNDAY, OCTOBER 1, 2011

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#### MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet October 11, 2011 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **727-729** of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2011 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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**VOLUME 38, NUMBER 4 – OCTOBER 1, 2011**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, OCTOBER 11, 2011, at 1:00 p.m., Room 149 Capitol Annex**

**EDUCATION PROFESSIONAL STANDARDS BOARD**

**Teaching Certificates**

16 KAR 2:040. Interdisciplinary early childhood education, birth to primary.

**Educator Preparation**

16 KAR 5:040. Admission, placement, and supervision in student teaching.

**Alternative Routes to Certification**

16 KAR 9:090. University-based alternative certification program for teachers of world languages.

**PERSONNEL BOARD**

**Personnel Cabinet, Classified**

101 KAR 1:375. Employee grievances and complaints.

**PERSONNEL CABINET**

**Applications, qualifications and examinations**

101 KAR 2:046. Applications, qualifications and examinations.

101 KAR 2:056. Registers.

101 KAR 2:105. Sick leave sharing procedures.

101 KAR 2:106. Annual leave sharing procedures.

101 KAR 2:180. Employee performance evaluation system.

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue**

**Ad Valorem Tax; State Assessment**

103 KAR 8:010. Watercraft allocation. (Not Amended After Comments) (Deferred from September)

**GENERAL GOVERNMENT CABINET  
Board of Pharmacy**

**Board**

201 KAR 2:170. Computerized recordkeeping.

**State Board of Licensure for Professional Engineers and Land Surveyors**

**Board**

201 KAR 18:192. Continuing professional development for professional land surveyors.

**Board of Physical Therapy**

**Board**

201 KAR 22:020. Eligibility and credentialing procedure.

**Board of Respiratory Care**

**Board**

201 KAR 29:050. Continuing education requirements. (Amended After Comments)

**Real Estate Appraisers Board**

**Board**

201 KAR 30:310 & E. Fees for registration of appraisal management companies. (Comments Received)

201 KAR 30:320 & E. Surety bond. (Comments Received)

201 KAR 30:330 & E. Application for registration. ("E" expires 1/11/2012) (Deferred from September)

201 KAR 30:360. Operation of an appraisal management company. (Comments Received)

**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) (Deferred from September)

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) (Deferred from September)

201 KAR 43:030 & E. Fees. ("E" expires 11/26/2011) (Not Amended After Comments) (Deferred from September)

201 KAR 43:040 & E. Code of ethical standards and standards of practice. ("E" expires 10/26/11) (Deferred from July) (Deferred from September)

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

**Game**

301 KAR 2:228. Sandhill crane hunting requirements. (Amended After Comments)

**GENERAL GOVERNMENT CABINET  
Department of Agriculture  
Division of Agriculture Marketing**

**Ginseng**

302 KAR 45:010 & E. Ginseng, general provisions. ("E" expires 1/29/2011)

**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) (Deferred from September)

## **VOLUME 38, NUMBER 4 – OCTOBER 1, 2011**

### **Department for Natural Resources Division of Mine Reclamation and Enforcement**

#### **Surface Effects of Noncoal Mining**

405 KAR 5:085. Enforcement.

405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions.

#### **General Provisions**

405 KAR 7:091. General practice provisions.

#### **Inspection and Enforcement**

405 KAR 12:020. Enforcement.

### **JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections Sex Offender Risk Assessment Advisory Board**

#### **Office of the Secretary**

501 KAR 6:220. Treatment for sex offenders.

#### **Department of State Police**

#### **Concealed Deadly Weapons**

502 KAR 11:010. Application for license to carry concealed deadly weapon.

502 KAR 11:050. Updating, replacement, and renewal of license to carry concealed deadly weapon.

#### **Technical Services Division**

#### **Law Enforcement Officers Safety Act of 2004**

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.

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.

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.

### **TRANSPORTATION CABINET Office of Transportation Delivery**

#### **Mass Transportation**

603 KAR 7:080. Human service transportation delivery. (Amended After Comments)

### **PUBLIC PROTECTION CABINET Department of Insurance Agent Licensing Division**

#### **Agents, Consultants, Solicitors, and Adjusters**

806 KAR 9:020. False or deceptive names, titles, prohibited. (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) (Deferred from September)

815 KAR 4:025 & E. Permit fees for new and altered elevators. ("E" expires 1/4/2012) (Deferred from September)

815 KAR 4:030 & E. Elevator contractor licensing requirement. ("E" expires 1/4/2012) (Deferred from September)

815 KAR 4:040 & E. Elevator mechanic licensing requirements. ("E" expires 1/4/2012) (Deferred from September)

815 KAR 4:050 & E. Continuing education requirements for elevator contractors and elevator mechanics. ("E" expires 1/4/2012) (Deferred from September)

815 KAR 4:060 & E. Requirements for approval of continuing education courses and providers. ("E" expires 1/4/2012) (Deferred from September)

815 KAR 4:070 & E. Fees and refunds. ("E" expires 1/4/2012) (Deferred from September)

#### **Kentucky Building Code**

815 KAR 7:120. Kentucky Building Code.

### **Division of Heating, Ventilation and Air Conditioning (HVAC)**

#### **Heating, Ventilation, and Air Conditioning Licensing Requirements**

815 KAR 8:007. Kentucky Board of Heating, Ventilation, and Air Conditioning (HVAC) contractors budget review and responsibility.

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

#### **Certificate of Need**

900 KAR 6:030. Certificate of need expenditure minimums.

900 KAR 6:080. Certificate of Need emergency circumstances. (Deferred from September)

#### **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) (Deferred from September)

#### **Radiology**

902 KAR 100:019. Standards for protection against radiation. (Deferred from September)

902 KAR 100:022. Licensing requirements for land disposal of radioactive waste. (Deferred from September)

902 KAR 100:040. General provisions for specific licenses. (Deferred from September)

902 KAR 100:042. Decommissioning and financial surety. (Deferred from September)

902 KAR 100:100. Industrial radiography. (Deferred from September)

## **VOLUME 38, NUMBER 4 – OCTOBER 1, 2011**

### **Department for Medicaid Services Division of Community Alternatives**

#### **Medicaid Services**

907 KAR 1:595 & E. Model Waiver II service coverage and reimbursement. ("E" expires 1/17/2012)

### **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. (Not Amended After Comments)

### **Department for Community Based Services Division of Protection and Permanency Division of Family Support**

#### **K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

921 KAR 2:050. Time and manner of payments. (Deferred from September)

### **Division of Protection and Permanency**

#### **Child Welfare**

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

922 KAR 1:490. Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, and reporting requirements.

## **REMOVED FROM OCTOBER 2011 AGENDA**

### **GENERAL GOVERNMENT CABINET Real Estate Appraisers Board**

#### **Board**

201 KAR 30:310 & E. Fees for registration of appraisal management companies. (Comments Received, SOC ext)

201 KAR 30:320 & E. Surety bond. (Comments Received, SOC ext)

201 KAR 30:330 & E. Application for registration. ("E" expires 1/11/2012) (Comments Received, SOC ext)

### **Board of Interpreters for the Deaf and Hard of Hearing**

#### **Board**

201 KAR 39:040. Definitions. (Deferred from May) (Withdrawn by Agency 9-15-2011)

201 KAR 39:030. Application; qualifications for licensure; and certification levels. (Deferred from May) (Withdrawn by Agency 9/15/2011)

201 KAR 39:040. Fees. (Deferred from May) (Withdrawn by Agency 9-15-2011)

201 KAR 39:050. Renewal of licenses and extension of temporary licenses. (Deferred from May) (Withdrawn by Agency 9/15/2011)

201 KAR 39:060. Reinstatement of license subject to disciplinary action. (Deferred from May) (Withdrawn by Agency 9/15/2011)

201 KAR 39:070. Application and qualifications for temporary licensure. (Deferred from May) (Withdrawn by Agency 9/15/2011)

201 KAR 39:080. Reciprocity. (Deferred from May) (Withdrawn by Agency 9/15/2011)

201 KAR 39:090. Continuing education requirements. (Deferred from May) (Withdrawn by Agency 9/15/2011)

201 KAR 39:100. Complaint procedure. (Deferred from May) (Withdrawn by Agency 9-15-2011) (Withdrawn by Agency 9/15/2011)

201 KAR 39:120. Code of ethics. (Deferred from May) (Withdrawn by Agency 9/15/2011)

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

#### **Board**

201 KAR 44:010. Fees. (Comments Received, SOC ext.)

201 KAR 44:020. Requirements for licensure as an Orthotist, Prosthetist, Orthotist/Prosthetist, Pedorthist, or Orthotic Fitter prior to January 1, 2013. (Comments Received, Comments Received, SOC ext.d)

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. (Comments Received)

201 KAR 44:040. Professional Conduct and Code of Ethics. (Comments Received)

201 KAR 44:050. Per diem of board members. (Comments Received)

### **PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement**

#### **Kentucky Building Code**

815 KAR 7:125. Kentucky Residential Code.

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

#### **Certificate of Need**

900 KAR 6:075. Certificate of Need nonsubstantive review. (Comments Received)

**VOLUME 38, NUMBER 4 – OCTOBER 1, 2011**

**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.

VOLUME 38, NUMBER 4 – OCTOBER 1, 2011

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

STATEMENT OF EMERGENCY  
101 KAR 2:210E

This emergency administrative regulation incorporates by reference the 2012 plan year handbook for the Public Employee Health Insurance Program. The Public Employee Health Insurance Program is commonly known as the Kentucky Employees' Health Plan. KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the 2012 plan year handbook on or before September 15, 2011. This emergency administrative regulation is necessary to meet a deadline for the promulgation of an administrative regulation that is established by state law. KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the 2012 plan year handbook containing the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. This administrative regulation incorporates by reference the benefits selection guide distributed by the Department of Employee Insurance in the Personnel Cabinet to public employees covered under the self-insured plan. The Benefits Selection Guide contains the employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. This emergency administrative regulation will be replaced by an ordinary administrative regulation. This emergency administrative regulation is not identical to the ordinary administrative regulation filed at the same time as this emergency administrative regulation. Because this emergency administrative regulation will be in effect for part of plan year 2011, the existing language regarding the Benefits Selection Guide for the 2011 plan year is needed until the ordinary administrative regulation replaces this emergency administrative regulation.

STEVEN BESHEAR, Governor  
TIM LONGMEYER, Secretary of Personnel Cabinet

PERSONNEL CABINET  
Office of the Secretary  
(Emergency Amendment)

101 KAR 2:210. 2011 and 2012 Plan Year Handbooks [Handbook] for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2011 and 2012 Plan Years [Year] as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2011 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. (1) The Department of Employee Insurance shall distribute or make available to the public employees covered under

the self-insured plan the 2012 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

(2) The 2012 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide shall govern the health plan benefits for public employees covered under the self-insured plan beginning January 1, 2012.

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

(a) "2011 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2011 edition; and

(b) "2012 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2012 edition[, 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, 8:00 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 15, 2011 at 10 a.m.

CONTACT PERSON: Joe R. Cowles, Deputy Executive Director, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-7603.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Joe R. Cowles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2012 plan year Benefits Selection Guide for health benefit plans offered through the Public Employee Health Insurance Program. The Benefits Selection Guide is distributed to all health plan participant plan holders. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the 2012 self-insured plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254 requires the Personnel Cabinet to incorporate by reference the 2012 plan year handbook distributed to the public employees covered by the Public Employee Health Insurance Program in an administrative regulation. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the statute authorizing the self-insured health benefit plan and the statute mandating the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2012 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(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 an amendment. This administrative regulation constitutes a compilation of the health contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for the plan year 2012. The 2012 Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to

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public employees covered under the self-insured plan.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the health benefit plans to public employees for the 2012 plan year and the statutory mandate to annually update the regulations incorporating the plan year handbook contained in KRS 18A.2254.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2012 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2012 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: State and select county and local government entities, including employees of the local school boards and districts, and retirees will be affected. More specifically, this encompasses approximately 159,460 eligible employees under KRS 18A.225(1)(a) and a total of 270,555 (which would include qualifying beneficiaries and dependents).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by entities to comply with the incorporation of these provisions in an administrative regulation. The 2012 Benefits Selection Guide will provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the health benefit plans offered for the 2012 plan year; specifically, the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for the 2012 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Complying with this administrative regulation will have a cost impact to participants or beneficiaries covered under the Public Employee Health Insurance Program.

(c): As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants and dependents covered under the Public Employee Health Insurance Program for plan year 2012 will have comparable benefit structure to the 2011 plan year. There were necessary employee premium contribution and health benefit modifications for plan year 2012 as a result of projected health care inflation, two percent budgeted employer contribution increase for plan year 2012 and federal health care mandates effective January 1, 2012.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust 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: This is an amendment. The implementation of this administrative regulation will not require an increase in funding or fees.

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

fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all participants in the Public Employee Health Insurance Program which includes state government, retirees, select local government entities and employees of local school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287, and 26 U.S.C. 105, 106, 125, 152, 129 and 152 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1-7; H.R. 3590, the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (PPACA); H.R. 4872, the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (HCERA).

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, school boards 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, school boards or school districts) for the first year? The administrative regulation will not generate any 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? The administrative regulation will not generate any revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law an amended administrative regulation will be promulgated in 2012 and each subsequent plan year.

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 301 KAR 2:225E

This emergency administrative regulation establishes season dates, limits, shooting hours, and other requirements for hunting dove, woodcock, snipe, and other migratory game birds. Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons shall do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the migratory bird season. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation. The ordinary administrative regulation



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will be filed with the Regulations Compiler by August 31, 2011.

STEVEN L. BESHEAR, Governor  
BENJY KINMAN, Deputy Commissioner  
For DR. JONATHAN GASSETT, Commissioner

### TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Emergency Amendment)

#### 301 KAR 2:225E. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.603  
STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21

EFFECTIVE: August 18, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dove" means mourning dove or white-winged dove.

(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.

(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

(4) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation.

(2) The following seasons shall apply to migratory bird hunting:

(a) Dove, beginning on:

1. September 1 for fifty-four (54) consecutive days;

2. Thanksgiving Day for nine (9) consecutive days; and

3. The Saturday after Christmas for seven (7) consecutive days.

(b) Woodcock, beginning on November 1 [~~the third Saturday in October~~] for forty-five (45) consecutive days.

(c) Common snipe, beginning on:

1. The third Wednesday in September for forty (40) [~~forty-seven (47)~~] consecutive days; and

2. Thanksgiving Day for sixty-seven (67) [~~sixty (60)~~] consecutive days.

(d) Wood duck and teal, beginning on the third Wednesday in September for five (5) consecutive days.

(e) Virginia rail, sora rail, common moorhen, and purple gallinule, beginning on September 1 for seventy (70) consecutive days.

(f) Canada goose, beginning September 1 for fifteen (15) [~~the first Saturday in September for nine (9)~~] consecutive days except that the following areas, as established in 301 KAR 2:224, shall be closed:

1. Ballard reporting area;
2. Public lands in the West-Central Goose Zone; and
3. The Northeast Goose Zone.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:

(a) Dove:

1. Daily limit of fifteen (15); and

2. Possession limit of thirty (30).

(b) Eurasian collared dove: No limit, except that a hunter, if in the field or during transport, shall keep one (1) of the following attached to the bird:

1. The head; or
2. A fully-feathered wing.

(c) Woodcock:

1. Daily limit of three (3); and

2. Possession limit of six (6).

(d) Common snipe:

1. Daily limit of eight (8); and

2. Possession limit of sixteen (16).

(e) Virginia and sora rail, singly or in aggregate:

1. Daily limit of twenty-five (25); and

2. Possession limit of twenty-five (25).

(f) Common moorhen and purple gallinule, singly or in aggregate:

1. Daily limit of fifteen (15); and

2. Possession limit of thirty (30).

(g) Wood duck and teal:

1. Daily limit of four (4), which shall not include more than two (2) wood ducks; and

2. Possession limit of eight (8), which shall not include more than four (4) wood ducks.

(h) Canada goose:

1. Daily limit of two (2); and

2. Possession limit of four (4).

(2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the following attached to the bird:

- (a) The head; or
- (b) A fully-feathered wing.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section. (1) If hunting dove on WMA land, a person shall hunt:

(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(2) If hunting dove on private land, a person shall hunt:

(a) Between 11 a.m. and sunset on September 1; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. 20, 21 for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:

(1) Hunting waterfowl or doves; or

(2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:

(a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222;

(b) Hunt in an area marked by a sign as closed to hunting; or

(c) Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on any of the following areas shall only use or possess nontoxic shot approved by the U.S. Fish and

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Wildlife Service pursuant to 50 C.F.R. 20, 21:

- (a) Ballard WMA;
  - (b) Boatwright WMA;
  - (c) Doug Travis WMA;
  - (d) Duck Island WMA;
  - (e) Kaler Bottoms WMA;
  - (f) Kentucky River WMA;
  - (g) Ohio River Islands WMA;
  - (h) Sloughs WMA;
  - (i) South Shore WMA;
  - (j) Yatesville Lake WMA; and
  - (k) A WMA wetland management unit that is posted by sign.
- (3) At Ballard WMA, a person shall not hunt:
- (a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or
  - (b) Woodcock.
- (4) In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:
- (a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or
  - (b) Woodcock.
- (5) At Miller Welch - Central Kentucky WMA, a person shall not hunt:
- (a) Dove or snipe after October 13; or
  - (b) Woodcock.
- (6) At Grayson Lake WMA, a person shall not hunt:
- (a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;
  - (b) On Deer Creek Fork; or
  - (c) On Camp Webb property or the state park, except for youths drawn for the quota dove hunt on Camp Webb property on the first Saturday in September.
- (7) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.
- (8) At West Kentucky WMA, a person shall not hunt:
- (a) On "A" Tracts; or
  - (b) Canada geese during the September season.
- (9) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:
- (a) The Greenbrier Creek embayment; and
  - (b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.
- (10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 3, 2011

FILED WITH LRC: August 18, 2011 at 3 p.m.

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the United States Fish and Wildlife Service (USFWS). In addition, it establishes hunter restrictions for hunting migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2011–2012 migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to establish hunting season dates and bag limits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing

the migratory bird hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national and international management goals.

(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 extends the September Canada goose season from 9 days to 15 days, shifts the season for woodcock approximately 2 weeks later and aligns the season for common snipe to better overlap the November – January waterfowl season, exempts mourning dove and waterfowl hunters for hunter orange requirements during the firearm deer and elk seasons.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to increase waterfowl opportunity during the September season, and set woodcock and common snipe seasons to correspond with peak abundance and public desire.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 63,000 migratory bird hunters in Kentucky that may be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: 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 current changes in season dates, bag limits and/or wildlife management area requirements will be published in the annual Migratory Bird Hunting Guide and on the department's website. Hunters must review the hunting guide or website for the updated information to hunt legally during the specified season. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3). As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be increased opportunity to hunt migratory game birds.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or increase funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all migratory game bird hunters.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

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3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum days and bag limits permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives may necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's migratory bird hunters.

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ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

DEPARTMENT OF STATE  
Kentucky Registry of Election Finance  
(As Amended at ARRS, September 13, 2011)

**32 KAR 1:070. Waiver from filing candidate election finance statement~~[candidate's report]~~.**

RELATES TO: KRS 121.180(9)

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

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

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

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

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

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: June 22, 2011

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

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

GENERAL GOVERNMENT CABINET  
Board of Auctioneers  
(As Amended at ARRS, September 13, 2011)

**201 KAR 3:045. Recordkeeping and accounting.**

RELATES TO: KRS 330.110(5)

STATUTORY AUTHORITY: KRS 330.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) ~~authorizes the Board of Auctioneers to promulgate administrative regulations concerning recordkeeping and accounting. [This administrative regulation amends the existing regulation.]~~ This administrative regulation establishes requirements to protect [protects] the public through adequate recordkeeping and accounting. [To protect the public through adequate recordkeeping and accounting.]

Section 1. Proceeds of a personal property auction not disbursed to the owner on auction day shall be deposited in an auction escrow account by the auctioneer or auction [auctioneer/auction] firm no later than three (3) banking days following the date of auction or sale of the goods, whichever occurs first.

Section 2. Auctioneers and auction [Auctioneers/auction] firms shall use federally insured depositories in the Commonwealth of Kentucky.

Section 3. Proceeds due from the sale of goods, other than real property, shall be disbursed to the owner no later than thirty (30) days after the date of each auction.

Section 4. Funds from a real estate auction shall be held in escrow until settlement in accordance with the agreement of sale.

Section 5. If the owner's goods are not sold in a single auction, proceeds due shall be disbursed to the owner within thirty (30) days after each auction for goods, other than real property, or in accordance with the agreement of sale for the sale of real property. Notice shall be given to the owner of the tentative date of auction of the remaining goods.

Section 6. The auction escrow account shall be used solely for the preservation and guarantee of auction proceeds until disbursed at settlement. Funds for any other purpose shall not be commingled with the auction escrow account. Moneys due to the auctioneer or auction firm shall not be withdrawn from the auction escrow account until final settlement is made with the owner.

Section 7. Auction records, including lists of buyers and their addresses, and clerk sheets showing the items sold including the buyers' numbers or names and the selling prices, and the final settlement papers, shall be retained for a period of five (5) years from the date of settlement. These business records shall be available for inspection by the board or its designees [as deemed appropriate and necessary]. ~~[Section 4. (1) Any principal or apprentice auctioneer licensed by the Kentucky Board of Auctioneers shall be required to provide a receipt or receipts to all individuals or businesses placing merchandise with him for sale by him at auction. Every apprentice and principal auctioneer shall keep a copy of each receipt given for merchandise as provided herein, and shall give a true copy of said receipts to the owner of the property accepted for sale at auction.~~

~~(2) A principal auctioneer shall further render an accounting and settlement with the seller of any property sold at auction within thirty (30) days after the conclusion of such sale unless there is a legal requirement that funds held in escrow by that principal auctioneer be held longer than said thirty (30) days.]~~

This is to certify that the chief officer has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

GLENN BIRDWHISTELL, Chairman

APPROVED BY AGENCY: May 3, 2011

FILED WITH LRC: May 13, 2011 at 9 a.m.

CONTACT PERSON: Stephen Van Zant, General Counsel, 2819 Ring Road, Elizabethtown, Kentucky 42701, phone (270) 765-4196, fax (270) 737-4790.

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GENERAL GOVERNMENT CABINET  
Board of Auctioneers  
(As Amended at ARRS, September 13, 2011)

201 KAR 3:090. Administrative Fees for Applications and Services.

RELATES TO: KRS 330.070, KRS 330.192

STATUTORY AUTHORITY: KRS 330.050(8), 330.070[.]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) authorizes the Board of Auctioneers to promulgate administrative regulations as required to fulfill the duties and functions assigned to the board by KRS Chapter 330. KRS 330.070 authorizes the Board of Auctioneers to promulgate administrative regulations concerning license fees, late fees for continuing education completion, fees associated with pocket licenses, and change of address fees. KRS 330.192 authorizes[authorized] the Board of Auctioneers to promulgate administrative regulations concerning the auctioneer's education, research, and recovery fund. This administrative regulation establishes necessary fees associated with acquiring and maintaining auctioneer licenses.

Section 1. License Application and Renewal Fees. (1) The license fee for each new applicant with the Kentucky Board of Auctioneers shall be \$100[not exceed \$150].

(2) The license renewal fee shall be paid as of June 30th of each year.

(a) The license renewal fee shall be \$100[not exceed \$150] if paid by June 30th of each year.

(b) The license renewal fee during the six (6) month grace period after June 30th shall be \$100[not exceed \$150], in addition to a late fee of \$100[not to exceed \$150].

(c) The license renewal fee after the six (6) month grace period, but paid prior to June 30th of the following year, shall be \$100[not exceed \$150], in addition to a late fee of \$100[not to exceed \$150].

(3) The license renewal and late fees for apprentice auctioneers shall be equal to the fees set forth in subsection (2) of this section. [Section A (1) and (2) herein.]

Section 2. Late Continuing Education Completion. [(4)] A licensee who has failed to complete the required continuing education credits in the time period set forth by KRS 330.070 shall remit a fee of \$300[statute must remit a fee of not more than \$300], and in addition, shall[must] complete twice the amount of continuing education credits set forth by statute within the following year.

Section 3. Replacement of License or Pocket License. (1) The fee for replacement of a license shall be fifteen (15) dollars[\$15].

(2) The fee for replacement of a pocket license shall be fifteen (15) dollars[\$15].

Section 4. Reactivation of License. [(4)] The fee to reactivate a license which has previously been placed in escrow status shall be \$100[not exceed \$150]. In addition, the licensee shall[must] have completed the continuing education credits set forth by KRS 330.070[statute] for the current year.

Section 5. Change of Address Fees. (1) The fee for a Residential Change of Address shall be fifteen (15) dollars[not exceed \$15].

(2) The fee for a Business Change of Address shall be fifteen (15) dollars[not exceed \$15].

Section 6. Education, Research, and Recovery Fund. [(4)] The Kentucky Board of Auctioneers may assess each new applicant and each renewal licensee an initial recovery fee and a renewal recovery fee, respectively, of thirty (30) dollars[a fee not to exceed fifty (50) dollars] per year for the Education, Research, and Recovery Fund.

This is to certify that the chief officer has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070 (4).

GLENN BIRDWHISTELL, Chairman

APPROVED BY AGENCY: May 3, 2011

FILED WITH LRC: May 13, 2011 at 9 a.m.

CONTACT PERSON: Stephen Van Zant, General Counsel,  
2819 Ring Road, Elizabethtown, Kentucky 42701, phone (270) 765-4196, fax (270) 737-4790.

GENERAL GOVERNMENT CABINET  
Board of Nursing  
(As Amended at Interim Joint Committee on Health  
and Welfare, August 17, 2011)

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

RELATES TO: KRS 314.035, 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs and for credentialing dialysis technicians.

Section 1. Definitions. (1) "Approved dialysis technician training program" means a program to train dialysis technicians that is approved by the board.

(2) "Central venous catheter" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava.

(3) "Dialysis technician applicant" means an individual who has applied for a dialysis technician credential.

(4) "Dialysis technician trainee" means an individual who is enrolled in an approved dialysis technician training program.

(5) "Supervision" means initial and ongoing direction, procedural guidance, observation, and evaluation by a registered nurse or physician, and when a patient is being dialyzed the registered nurse or physician is in the immediate clinical area.

Section 2. Requirements for Dialysis Technician Credential. (1)(a) An individual who applies to be credentialed as a dialysis technician in order to engage in dialysis care shall:

1. File with the board the "Application for Dialysis Technician Credential";

2. Have completed an approved dialysis technician training program or an out-of-state dialysis training program pursuant to subsection (1)(b) of this section;

3. Pay the fee established in Section 12[(11)]14[(12)] of this administrative regulation;

4. Provide a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application;

5. Provide a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

6. Provide to the board a certified copy of the court record of any misdemeanor or felony conviction from any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years; and

7. Provide to the board a letter of explanation that addresses each conviction.

(b)1. If the dialysis technician applicant has completed an out-of-state dialysis technician training program, the applicant shall submit the training program curriculum and evidence of completion to the board. The board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as stated in Section 7 of this administrative regulation.

2. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of Section 7 of this administrative regulation.

3. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall be required to com-

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plete that portion of a board-approved dialysis technician training program related to specific portions of the legal and ethical aspects of practice as set forth in the "Dialysis Technician Training Program Guide". An applicant shall submit evidence to the board of successful completion of the following sections:

- a. State and federal regulations governing dialysis;
- b. The principles and legal aspects of documentation, communication and patient rights;
- c. The roles of the dialysis technician and other multidisciplinary team members; and
- d. Principles related to patient safety.

4. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit the "Checklist for Dialysis Technician Competency Validation" signed by the applicant's immediate supervisor in Kentucky. The "Checklist for Dialysis Technician Competency Validation" shall be filed after the submission of the "Application for Dialysis Credential".

5. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit evidence of:

- a. Successful completion of a comprehensive, written final examination from a board-approved dialysis technician training program; or

- b. Dialysis technician certification issued within the past two (2) years by the Nephrology Nursing Certification Commission, the Board of Nephrology Examiners Nursing and Technology, or the National Nephrology Certification Organization.

(2) An individual shall be exempt from the credentialing requirement while enrolled in an approved dialysis technician training program. The individual shall use the title dialysis technician trainee.

(3) Upon approval of the application, the board shall initially issue the dialysis technician credential for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(4)(a) An applicant for a dialysis technician credential may engage in dialysis care as a dialysis technician applicant upon:

1. Receipt by the board of the "Application for Dialysis Technician Credential"; and
2. Meeting the requirements of subsection (6) of this section as an applicant until:
  1. The credential is issued; or
  2. The application is denied by the board.

(5) An "Application for Dialysis Technician Credential" submitted for initial credentialing shall be valid for six (6) months from the date of receipt by the board.

(6) A felony or misdemeanor conviction shall be reviewed to determine whether:

- (a) The application shall be processed with no further action; or
- (b) The application shall be processed only after:
  1. The applicant has entered into an agreed order with the board with terms and conditions as agreed by the parties; or
  2. If the parties are unable to agree on terms and conditions, a hearing is held pursuant to KRS 314.091 and 201 KAR 20:162, and a final decision is entered by the board.

(7) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(a)5 of this section and any conviction is addressed by the board.

Section 3. Renewal. (1) To be eligible for renewal of the credential, the dialysis technician shall submit, no later than one (1) month prior to the expiration date of the credential:

- (a) The "Application for Renewal of the Dialysis Technician Credential"; and
- (b) The fee established in Section ~~12[44][42]~~ of this administrative regulation.

(2) Upon approval of the application, the credential shall be renewed for twenty-four (24) months. The credential shall lapse on the last day of the credentialing period.

(3) A dialysis technician shall report to the board at the time of renewal the name of the national certification program that has issued the technician's certification and provide a copy of the certification certificate to the board.

Section 4. Reinstatement. (1) Before beginning practice as a dialysis technician or a dialysis technician applicant, the individual shall meet the requirements of this section. If the dialysis technician credential has lapsed for a period of less than one (1) credentialing period, the individual may reinstate the credential by:

- (a) Submitting the "Application for Dialysis Technician Credential";

- b) Paying the fee established in Section ~~12[44][42]~~ of this administrative regulation; and

- c) Providing a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application.

(2) If the dialysis technician credential has lapsed for more than one (1) credentialing period, the dialysis technician may reinstate the credential by:

- (a) Completing a board-approved dialysis technician training program before submitting the "application for Dialysis Technician Credential". While enrolled in a training program, the individual shall be referred to as a dialysis technician trainee;

- b) Submitting the "Application for Dialysis Technician Credential";

- c) Paying the fee established in Section ~~12[44][42]~~ of this administrative regulation;

- d) Submitting the "Checklist for Dialysis Technician Competency Validation" signed by the individual's immediate supervisor;

- e) Providing a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of application; and

- f) Providing a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is dated within six (6) months of the date of the application.

(3) An "Application for Dialysis Technician Credential" submitted for reinstatement shall be valid for six (6) months from the date of receipt by the board.

(4) Upon approval of the application, the credential shall be reinstated for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(5) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (2)(f) of this section and any conviction is addressed by the board.

Section 5. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse or a physician:

- (a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

- b) Initiating, delivering or discontinuing dialysis care;

- c) Administration of the following medications only:

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician.

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse;

- d) Assistance to the registered nurse in data collection;

- e) Obtaining a blood specimen via a dialysis line or a peripheral access site;

- f) Responding to complications that arise in conjunction with dialysis care; and

- g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

- (a) Dialysis care for a patient whose condition is determined by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

- b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters; and

- c) The administration of blood and blood products.

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Section 6. Discipline of a Dialysis Technician. (1) A dialysis technician, an employer of dialysis technicians, or any person having knowledge of facts shall report to the board a dialysis technician who may have violated any provision of this administrative regulation.

(2) The board shall have the authority to discipline a dialysis technician for:

(a) Failure to safely and competently perform the duties of a dialysis technician as stated in Section 5 of this administrative regulation;

(b) Practicing beyond the scope of practice as stated in Section 5 of this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence. A "conviction" shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Misuse or misappropriation of any drug placed in the custody of the dialysis technician for administration, or for use of others;

(g) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(h) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(i) Practicing without filing an "Application for Dialysis Technician Credential" or without holding a dialysis technician credential;

(j) Abuse of a patient;

(k) Theft of facility or patient property;

(l) Having disciplinary action on a professional or business license;

(m) Violating any lawful order or directive previously entered by the board;

(n) Violating any administrative regulation promulgated by the board; [or]

(o) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; or

(p) Having violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

(3) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure set out in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the application for a credential.

(4) The board shall follow the procedures set out in and have the authority set forth

in KRS 314.091, 201 KAR 20:161, and 20:162 for management and resolution of complaints filed against a dialysis technician.

(5) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to \$10,000.

Section 7. Dialysis Technician Training Program Standards. (1) Program administrator. A registered nurse, holding a current Kentucky license, temporary work permit, or multistate privilege, with at least one (1) year of experience in dialysis care, shall be administratively responsible for planning, development, implementation, and evaluation of the dialysis technician training program. The name, title, and credentials identifying the educational and professional qualifications of the program administrator shall be provided to the board. A change in the program administrator shall be reported to the board within thirty (30) days of the change.

(2) Faculty qualifications. The dialysis technician training program shall be taught by multidisciplinary faculty with expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications of each didactic and clinical instructor shall be provided to the board.

(3) The dialysis technician training program shall be based upon the "Dialysis Technician Training Program Guide".

(4) The dialysis technician training program syllabus shall include:

(a) Prerequisites for admission to the program;

(b) Program outcomes. The outcomes shall provide statements of measurable competencies to be demonstrated by the learner; supportive content identified;

(d) Content. The content shall be described in outline format with corresponding time frame and testing schedules;

(e) Teaching methods. The activities of both instructor and learner shall be specified. These activities shall be congruent with stated objectives and content, and reflect application of adult learning principles;

(f) Instructional or reference materials. All required instructional reference materials shall be identified; and

(g) Evaluation. There shall be clearly defined criteria for evaluating the learner's achievement of program outcomes. There shall also be a process for annual program evaluation by trainees, program administrator, faculty, and employers.

(5) Any proposed substantive changes to the dialysis technician training program syllabus after initial submission shall be submitted to the board in writing and shall not be implemented without approval from the board.

(6) Trainee clinical practice requirements. The dialysis technician trainee enrolled in a dialysis technician training program shall practice dialysis care incidental to the training program only under the supervision of a faculty member, or his designee.

(7) The dialysis technician training program shall be at least 400 hours in length. A minimum of 200 hours shall be didactic.

(8) Completion requirements. Requirements for successful completion of the dialysis technician training program shall be clearly specified. The requirements shall include demonstration of clinical competency and successful completion of a comprehensive, written final examination. The final examination shall be administered only during the final forty (40) hours of the training program. There shall be a statement of policy regarding a trainee who fails to successfully complete the training program.

(9) The program shall establish a written records retention plan describing the location and length of time records are maintained. At a minimum, the following records shall be maintained by the program:

(a) Provider name, dates of program offerings, and sites of the training program;

(b) The program code number issued by the board; and

(c) Trainee roster, with a minimum of name, date of birth, Social Security number, and program completion date.

(10) An individual who successfully completes the training program shall receive a certificate of completion that documents the following:

(a) Name of individual;

(b) Title of training program, date of completion, and location;

(c) Provider's name;

(d) The program code number issued by the board; and

(e) Name and signature of program administrator.

(11) The program shall submit the "List of Dialysis Technician Training Program Graduates" within three (3) working days of the program completion date.

(12) The program shall notify the board in writing within thirty (30) days of a training program closure. The notification shall include the date of closing, a copy of the program trainee roster from the date of the last renewal to the date of closing, the location of the program's records as defined in subsection (9) of this section, and the name and address of the custodian of the records.

(13) A dialysis technician training program that conducts either the didactic portion or the clinical portion in this state shall be required to be approved by the board and the program shall meet the requirements of this section.

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Section 8. Dialysis Technician Training Program Initial Approval. (1) To receive initial approval, a dialysis technician training program shall:

(a) File an "Application for Dialysis Technician Training Program Approval"; and

(b) Pay the fee established in Section ~~12[44][42]~~ of this administrative regulation.

(2) Board approval for a dialysis technician training program that meets the requirements of this administrative regulation shall be granted for a two (2) year period from the date of approval.

(3) Upon approval, the board shall issue a program code number.

### **Section 9. Continued Board of Approval of a Dialysis Technician Training Program. (1) To receive continued approval, a dialysis technician training program shall:**

(a) File an "Application for Dialysis Technician Training Program Approval";

(b) Submit an annual program evaluation summary report and any actions taken as a result of the evaluation as required by Section 7(4)(g) and (5) of this administrative regulation;

(c) Submit a list of current faculty including the name, title, and credential identifying the educational and professional qualifications of each instructor;

(d) Submit a copy of the program trainee roster for the past two (2) years as required by Section 7(9)(c) of this administrative regulation; and

#### **(e) Pay the fee established in Section 12 of this administrative regulation**

(2) The application shall be submitted at least two (2) months prior to the end of the current approval period.

(3) Continued approval shall be based on compliance with the standards set out in Section 7 of this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to maintain continued approval, the approval shall lapse.

Section ~~10[9][40]~~ Reinstatement of Dialysis Technician Training Programs. (1) A program whose approval has lapsed and that seeks to reinstate that approval shall:

(1) File an "Application for Dialysis Technician Training Program Approval"; and

(2) Pay the fee established in Section ~~11[42]~~ of this administrative regulation.

Section ~~11[40][44]~~ Board Actions on Dialysis Technician Training Programs. (1) A representative of the board may make a site visit to a dialysis technician training program to determine if the program is complying with regulatory standards.

(2) The board shall prepare a report of the site visit, identifying deficiencies for the training program, and shall include recommendations and requirements to be met in order to maintain compliance with standards.

(3) The program administrator shall submit to the board a response to the site visit report.

(4) Based on the report of deficiencies, the training program's response, and any other relevant evidence, the board may grant approval, continue approval, continue approval with stipulations as determined by the board, or propose to deny or withdraw approval of the program.

(5) A dialysis technician training program administrator may request a review of a board decision concerning approval using the following procedure:

(a) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the dialysis technician training program administrator contests.

(b) The board, or its designee, shall conduct a review. The dialysis technician training program administrator may appear in person to present reasons why the board's decision should be set aside or modified.

(c) The dialysis technician training program administrator shall be notified of the board's decision.

(6) The board shall deny or withdraw approval of a program after an administrative hearing conducted pursuant to KRS Chapter 13B.

Section ~~12[44][42]~~ Fees. (1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be seventy (70) dollars.

(3) The credential reinstatement fee shall be \$100.

(4) The dialysis technician training program initial approval fee shall be \$950.

(5) The dialysis technician training program continued approval fee shall be \$800.

(6) The dialysis technician training program reinstatement fee shall be \$950.

(7) An additional fee of twenty-five (25) dollars shall be charged for an application for renewal of the credential that is filed after the deadline for filing.

(8) An additional fee of \$150 shall be charged for an application for continued dialysis technician training program approval that is filed after the deadline for filing.

(9) A fee of thirty-five (35) dollars shall be charged for issuing a duplicate of the credential.

(10) A check submitted to the board for payment of a fee which is returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.

(11) A fee of ten (10) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(12) A fee of twenty-five (25) dollars shall be charged for a duplicate application form which is issued due to the failure to maintain a current mailing address as required by Section ~~12[43]~~ of this administrative regulation.

(13) A fee of thirty five (35) dollars shall be charged for a name change and the issuance of a new credential.

(14) All fees shall be nonrefundable.

Section ~~13[42][43]~~ Miscellaneous Requirements. (1) Any person credentialed by the board as a dialysis technician shall maintain a current mailing address with the board and immediately notify the board in writing of a change of mailing address.

(2) As a condition of holding a credential from the board, a dialysis technician shall be deemed to have consented to service of notices or orders of the board at the mailing address on file with the board. Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3) Any dialysis technician credentialed by the board shall, within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction. A conviction shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime. Upon learning of any failure to notify the board under this provision, the board may initiate an action for immediate temporary suspension until the person submits the required notification.

(4) Any dialysis technician credentialed by the board shall immediately notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction is surrendered or terminated under threat of disciplinary action or is refused, limited, suspended, or revoked, or if renewal of continuance is denied.

(5) If the board has reasonable cause to believe that any dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it may require the person to submit to a chemical dependency evaluation or a mental or physical examination by a practitioner it designates. Upon failure of the person to submit to a chemical dependency evaluation or a mental or physical examination, unless due to circumstances beyond the person's control, the board may initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(6) Every dialysis technician shall be deemed to have given consent to submit to a chemical dependency evaluation of a men-



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tal or physical examination when so directed in writing by the board. The direction to submit to an evaluation or an examination shall contain the basis of the board's reasonable cause to believe that the person is unable to practice with reasonable skill and safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining practitioner's testimony or examination reports on the ground of privileged communication.

(7) The dialysis technician shall bear the cost of any chemical dependency evaluation or mental or physical examination ordered by the board.

Section ~~14.~~~~[13.]~~[14.-] Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval", Kentucky Board of Nursing, 6/06;

(b) "Application for Dialysis Technician Credential", Kentucky Board of Nursing, 12/09;

(c) "Application for Renewal of Dialysis Technician Credential", Kentucky Board of Nursing, 9/07;

(d) "Checklist for Dialysis Technician Competency Validation", Kentucky Board of Nursing, 9/07;

(e) "Dialysis Technician Training Program Guide", August 14, 2001, Kentucky Board of Nursing; and

(f) "List of Dialysis Technician Training Program Graduates", Kentucky Board of Nursing, 9/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL A. KOMARA, RN, MSN, President

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### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, September 13, 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 281,] 42 U.S.C. 6991c, 6991e, [42 U.S.C.] 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 B, Part 281, 42 U.S.C. 6991e]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [Environmental and Public Protection] cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks [tank (UST) systems] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements [standards] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [401 KAR Chapter 42 identifies requirements for UST systems.] This administrative regulation establishes requirements concerning performance standards, registration, designated compliance managers and UST facility employees, and alternatives for upgrading existing UST systems.

Section 1. Registrations. (1)(a) The owner shall submit, to the cabinet, a UST Facility Registration Form, DEP 7112 for each UST

facility within thirty (30) days of bringing a UST system into operation.

(b) The form shall be signed by the owner and operator of the UST system.[-; and]

(c) The form shall be notarized.

(2)(a) Except as established in Section 2 of this administrative regulation, the owner shall submit to the cabinet an amended UST Facility Registration Form, DEP 7112 within thirty (30) days of any change to information contained within the most recently submitted UST Facility Registration Form.[-;]

(b) The form shall be signed by the owner and operator of the UST system.[-; and]

(c) The form shall be notarized.

(3) An amended UST Facility Registration Form, DEP 7112 shall be submitted for a UST system being placed into temporary closure for more than six (6) months.

(4) An unregistered UST system discovered during permanent closure activities conducted in accordance with 401 KAR 42:070 shall be listed on the Closure Assessment Report incorporated by reference in 401 KAR 42:070.

(5) With the exception of unregistered UST systems discovered during permanent closure activities in accordance with subsection (1) 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:

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(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 cabinet shall assign an agency interest number and shall notify the owner, in writing, of the agency interest number[.]

Section 5. Notification Requirements. Requirements for notification shall be as established in 40 C.F.R. 280.22.

Section 6. Notice and Verification of Installation of Underground Storage Tank and Piping. (1)(a) Owners shall submit the Notice of Intent to Install Underground Storage Tank or Piping, DEP 8044, to the appropriate Division of Waste Management Regional Office at least fourteen (14) days prior to installation of an underground storage tank or an entire piping run to afford the division representative the opportunity to be present during installation. [.]

(b) If a division representative fails to be present on the date scheduled for installation, the installation may proceed.

(2) After April 1, 2012, owners and operators shall submit a Verification 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 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, by August 8, 2012 and every twelve (12) months thereafter, 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.

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(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 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, ~~September [April] 2011~~ September [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~~ 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, ~~September [July] [April] 2011~~;

(f) "Installation Verification and Compatibility Form", DEP 7115, ~~September [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.

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](mailto:Cassandra.Jobe@ky.gov).

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### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, September 13, 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 overflow control, operation and maintenance of corrosion protection, compatibility, repairs, and reporting and recordkeeping.

Section 1. Spill and Overflow Control. Spill and overflow 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. Overflow Prevention Devices. All overflow prevention devices installed after April 1, 2012 shall be installed in an extractable fitting to allow for inspection, maintenance, and testing of the device.

Section 5. Corrosion Protection. (1) UST system components that routinely contain product and are regularly or intermittently in contact with soil, water, or backfill shall be protected from corrosion.

(2) Owners or operators with steel tanks or piping that do not have corrosion protection installed in accordance with subsection (1) of this section shall remove all regulated substances and initiate permanent closure, in accordance with 401 KAR 42:070, by January 1, 2012.

Section 6. Operation and Maintenance of Corrosion Protection. Requirements for operation and maintenance of corrosion protection shall be as established in 40 C.F.R. 280.31.

Section 7. Cathodic Protection System Evaluation. (1) A cathodic protection system evaluation shall be required within 180 days from the date of installation, repair, or modification of a cathodic protection system and at least every three (3) years thereafter.

(2) If the cathodic protection system fails an evaluation, but the cathodic protection system evaluator determines the failure may be attributable to adverse physical conditions related to the evaluation and determines that the system is otherwise in good working condition, then a reevaluation may be performed.

(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 15[43], 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;

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(c) Corrosion prevention;

(d) Assessing physical conditions for corrosion potential;

(e) Hands on field experience in the testing of both impressed current and sacrificial anode systems, which includes:

1. Using reference cells;

2. Taking remote readings for appropriate systems;

3. How to read and understand a rectifier;

4. Taking measurements/ -850 criterion; and

5. Typical and nontypical problems;

(f) Review of EPA's regulatory requirements for corrosion protection; and

(g) Review of standards and recommended practices from corrosion protection publications including, NACE, API, NFPA, STI, and ASTM.

(2) Owners or operators shall ensure that individuals, qualified to perform cathodic protection system evaluations in accordance with subsection (1) of this section, submit to the cabinet upon request, documentation verifying that the training requirements have been met.

Section 10. Compatibility. (1) Requirements for compatibility shall be as established in 40 C.F.R. 280.32; and

(2) The owner or operator of a UST system installed after April 1, 2012 shall submit the Installation Verification and Compatibility Form, DEP 7115 within thirty (30) days of bringing the UST system into operation in order to verify that the UST system is compatible with the regulated substance stored.

(3) A UST System Compatibility Form, DEP 6089 shall be submitted to the cabinet 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.

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 com-



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pleted 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](http://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, September 13, 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

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(e) A copy of a deed or other documentation indicating ownership of the tanks, if the tanks have not been registered in the applicant's name, in accordance with 401 KAR 42:020, with the Division of Waste Management for twelve (12) months prior to the SOTRA application being submitted.

(2) The owner shall retain a copy of the SOTRA Application for their records.

(3)(a)]:

(2)(a)] In response to the application submitted, the cabinet shall issue a letter setting forth the owner's eligibility status and the availability of funding for the closure of the petroleum storage tank.

(b) Permanent closure of the tank system shall not begin until the cabinet has approved the application and established the reimbursable amount. Failure to comply with this requirement shall result in denial of the reimbursement.

Section 4[5]. Permanent Closure Costs. The rates established for permanent closure costs in this section shall apply to a SOTRA Application for Assistance approved after October 6, 2011. (1)(a) Reimbursement from this account shall be determined from the lesser of two (2) dollars and sixty (60) cents per gallon of tank capacity or the following matrix table:

Number of Tanks in Pit	Size of Largest Tank in Pit (gallons)			
	Less than 3,100	3,101 to 5,100	5,101 to 10,000	Greater than 10,000
1	\$3,900	\$4,420	\$6,370	\$7,020
2	\$6,370	\$7,150	\$9,620	\$11,180
3	\$8,320	\$9,750	\$12,610	\$15,340
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 5[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).]

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(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 thirty (30) days of receipt of the request shall cause the claim to be denied.

(7)(6) Reimbursement shall be contingent upon a determination by the cabinet that the report required is complete and meets the requirements of 401 KAR Chapter 42.

(8)(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/ust> [page located at [www.waste.ky.gov](http://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](mailto: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.



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### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-130(1)(j)

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not have increased cost to the agency for implementation. There may be an increase in the amount of money paid out of SOTRA as the rates have increased.

(d) How much will it cost to administer this program for subsequent years? This amendment will not have increased cost to the agency for implementation. There may be an increase in the amount of money paid out of SOTRA as the rates have increased.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, September 13, 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) A category I jail with eighty (80) beds or less shall provide twenty-four (24) hour awake supervision for all prisoners by providing a minimum of two (2) jail personnel, excluding jail personnel designated for communication.

(2)(a) A category I jail with eighty-one (81) to 100 beds shall provide awake supervision for all prisoners by providing a minimum of three (3) jail personnel, excluding jail personnel designated for communication, between the hours of 6:00 a.m. and 10 p.m., except as provided in paragraph (c) of this subsection.

(b) The jail shall provide a minimum of two (2) jail personnel, excluding jail personnel designated for communication, for the remaining hours of the day.

(c) If the jail's night shift does not coincide with the hours of 10 p.m. to 6:00 a.m., then the jail may request in writing an exception to allow the jail to meet the minimum requirements in paragraph (a) of this subsection during a different time frame. The division may approve an exception for a different time frame to comply with paragraph (a) of this subsection.

(3) A category II, III, IV, and V jail [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.

(4) 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.]

(5)[(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.

(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;

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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, September 13, 2011)

#### 501 KAR 3:050. Physical Plant.

RELATES TO: KRS 441.045, 441.055, 441.064, 441.075, **441.415-441.450**

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 standards and procedures to be followed in the design, **construction, renovation, and expansion** of full-service jails.

Section 1. Definitions. (1) "Construction authority" is defined in **KRS 441.415[441.015]**.

(2) "Division" means the Department of Corrections Division of Local Facilities.

(3) "Expansion" means a renovation **which includes an increase in the number of square footage of the local correctional facility to add prisoner bed space** as described in KRS 441.450(2).

(4) "Local correctional facility" is defined in **KRS 441.415[441.015]**.

(5) "Renovation" means changes to the physical plant of or construction on an existing local correctional facility that **does not:**

**(a) Include an increase in the number of square footage of the local correctional facility to add prisoner bed space; and**

**(b) Require approval of the construction authority**~~[is not an expansion]~~ as described in KRS 441.450(2).

Section 2. Consultation. The department may ~~[department shall]~~ provide to a unit of local government ~~[county government]~~ seeking to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails. The consultant may ~~[shall]~~ meet with the appropriate officials of that county and advise them concerning: (1) Site selection;

(2) Probable need as it relates to capacity and types of prisoners to be housed;

(3) Sources of financing for constructing;

(4) Laws and administrative regulations relating to treatment of prisoners;

(5) Laws and administrative regulations relating to facilities for prisoners;

(6) Sources of revenue for operations of the jail;

(7) Probable cost for operation of the jail; and

(8) Potential for sharing facilities with adjoining counties.

Section 3. Application for Construction. **(1) Prior to the commencement of any construction for a new local correctional facility or for the renovation or expansion of an existing local correctional facility, a unit of local government shall submit to the division:**

**(a) An application for approval; and**

**(b) If the construction is for a new facility or an expansion of an existing facility, any applications and materials submitted to the construction authority in accordance with KRS 441.430.**

**(2) The application required by subsection (1)(a) of this section shall:**~~[A unit of local government shall submit an application to the division for approval prior to the commencement of any construction for the renovation of an existing local correctional facility. A unit of local government shall also submit the applications required by KRS 441.430 to the division. The application shall:]~~

**(a)[(4)] Be signed by the:**

**1.[(a)] County judge-executive for each county involved in the proposal;**

**2.[(b)] Highest executive of a unit of local government other than a county; or**

**3.[(c)] Head of the Regional Jail Authority, if applicable;**

**(b)[(2)] State in detail the need for the specific request being proposed;**

**(c)[(3)] Identify the unit of local government submitting the request;**

**(d)[(4)] Identify other units of local government that are partnering in the pursuit of a full service regional jail, if applicable;**

**(e)[(5)] State the following information for the current jailer:**

**1.[(a)] Name;**

**2.[(b)] Address; and**

**3.[(c)] Phone number;**

**(f)[(6)] Identify the type of local correctional facility currently being used;:**

**1.[(a)] Full service;**

**2.[(b)] Regional full service;**

**3.[(c)] Life safety; or**

**4.[(d)] None.**

**(g)[(7)] Identify the type of local correctional facility which will exist after the proposed construction is completed:**

**1.[(a)] Full service; or**

**2.[(b)] Regional full service;**

**(h)[(8)] If construction is proposed at a location other than where the current local correctional facility is located, then provide the following information for the new property:**

**1.[(a)] Address;**

**2.[(b)] Description of new property;**

**3.[(c)] Explanation of ownership of new property; and**

**4.[(d)] Estimated cost to purchase property if not owned by the unit of local government proposing construction;**

**(i)[(9)] If the proposed construction is for a new local correctional facility, then identify the size of facility being requested using the bed capacity increments required for plans in KRS 441.420(3).**

**(j)[(10)] If the proposed construction is for an expansion ~~[that increases the square footage as described in KRS 441.450(2)], then state the:~~**

**1.[(a)] Number of proposed additional beds; and**

**2.[(b)] Proposed additional square footage;**

**(k)[(11)] If the proposed construction is for a renovation, then state:**

**1.[(a)] The purpose of the renovation; and**

**2.[(b)] The amount of any proposed additional square footage;**

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(1) [(12)] For the current local correctional facility, state the:

1. [(a)] Current capacity;

2. [(b)] Average daily population (ADP) for the preceding two (2) years;

3. [(c)] Total amount of remaining bond indebtedness;

4. [(d)] Amount of monthly debt installment payment; and

5. [(e)] Remaining number of payments on any note; and

(m) [(13)] Identify the architect, consultant, or other person or entity with which the unit of local government consulted for the construction proposal; and

(14) If the construction authority requires additional information be provided for its application process, then the unit of local government shall supply the additional information required by the construction authority to the Division when filing its application.]

Section 4. Documentation Required for Application. A unit of local government shall [(4)] provide a copy of the following documents with any application submitted to the division:

(1) [(a)] Ordinance for the unit of local government showing an affirmative vote for the proposed construction for the local correctional facility;

(2) [(b)] If applicable, a resolution or other verified document showing the regional jail authority affirmative vote for the proposed construction for the local correctional facility;

(3) [(c)] Deed, lease, or legal description of the new property for proposed construction;

(4) [(d)] Local correctional facility budget for the preceding two (2) years;

(5) [(e)] General budget for any unit of local government proposing construction;

(6) [(f)] Feasibility study or other documentation provided by any architect, entity, or other person that consulted on the proposed construction; and

(7) [(g)] Documentation showing that the unit of local government has sufficient bonding and revenue sources to pay the bond indebtedness, operating costs, and maintenance costs over the anticipated life of the note for the proposed construction; and

(2) If the construction authority requires additional documentation be provided for its application process, then the unit of local government shall supply the additional documentation required by the construction authority to the Division when filing its application.]

Section 5. Site Selection Review. The following criteria shall be considered by the Division in its site selection review [Site Acceptance. A jail shall not be built without site acceptance by the department. The following criteria shall be considered in site selection]:

- (1) Size;
- (2) Proximity to court;
- (3) Proximity to community resources;
- (4) Availability of public transportation;
- (5) Environmental health;
- (6) Adequate parking; and
- (7) Provisions for future expansion.

Section 6 [Section 3]. Construction Documents. (1) A unit of local government shall submit plans and specifications to the Division for approval prior to the commencement of any construction for a new local correctional facility or for the renovation or expansion of an existing local correctional facility [for the renovation of an existing local correctional facility]. The division may waive some of the requirements of this section on a case-by-case basis [for a renovation] depending on the specifics proposed for the construction [renovation].

(2) If the construction is for a new facility or expansion of an existing facility, a unit of local government shall submit plans and specifications for the applications required by KRS 441.430 to the Division.

(3) Whether new construction or renovation or expansion of an existing facility, plans and specifications for a local correctional facility shall meet the following criteria and contain the following documentation: [Prior to the renovation or construction of any jail, or for information review purposes, plans and specifications shall be submitted to the department for review and approval.

Plans and specifications for jail renovation or construction shall contain the following criteria and documentation:]

(a) A programming phase to include: [(1) For major renovation or new construction or information review purposes, a programming phase, to include:]

1. [(a)] Evaluation of the existing facility;

2. [(b)] Population analysis as based on the NIC (National Institute of Corrections) staffing analysis, and may [shall] include, jail [jail's] operations, jail programs, court location, and transportation issues;

3. [(c)] Space requirements based on population analysis and standards for the facility and site outlined in this administrative regulation;

4. [(d)] Staffing analysis;

5. [(e)] Cost analysis to include construction and operation costs;

6. [(f)] Financing alternatives, if applicable;

7. [(g)] Design-construction time schedule; and

8. [(h)] Summary and recommendations.

(b) [(2)] A schematic phase to include [containing]:

1. [(a)] A scale drawing of each floor plan with proposed rooms and areas one-eighth (1/8) inch minimum;

2. [(b)] A scale drawing of the site, locating the building, parking, and other facilities with one (1) inch equaling [equals] fifty (50) feet;

3. [(c)] Documentation of site as to:

a. [(i)] [(1)] Size;

b. [(ii)] [(2)] Proximity to court;

c. [(iii)] [(3)] Proximity to community resources;

d. [(iv)] [(4)] Availability of public transportation;

e. [(v)] [(5)] Environmental health;

f. [(vi)] [(6)] Adequate parking; and

g. [(vii)] [(7)] Provisions for future expansion; and

4. [(d)] Sections through the proposed structure indicating deck heights of rooms, mechanical spaces, roof slopes, and other related information;

5. [(e)] Scale elevation drawing of exterior walls;

6. [(f)] Schematic cost estimate to include revised construction and operation costs; and

7. [(g)] A revised design-construction time schedule.

(c) [(3)] A design development phase containing:

1. [(a)] A scale drawing on each floor plan with proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;

2. [(b)] All necessary construction drawings including construction details;

3. [(c)] Specifications for materials and workmanship;

4. [(d)] A proposed contract with general and special conditions;

5. [(e)] Engineering calculations for the foundations, structure, heating, ventilating, air conditioning, lighting, and plumbing; and

6. [(f)] Detailed estimates of cost of land, site development, construction, financing, professional services, equipment, and furnishings.

(d) [(4)] Construction document phase containing:

1. [(a)] Revised design development construction drawings following review by all applicable agencies, signed by an architect registered in the Commonwealth of Kentucky, and revised if necessary to include changes required by the division [department]; and

2. [(b)] Revised design development specifications of material and workmanship following review by all applicable agencies.

(e) [(5)] A contract administration phase containing:

1. [(a)] Signed copies of the contracts for construction, financing, and bonding;

2. [(b)] Signed copies of the construction permits; and

3. [(c)] Documentation of required review by other applicable state agencies.

(4) Whether new construction or renovation or expansion of an existing facility, [(f)] [(6)] every change order shall be submitted to the Division jail consultant [department] for review and approval.

Section 7 [Section 4]. Approval of [Renovation.] Construction Plans and Specifications. (1) Construction shall not begin until the construction plans have been approved by the division and, if re-

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quired, the construction authority has approved the construction[for the document phase]. The division shall [document phase has been approved by the Division of Local Facilities. The department shall]:

(a) Review each complete application [submission] within thirty (30) days of receipt; [and]

(b) For a renovation, issue:

1. An approval;

2. An acceptance with required changes; or

3. A rejection, with reasons stated;[.]

(c) For an expansion or new local correctional facility, issue a recommendation to the construction authority whether to approve construction; and[er]

(d) For an incomplete application, inform the applicant of the information or documents that need to be submitted to complete the application.[.]

(2) A request for changes to the plans shall be submitted to the division and shall include a description of the changes requested and the reasons for the changes.[.] and[.] issue a letter of:

1. Approval;

2. Acceptance with required changes; or

3. Rejection, with reasons stated.

(2) Depending on the site of the proposed construction, renovation or addition, the department may combine two (2) or more of the phases outlined in Section 3 of this administrative regulation, for review and approval.]

(3) A change to the approved plans [plan] shall require redrawing unless specifically exempted by the department. Specifications shall be rewritten to reflect a change.

Section 8[Section-5]. Exemption from compliance. (1) If a jail was built before the effective date of the physical plant standards in Section 10 of this administrative regulation, then it is exempt from the standards except as stated in subsection (3) of this section.

(2) If a renovation or expansion was built before the effective date of a physical plant standard in Section 10 of this administrative regulation, then it is exempt from the standard except as stated in subsection (3) of this section.

(3) If a new jail, renovation, or expansion is built after the effective date of a physical plant standard in Section 10 of this administrative regulation, then it shall meet the standard pursuant to Section 10 of this administrative regulation, unless a waiver is obtained pursuant to Section 9 of this administrative regulation.

Section 9. Waiver of Compliance. (1) The department may grant a waiver of the implementation of the physical plant standards in Section 10[9] of this administrative regulation for an existing jail if the department determines that:

(a) ~~[That]~~ Strict compliance will ~~[shall]~~ cause unreasonable difficulties;

(b) ~~[That]~~ A waiver will ~~[shall]~~ not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail; and

(c) ~~[That]~~ Compliance may ~~[shall]~~ be achieved in a manner other than that specified, but in a manner that is sufficient to meet the intent of this administrative regulation.

(2) If a waiver from a standard is desired, the responsible unit of local government ~~[local authority]~~ shall submit a written request to the department. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Identification and description of the specific difficulties involved in meeting strict compliance;

(c) Description of the alternative proposed; and

(d) Provision of sufficient documentation which shall demonstrate that the waiver, if granted, will ~~[shall]~~ not jeopardize the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail.

(3) A waiver, if granted by the department, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. A waiver shall not be granted for longer than twelve (12) months. A waiver granted for a

twelve (12) month period shall be reviewed for reapproval at the end of the period.

Section 10[9][Section-6]. Physical Plant Design Standards. New local correctional facilities shall comply with the physical plant design standards in this section. All existing local correctional facilities that are in operation shall comply with the physical plant design standards, unless the facility is **exempt from a standard pursuant to Section 8 of this administrative regulation or has obtained a waiver from the department pursuant to Section 9[8] of this administrative regulation for a standard in this section.** ~~A[The department may require] new local correctional facility and[facilities or] the expansion or renovation of an existing local correctional facility shall[te] comply with the additional requirements incorporated by reference in Section 12[44] of this administrative regulation unless the facility has obtained a waiver from the department pursuant to Section 9 of this administrative regulation.~~ [Facility-Design. All existing jails that are in operation and have prior approval from the department shall be exempt from the requirements of this section until the facility is renovated. Depending upon its size and intended use, each jail shall include within its walls the following facilities and equipment:]

(1) Entrances. Each jail shall have three (3) separate and distinct entrances: a public entrance, a prisoner entrance, and a service entrance. The department may permit these entrances to be combined.

(a) Public entrance. The purpose of this entrance shall be to divert the general public from the security area of the jail and from contact with incoming prisoners. This area shall be the location for the general public to conduct their business at the jail. The following design features shall be incorporated:

1. Provide a clear view of this entrance from the control room by means of direct surveillance or closed circuit TV; and

2. Meet the requirements for handicapped persons.

(b) Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It shall be located in close proximity to storage rooms and the kitchen area.

(c) Prisoner entrance. The purpose of this entrance shall be to provide secure and controlled access to the jail for prisoners. The entrance shall be serviced by a covered drive-through sally port~~[an enclosed drive-in sally]~~, located adjacent to the jail intake area, and ~~[port]~~ made secure by electronically or manually operated doors for entrance and exit, or a secure walk-in vestibule and shall incorporate the following design features:

1. Be located adjacent to the booking area;

2. Be monitored from the control room;

3. Be free of steps or other obstacles;

4. Be protected from inclement weather;

5. Have a security penal-type pistol locker in the sally port or vestibule; and

6. Have approved penal-type hardware and equipment.

(d) If the vestibule is used for outside entrance, at least the outer entry door shall be remotely operated.

(2) Exits. An opening in the security perimeter shall be secured with a penal device. Fire exits, if possible, shall open into controlled, secured courts or exercise areas.

(3) Administrative areas. Administrative areas shall provide space outside the secured area of the jail for the housing of administrative offices and to accommodate the public. Administrative areas shall contain the following additional areas:

(a) A waiting area which shall provide:

1. Space for the general public;

2. Protection from inclement weather; and

3. If the facility is a new jail, ADA compliant toilet facilities for both male and female persons and drinking fountains;

(b) A visiting area, public side which shall:

1. Provide for private communication with prisoners;

2. Be located in close proximity to the waiting area; and

3. Provide at least one (1) ADA compliant space;[.]

(c) An office area which shall be of sufficient space to house the administrative function of the jail; and

(d) An entrance to the security area which shall:

1. Provide secure access to the security area;

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2. Be of penal-type; and
3. Have access controlled from the security area.
- (4) Security area. The area shall enclose those facilities and services required for or used by prisoners. It shall contain a book- ing area. The purpose shall be to provide a private and separate area, properly equipped to carry out admission and release proce- dures. The equipment shall be penal-type. This area shall be de- signed for different classes of prisoners. Design features for this area shall include:
  - (a) Close proximity to a secure area for storage of prisoner personal property;
  - (b) Close proximity to an area for photography and fingerprint- ing;
  - (c) Close proximity to an area for showering, delousing, and strip searching a prisoner and which ensures privacy for the prisoner;
  - (d) Close proximity to temporary holding and detoxification cells; and
  - (e) Located in a manner to be monitored by a control room;
- (5) Detoxification area. The purpose shall be to provide an area to separate intoxicated prisoners from the general prisoner population. Design features shall include:
  - (a) A minimum of fifty (50) square feet per prisoner;
  - (b) A minimum of eight (8) feet deck height including soffits;
  - (c) One (1) concrete slab ~~bunk of approved material~~ thirty (30) inches wide by seventy-two (72) inches long by four (4) inches high for each prisoner;
  - (d) A penal commode, lavatory, and a flush floor drain con- trolled from outside the cell;
  - (e) A bubble-type drinking fountain;
  - (f) ~~The~~ ~~These~~ fixtures and equipment shall be penal-type;
  - (g) Each surface inside the area shall be smooth, flush, and free of sharp edges and protrusions;
  - (h) Each horizontal surface (the bunk and the floor) shall be sloped (one-fourth (1/4) of an inch to the foot) to the floor drain;
  - (i) The protruding corners (except at deck) shall be covered;
  - (j) Deck, walls, surfaces of the wall base, and floors shall be of approved masonry, concrete, or steel construction; and
  - (k) Each detoxification ~~detox~~ cell shall have sufficient penal- type fixtures capable of providing twenty (20) foot-candles of light with a nightlight capable of providing five (5) foot-candles of light.
- (6) Holding areas. The purpose of holding areas shall be for temporary detention not to exceed eighteen (18) hours in secure holding or eighteen (18) hours in diversion holding.
  - (a) Design features for secure holding shall include:
    1. Twenty-five (25) square feet per rated capacity with a mini- mum size of no less than fifty (50) square feet;
    2. Eight (8) feet deck height;
    3. One (1) commode and lavatory for a rated capacity of ten (10) or less, two (2) commodes and lavatories for a rated capacity of eleven (11) to twenty (20), or three (3) commodes and lavatories for a rated capacity of twenty-one (21) or more; ~~One (1) penal-type bench per rated capacity;~~
    4. Penal-type equipment;
    5. One (1) penal-type lavatory and commode;
    6. One (1) penal-type light fixture capable of providing twenty (20) foot-candles of light; and
    7. Decks, walls, surfaces of wall bases and floors that are con- structed of approved masonry, concrete or steel construction.
  - (b) If a diversion holding area is provided, features and re- quirements shall include:
    1. Twenty-five (25) square feet per rated capacity with a mini- mum size of fifty (50) square feet;
    2. Total rated capacity not to exceed twenty-four (24) persons;
    3. One (1) bathroom for a rated capacity of eight (8) or less; two (2) bathrooms for a rated capacity of nine (9) or more;
    4. At least one (1) water fountain that is located in the area;
    5. A phone system that is available for use by prisoners;
    6. Fire-rated construction with penal hardware, windows, and door;
    7. Fire-rated chairs and tables per rated capacity but no beds;
    8. An unobstructed view into the area; and
    9. Areas that allow constant in-person surveillance.
  - (c) Policy and procedure shall set forth criteria for placement of

prisoners in the diversion holding area.

(7) Medical exam area. The purpose of this room shall be to provide a separate and secure area for medical examinations and rendering medical treatment. Design features shall include:

- (a) Minimum dimensions that are no less than 100 ~~ten (10)~~ feet;
  - (b) Minimum deck height that is eight (8) feet including soffits;
  - (c) One (1) lavatory or counter sink;
  - (d) One (1) work counter;
  - (e) Secured lockers for medical equipment, medical instru- ments, medications, bandages, etc., secured to the floor or walls or a secure closet;
  - (f) One (1) or more medical examination tables;
  - (g) Electrical power outlets with at least one (1) outlet or power source connected to an emergency power source;
  - (h) Decks, walls, and floors constructed of approved masonry, concrete, or steel construction;
  - (i) A secure area for storage of medication and medical equip- ment if medical services are provided outside the jail; and
  - (j) One (1) bathroom with commercial grade fixtures.
- (8) Visiting area, prisoner side. The purpose shall be to provide secure and private visitation for the prisoners. The equipment and furnishings shall be of penal-type and permanently attached. At least one (1) area shall ~~is to~~ be ADA compliant.
- (9) Conference area. The purpose of this area shall be to pro- vide space for confidential conferences between prisoners and lawyers, counselors, clergy, etc. Design features shall include:
  - (a) Doors, windows, and light fixtures shall be penal-type;
  - (b) Walls, floors, and decks shall be of approved masonry, concrete, or steel construction; and
  - (c) Furnishings shall be noncombustible and nontoxic as ap- proved by the department.
- (10) Multipurpose room. The purpose of this area shall be to provide space for assembly of prisoners for specific program activi- ties.
  - (a) The multipurpose room shall be:
    1. In jails with 100 or fewer beds, a minimum of 250 square feet;
    2. In jails with 101 to 300 beds, a minimum of 500 square feet or two rooms with a minimum of 250 square feet each; and
    3. In jails with 301 or more beds, a minimum of 1,000 square feet or four (4) rooms with a minimum of 250 square feet each.
  - (b) Design features shall include:
    1. Doors, windows, and light fixtures shall be penal-type;
    2. Walls, floor, and deck shall be of approved masonry, con- crete, or steel construction;
    3. Furnishings shall be noncombustible and nontoxic as ap- proved by the department; and
    4. Deck shall be of approved construction.
  - (11) Outdoor recreation. The purpose of this area shall be to provide secure outdoor space for recreational activities. This area shall allow at least thirty-five (35) square feet per prisoner in an area with a minimum of 385 square feet. At least part of this area shall ~~is to~~ be covered.
  - (12) Kitchen. The purpose of this area shall be to provide suffi- cient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:
    - (a) Compliance with the Retail Food Code, 902 KAR 45:005;
    - (b) Commercial-type stoves and refrigeration units;
    - (c) Penal-type doors and windows; and
    - (d) Walls, floors, and decks constructed of fire-rated masonry, concrete, or steel construction.
  - (13) Control room. The purpose of this area shall be to control all movement of prisoners within the jail and traffic in and out of the security area. Also, this area shall be the hub for operations within the jail. Design features shall include:
    - (a) Doors and windows shall be of penal-type;
    - (b) Walls, floors, and deck shall be approved masonry, con- crete, or steel construction;
    - (c) Audio and video monitors shall be located in this area;
    - (d) Gauges, indicators, and alarms shall be located in this area;
    - (e) Central control panels shall be located in this area; and
    - (f) This area shall permit visual observation of all corridors,

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entrances, and exits under its supervision.

(14) If jail personnel are [staff-is] not within normal hearing distance of prisoners, an audio communication system shall be installed to allow jail personnel [staff] to communicate with prisoners.

(15) A panic button, jail personnel [staff] call station, or portable communication device shall be installed or available in corridors and jail personnel [staff] observation areas, which shall sound an alarm in the control center in an emergency situation.

(16) Confinement areas. The purpose of these areas shall be to provide suitable living conditions for all types of prisoners lodged in the jail.

(a) Design features for all living areas shall include:

1. Sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light;

2. Ventilation to meet air exchange as required in the Kentucky Department of Corrections Jail Construction, Expansion, and Renovation Guidelines [~~Jail Construction and Renovation Standards~~];

3. Temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit to eighty-five (85) degrees Fahrenheit);

4. Approved masonry, concrete, or steel construction;

5. Penal-type furnishings and equipment that are permanently attached;

6. Floor drains that service each living area;

7. An approved securable food pass where appropriate and approved by the division [Kentucky DOC] jail consultants;

8. Electrical outlets that if provided, are ground-faulted or have ground-fault circuit breakers; and

9. Penal-type receptacle and switch plate covers.

(b) All cells and housing areas shall meet the following design requirements:

1. Prisoner living areas shall be equipped with the security hardware to meet the security requirements of the prisoners housed in the area. Depending on the size of the jail, at least one (1) living area shall be designed at high security and be equipped with a safety vestibule to enter the living area.

2. Depending on the size of the jail, at least one (1) male, one (1) female, and one (1) medical isolation cell shall be provided.

3. All cells shall open into a dayroom and a cell shall not be less than seventy (70) square feet. A cell shall not have more than two (2) penal-type bunks. If two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours, except in emergency situations.

4. If the vestibule is used at a cell area, at least the inner door shall be remotely operated.

5. Each cell shall contain:

a. A penal-type commode, lavatory, and drinking fountain, penal-type bunks secured to the floor or wall, penal-type table with two (2) seats, and penal-type storage area for personal property; and

b. A penal-type light fixture with controls inaccessible to prisoners unless it has staff override.

6. The jail shall provide living space for low security prisoners including work release and community service workers. This area shall be either cells opening into a dayroom or a combination of this and multiple-occupancy dorms. If dorms are used, they shall include:

a. Forty (40) feet per prisoner;

b. One (1) commode, one (1) lavatory, and one (1) drinking fountain per ten (10) prisoners, but one (1) urinal may be substituted for each commode in male areas so long as the commodes shall not be reduced to less than one-half (1/2) the number required;

c. One (1) shower per twenty (20) prisoners;

d. Sufficient tables and benches to handle the number of prisoners housed in the dorm;

e. One (1) penal-type storage area for personal property per prisoner; and

f. One (1) penal-type bunk per prisoner.[:i]

7. Jails may assign conditional housing arrangements relating to overcrowding if they meet the minimum square footage allowable for the area, and have in place an objective classification sys-

tem [approved by the department] relating to the management of the inmate population.

a. The conditional housing arrangement assignment shall be limited to a maximum of seven (7) days.

b. If at any time during the seven (7) days the population drops below the maximum allowable number, the seven (7) day time-frame shall restart. The cycle of assigning conditional housing arrangements shall not exceed a continuous period of more than four (4) consecutive weeks within a sixty (60) day time period without being found in violation.

c. The requirements of subparagraph 7. of this paragraph[This] shall apply to all secure and nonsecure areas where a maximum number of inmates have been predetermined by the jail to be in the area.

8.[7.] Each dayroom area shall contain:

a. Thirty-five (35) square feet per prisoner; [and]

b. One (1) commode per ten (10) prisoners, but one (1) urinal may be substituted for each commode in male areas so long as the commodes shall not be reduced to less than one-half (1/2) the number required;

c. One (1) lavatory per ten (10) prisoners;

d. One (1) drinking fountain per twenty (20) prisoners;

e. One (1) shower per twenty (20) prisoners; and

f. Tables and benches sufficient to handle the rated capacity with space twenty-four (24) inches wide and twelve (12) inches deep per prisoner.

(17) Direct supervision areas. The purpose of a direct supervision area shall be to provide suitable living conditions for prisoners who are located in the jail whose behavior indicates their ability to function in a less secure setting under the direct supervision of jail personnel [staff]. Jails that elect to use the direct supervision concept shall have a sufficient number of secure cell or dormitories, as approved by the Department [of Corrections], in order to separate prisoners who display negative behavior in direct supervision areas. All direct supervision areas shall have a secure perimeter. Direct supervision area design features shall include:

(a) Sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light;

(b) Ventilation to meet air exchange as required in the Kentucky Department of Corrections Jail Construction, Expansion, and Renovation Guidelines [~~Jail Construction and Renovation Standards~~];

(c) Temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit to eighty-five (85) degrees Fahrenheit;

(d) Approved masonry or concrete construction;

(e) Penal- or commercial-type furnishings and equipment;

(f) Electrical outlets that are ground-faulted or have ground-fault circuit breakers;

(g) Dormitories that provide not less than forty (40) square feet per person and do not exceed seventy (70) persons;

(h) One (1) commode, one (1) lavatory, and one (1) drinking fountain per ten (10) prisoners, but one (1) urinal may be substituted for each commode in male areas so long as the commodes shall not be reduced to less than one-half (1/2) the number required;

(i) One (1) shower per twenty (20) prisoners;

(j) Sufficient tables and chairs to handle the number of prisoners in the dorm;

(k) One (1) storage area for personal property per prisoner;

(l) A phone system available for use by prisoners; and

(m) Compliance with all other full-service requirements as outlined in 501 KAR Chapter 3.

Section 11[10]. In any new construction or expansion of the local correctional facility, there shall not be a 911 Control Center housed within the secure perimeter of the local correctional facility. Any increase of square-footage of an existing 911 Center shall require the removal of the Center's location to a new location outside the secure perimeter of the local correctional facility.

Section 12[14]. Incorporation by Reference. (1) "Kentucky Department of Corrections Jail Construction, Expansion, and Renovation Guidelines", 9-11[3-14], is incorporated by refer-

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~~ence. [Section 7. Incorporation by Reference. (1) "Kentucky Department of Corrections Jail Construction and Renovation Standards," 10-07, is incorporated by reference.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Corrections, Division of Local Facilities, 2439 Lawrenceburg Road, P.O. 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

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 THOMSON, 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, September 13, 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, except for mental health evaluations for involuntary commitments pursuant to KRS Chapter 202A.

(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.

(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 [400 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)] The jail shall follow [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;

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- (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 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.

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, September 13, 2011)

501 KAR 3:140. Prisoner rights.

RELATES TO: KRS 441.045, 441.047, 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 to ensure the protection of rights of prisoners in those full-service jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written statement of prisoner rights that shall address:

- (a) Access to court;
- (b) Access to attorney;
- (c) Mail;
- (d) Telephone;
- (e) Grievance procedure;
- (f) Search and seizure;
- (g) Disciplinary procedure;
- (h) Racial segregation;
- (i) Medical care;
- (j) Mental health care, if available; and
- (k) Religion.

(2) The statement of prisoner rights shall be made available to all inmates being assigned to general housing units. The prisoner rights may be posted in a conspicuous place, provided in hard-copy format, or provided through closed circuit television, [in the booking area and living areas of the jail, and a copy shall be made available to the prisoner as soon after assignment as possible. Upon admission and receipt, a prisoner shall sign that he has received a written copy of the prisoner's rights.]

(3) The jailer shall not prohibit a prisoner's right of access to the judicial process.

(4) The jailer shall ensure the right of a prisoner to have confidential access to his attorney or authorized representative.

(a) To the extent available in the jail and reasonable for use by an attorney, "confidential access" shall include a meeting with counsel in a private room in the jail. The room may be used for purposes other than attorney-client visits, but shall meet the following conditions:

1. Jail employees and other prisoners shall not enter the room during the attorney-client meeting, unless an emergency or the security of the jail requires;

2. The room should be located so that conversations in ordinary tones with the door closed cannot be overheard by others outside the room;

3. If the room is located so that jail personnel could not hear a call for aid from the room with the door closed, then the room shall contain some other means to summon aid;

4. The room shall contain a desk or table and seating for an attorney, an assistant, and a prisoner;

5. The room shall have a means to access electricity suitable for plugging in a laptop or portable television, if the jail allows these items to be brought into the jail by an attorney, for the purpose of viewing discovery or other litigation materials. The jail may provide a laptop, portable television, or other means for viewing discovery; and

6. The attorney shall be permitted access to a telephone, unless an emergency or the security of the jail requires otherwise. The jail may provide a phone in the meeting room or in another location within the jail.

(b) Prisoners shall not be given access to cellular phones under any circumstances.

(c) Prisoners shall not be given access to a laptop, except to the extent required to review litigation materials in the immediate presence of an attorney or authorized representative, if the jail allows a laptop to be brought in for this purpose.

(d) The jail shall address in its policy and procedures manual the handling of legal mail sent or received by a prisoner.



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The policy shall include provisions concerning the constitutional limits on reading prisoner legal mail and opening and inspecting legal mail in the presence of the inmate.

(e) The jail shall address in its policy and procedures manual reasonable access for a prisoner to a telephone to make collect calls to counsel. The policy shall include provisions for any required actions by the prisoner or attorney to allow the telephone system to prevent recording of the attorney-client call.

(5) The jailer shall have a written policy and procedure that defines the jail's visitation rules [and regulations], which shall include:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend;

(b) At least one (1) visit per week per prisoner shall be allowed except if a prisoner is assessed a disciplinary penalty for an infraction of rules governing visitation or the prisoner's current institutional behavior presents an imminent danger or threat of danger to staff or other prisoners;

(c) A visit shall not be less than fifteen (15) minutes;

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit; and

(e) Children, if accompanied by an adult, shall be permitted to visit a prisoner.

(6) Attorneys, clergy, and health care staff [medical personnel] shall be permitted to visit a prisoner at reasonable hours, other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(7) Each visitor shall register before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (5) of this section or established in subsection (6) of this section.

(8) A prisoner shall not be restricted in regard to whom he may have as a visitor unless the jailer determines to exclude the visitor on the basis of one (1) or more of the following conditions:

(a) The visitor:

1. Represents a clear and present danger to security;
2. Has a past history of disruptive conduct at the jail;
3. Is under the influence of alcohol or drugs;
4. Refuses to submit to a search; or
5. Refuses to show proper identification; or

(b) The prisoner refuses the visit.

(9) Except for visitors pursuant to subsection (6) of this section, the jail personnel [staff] may monitor and record visitor and prisoner conversation for security reasons. Notification shall be posted in a conspicuous location in the visiting areas.

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that:

(a) Protects prisoners' personal rights; and

(b) Provides for security practices consistent with the operation of the jail.

(2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. A jailer may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer discretion to grant the privilege.

(3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner.

Section 3. Telephone. (1) A newly admitted prisoner shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of the prisoner's choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

(2) The jailer or his designee shall maintain a log of telephone calls made by a prisoner during the admission procedure unless those calls are made on a telephone in the housing area. The log shall document the date, time, and party contacted.

(3) Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.

(4) A minimum of five (5) minutes shall be allotted for each phone call.

(5) If calls are monitored, the prisoner shall be notified.

(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) A prisoner shall be granted the right to practice his religion within limits necessary to maintain institution order and security.

(2) Each prisoner shall be afforded an opportunity to participate in religious services and receive religious counseling within the jail.

(3) A prisoner shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs. The jailer shall ensure each prisoner equal access to programs and services, if the security and order of the jail will not be jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written prisoner grievance procedure. The procedures shall include provisions for:

(1) A response to each written grievance within ten (10) days [Response, within ten (10) days, to all grievance complaints, unless waived by the prisoner];

(2) Equal access for each prisoner;

(3) A guarantee [Guarantee] against reprisal; and

(4) Resolution of legitimate complaints.

Section 7. Disciplinary Rights. Each jail shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care. ~~[(1) Jailers shall be required to report suicides or attempted suicides that constitute a serious health situation to the Kentucky Department of Corrections within twenty-four (24) hours.~~

~~(2) All jail personnel shall receive a minimum of four (4) hours of mental health training within their first year of service and one (1) additional hour of mental health training each year thereafter.~~

~~(3) Each jail shall have a written policy and procedure outlining staff response to detainees who are at risk for suicide or have attempted or completed suicide.~~

~~(4) The Kentucky Department of Corrections and Kentucky Jailers Association shall coordinate the development of and revisions to the mental health training curriculum.]~~

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 of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: May 6, 2011 at 4 p.m.

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.

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(As Amended at ARRS, September 13, 2011)**

**501 KAR 6:060. Northpoint Training Center.**

RELATES TO: KRS Chapters 196, 197, 439

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STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Northpoint Training Center.

Section 1. Incorporation by Reference. (1) Northpoint Training Center policies and procedures, September[July] 13, 2011 [January 7, 2008], are incorporated by reference. Northpoint Training Center policies and procedures include:

NTC 01-17-01 Relationships with Public, Media and Other Agencies (Amended 7/13/11) [(Amended 5/12/06)]

NTC 02-07-02 Institutional Religious Center Fund (Amended 7/13/11) [(Amended 5/12/06)]

NTC 02-08-01 Inmate Canteen (Amended 9/13/11) [7/13/11]

NTC 02-12-01 Inmate Accounts (Amended 9/13/11) [7/13/11] [(Amended 5/12/06)]

NTC 06-01-01 Offender Information Services (Amended 9/13/11) [7/13/11] [(Added 5/12/06)]

NTC 06-01-02 Offender Information Services - Release of Information (Amended 9/13/11) [7/13/11] [(Amended 6/10/03)]

NTC 08-05-02 Fire Procedures (Amended 01/08/08)

NTC 08-05-03 Fire Prevention (Amended 4/15/03)

NTC 08-07-01 Safety Standards]

NTC 09-06-01 Searches and Contraband Procedures; Disposition of Contraband (Amended 9/13/11) [7/13/11] [(Amended 11/15/07)]

NTC 09-14-01 Inmate Death (Amended 7/13/11) [(Amended 11/15/07)]

NTC 09-16-01 Restricted Areas (Amended 01/07/08)

[NTC 09-33-01 Use of the Electronic Identification Card Scanner, Metal Detector and X-ray Machine (Amended 5/12/06)]

NTC 10-01-01 Special Management Unit (Amended 9/13/11) [7/13/11] [(Amended 7/11/06)]

NTC 11-03-01 Food Services: General Guidelines (Amended 11/15/07)]

NTC 11-04-02 Menu, Nutrition, Special, and Individual Diets (Amended 7/13/11) [(Amended 4/15/03)]

NTC 11-05-02 Health Standards and Regulations for Food Service Employees (Amended 11/15/07)

NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens (Amended 7/13/11) [(Amended 5/12/06)]

NTC 12-02-02 Issuance of Personal Hygiene Products (Amended 7/13/11)

NTC 12-06-01 Housekeeping Procedures (Amended 7/13/11) [(Amended 5/12/06)]

NTC 12-07-01 Grooming and Hair Care Standards (Amended 9/13/11) [7/13/11]

NTC 13-01-01 Emergency Medical Care Plan (Amended 11/15/07)

NTC 13-01-02 Emergency and Specialized Health Services (Amended 7/13/11) [(Amended 10/14/05)]

NTC 13-02-01 Provisions and Authority for Health Services (Added 9/13/11) [7/13/11]

NTC 13-03-01 Sick Call and Pill Call (Amended 7/13/11) [(Amended 10/14/05)]

NTC 13-04-01 Utilization of Pharmaceutical Products (Amended 9/13/11) [7/13/11]

NTC 13-05-01 Dental Services (Amended 7/13/11) [(Amended 11/15/07)]

[NTC 13-05-03 Dental Radiation Levels

NTC 13-07-01 Provisions for Health Care Delivery (Amended 10/14/05)]

NTC 13-08-01 Medical and Dental Records (Amended 11/15/07)

NTC 13-10-01 Notification of Inmate's Family or Designation Individual of Serious Illness or Injury, Surgery, or Inmate Death

(Added 11/15/07)

NTC 13-11-01 Inmate Health Screening and Evaluation (Amended 7/13/11)

NTC 13-12-01 Special Health Care Programs (Amended 7/13/11) [(Amended 11/15/07)]

NTC 13-13-01 Inmate Self-administration of Medication (Amended 7/13/11)

[NTC 13-17-01 Inmates Assigned to the Health Services Department]

NTC 13-19-01 Mental Health Care Program (Amended 7/13/11) [(Amended 11/15/07)]

NTC 13-19-03 Suicide Prevention and Intervention Program (Amended 7/13/11)

[NTC 13-20-01 Infectious Disease (Amended 10/14/05)]

NTC 13-20-02 Infection Control (Amended 9/13/11) [7/13/11] [(Amended 10/14/05)]

[NTC 13-21-01 Vision Care and Optometry Services]

NTC 13-22-01 Informed Consent (Amended 7/13/11)

[NTC 13-23-01 Special Needs Inmates]

NTC 13-26-01 Public Advocacy Access to Psychological and Psychiatric Reports (Amended 12/13/05)

NTC 14-01-01 Legal Services Program (Amended 7/13/11) [(Amended 11/15/07)]

NTC 14-02-01 Inmate Grievance Procedure (Amended 5/12/06)

[NTC 14-03-01 Inmate Rights and Responsibilities]

NTC 14-03-02 Board of Claims (Amended 9/13/11) [7/13/11]

NTC 15-02-01 Due Process and Disciplinary Procedures (Amended 7/13/11) [(Amended 4/15/03)]

NTC 15-02-02 Extra Duty Assignments

[NTC 15-02-03 Hearing Officer (Amended 5/12/06)]

NTC 15-03-01 Rules for Inmates Assigned to Outside Detail (Amended 9/13/11) [7/13/11] [(Amended 5/12/06)]

NTC 15-03-02 Rules and Regulations for General Population Dormitories (Amended 9/13/11) [7/13/11] [(Amended 6/10/03)]

NTC 15-03-03 Nonsmoking Dormitory

NTC 15-04-01 Inmate Identification (Amended 9/13/11) [7/13/11] [(Amended 5/12/06)]

NTC 15-05-01 Drug Abuse and Intoxicants Testing (Amended 7/13/11)

NTC 16-01-01 Mail Regulations (Amended 9/13/11) [7/13/11] [(Amended 5/12/06)]

NTC 16-02-01 Visiting (Amended 7/13/11) [(Amended 5/12/06)]

[NTC 16-02-02 Extended and Special Visits (Amended 5/12/06)]

NTC 16-02-04 Controlled Visitation

NTC 16-03-01 Inmate Furloughs]

NTC 16-05-01 Telephone Use and Control (Amended 7/13/11)

NTC 17-01-01 Personal Property Control (Amended 9/13/11) [7/13/11] [(Amended 5/12/06)]

[NTC 17-01-02 Authorized Inmate Personal Property

NTC 17-01-03 Unauthorized Inmate Property (Amended 4/15/03)]

NTC 17-01-04 Disposition of Unauthorized Property (Amended 9/13/11) [7/13/11]

[NTC 17-01-05 State Issue and Required Inmate Clothing (Amended 5/12/06)]

NTC 17-03-01 Assessment and Orientation (Amended 7/13/11) [(Amended 4/15/03)]

NTC 18-01-01 Parole Progress Report (Amended 7/13/11) [(Amended 4/15/03)]

NTC 18-02-01 Classification (Amended 9/13/11) [7/13/11] [(Amended 5/12/06)]

NTC 18-02-02 Classification - 48 Hour Notification (Amended 5/12/06)

NTC 18-03-01 Conflict Notification Form (Amended 9/13/11) [7/13/11] [(Amended 6/10/03)]

NTC 18-05-01 Transfers of Inmates (Amended 7/13/11) [(Amended 4/15/03)]

[NTC 18-05-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center]

NTC 19-01-01 Inmate Work Program (Amended 7/13/11)

[NTC 19-02-01 Correctional Industries (Amended 5/12/06)]

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NTC 19-02-02 Guidelines for Correctional Industries]  
NTC 20-01-01 Educational Programs (Amended 7/13/11)  
[(Amended 5/12/06)]  
NTC 20-02-02 Live Work Projects in Technical School Classes  
(Amended 7/13/11) [(Amended 4/15/03)]  
NTC 21-01-01 Library Services (Amended 5/12/06)  
NTC 22-03-01 Conducting Inmate Organizational Meetings  
and Programs (Amended 9/13/11)[7/13/11]  
NTC 23-01-01 Religious Services (Amended 9/13/11)[7/13/11]  
[(Amended 11/15/07)]  
NTC 23-03-01 Marriage of Inmates (Amended 7/13/11)  
[(Amended 5/12/06)]  
NTC 24-04-01 Honor Housing (Amended 7/13/11) [(Amended  
6/10/03)]  
NTC 24-05-01 Unit Management (Amended 5/12/06)]  
NTC 25-01-01 Release Preparation Program  
NTC 25-01-02 Temporary and Community Center Release  
[NTC 25-01-03 Graduated Release (Amended 6/10/03)]  
NTC 25-02-01 Funeral Trips and Bedside Visits  
NTC 25-03-01 Inmate Release Procedure (Amended 7/13/11)  
[(Amended 5/12/06)]  
NTC 26-01-01 Citizen Involvement and Volunteer Services  
Program (Amended 7/13/11)

(2) This material may be inspected, copied, or obtained, sub-  
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Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor,  
Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-  
6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: June 20, 2011

FILED WITH LRC: July 13, 2011 at 2 p.m.

CONTACT PERSON: Amy Barker, Assistant General Counsel,  
Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort,  
phone (502) 564-3279, fax (502) 564-6686.

### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, September 13, 2011)

#### 501 KAR 7:050. Physical plant.

RELATES TO: KRS 441.045, 441.055, 441.064, 441.075,  
441.415-441.450

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055  
requires the Department of Corrections to promulgate administra-  
tive regulations establishing minimum standards for jails that [elect  
to] house state prisoners. This administrative regulation establish-  
es standards and procedures to be followed in the design, con-  
struction, renovation, and expansion[and construction] of re-  
stricted custody centers and [provides minimum standards for the  
renovation and construction of restricted custody centers and] for  
measuring compliance of existing centers in accordance with KRS  
441.055, 441.064, and 441.075.

Section 1. **Definitions.** (1) "Construction authority" is de-  
fined in KRS 441.415.

(2) "Division" means the Department of Corrections Divi-  
sion of Local Facilities.

(3) "Expansion" means a renovation which includes an in-  
crease in the number of square footage of the local correc-  
tional facility to add prisoner bed space as described in KRS  
441.450(2).

(4) "Local correctional facility" is defined in KRS 441.415.

(5) "Renovation" means changes to the physical plant of  
or construction on an existing local correctional facility that  
does not:

(a) Include an increase in the number of square footage of  
the local correctional facility to add prisoner bed space; and

(b) Require approval of the construction authority as de-  
scribed in KRS 441.450(2).

**Section 2. Consultation.** If requested, the Department may  
provide to a unit of local government seeking to remodel an  
existing restricted custody center or construct a new center, a  
consultant knowledgeable in the design, utilization, and oper-  
ation of detention facilities. The consultant may meet with the  
appropriate officials of that county and advise them concern-  
ing:

- (1) Site selection;
- (2) Probable need as it relates to capacity and types of  
prisoners to be housed;
- (3) Sources of financing for constructing;
- (4) Laws and administrative regulations relating to treat-  
ment of prisoners;
- (5) Laws and administrative regulations relating to facili-  
ties for prisoners;
- (6) Sources of revenue for operations of the center;
- (7) Probable cost for operation of the center; and
- (8) Potential for sharing facilities with adjoining counties.

**Section 3. Application for Construction.** (1) Prior to the  
commencement of any construction for a new restricted cus-  
tody center or for the renovation or expansion of an existing  
restricted custody center, a unit of local government shall  
submit to the division:

- (a) An application for approval; and
- (b) If the construction is for a new center or an expansion  
of an existing center, any applications and materials submit-  
ted to the construction authority in accordance with KRS  
441.430.

(2) The application required by subsection (1)(a) of this  
section shall:

- (a) Be signed by the:
  1. County judge-executive for each county involved in the  
proposal;
  2. Highest executive of a unit of local government other  
than a county; or
  3. Head of the Regional Jail Authority, if applicable;
- (b) State in detail the need for the specific request being  
proposed;
- (c) Identify the unit of local government submitting the re-  
quest;

(d) State the following information for the current jailer:

1. Name;
  2. Address; and
  3. Phone number;
- (e) Identify the type of local correctional facility currently  
being used:

1. Full service;
2. Regional full service;
3. Life safety; or
4. None.

(f) If construction is proposed at a location other than  
where the current local correctional facility is located, then  
provide the following information for the new property:

1. Address;
2. Description of new property;
3. Explanation of ownership of new property; and
4. Estimated cost to purchase property if not owned by the  
unit of local government proposing construction;

(g) If the proposed construction is for a new restricted  
custody center, then identify the size of center being re-  
quested using the bed capacity increments required for plans  
in KRS 441.420(3).

(h) If the proposed construction is for an expansion, then  
state the:

1. Number of proposed additional beds; and
  2. Proposed additional square footage;
- (i) If the proposed construction is for a renovation, then  
state:

1. The purpose of the renovation; and
  2. The amount of any proposed additional square footage;
- (j) For the current restricted custody center, state the:
1. Current capacity;

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2. Average daily population (ADP) for the preceding two (2) years;

3. Total amount of remaining bond indebtedness;

4. Amount of monthly debt installment payment; and

5. Remaining number of payments on any note; and

(k) Identify the architect, consultant, or other person or entity with which the unit of local government consulted for the construction proposal.

Section 4. Documentation required for application. A unit of local government shall provide a copy of the following documents with any application submitted to the division:

(1) Ordinance for the unit of local government showing an affirmative vote for the proposed construction for the restricted custody center;

(2) Deed, lease, or legal description of the new property for proposed construction;

(3) Local correctional facility budget for the preceding two (2) years;

(4) General budget for any unit of local government proposing construction;

(5) Feasibility study or other documentation provided by any architect, entity, or other person that consulted on the proposed construction; and

(6) Documentation showing that the unit of local government has sufficient bonding and revenue sources to pay the bond indebtedness, operating costs, and maintenance costs over the anticipated life of the note for the proposed construction.

Section 5. Site Selection Review. The following criteria shall be considered by the division in its site selection review:

(1) Size;

(2) Proximity to court;

(3) Proximity to community resources;

(4) Availability of public transportation;

(5) Environmental health;

(6) Adequate parking; and

(7) Provisions for future expansion.

Section 6. Construction Documents. (1) A unit of local government shall submit plans and specifications to the division for approval prior to the commencement of any construction for a new center or for the renovation or expansion of an existing center. The division may waive some of the requirements of this section on a case by case basis depending on the specifics proposed for the construction.

(2) If the construction is for a new center or expansion of an existing center, a unit of local government shall submit plans and specifications for the applications required by KRS 441.430 to the division.

(3) Whether new construction or renovation or expansion of an existing center, plans and specifications for a center shall meet the following criteria and contain the following documentation:

(a) A programming phase to include:

1. Evaluation of the existing center;

2. Population analysis as based on the NIC staffing analysis, and may include, jail operations, jail programs, court location, and transportation issues;

3. Space requirements based on population analysis and standards for the center and site outlined in this administrative regulation;

4. Staffing analysis;

5. Cost analysis to include construction and operation cost;

6. Financing alternatives, if applicable;

7. Design-construction time schedule; and

8. Summary and recommendations.

(b) A schematic phase to include:

1. A scale drawing of each floor plan with proposed rooms and areas one-eighth (1/8) inch minimum;

2. A scale drawing of the site, locating the building, parking, and other facilities with one (1) inch equaling fifty (50)

feet;

3. Documentation of site as to:

a. Size;

b. Proximity to court;

c. Proximity to community resources;

d. Availability of public transportation;

e. Environmental health;

f. Adequate parking; and

g. Provisions for future expansion;

4. Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes, and other related information;

5. Scale elevation drawing of exterior walls;

6. Schematic cost estimate to include revised construction and operation costs; and

7. A revised design-construction time schedule.

(c) A design development phase containing:

1. A scale drawing on each floor plan with proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;

2. All necessary construction drawings including construction details;

3. Specifications for materials and workmanship;

4. A proposed contract with general and special conditions;

5. Engineering calculations for the foundation, structure, heating, ventilating, air conditioning, lighting, and plumbing; and

6. Detailed estimates of cost of land, site development, construction, financing, professional services, equipment, and furnishings.

(d) Construction document phase containing:

1. Revised design development construction drawings following review by all applicable agencies, signed by an architect registered in the Commonwealth of Kentucky, and revised, if necessary, to include changes required by the division; and

2. Revised design development specifications of material and workmanship following review by all applicable agencies.

(e) A contract administration phase containing:

1. Signed copies of the contracts for construction, financing, and bonding;

2. Signed copies of the construction permits; and

3. Documentation of required review by other applicable state agencies.

(4) Whether new construction or renovation or expansion of an existing facility, every change order shall be submitted to the division jail consultant for review and approval.

Section 7. Approval of Construction Plans and Specifications. (1) Construction shall not begin until the construction plans have been approved by the division and, if required, the construction authority has approved the construction. The division shall:

(a) Review each complete application within thirty (30) days of receipt;

(b) For renovation, issue:

1. An approval;

2. An acceptance with required changes; or

3. A rejection, with reasons stated;

(c) For an expansion or new center, issue a recommendation to the construction authority whether to approve construction; and

(d) For an incomplete application, inform the applicant of the information or documents that need to be submitted to complete the application.

(2) A request for changes to the plans shall be submitted to the division and shall include a description of the changes requested and the reasons for the changes.

(3) A change to the approved plans shall require redrawing unless specifically exempted by the department. Specifications shall be rewritten to reflect a change.

Section 8. Exemption from Compliance. (1) If a center was

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built before the effective date of the physical plant standards in Section 10 of this administrative regulation, then it is exempt from the standards except as stated in subsection (3) of this section.

(2) If a renovation or expansion was built before the effective date of a physical plant standard in Section 10 of this administrative regulation, then it is exempt from the standard except as stated in subsection (3) of this section.

(3) If a new jail, renovation, or expansion is built after the effective date of a physical plant standard in Section 10 of this administrative regulation, then it shall meet the standard pursuant to Section 10 of this administrative regulation, unless a waiver is obtained pursuant to Section 9 of this administrative regulation.

Section 9. Waiver of Compliance. (1) The department may grant a waiver of the implementation of the physical plant standards in Section 10 of this administrative regulation for an existing center if the department determines that:

(a) Strict compliance will cause unreasonable difficulties;

(b) A waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the center; and

(c) Compliance may be achieved in a manner other than that specified, but in a manner which is sufficient to meet the intent of this administrative regulation.

(2) If a waiver from a standard is desired, the responsible unit of local government shall submit a written request to the department. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Identification and description of the specific difficulties involved in meeting strict compliance;

(c) Description of alternative proposed; and

(d) Provision of sufficient documentation which shall demonstrate that the waiver, if granted, will not jeopardize the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the center.

(3) A waiver, if granted by the department, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. A waiver shall not be granted for longer than twelve (12) months. A waiver granted for a twelve (12) month period shall be reviewed for reapproval at the end of the period.

Section 10. Physical Plant Design Standards. New restricted custody centers shall comply with the physical plant design standards in this section. All existing centers that are in operation shall comply with the physical plant design standards unless the center is exempt from a standard pursuant to Section 8 of this administrative regulation or has obtained a waiver from the department pursuant to Section 9 of this administrative regulation for a standard in this section. [Consultation. If requested, the department may provide to a governing authority] [The department shall provide to a county government] [seeking to remodel an existing restricted custody center or construct a new center, a consultant knowledgeable in the design, utilization, and operation of detention facilities. The consultant may] [shall] [meet with the appropriate officials of that county and advise them concerning:

(1) Site selection;

(2) Probable need as it relates to capacity and types of prisoners to be housed;

(3) Sources of financing for constructing; (4) Laws and administrative regulations relating to treatment of prisoners;

(5) Laws and administrative regulations relating to facilities for prisoners;

(6) Sources of revenue for operations of the center;

(7) Probable cost for operation of the center; and

(8) Potential for sharing facilities with adjoining counties.

Section 2. Site Acceptance. A center shall not be built without site acceptance by the department. The following criteria shall be

considered in site selection:

(1) Size;

(2) Proximity to court;

(3) Proximity to community resources;

(4) Availability of public transportation;

(5) Environmental health;

(6) Adequate parking; and

(7) Provisions for future expansion.

Section 3. Construction Documents. Prior to the renovation or construction of any restricted custody center, plans and specifications shall be submitted to the department for review and approval. Plans and specifications for jail renovation or construction shall contain the following criteria and documentation:

(1) For major renovation or new construction, a programming phase, to include:

(a) Evaluation of existing center [facility];

(b) Population analysis as based on the NIC staffing analysis, and may include, jail's operations, jail programs, court location and transportation issues;

(c) Space requirements based on population analysis and standards for the center and site outlined in this administrative regulation;

(d) Staffing analysis;

(e) Cost analysis to include construction and operation cost;

(f) Financing alternatives, if applicable;

(g) Design-construction time schedule; and

(h) Summary and recommendations.

(2) A schematic phase containing:

(a) A scale drawing of each floor plan with proposed rooms and areas one-eighth (1/8) inch minimum;

(b) A scale drawing of the site, locating the building, parking and other facilities one (1) inch = fifty (50) feet;

(c) Documentation of site as to:

1. Size;

2. Proximity to court;

3. Proximity to community resources;

4. Availability of public transportation;

5. Environmental health;

6. Adequate parking; and

7. Provisions of future expansion.

(d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes, and other related information;

(e) Scale elevation drawing of exterior walls;

(f) Schematic cost estimate to include revised construction and operation costs; and

(g) A revised design-construction time schedule.

(3) A design-development phase containing:

(a) A scale drawing on each floor plan with proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;

(b) All necessary construction drawings including construction details;

(c) Specifications for materials and workmanship;

(d) A proposed contract with general and special conditions;

(e) Engineering calculations for the foundation, structure, heating, ventilating, air conditioning, lighting and plumbing; and

(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.

(4) A construction document phase containing:

(a) Revised design-development construction drawings following review by all applicable agencies, signed by an architect registered in the Commonwealth of Kentucky, and revised, if necessary, to include changes required by the department; and

(b) Revised design-development specifications of material and workmanship following review by all applicable agencies.

(5) A contract administration phase containing:

(a) Signed copies of the contracts for construction, financing and bonding;

(b) Signed copies of the construction permits; and

(c) Documentation of required review by other applicable state agencies.

(6) Every change order shall be submitted to the department

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for review and approval.

~~Section 4. Approval of Renovation, Construction Plans and Specifications. (1) Construction shall not begin until the construction document phase has been approved. The department shall:~~

~~(a) Review each submission within thirty (30) days of receipt; and~~

~~(b) Issue a letter of:~~

~~1. Approval;~~

~~2. Acceptance with required changes; or~~

~~3. Rejection, with reasons stated.~~

~~(2) Depending on the site of the proposed construction, renovation, or addition the department may combine two (2) or more phases, as outlined in Section 3 of this administrative regulation, for review and approval.~~

~~(3) A changes to the plans shall require redrawing unless specifically exempted by the department. Specifications shall be rewritten to reflect a change.~~

~~Section 5. Waiver of Compliance. (1) The department may grant a waiver of the implementation of the physical plant standards for an existing center if the department determines:~~

~~(a) That strict compliance shall cause unreasonable difficulties;~~

~~(b) That a waiver shall not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operations of the center; and~~

~~(c) That compliance shall be achieved in a manner other than that specified, but in a manner which is sufficient to meet the intent of this administrative regulation.~~

~~(2) If a waiver from a standard is desired, the responsible governing [local] [authority shall submit a written request to the department. The written request shall include the following information:~~

~~(a) Citation of the specific standard involved;~~

~~(b) Identification and description of the specific difficulties involved in meeting strict compliance;~~

~~(c) Description of alternative proposed; and~~

~~(d) Provision of sufficient documentation which shall demonstrate that the waiver, if granted, shall not jeopardize the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the center.~~

~~(3) A waiver, if granted by the department, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. A waiver shall not be granted for longer than twelve (12) months. A waiver granted for a twelve (12) month period shall be reviewed for reapproval at the end of the period.~~

~~Section 6. Facility Design.] (1) Each center shall have two (2) separate entrances: a prisoner entrance and a service entrance. The department may permit these entrances to be combined.~~

~~(a) Prisoners' entry. The purpose of this entrance shall be to provide secure and controlled access to the center for prisoners.~~

~~(b) Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It shall be located in close proximity to storage rooms and the kitchen area.~~

~~(2) Each exit in the security area shall be secured.~~

~~(3) Security area. The area shall enclose those facilities and services required for or used by prisoners. It shall contain the following function areas:~~

~~(a) Control area. This area shall be located in close proximity to the prisoner entrance and shall be used to monitor the movement of prisoners in and out of the center [facility].~~

~~(b) Visitation. Adequate space shall be made available for contact visits between prisoners and families. Tables and chairs shall be provided. Bathroom facilities shall be available to serve this area.~~

~~(c) Multipurpose room. The purpose of this area shall be [is] to provide space for assembly of prisoners for specific program activities. Adequate furnishings shall be provided.~~

~~(d) Conference area. The purpose of this space shall be [is] to provide space for confidential conferences between prisoners and~~

lawyers, counselors, clergy, etc. A table and chairs shall be provided.

~~(e) Living areas.~~

1. Each sleeping room shall provide a minimum of forty (40) square feet per prisoner. More than forty (40) prisoners shall not be placed in a single sleeping room, with the exception of a direct supervision area as outlined in 501 KAR Chapter 3.

2. Each prisoner shall be provided in the sleeping room, at a minimum: bed, mattress and pillow, supply of bed linen, chair, and closet or locker space for the storage of personal items.

3. A sleeping area shall have lighting of at least twenty (20) foot-candles in the reading and grooming area, with a nightlight capable of providing five (5) foot-candles of light.

4. The center [facility] shall have one (1) toilet for every ten (10) prisoners, one (1) washbasin for every ten (10) prisoners, and a shower for every twenty (20) prisoners. One (1) urinal may be substituted for each commode in male areas but the commodes shall not be reduced to less than one-half (1/2) the number required.

5. Phone facilities shall be available for prisoner use.

6. Each occupied area shall have temperature ranges within comfort zones, sixty-five (65) degrees Fahrenheit to eighty-five (85) degrees Fahrenheit.

7. Each occupied area shall have ventilation to meet air exchange as required in the Kentucky Building Code, 815 KAR 7:120.

(f) Kitchen. The purpose of this area shall be [is] to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the center. Design features shall include compliance with standards for the Retail Food Code, 902 KAR 45:005. If food is not prepared in the center [facility], a food distribution area shall be substituted.

(g) Laundry facilities. Laundry facilities shall be available.

(h) Furnishings. Center furnishings shall be noncombustible and nontoxic as approved 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).

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, September 13, 2011)

#### 501 KAR 7:140. Prisoner rights.

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 to ensure the rights of prisoners in restricted custody centers.

Section 1. Policy and Procedure. (1) Each center shall have a written statement of prisoner rights which shall address:

(a) Access to court;

(b) Access to attorney;

(c) Mail;

(d) Telephone;

(e) Grievance procedure;

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- (f) Search and seizure;
- (g) Disciplinary procedure;
- (h) Racial segregation;
- (i) Medical care;
- (j) Counseling, if available; and
- (k) Religion.

(2) The statement of prisoner rights shall be made available to all inmates being assigned to general housing units. The statement of prisoner rights may be posted in a conspicuous place, provided in hard-copy format, or provided through close-circuit cable television. [The statement of prisoner rights shall be posted in a conspicuous place in the booking and living areas of the center and a copy shall be made available to the prisoner as soon after assignment as possible, and upon admission, the prisoners shall sign that they have received a written copy of the prisoners' rights.]

(3) The jailer shall not prohibit a prisoner's right of access to the judicial process.

(4) The jailer shall ensure the right of each prisoner to have confidential access to his attorney and his authorized representative.

(5) The jailer shall have a written policy and procedure that defines the center's visitation rules [and administrative regulations], which shall include:

- (a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend;
- (b) At least one (1) visit per week per prisoner shall be allowed except if a prisoner has been assessed a disciplinary penalty for an infraction of rules governing visitation;
- (c) A visit shall not be less than fifteen (15) minutes;
- (d) Two (2) or more persons permitted to visit at the same time shall count as a single visit; and
- (e) Children, if accompanied by an adult, shall be permitted to visit a prisoner.

(6) Attorneys, clergy, and health care staff~~[medical personnel]~~ shall be permitted to visit a prisoner at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(7) Each visitor shall register and show proper photo identification before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (5) of this section or established in subsection (6) of this section.

(8) A prisoner shall not be restricted in regard to whom he may have as a visitor, unless the jailer determines to exclude the visitor on the basis of one (1) or more of the following conditions:

- (a) The visitor:
  - 1. Represents a clear and present danger to security;
  - 2. Has a past history of disruptive conduct at the center;
  - 3. Is under the influence of alcohol or drugs;
  - 4. Refuses to submit to a search; or
  - 5. Refuses to show proper identification; or
- (b) The prisoner refuses the visit.

(9) Except for visitors pursuant to subsection (6) of this section, jail personnel ~~[the jail staff]~~ may monitor and record visitor and prisoner~~[inmate]~~ conversation for security reasons. Notification shall be posted in a conspicuous location in the visiting areas.

Section 2. Mail. (1) The jailer shall have a written policy and procedure for receiving and sending mail that:

- (a) Protects prisoners' personal rights; and
- (b) Provides for security practices consistent with the operation of the center.

(2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate any state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. The jailer may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer discretion to grant the privilege.

(3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner.

Section 3. Telephone. (1) Written policy and procedure shall

permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.

(2) If calls are monitored, the prisoner shall be notified.

(3) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) Each prisoner shall be:

- (a) Granted the right to practice his religion within limits necessary to maintain institutional order and security; and
- (b) Afforded an opportunity to participate in religious services and receive religious counseling within the center.

(2) A prisoner shall not be required to attend or participate in any religious service or discussion.

Section 5. Access to Programs. The jailer shall ensure each prisoner equal access to programs and services, if the security and order of the center are not jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written prisoner grievance procedure. The procedures shall include provisions for:

- (1) A response to each written grievance ~~[shall be made]~~ within ten (10) days;
- (2) Equal access for each prisoner;
- (3) A guarantee ~~[Guarantee]~~ against reprisal; and
- (4) Resolving legitimate complaints.

Section 7. Disciplinary Rights. Each center shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care.

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.

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office of Employment and Training (As Amended at ARRS, September 13, 2011)

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

RELATES TO: KRS 341.190

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.190~~(1)~~ requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. This administrative regulation establishes the application requirements for an employer account and the requirements for other additional reports required by the division.

Section 1. Each employing unit that has met one (1) or more of the requirements for coverage set forth in KRS 341.070 shall complete and file with the Division of Unemployment Insurance an "Application for Unemployment Insurance Employer Reserve Account" UI-1 no later than the last day of the calendar quarter in which the coverage requirements are~~[is]~~ first met.

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Section 2. Each employing unit shall complete and file with the Division of Unemployment Insurance the following reports as required in accordance with the instructions contained on the forms:

- (1) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account";
- (2) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report";
- (3) UI-3.2, "Account Status Information" [~~"Request to Place Subject Employer's Account in Inactive Status"~~];
- (4) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part";
- (5) UI-35, "Termination of Coverage" [UI-47, "Claim for Refund of Contributions"];];
- (6) UI-74, "Application for Partial Payment Agreement";
- (7) UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits"; and
- (8) UI-203, "Overpayment and Fraud Detection".

Section 3. If an employing unit elects to submit the information required in any report listed in Section 1 or 2 of this administrative regulation through the Web site provided by the Division of Unemployment Insurance for that purpose, the requirement for the filing of that report shall have been satisfied.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) UI-1, "Application for Unemployment Insurance Employer Reserve Account", [(Rev. 3/05)];
  - (b) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account", [(Rev. 5/11[1/93])];
  - (c) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report", [(Rev. 5/11[5/99])];
  - (d) UI-3.2, "Account Status Information", [(Rev. 5/11[1/93])] [~~"Request to Place Subject Employer's Account in Inactive Status (Rev. 4/90)";~~];
  - (e) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part", [(Rev. 3/05)];
  - (f) UI-35, "Termination of Coverage", [(Rev. 5/11[1/93])] [UI-47, "Claim for Refund of Contributions (Rev. 8/93)"];];
  - (g) UI-74, "Application for Partial Payment Agreement", [(Rev. 5/11[4/88])];
  - (h) UI-203, "Overpayment and Fraud Detection", [(Rev. 9/11[6/11][4/96])]; and
  - (i) UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits", [(Rev. 9/11[6/11][9/92])].
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of Unemployment Insurance, 275 E. Main Street, 2E, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM MONTEROSSO, Executive Director

APPROVED BY AGENCY: July 15, 2011

FILED WITH LRC: July 15, 2011 at 10 a.m.

CONTACT PERSON: William Monterosso, Executive Director, Office of Employment and Training, 275 East Main, 2C, Frankfort, Kentucky 40602, phone (502) 564-5331, fax (502) 564-7452.

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Health and Life Division  
(As Amended at ARRS, September 13, 2011)**

**806 KAR 12:150. Annuity disclosures**

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230, 26 U.S.C. ~~401~~[4010], 403, 414, 457, 29 U.S.C. 1001-1461

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires insurers to deliver information to purchasers of annuities

that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current Annuity Buyer's Guide published by the Commonwealth of Kentucky Department of Insurance.

(2) "Charitable gift annuity" is defined in KRS 304.1-120(6)(b).

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements derived from processes or methods that are guaranteed at issue and not subject to company discretion, but ones in which the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine at issue. An element is determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one (1) or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated.

(7) "Guaranteed elements" means the premiums and credited interest rates, including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(8) "Nonguaranteed elements" means the premiums and credited interest rates including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(9) "Structured settlement annuity" means;

(a) A "qualified funding asset" as defined in 26 U.S.C. 130(d); or

(b) An annuity that would be a qualified funding asset pursuant to 26 U.S.C. 130(d) except for the fact that it is not owned by an assignee under a qualified assignment.

Section 2. Applicability. This administrative regulation shall apply to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products;

(2)(a) Annuities used to fund:

1. An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;

2. A plan described by 26 U.S.C. 401(a), (k), or 403(b), if the plan, for purposes of ERISA, is established or maintained by an employer;

3. A governmental or church plan defined in 26 U.S.C. 414 or a deferred compensation plan of a state or local government or a tax exempt organization under 26 U.S.C. 457; or

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(b)1. Notwithstanding paragraph (a) of this subsection, this administrative regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and if the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract.

2. As used in this subsection, direct solicitation shall not include a meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;



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- (3) Structured settlement annuities;
- (4) Charitable gift annuities; and
- (5) Funding agreements.

Section 3. Standards for the Disclosure Document and Buyer's Guide. (1)(a) If the application for an annuity contract is solicited personally by an agent, the applicant shall be given both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than the time of application.

(b) If the application for an annuity contract is taken by means other than a personal solicitation by an agent, the applicant shall be sent both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

1. With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application; or

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

2. With respect to an application received via the Internet:

a. Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's Web site shall satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application; or

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's Web site shall satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

3. A solicitation for an annuity contract that is not personally solicited by an agent shall include a statement that the proposed applicant may obtain a free Annuity Buyer's Guide by contacting the Department of Insurance or the insurer.

(c) 1. If the Buyer's Guide and disclosure document described in subsection (3) of this section are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty.

2. This free look period shall run concurrently with any other free look period provided under state law or administrative regulation.

(2) The following information shall be included in the disclosure document:

(a) The generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) The insurer's name and address;

(c) A description of the contract and its benefits, emphasizing its long-term nature, including the following information:

1. The guaranteed, nonguaranteed, and determinable elements of the contract and their limitations, if any, and an explanation of how they operate;

2. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and shall not be guaranteed;

3. Periodic income options both on a guaranteed and nonguaranteed basis;

4. Value reductions caused by withdrawals from or surrender of the contract;

5. How values in the contract can be accessed;

6. The death benefit, if available, and how it will be calculated;

7. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

8. An explanation of the impact of a rider, such as a long-term care rider;

(d) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(3) The disclosure statement shall comply with the minimum standards for readability and intelligibility established in 806 KAR 14:121.

Section 4. Report to Contract Owners. For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(1) The beginning and end date of the current report period;

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(3) The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and

(4) The amount of outstanding loans, if any, as of the end of the current report period.

Section 5. Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date, determined pursuant to KRS 13A.330, or January 1, 2012, whichever is later. [The requirements, implementation, and enforcement of this administrative regulation shall begin on July 1, 2011.]

Section 6. Incorporation by Reference. (1) "The Annuity Buyer's Guide, Commonwealth of Kentucky", July 2011 [December 2010], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(3) This material is also available on the department's Web site at <http://insurance.ky.gov/>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

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.

### ENERGY AND ENVIRONMENT CABINET Public Service Commission (As Amended at ARRS, September 13, 2011)

**807 KAR 5:076. Alternative rate adjustment procedure for small utilities.**

RELATES TO: KRS 278.010, 278.030, 278.160, 278.180, 278.185, 278.190, 278.310, 278.380[Chapter 278.]

STATUTORY AUTHORITY: KRS 278.040(3), 278.160(1), 278.180, 278.185(4)[278.030; KRS 278.040; KRS 278.160; KRS 278.180; KRS 278.185; KRS 278.190; KRS 278.310; KRS 278.380.]

NECESSITY, FUNCTION AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement KRS Chapter 278. This administrative regulation establishes[provides] a simplified and less expensive procedure for [by which] small utilities to use 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 an-

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nual 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; ~~or~~

(3) "Gross annual revenue" means:

(a) The total revenue that a utility derived during a calendar year; ~~or~~

(b) ~~If, 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. (1) 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 established in this administrative regulation ~~[described below]~~.

(2) 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) Applicant's annual report ~~[(a)] [Annual reports of the applicant]~~ for the immediate past year and the annual reports for the two (2) prior years, if the applicant has been in existence that long;

(2) The application required by Section 4 of this administrative regulation ~~[(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; ~~and]~~

(7) If a hearing is held, the record of that hearing.

Section 4[3]. Application. (1) An application for alternative rate adjustment shall consist of:

(a) A completed ARF Form-1 ~~[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 all utility plant in service;

(e) A copy of the most recent state and federal tax returns of the applicant, if the applicant is required to file returns;

(f) A detailed analysis of the applicant's customers' bills showing ~~[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]~~ ~~and]~~

(h) 1. If the applicant is a corporation ~~[for 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; ~~or]~~

2. [(b)] 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; ~~or]~~

3. [and]

[(i)] If the applicant is a limited partnership, a certified copy of its 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) Except as provided in Section 13 of this administrative regulation for electronic filings ~~[Unless electronic filing procedures are used]~~, the applicant shall:

(a) Submit one (1) original and five (5) paper copies of its application to the executive director of the commission; ~~and]~~

(b) ~~[(c)]~~

~~[(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](mailto:rateintervention@ag.ky.gov) ~~[intervention@ag.ky.gov]~~.

(3) ~~[(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) To redact the document, the applicant shall replace ~~Redaction may be made by any method, including but not limited to replacing]~~ the identifiers with neutral placeholders or cover ~~[covering]~~ the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(4) ~~[(5)]~~ The application shall not contain any request for relief from the commission other than an adjustment of rates.

(5) ~~[(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:

(a) Mail written notice as required by subsection (3) of this section ~~[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;

(b) ~~[(c)]~~

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]~~

(c) Keep the ~~[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 twenty (20) customers and is not a sewer utility shall post at its

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place of business a sheet containing the information **required by subsection (3) of this section** 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 **submit a written request to intervene; and** [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 at [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 615, 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; or

(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:

(a) Post on its **Web site** [website] within seven (7) days of the filed date of the application:

1. A notice containing the information provided in the written notice to its customers; and

2. A link to a copy of its application posted on the commission's Web site; and

(b) [shall] Keep both **items** 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, **an** [he] applicant shall **not** 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. **(1) An applicant shall not** [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.

**(2) If the commission 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.**

**(3) 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. **(1) The minimum discovery available to intervening parties shall be as prescribed by this subsection.**

**(a) A party in the proceeding** [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.

**(b) At the time of serving its requests** [request] upon the applicant, the party shall [also] file a copy of its **requests** [request] with the commission and serve a copy upon all other parties.

**(c) 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.**

**(2) The commission may establish different arrangements for discovery if it finds different arrangements are necessary to evaluate an application or to protect a party's rights to due process.** [Nothing in this section shall preclude the commission from establishing different arrangements for discovery.]

Section 10[9]. Commission Staff Report. **(1) Within thirty (30) days of the date that an application is accepted for filing, the commission shall enter an order advising the parties whether commission staff will prepare a report on the application.**

**(2) If a commission staff report is prepared, the:**

**(a) Commission staff shall:**

1. **File the report with the commission; and**

2. **Serve a copy of the report on all parties of record; and**

**(b) Report shall contain the commission staff's** [Unless the commission directs otherwise, 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.

**(3)(a) [(2)] Each party shall file with the commission a written response to the commission staff report within fourteen (14) days of the filing of the report.**

**(b) This written response shall contain:**

1. All objections to and other comments on the findings and recommendations of commission staff;

2. [Any request for hearing or informal conference;] and

3. The reasons why a hearing or informal conference is necessary.

**(c) 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. **(1) 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**

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KRS-424.300.

**(2)** The notice shall state the purpose, time, place, and date of the hearing.

**(3)** 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.

**(4) Mailed notices shall be mailed at least fourteen (14) days prior to the date of the hearing.** [The notice shall state the purpose, time, place, and date of the hearing.]

Section 12[14]. 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. (1) An applicant may elect to use electronic filing procedures in lieu of submission of paper documents to the commission.

**(2)** At least seven (7) days prior to the submission of its application, an applicant shall:

**(a)** File with the commission written notice of its election **using the ARF Form-2; and**

**(b)[.]** If it does not have an account for electronic filing with the Commission, register for an account at <http://psc.ky.gov/Account/Register>.

**(3)** Upon electing the use of electronic filing procedures, the [following] procedures **established in this section** shall be followed in the commission proceeding on the application. [unless the commission orders otherwise:]

**(4)[(4)]** 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 **as required by subsection (12) of this section.**

**(5)[(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 **no less than 300 dots per inch.**

**(6)(a)[(3)]** All electronic submissions shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. A general description of the filing;

2.[.] A list of all materials not included in the electronic filing;[.] and

3. A statement attesting that the electronically filed documents are a true representation of the original documents.

**(b)** The "Read1st" file and any other document that normally contains a signature shall contain a signature in the electronically submitted document.

**(c)** The electronic version of the cover letter accompanying the paper filing may be substituted for a general description.

**(d)** 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.

**(7)(a)[(4)]** An electronic transmission or uploading session shall not exceed twenty (20) files.

**(b)** An individual file shall not exceed fifty (50) megabytes.

**(c)** If a filing party's submission exceeds **the limitations es-**

**tablished in paragraph (a) or (b) of this subsection**[these limitations], the filer shall make its electronic submission in two (2) or more consecutive electronic transmission or uploading sessions.

**(8) If[(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 **each document**[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.

**(9)(a)[(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.

**(b)** 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.

**(10)[(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:

**(a)** 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

**(b) [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:

1. It waives any right to service of commission orders by United States mail; and

2. [that] It, or its authorized agent, possesses the facilities to receive electronic transmissions.

**(11)[(9)]** 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.

**(12)(a)[(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.

**(b)** The original document, in paper medium, shall be filed at the commission's offices no later than the second business day following the electronic filing.

**(c)** Parties shall attach to the top of **the paper**[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, **Sections 1 through 5 and 7**, [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[15]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) **"ARF Form-1", September 2011; and**  
**(b) "ARF Form-2", September 2011**[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

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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.

### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, September 13, 2011)**

#### **810 KAR 1:070. Kentucky thoroughbred breeders' incentive fund.**

RELATES TO: KRS ~~[230.225(7)(b)]~~ 230.330, 230.800

STATUTORY AUTHORITY: KRS 230.800

NECESSITY, FUNCTION AND CONFORMITY: KRS. 230.800 establishes the Kentucky Thoroughbred Horse Breeders' Incentive Fund. KRS 230.800(2)(b) authorizes the commission~~[Authority]~~ to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of payments from the fund.

Section 1. Definitions. (1) "Allowance race" means an overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, gender, earnings, and number of wins, excluding starter allowance races.

(2) "Claiming earnings" means the gross cash portion, as this portion is determined by The Jockey Club, of the prize awarded to a qualified Kentucky claiming horse that is paid from the association or the license holder permitted to conduct racing in the jurisdiction.

(3) "Claiming race" means a race in which every horse running in the race~~[therein]~~ may be transferred in conformity with 810 KAR 1:015.

(4) "Grade I stakes race" means a nonrestricted race held in the United States which has been assigned Grade I stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.

(5) "Grade II stakes race" means a nonrestricted race held in the United States which has been assigned Grade II stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.

(6) "Grade III stakes race" means a nonrestricted race held in the United States which has been assigned Grade III stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.

(7) "Group I race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group I race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade I stakes status for the year contested by the Canadian Graded Stakes Committee.

(8) "Group II race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group II race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade II stakes status for the year contested by the Canadian Graded Stakes Committee.

(9) "Group III race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group III race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade III stakes status for the year contested by

the Canadian Graded Stakes Committee.

(10) "Intended breeder of record" means the owner or lessee of a thoroughbred mare who desires to use the mare for breeding purposes and to qualify the foal for the Kentucky Thoroughbred Breeders' Incentive Fund and who is listed as the intended breeder of record on the forms necessary to register under the KBIF.

(11) "KBIF" means the Kentucky Thoroughbred Breeders' Incentive Fund.

(12) "KBIF registered horse" means a horse registered with the Kentucky Thoroughbred Breeders' Incentive Fund.

(13) "Kentucky sire" means a sire registered as a Kentucky Thoroughbred Development Fund sire.

(14) "Kentucky Thoroughbred Breeders' Incentive Fund" means the trust and revolving fund set out in KRS 230.800.

(15) "Maiden special weight race" means a race in which:

(a) None of the runners have been previously declared a winner; and

(b) None of the runners are eligible to be claimed.

(16) "Overnight race" means a race for which entries close at a time set by the racing secretary.

(17) "Qualified breeder" means the breeder of record as listed in The Jockey Club records.

(18) "Qualified Kentucky claiming horse" means a foal who is born out of a qualified mare and from a Kentucky sire, and who receives earnings from a claiming race in Kentucky.

(19) "Qualified mare" means a thoroughbred dam who resides in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling, unless one (1) of the exceptions in Section 5(4) of this administrative regulation is met.

(20) "Qualified winner" means a thoroughbred horse born out of a qualified mare and from a Kentucky sire and whose nose reaches the finish line first or is placed first through disqualification by the stewards and is not eligible to be claimed in that race.

(21) "Qualified winner's earnings" means the gross cash portion of the prize, as this portion is determined by The Jockey Club, awarded to the qualified winner of a race that is paid for from the association or the license holder permitted to conduct racing in the jurisdiction.

(22) "Starter allowance" means a race written to allow claiming horses who have improved from their earlier form to run in a non-claiming event.

Section 2. Timing of Awards; Eligibility. (1) Disbursements from the Kentucky Thoroughbred Breeders' Incentive Fund shall be made as soon as is practicable after the end of each full racing year based on a calendar year, but not later than March 31~~[February 15]~~ of the calendar year following the last date the application may be filed under Section 7(3)(b) of this administrative regulation.

(2) For a horse foaled prior to 2007, if the horse is eligible to be registered to receive funds under the Kentucky Thoroughbred Development Fund, the breeder shall be eligible to receive funds from the Kentucky Thoroughbred Breeders' Incentive Fund, subject to registration under Section 4(1) of this administrative regulation.

(3) For a horse foaled during or after 2007, the requirements set forth in this administrative regulation shall be met.

(4) The races eligible for awards from the KBIF as provided in Sections 3 and 6 of this administration regulation shall be those run on and after January 1, 2006.

Section 3. Awards. (1)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each of the Kentucky Derby and Kentucky Oaks.

(b) The incentive shall be fifty thousand dollars (\$50,000).

(2)(a) An incentive shall be awarded to the top twenty (20) horses with the most claiming wins in Kentucky each year.

(b) Horses earning awards at a Kentucky race track through any component other than the claiming component during the same calendar year shall~~[will]~~ not be eligible for the Kentucky claiming component.

(c) An incentive of \$200,000 shall~~[will]~~ be distributed to the top twenty (20) qualified Kentucky claiming horses with the most wins, as follows:

1. \$20,000 to the horse with the most wins;



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2. \$17,500 to the horse with the second most wins;
3. \$15,000 to the horse with the third most wins;
4. \$12,500 to the horse with the fourth most wins;
5. \$12,000 to the horse with the fifth most wins;
6. \$11,500 to the horse with the sixth most wins;
7. \$11,000 to the horse with the seventh most wins;
8. \$10,500 to the horse with the eighth most wins;
9. \$10,000 to the horse with the ninth most wins;
10. \$9,500 to the horse with the tenth most wins;
11. \$9,000 to the horse with the eleventh most wins;
12. \$8,500 to the horse with the twelfth most wins;
13. \$8,000 to the horse with the thirteenth most wins;
14. \$7,500 to the horse with the fourteenth most wins;
15. \$7,000 to the horse with the fifteenth most wins;
16. \$6,500 to the horse with the sixteenth most wins;
17. \$6,000 to the horse with the seventeenth most wins;
18. \$6,000 to the horse with the eighteenth most wins;
19. \$6,000 to the horse with the nineteenth most wins; **and**
20. \$6,000 to the horse with the twentieth most wins.[.]

(d) Claiming earnings earned at a Kentucky race track from the same calendar year ~~shall~~**[will]** be used to settle any ties.

(e) If two horses have the same number of wins and the same total earnings, all incentive totals to which those horses would have been entitled shall be divided equally between them. This ~~shall apply~~**[applies]** in dividing all incentives whatever the number of horses that finish with the same number of wins and the same total earnings.

(3)(a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in the United States, but outside Kentucky, or at Woodbine Race-track in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings ~~except it~~**[but]** shall not exceed three thousand dollars (\$3,000).

(4)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in Kentucky.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings ~~except it~~**[but]** shall not exceed three thousand dollars (\$3,000).

(5)(a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings ~~except it~~**[but]** shall not exceed four thousand dollars (\$4,000).

(6)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in Kentucky.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings ~~except it~~**[but]** shall not exceed four thousand dollars (\$4,000).

(7)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each:

1. Grade I stakes race held in the United States;

2.~~[or]~~ Group 1 race held in Canada, England, France, **and Ireland; and**

3.**Group 1 race**~~[or Ireland as well as Group 1 races]~~ held on Dubai World Cup day, Japan Cup day, and Hong Kong International day.

(b) The incentive shall be seven thousand, five hundred dollars (\$7,500).

(8)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each:

1. Grade II **and**~~[or]~~ Grade III stakes race held in the United States; **and**

2.~~[or]~~ Group 2 **and**~~[or]~~ Group 3 race held in Canada, England, France, **and**~~[or]~~ Ireland.

(b) The incentive shall be five thousand dollars (\$5,000).

(9) ~~An~~**[No]** incentive shall **not** be awarded to the winner of any Breeders' Cup World Championship race.~~[Kentucky first compo-~~

nent:

(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight, allowance, and stakes race run in Kentucky, except for any Breeders' Cup World Thoroughbred Championship race run in Kentucky and any Grade I stakes race run in Kentucky.

(b) The incentive shall be that amount which is equal to twenty-five (25) percent of the qualified winner's earnings except for those receiving awards under subsection (3) of this section.

(c) The amount a qualified breeder may be awarded from the KBIF in each race shall be no more than \$10,000 except for those receiving awards under subsection (3) of this section.

(2) National component:

(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race won by two (2), three (3), and four (4) year-old thoroughbreds held in states within the United States other than Kentucky.]

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings.

(c) The amount a qualified breeder may be awarded from the KBIF in each race shall be no more than \$10,000.

(3) Kentucky Grade I stakes race component. An incentive shall be awarded to the qualified breeder of the qualified winner of each Grade I stakes race run in Kentucky, except for any Breeders' Cup World Thoroughbred Championship race run in Kentucky as follows:

(a) An incentive in the total amount of \$25,000 shall be awarded to the qualified breeder of each of the qualified winners of each Grade I stakes race run in Kentucky, except for the Kentucky Derby and the Kentucky Oaks; and

(b) An incentive in the total amount of \$100,000 shall be awarded to the qualified breeder of the qualified winner of each of the Kentucky Derby and the Kentucky Oaks.

(4) National Grade I stakes race component. An incentive in the amount of \$2,500 shall be awarded to the qualified breeder of the qualified winner of each Grade I stakes race run within the United States but outside of Kentucky except that an incentive shall not be awarded under this administrative regulation in connection with any Breeders' Cup World Thoroughbred Championship race.

(5) Kentucky claiming component. An incentive shall be awarded to the qualified breeders of Kentucky's best claiming horses as follows:

(a) An incentive of \$25,000 shall be awarded to the qualified breeder of the qualified Kentucky claiming horse that has the highest earnings in claiming races run at each of Churchill Downs, Ellis Park, Keeneland, and Turfway Park, respectively, for each calendar year; and

(b) A claiming title incentive of \$100,000 shall be divided among the breeders of the top three (3) qualified Kentucky claiming horses with the highest cumulative claiming earnings derived from claiming races in Kentucky for each calendar year in the following percentages:

1. Fifty (50) percent for 1st place;
2. Thirty (30) percent for 2nd place; and
3. Twenty (20) percent for 3rd place.]

Section 4. Registration of Foals. (1)(a) For a horse foaled prior to 2007 and eligible to be registered under Section 2(2) of this administrative regulation, the intended breeder of record shall file with the ~~commission~~**[Authority]** a "Grandfather Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for a horse born in 2006 and prior years)".

(b) The application shall be filed no later than December 31 of the year following the year in which the horse has raced in a race that would qualify him for an incentive from the KBIF.

(c) A filing fee of thirty (30) dollars may be paid with the application or it shall be deducted from the award amount.

(2)(a) For the 2006 breeding season, the intended breeder of record shall file with the Authority an "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the 2006 breeding season)".

(b) The application shall be filed either:

(i) Within forty five (45) days after the first cover of the mare

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proposed to be a qualified mare to a Kentucky sire, along with a filing fee of thirty (30) dollars; or

(ii) On or prior to August 1, 2006 along with a filing fee of sixty (60) dollars, except as provided in subsection (6) of this section.

(3) For the breeding season beginning in 2007 and thereafter, the intended breeder of record shall register the unborn foal with the commission[Authority] on or prior to August 15 of the breeding season by filing the "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the breeding season beginning in 2007)" and paying a filing fee of sixty (60) dollars, except as provided in subsection (5)[(6)] of this section.

(3)[(4)](a) The commission[Authority] shall be recognized and designated as the sole official registrar of the Kentucky Thoroughbred Breeders' Incentive Fund for the purposes of registering Kentucky thoroughbred foals in accordance with [the terms of] this administrative regulation.

(b) The records of The Jockey Club shall be used as the official records of the commission[Authority] for determining the following information:

1. The identity of the qualified breeder;
2. The claiming wins and earnings for each race pursuant to which an award shall be granted under this administrative regulation;
3. The qualified winners' earnings for each race pursuant to which an award shall be granted under this administrative regulation;
4. The name of the qualified winner for each race pursuant to which an award shall be granted under this administrative regulation;
5. The name of each horse determined to be a qualified Kentucky claiming horse for purposes of calculating the awards under Section 3(2)[3(5)] of this administrative regulation;
6. The registration number or special identification number of the KBIF-registered horse;
7. The name of the KBIF-registered horse; and
8. Other information for purposes of administering the KBIF.

(4)[(5)] If the information on a form required under this section is found to be incorrect or becomes incorrect or changes, the person considered to be the intended breeder of record shall promptly file ~~be responsible for promptly filing~~ an amended form with the commission[Authority] to correct the information within thirty (30) days of realizing the inaccuracy or of the circumstances causing the information to change. ~~[An amended form shall not be required if the only change is a change of address for the mare, provided the mare remains in Kentucky.]~~

(5)[(6)](a) A hardship filing may be made if the intended breeder of record can prove that there was good cause for the application to not have been filed on a timely basis as required under subsection (2)[subsections (2) and (3)] of this section, and that the foal otherwise met the eligibility requirements to be a KBIF-registered horse. The filing shall be made on the form "Late Filing of Application for the Kentucky Breeders' Incentive Fund".

(b) The amount of the filing fee shall be as follows:

1.[(i)] For a filing made after August 15[4] of the breeding season and on or prior to December 31 of the cover year[-foaled], the filing fee shall be \$150[\$750]; ~~and~~

2. For a filing made after December 31 of the cover year and on or prior to December 31 of the weanling year, the filing fee shall be \$750; and

3.[(ii)] For a filing made between January 1 and December 31 of the yearling year, the filing fee shall be \$1,500. No other late filing shall be permitted. ~~[(7) A breeder may appoint an authorized agent by completing and filing with the Authority a "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form".]~~

(6)[(8)] If ownership of a mare is transferred, a "Mare Transfer of Ownership Report in connection with the Kentucky Thoroughbred Breeders' Incentive Fund" shall be filed with the commission[Authority].

(7) If any registration or nomination deadline imposed by this administrative regulation falls on a weekend or holiday, the deadline shall be moved to the next business day following the original deadline.

Section 5. Qualification of Foal And Qualified Mare. (1) The

commission[Authority] may~~[shall have the right to]~~ inspect the location where the mare proposed to be a qualified mare is boarded to determine that the residency requirement is met. The commission[Authority] may~~[shall]~~ also ~~[have the right to]~~ request, obtain, and inspect records relating to the location of the mare proposed to be a qualified mare to determine that the residency requirement is met.

(2) The person claiming to be the qualified breeder shall bear the burden of proof to show that a mare is a qualified mare.

(3) A failure to comply with a term, condition, or requirement of this administrative regulation shall not result in the loss of the registration of the foal, if the person claiming the foal should be registered proves to the commission[Authority]:

(a) The failure to comply was insignificant with respect to the registration requirements as a whole; and

(b) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of this administrative regulation.

(4) In order for the mare to be a qualified mare as defined in Section 1(19) of this administrative regulation, the thoroughbred dam shall have resided in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling unless one (1) of the following exceptions is met:

(a) Medical procedure.

1. A medical procedure is required to be performed to protect the health of the mare or the unborn foal that involves an extraordinary medical situation and the breeder desires to have an expert located outside of Kentucky conduct the procedure;

2. The owner or the lessee of the mare, when~~[at the time]~~ the mare leaves Kentucky, files an "Application to Move a Mare outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund" and provides information relating to the procedure as requested by the commission[Authority] within fourteen (14) days after the mare leaves Kentucky;

3. The executive director of the commission[Authority] approves the departure of the mare from Kentucky; and

4. The mare remains under the care of a veterinarian during the entire period of time she is not residing in Kentucky other than the time during which she is traveling to and from Kentucky; or

(b) Training.

1. The mare has not yet delivered her first foal and is in active training outside of Kentucky;

2. The owner or the lessee of the mare, when~~[at the time]~~ the mare leaves Kentucky, files an "Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund" and provides information relating to the training outside of Kentucky as requested by the commission[Authority] within fourteen (14) days after the mare leaves Kentucky;

3. The executive director of the commission[Authority] approves the departure of the mare from Kentucky; and

4. The mare returns to Kentucky within ten (10) days after the end of her racing career.

(5) The executive director shall notify the commission[Authority] if an exception is made to the residency requirement pursuant to subsection (4) of this section.

(6) A qualified breeder of a qualified mare shall be responsible for:

(a) The registration and records of the KBIF -registered horse; and

(b) Complying with the requirements of the Kentucky Thoroughbred Breeders' Incentive Fund.

(7) The owner or lessee of the mare may~~[desire to]~~ withdraw the mare's foal from the KBIF by filing a "Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders' Incentive Fund."

Section 6. Bonus Calculation. (1) Funds available in the KBIF state account resulting from the breeding season relating to each year preceding the granting of the actual awards shall be apportioned according to Sections 3 and 6 of this administrative regulation.

(2) The funds apportioned to each qualified breeder shall be awarded by determining the amount a qualified breeder is eligible to receive based on Sections 3 and 6 of this administrative regula-

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tion.

(3) If, at the close of any calendar year, inadequate funding is available to the KBIF to fund the awards provided for in Section 3 of this administrative regulation, the funding shall be decreased proportionally among all awards, excluding the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award until funding is adequate to fund all awards.~~in the following order:~~

(a) The incentive awarded under the Kentucky first component and the national component shall each be decreased proportionately as provided below, as needed to make the funding adequate:

1. For the Kentucky first component, the award shall be decreased to no less than an amount which is twenty (20) percent of the qualified winners' earnings; and

2. For the national component, the award shall be decreased to no less than an amount which is eight (8) percent of the qualified winners' earnings.

(b) If the reductions made pursuant to paragraph (a) of this subsection are insufficient, the incentive awarded under the national Grade I stakes race component and the Kentucky claiming component shall be decreased by the same percentage as needed to make the funding adequate. The decrease shall not exceed fifty (50) percent for each component.

(c) If the reductions made pursuant to paragraphs (a) and (b) of this subsection are insufficient, the incentive awarded under the national component shall be decreased as needed to make the funding adequate.]

(4)(a) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation, after payment of operating expenses, a reserve fund shall be established in the KBIF in an amount which is no more than five (5) percent of the amount of funding available from tax receipts for that calendar year.

(b) Moneys in the reserve account may be used as needed to provide funding of awards in a subsequent calendar year if the amount available at the close of the last calendar year is insufficient to fund the awards provided in Section 3 of this administrative regulation.

(c) Additional money shall not be added to the reserve fund if it contains at least \$5,000,000 when[at the time] the excess funding is available.

(5) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation and an amount has been designated for the reserve fund provided for in subsection (4)(a) of this section, then the awards shall be increased proportionally among all awards except the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award,~~as provided in this subsection.~~ The order in which an award shall be increased shall be:

(a) An international component shall be added for Group I races with an award of no less than \$750 and no more than \$2,500 per race as the fund permits.

(b) If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraph (a) of this subsection, the incentives for Group I races and national Grade I stakes races shall be increased to an award of up to \$5,000 per race as the fund permits.

(c) If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraphs (a) and (b) of this subsection, the additional funds shall be divided with fifty (50) percent of the additional funds (the "total Kentucky bonus") being awarded to Kentucky races as set forth in subparagraph 1 of this paragraph and fifty (50) percent of the additional funds (the "total national and international bonus") being awarded to national and international races as set forth in subparagraph 2 of this paragraph.

1. Kentucky races. The awards for the Kentucky races shall be increased in the following order as the KBIF permits:

a. The incentives for Grade II stakes races and Grade III stakes races in Kentucky shall be increased equally to an award of up to \$25,000 per race; and

b. If the funding continues to be in excess of that required for

the reserve and for the allocations set forth in paragraphs (a) and (b) of this subsection and clause a of this subparagraph, the incentives provided for in Section 3(1), (3), and (5) of this administrative regulation and clause a of this subparagraph, then a bonus amount shall be given to each recipient of an award under Section 3(1), (3), and (5) of this administrative regulation and clause a of this subparagraph (the "Kentucky bonus components") determined as follows:

(i) The denominator to be used in calculating the factor shall be the sum of the dollar amounts awarded pursuant to Section 3(1), (3), (5) of this administrative regulation and clause a of this subparagraph.

(ii) The numerator to be used in calculating the factor shall be the dollar amount of the additional funds available under the total Kentucky bonus.

(iii) The factor shall be the result of the division of the numerator into the denominator.

(iv) The factor shall be multiplied by each individual award granted under the Kentucky bonus components to determine the bonus amount for each award.

2. International and national races. The awards for the International and national races shall be increased in the following order as the KBIF permits:

a. The incentives for Grade II stakes race, Grade III stakes race, Group II races and Group III races shall be increased to an award of up to \$5,000 per race; and

b. If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraphs (a) and (b) of this subsection and clause a of this subparagraph, and the incentives provided in Section 3(2) and (4) of this administrative regulation, paragraph (b) of this subsection, and clause a of this subparagraph, then a bonus amount shall be given to each recipient of an award under Section 3(2) and (4) of this administrative regulation, paragraph (b) of this subsection, and clause a of this subparagraph (the "national and international bonus components") determined as follows:

(i) The denominator to be used in calculating the factor shall be the sum of the dollar amounts awarded pursuant to Section 3(2) and (4) of this administrative regulation, paragraph (b) of this subsection, and clause a of this subparagraph.

(ii) The numerator to be used in calculating the factor shall be the dollar amount of the additional funds available for the total national and international bonus.

(iii) The factor shall be the result of the division of the numerator into the denominator.

(iv) The factor shall be multiplied by each individual award granted under the national and international bonus components to determine the bonus amount for each award.]

Section 7. Application Requirements. (1) The amount due for awards shall be calculated after the end of each racing year. The recipient of an award shall be notified of the amount of the award to which the recipient may be entitled according to the last known address on file with the commission~~[Authority]~~.

(2)(a) After receipt of notification of an award, each potential recipient shall ~~[be required to]~~ return an application for the award that certifies that the applicant is entitled to the award and certifies the applicant's taxpayer ID number or Social Security number.

(b) The application shall be on the form "Application for an Award from Kentucky Thoroughbred Breeders' Incentive Fund".

(c) A breeder may appoint an authorized agent to complete the "Application for Award from Kentucky Thoroughbred Breeders' Incentive Fund" by completing and filing with the commission a "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form".

(3)(a) Awards due recipients who cannot be located by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation shall lapse to the KBIF for distribution or building the reserve in the following year.

(b) Failure to return the application required by subsection (2) of this section by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became



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eligible to receive an incentive under Section 3 of this administrative regulation, shall result in forfeiture of the award and the award money shall lapse to the KBIF for distribution or building the reserve in the following year.

Section 8. Disputes. (1) Any dispute arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director, within thirty (30) days of action or inaction leading to the dispute.

(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.

Section 9. Disciplinary Procedures. (1) The commission[Authority] may deny or revoke the registration of a foal or horse if the qualified breeder, or an applicant for qualified breeder status:

(a) Provides[~~Knowingly provides~~] the commission[Authority] with incorrect, false, or misleading information concerning a foal or horse and fails within thirty (30) days to provide accurate information upon request by the commission[Authority];

(b) Fails[~~Knowingly fails~~] to furnish within thirty (30) days information the commission[Authority] has requested relating to the registration of a foal or horse; or

(c) Violates[~~Knowingly violates~~] this administrative regulation in any other manner.

(2) If the commission[Authority] denies or revokes the registration of the foal or horse, the qualified breeder or applicant for qualified breeder status may request, and the commission[Authority] shall thereupon schedule, a hearing to be conducted pursuant to KRS Chapter 13B.

(3) At the conclusion of the hearing, the commission[Authority] shall in its final order determine whether the qualified breeder or applicant for qualified breeder status has [~~knowingly~~] provided the commission[Authority] with false or misleading information, or has [~~knowingly~~] failed to provide the commission[Authority] with requested information, or has [~~knowingly~~] violated this administrative regulation in any other manner, and may take one (1) or more of the following actions:

(a) Deny or revoke the registration;

(b) Uphold the denial or revocation of the registration;

(c) Rescind the denial or revocation of the registration; or

(d) Bar the applicant who failed to furnish the requested information or who has [~~knowingly~~] violated the administrative regulation from registering foals to the fund for a period of one (1) to five (5) breeding seasons, based on the seriousness of the violation, beginning with the season in which the violation occurred.

(4) If a person or his or her designee or representative fails to appear at the hearing, the commission[Authority] may take one (1) or more of the following actions:

(a) Deny or revoke the registration; or

(b) Bar the owner or lessee who failed to respond to the summons from registering foals to the fund for a period of one (1) to five (5) breeding seasons, based on the seriousness of the violation, beginning with the breeding season in which the violation occurred.

(5) A second or subsequent violation of this administrative regulation may result in a lifetime bar of the applicant or qualified breeder from being eligible to receive an incentive from the KBIF.

(6) The commission[Authority] shall notify the applicant or qualified breeder in writing of the action taken by the commission[Authority].

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Grandfather Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for a horse born in 2006 and prior years)", KHRA Form 20-1, (4/06);

(b) [~~"Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the 2006 breeding season)"~~], KHRA Form 20-2, (4/06);

(c) [~~"Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the breeding season beginning 2007)"~~], KHRA

Form 20-3, (4/06);

(c) [(d)] "Mare Transfer of Ownership Report in connection with the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-4, (4/06);

(d) [(e)] "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRA Form 20-5, (4/06);

(e) [(f)] "Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-6, (4/06);

(f) [(g)] "Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-7, (4/06);

(g) [(g)] "Late Filing of Application for the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-8, (4/06); and

(h) [(h)] "Application for Award from Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-9, (4/06).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Kentucky Horse Racing Commission [Authority], 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at [www.khrc.ky.gov](http://www.khrc.ky.gov) [~~www.khra.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: 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, September 13, 2011)

#### 810 KAR 1:145. Advance deposit account wagering.

RELATES TO: KRS 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.310, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(2) authorizes the Kentucky Horse Racing Commission to issue licenses to any person or entity that offers advance deposit account wagering to Kentucky residents. This administrative regulation establishes the license application procedures and requirements to offer advance deposit account wagering to Kentucky residents.

Section 1. Definitions. (1) "Account" means an account for advance deposit account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the advance deposit account wagering licensee.

(2) "Account holder" means an individual who successfully completed an application and for whom the advance deposit account wagering licensee has opened an account.

(3) "Advance deposit account wagering" is defined by KRS 230.210(1).

(4) "Advance deposit account wagering licensee" is defined by KRS 230.210(2).

(5) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(6) "Association" is defined by KRS 230.210(5).

(7) "Confidential information" means:

(a) The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;

(b) The amount of money wagered by a particular account holder on any race or series of races;

(c) The account number and secure personal identification code of a particular account holder;

(d) The identities of particular racing associations on which the account holder is wagering or has wagered; and

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(e) Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the advance deposit account wagering licensee that would identify the account holder to anyone other than the commission or the advance deposit account wagering licensee.

(8) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(9) "Kentucky resident" is defined by KRS 230.210(12).

(10) "Nominal change in ownership" is defined by 810 KAR 1:037, Section 1(1).

(11) "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.

(12) "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.

(13) "Substantial change in ownership" is defined by 810 KAR 1:037, Section 1(4).

(14) "Telephone account wagering" is defined by KRS 230.210(19).

(15) "Totalizator" or "Totalizator system" 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 ~~the[such]~~ wagers, and records, displays, and stores pari-mutuel wagering information.

Section 2. License required to conduct advance deposit account wagering.

(1) New license applications. Any individual, person, or entity, other than a licensed association engaged in telephone account wagering as defined in KRS 230.210(19) and addressed in KRS 230.378 and KRS 230.379, that offers advance deposit account wagering to Kentucky residents shall apply to the commission for a license pursuant to KRS 230.260(2). Deadlines for new license applications shall be as follows:

(a) Any individual, person, or entity that offered advanced deposit account wagering to Kentucky residents prior to {EFFECTIVE DATE OF REG}, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" 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]~~ individual, person, or entity may continue to operate. The commission shall render a decision within ninety (90) days of receipt of a completed license application. The license shall be effective upon approval of the commission.

(b) Any other individual, person, or entity shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering." The license shall be effective, and the advance deposit account wagering licensee may begin operations, upon approval of the commission.

(2) Renewal applications. A license to conduct advance deposit account wagering shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" on or before September 1 of

the preceding year. The commission shall render a decision on the application on or before December 15 of the preceding year. 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 of the 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 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 five thousand dollars (\$5,000). 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 will be 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 reasonably 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 costs contained in subsections **(1) and (2)**~~[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 of 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. The commission shall track the additional costs required to implement and enforce this administrative regulation and amend the annual fee in accordance with KRS Chapter 13A if necessary to recoup its regulatory costs, ~~except[however, in no event shall]~~ the annual license fee shall not exceed ten thousand dollars (\$10,000), as provided in KRS 230.260(2).

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 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 (3) 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 and protecting accounts;

(e) A detailed plan of how the advance deposit account wagering system will operate. The commission may require changes in the proposed plan of operations as a condition of granting a license. There shall not be~~[No]~~ subsequent material changes in the plan of operations ~~[may occur]~~ unless ordered by the commission or until approved by the commission after receiving a written

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request;

(f) A list of all personnel processing wagers on races made by Kentucky residents. This list shall be kept current and be provided to the commission upon request; and

(g) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering."

(2) In addition to the application requirements contained in subsection (1) of this section, the commission may require:

(a) A Type II SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants, or other independent report in a form acceptable to the commission, completed within the preceding twelve (12) months and other pertinent information as required by the commission to evaluate the applicant's control objectives, control activities, and control processes. The commission may require that a SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license; and

(b) A bond from a surety company admitted in the Commonwealth of Kentucky or other form of financial security such as an irrevocable letter of credit in favor of the Commonwealth of Kentucky in an amount not to exceed five hundred thousand dollars (\$500,000) depending upon the financial stability of the applicant, as demonstrated in the applicant's audited financial statements 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 and protecting accounts. The bond or letter of credit shall, if necessary, be used to:

1. Comply with and perform the provisions and undertakings of the advance deposit account wagering licensee set forth in the application as finally approved by the commission;

2. Discharge the licensee's financial obligations to account holders who are Kentucky residents;

3. Discharge payment of all taxes and expenses due by the licensee to the Commonwealth; and

4. Discharge the licensee's financial obligations to any racing association or simulcast facility licensed by the commission.

(3) 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:

1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);

2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;

3. Whether the applicant or its principals has 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;

4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and

5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes;[-]

(b) The quality of physical facilities and equipment;

(c) The financial ability of the applicant to conduct advance deposit account wagering;

(d) The protections provided to safeguard accounts, including a certification from the licensee's chief financial officer that account funds will not be commingled with other funds as required in Section 7(6) of this administrative regulation;

(e) The management ability of the applicant and its principals;

(f) Compliance of the applicant with applicable statutes, charters, ordinances, and **administrative** regulations;

(g) The efforts of the applicant to promote, develop, and improve the horse racing industry in the Commonwealth;

(h) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth; and

(i) The economic impact of the applicant upon the Commonwealth.

Section 5. Oral Presentation by Applicant. (1) The commission may require an applicant to make an oral presentation prior to its ruling in order to clarify or otherwise respond to questions concerning the application as a condition to the issuance or renewal of a license.

(a) 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.

(b) 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. [(4)] 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:

(1)[(a)] Copies of any documents used by the applicant in preparing the application; and

(2)[(b)] A list of all contracts between the applicant and third parties related to operations. The commission may review **the[such]** contracts any time upon request.

Section 7. Operations. (1) Before doing business in Kentucky, the licensee **shall[must]** be qualified to do business in Kentucky.

(2) A licensee shall submit a copy of any documents required to be filed with the Kentucky Department of Revenue and any documents related to an audit or investigation by any local, state, or federal regulatory agency contemporaneously to the commission.

(3) 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 any local, state, or federal regulatory agency.

(4) A licensee shall submit quarterly reports to the commission providing amounts wagered by Kentucky residents and amounts wagered on Kentucky races as required by KRS 230.260(2).

(5) **A licensee[An applicant]** shall enter into an agreement with each licensed racing association in the Commonwealth on whose races the **licensee[applicant]** offers advance deposit account wagering regarding payment of host fees and any other applicable fees, costs, or payments of any kind to be paid to the licensed association. The licensed racing association and the applicable horsemen's organization shall negotiate a separate agreement for contributions to the purse account generated by advanced deposit account wagering.

(6) **A licensee[An applicant]** shall not commingle account funds with other funds.

(7) **A licensee[An applicant]** that does not have audited financial statements for the last three (3) years as referenced in Section 4(1)(d) of this administrative regulation shall provide quarterly financial statements to the commission for the first calendar year of operation.

(8) A licensee **shall[must]** use and communicate pari-mutuel wagers to a totalizator system licensed by the commission.

(9) A licensee **shall[must]** operate and communicate with the totalizator system in such a way as not to provide or facilitate a wagering advantage based on access to information and processing of wagers by account holders relative to persons who wager at licensed associations or simulcast facilities.

(10) All personnel processing wagers made by Kentucky residents **shall[must]** be licensed in the jurisdiction where they are located. If an individual is located in a jurisdiction that is not a racing jurisdiction or that does not require a license, that individual **shall[must]** be licensed in Kentucky.

(11) Accounts shall only be accepted in the name of an individual and shall not be transferable. Only individuals who have established accounts with a licensee may wager through a licensee.

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(12) Each account holder shall provide ~~[such]~~ personal information as the licensee and the commission require, including, but not limited to:

- (a) Name;
- (b) Principal residence address;
- (c) Telephone number;
- (d) Social security number;
- (e) Date of birth; and
- (f) Other information necessary for account administration.

(13) The information supplied by the account holder shall be verified by the licensee using means acceptable to the commission.

(14) The licensee shall provide each account holder a secure personal identification code and password to be used by the account holder to confirm the validity of every account transaction.

(15) ~~An[No]~~ employee or agent of the licensee shall not disclose any confidential information except:

- (a) To the commission;
- (b) To the account holder as required by this administrative regulation;
- (c) To the licensee and its affiliates;
- (d) To the licensed association as required by the agreement between the licensee and the association; and
- (e) As otherwise required by law.

(16) The licensee shall provide each account holder a copy of account holder rules/terms of agreement and ~~[such]~~ other information and materials that are pertinent to the operation of the account.

(17) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(18) Each account shall be administered in accordance with the account holder rules/terms of agreement provided to account holders, including, but not limited to:

- (a) Placing of wagers;
- (b) Deposits to accounts;
- (c) Credits to accounts;
- (d) Debits to accounts;
- (e) Refunds to accounts;
- (f) Withdrawals from accounts;
- (g) Minimum deposit requirements;
- (h) Fees per wager; and
- (i) Rebates.

(19) Each licensee shall have protocols in place and shall publicize to its account holders when its wagers are excluded from a host track's wagering pool. These protocols shall include an immediate electronic mail message to affected account holders and immediate posting on the licensee's website.

(20) A licensee shall maintain complete records of the application and the opening of an account for the life of the account plus two (2) additional years. A licensee shall also maintain complete records of the closing of an account for two (2) years after closing. These records shall be provided to the commission upon request.

(21) A licensee shall maintain complete records of all transactions, including deposits, credits, debits, refunds, withdrawals, fees, wagers, rebates, and earnings for two (2) years. These records shall be provided to the commission upon request.

(22) All wagering conversations, transactions, or other wagering communications, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of ~~the[such]~~ communications shall be kept by the licensee for a period of two (2) years. These tapes and other records shall be made available to the commission upon request.

(23) The recording of the confirmation of the transaction, as reflected in the voice or other data recording, shall be deemed to be the actual wager regardless of what was recorded by the totalizer system.

(24) A licensee shall not accept wagers if its recording system is not operable.

(25) The commission may monitor the equipment and staff and review the records of a licensee and any of the transactions conducted by the licensee with regards to wagers made by Kentucky residents.

(26) A licensee may suspend or close any account for violation

of its account holder rules/terms of agreement, or any other reason it deems sufficient, if it returns~~[provided that when an account is closed, it shall return]~~ to the account holder all monies then on deposit within seven (7) calendar days.

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 has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11. 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 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.

(5) Any attempt to effect a substantial change in ownership under this section not in writing shall be considered void by the commission.

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.

(2) Additionally, with respect to any individual, person, or entity that offers advanced deposit account wagering to Kentucky residents without a license issued by the commission, the commission may take the[such] measures [as] it deems necessary, including referral to the appropriate regulatory and law enforcement authorities for civil action or criminal penalties.

Section 11. ~~[Severability. In the event that any section or provision of this administrative regulation is found to be invalid, the remaining sections and provisions of this administrative regulation shall not be affected or invalidated.]~~

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

(a) "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering," KHRC 145-01, 06/11; and

(b) "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11.

(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](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 noon.

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CONTACT PERSON: Susan B. Speckert, General Counsel,  
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(859) 246-2039.

### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, September 13, 2011)**

#### **811 KAR 1:285. Advance deposit account wagering.**

RELATES TO: KRS 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.310,  
230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(2) authorizes the Kentucky Horse Racing Commission to issue licenses to any person or entity that offers advance deposit account wagering to Kentucky residents. This administrative regulation establishes the license application procedures and requirements to offer advance deposit account wagering to Kentucky residents.

Section 1. Definitions. (1) "Account" means an account for advance deposit account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the advance deposit account wagering licensee.

(2) "Account holder" means an individual who successfully completed an application and for whom the advance deposit account wagering licensee has opened an account.

(3) "Advance deposit account wagering" is defined by KRS 230.210(1).

(4) "Advance deposit account wagering licensee" is defined by KRS 230.210(2).

(5) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(6) "Association" is defined by KRS 230.210(5).

(7) "Confidential information" means:

(a) The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;

(b) The amount of money wagered by a particular account holder on any race or series of races;

(c) The account number and secure personal identification code of a particular account holder;

(d) The identities of particular racing associations on which the account holder is wagering or has wagered; and

(e) Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the advance deposit account wagering licensee that would identify the account holder to anyone other than the commission or the advance deposit account wagering licensee.

(8) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(9) "Kentucky resident" is defined by KRS 230.210(12).

(10) "Nominal change in ownership" is defined by 811 KAR 1:037, Section 1(1).

(11) "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.

(12) "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.

(13) "Substantial change in ownership" is defined by 811 KAR 1:037, Section 1(4).

(14) "Telephone account wagering" is defined by KRS 230.210(19).

(15) "Totalizator" or "Totalizator system" 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 ~~the[such]~~ wagers, and records, displays, and stores pari-mutuel wagering information.

Section 2. License Required to Conduct Advance Deposit Account Wagering. (1) New license applications. Any individual, person, or entity, other than a licensed association engaged in telephone account wagering as defined in KRS 230.210(19) and addressed in KRS 230.378 and KRS 230.379, that offers advance deposit account wagering to Kentucky residents shall apply to the commission for a license pursuant to KRS 230.260(2). Deadlines for new license applications shall be as follows:

(a) Any individual, person, or entity that offered advanced deposit account wagering to Kentucky residents prior to {EFFECTIVE DATE OF REG}, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" 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]~~ individual, person, or entity may continue to operate. The commission shall render a decision within ninety (90) days of receipt of a completed license application. The license shall be effective upon approval of the commission.

(b) Any other individual, person, or entity shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering." The license shall be effective, and the advance deposit account wagering licensee may begin operations, upon approval of the commission.

(2) Renewal applications. A license to conduct advance deposit account wagering shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" on or before September 1 of the preceding year. The commission shall render a decision on the application on or before December 15 of the preceding year. 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 of the 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 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 five thousand dollars (\$5,000). 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 will be 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.

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(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 reasonably 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 costs contained in subsections **(1) and (2)**~~[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 of 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. The commission shall track the additional costs required to implement and enforce this administrative regulation and amend the annual fee in accordance with KRS Chapter 13A if necessary to recoup its regulatory costs, ~~except[however, in no event shall]~~ the annual license fee shall not exceed ten thousand dollars (\$10,000), as provided in KRS 230.260(2).

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 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 (3) 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 and protecting accounts;
- (e) A detailed plan of how the advance deposit account wagering system will operate. The commission may require changes in the proposed plan of operations as a condition of granting a license. There shall not be[No] subsequent material changes in the plan of operations ~~[may occur]~~ unless ordered by the commission or until approved by the commission after receiving a written request;
- (f) A list of all personnel processing wagers on races made by Kentucky residents. This list shall be kept current and be provided to the commission upon request; and

(g) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering."

(2) In addition to the application requirements contained in subsection (1) of this section, the commission may require:

(a) A Type II SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants, or other independent report in a form acceptable to the commission, completed within the preceding twelve (12) months and other pertinent information as required by the commission to evaluate the applicant's control objectives, control activities, and control processes. The commission may require that a SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license; and

(b) A bond from a surety company admitted in the Commonwealth of Kentucky or other form of financial security such as an irrevocable letter of credit in favor of the Commonwealth of Kentucky in an amount not to exceed five hundred thousand dollars (\$500,000) depending upon the financial stability of the applicant, as demonstrated in the applicant's audited financial statements 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 and protecting accounts. The bond or letter of credit shall, if necessary, be used to:

1. Comply with and perform the provisions and undertakings of the advance deposit account wagering licensee set forth in the application as finally approved by the commission;

2. Discharge the licensee's financial obligations to account holders who are Kentucky residents;

3. Discharge payment of all taxes and expenses due by the licensee to the Commonwealth; and

4. Discharge the licensee's financial obligations to any racing association or simulcast facility licensed by the commission.

(3) 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:
  1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);
  2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;
  3. Whether the applicant or its principals has 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;
  4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and
  5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes~~[-]~~;
- (b) The quality of physical facilities and equipment;
- (c) The financial ability of the applicant to conduct advance deposit account wagering;
- (d) The protections provided to safeguard accounts, including a certification from the licensee's chief financial officer that account funds will not be commingled with other funds as required in Section 7(6) of this administrative regulation;
- (e) The management ability of the applicant and its principals;
- (f) Compliance of the applicant with applicable statutes, charters, ordinances, and administrative regulations;
- (g) The efforts of the applicant to promote, develop, and improve the horse racing industry in the Commonwealth;
- (h) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth; and
- (i) The economic impact of the applicant upon the Commonwealth.

Section 5. Oral Presentation by Applicant. (1) The commission may require an applicant to make an oral presentation prior to its ruling in order to clarify or otherwise respond to questions concerning the application as a condition to the issuance or renewal of a license.

(a) 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.

~~(b)~~ 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. ~~[(4)]~~ 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:

~~(1)[(a)]~~ Copies of any documents used by the applicant in preparing the application; and

~~(2)[(b)]~~ A list of all contracts between the applicant and third parties related to operations. The commission may review the[such] contracts any time upon request.



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Section 7. Operations. (1) Before doing business in Kentucky, the licensee ~~shall~~must be qualified to do business in Kentucky.

(2) A licensee shall submit a copy of any documents required to be filed with the Kentucky Department of Revenue and any documents related to an audit or investigation by any local, state, or federal regulatory agency contemporaneously to the commission.

(3) 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 any local, state, or federal regulatory agency.

(4) A licensee shall submit quarterly reports to the commission providing amounts wagered by Kentucky residents and amounts wagered on Kentucky races as required by KRS 230.260(2).

(5) ~~A licensee~~An applicant shall enter into an agreement with each licensed racing association in the Commonwealth on whose races the ~~licensee~~applicant offers advance deposit account wagering regarding payment of host fees and any other applicable fees, costs, or payments of any kind to be paid to the licensed association. The licensed racing association and the applicable horsemen's organization shall negotiate a separate agreement for contributions to the purse account generated by advanced deposit account wagering.

(6) ~~A licensee~~An applicant shall not commingle account funds with other funds.

(7) ~~A licensee~~An applicant that does not have audited financial statements for the last three (3) years as referenced in Section 4(1)(d) of this administrative regulation shall provide quarterly financial statements to the commission for the first calendar year of operation.

(8) A licensee ~~shall~~must use and communicate pari-mutuel wagers to a totalizator system licensed by the commission.

(9) A licensee ~~shall~~must operate and communicate with the totalizator system in such a way as not to provide or facilitate a wagering advantage based on access to information and processing of wagers by account holders relative to persons who wager at licensed associations or simulcast facilities.

(10) All personnel processing wagers made by Kentucky residents ~~shall~~must be licensed in the jurisdiction where they are located. If an individual is located in a jurisdiction that is not a racing jurisdiction or that does not require a license, that individual ~~shall~~must be licensed in Kentucky.

(11) Accounts shall only be accepted in the name of an individual and shall not be transferable. Only individuals who have established accounts with a licensee may wager through a licensee.

(12) Each account holder shall provide ~~such~~ personal information as the licensee and the commission require, including, but not limited to:

- (a) Name;
- (b) Principal residence address;
- (c) Telephone number;
- (d) Social Security number;
- (e) Date of birth; and
- (f) Other information necessary for account administration.

(13) The information supplied by the account holder shall be verified by the licensee using means acceptable to the commission.

(14) The licensee shall provide each account holder a secure personal identification code and password to be used by the account holder to confirm the validity of every account transaction.

(15) ~~An~~Ne employee or agent of the licensee shall ~~not~~ disclose any confidential information except:

- (a) To the commission;
- (b) To the account holder as required by this administrative regulation;
- (c) To the licensee and its affiliates;
- (d) To the licensed association as required by the agreement between the licensee and the association; and
- (e) As otherwise required by law.

(16) The licensee shall provide each account holder a copy of account holder rules/terms of agreement and ~~such~~ other information and materials that are pertinent to the operation of the account.

(17) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(18) Each account shall be administered in accordance with the account holder rules/terms of agreement provided to account holders, including, but not limited to:

- (a) Placing of wagers;
- (b) Deposits to accounts;
- (c) Credits to accounts;
- (d) Debits to accounts;
- (e) Refunds to accounts;
- (f) Withdrawals from accounts;
- (g) Minimum deposit requirements;
- (h) Fees per wager; and
- (i) Rebates.

(19) Each licensee shall have protocols in place and shall publicize to its account holders when its wagers are excluded from a host track's wagering pool. These protocols shall include an immediate electronic mail message to affected account holders and immediate posting on the licensee's website.

(20) A licensee shall maintain complete records of the application and the opening of an account for the life of the account plus two (2) additional years. A licensee shall also maintain complete records of the closing of an account for two (2) years after closing. These records shall be provided to the commission upon request.

(21) A licensee shall maintain complete records of all transactions, including deposits, credits, debits, refunds, withdrawals, fees, wagers, rebates, and earnings for two (2) years. These records shall be provided to the commission upon request.

(22) All wagering conversations, transactions, or other wagering communications, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of ~~the~~such communications shall be kept by the licensee for a period of two (2) years. These tapes and other records shall be made available to the commission upon request.

(23) The recording of the confirmation of the transaction, as reflected in the voice or other data recording, shall be deemed to be the actual wager regardless of what was recorded by the totalizator system.

(24) A licensee shall not accept wagers if its recording system is not operable.

(25) The commission may monitor the equipment and staff and review the records of a licensee and any of the transactions conducted by the licensee with regards to wagers made by Kentucky residents.

(26) A licensee may suspend or close any account for violation of its account holder rules/terms of agreement, or any other reason it deems sufficient, ~~if it returns~~provided that when an account is closed, it shall return to the account holder all monies then on deposit within seven (7) calendar days.

Section 8. Transfers of Licenses. (1) A license issued under this administrative regulation ~~shall not be~~is neither transferable ~~or~~neer assignable.

(2) A substantial change in ownership in a licensee shall result in termination of the license unless prior written approval has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Advance Deposit Account Wagering Change of Control Form," KHR 145-02, 06/11. 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 shall hold the voting securities of the

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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.

(5) Any attempt to effect a substantial change in ownership under this section not in writing shall be considered void by the commission.

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.

(2) Additionally, with respect to any individual, person, or entity that offers advanced deposit account wagering to Kentucky residents without a license issued by the commission, the commission may take ~~the[such]~~ measures ~~[as]~~ it deems necessary, including referral to the appropriate regulatory and law enforcement authorities for civil action or criminal penalties.

~~Section 11. [Severability. In the event that any section or provision of this administrative regulation is found to be invalid, the remaining sections and provisions of this administrative regulation shall not be affected or invalidated.]~~

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

(a) "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering," KHRC 145-01, 06/11; and

(b) "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11.

(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](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 noon

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, September 13, 2011)**

#### **811 KAR 2:185. Advance deposit account wagering.**

RELATES TO: KRS 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.310, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(2) authorizes the Kentucky Horse Racing Commission to issue licenses to any person or entity that offers advance deposit account wagering to Kentucky residents. This administrative regulation establishes the license application procedures and requirements to offer advance deposit account wagering to Kentucky residents.

Section 1. Definitions. (1) "Account" means an account for advance deposit account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the advance deposit account

wagering licensee.

(2) "Account holder" means an individual who successfully completed an application and for whom the advance deposit account wagering licensee has opened an account.

(3) "Advance deposit account wagering" is defined by KRS 230.210(1).

(4) "Advance deposit account wagering licensee" is defined by KRS 230.210(2).

(5) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(6) "Association" is defined by KRS 230.210(5).

(7) "Confidential information" means:

(a) The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;

(b) The amount of money wagered by a particular account holder on any race or series of races;

(c) The account number and secure personal identification code of a particular account holder;

(d) The identities of particular racing associations on which the account holder is wagering or has wagered; and

(e) Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the advance deposit account wagering licensee that would identify the account holder to anyone other than the commission or the advance deposit account wagering licensee.

(8) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(9) "Kentucky resident" is defined by KRS 230.210(12).

(10) "Nominal change in ownership" is defined by 811 KAR 2:140, Section 1(1).

(11) "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.

(12) "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.

(13) "Substantial change in ownership" is defined by 811 KAR 2:140, Section 1(4).

(14) "Telephone account wagering" is defined by KRS 230.210(19).

(15) "Totalizator" or "Totalizator system" 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 ~~the[such]~~ wagers, and records, displays, and stores pari-mutuel wagering information.

Section 2. License Required to Conduct Advance Deposit Account Wagering. (1) New license applications. Any individual, person, or entity, other than a licensed association engaged in telephone account wagering as defined in KRS 230.210(19) and addressed in KRS 230.378 and KRS 230.379, that offers advance deposit account wagering to Kentucky residents shall apply to the commission for a license pursuant to KRS 230.260(2). Deadlines for new license applications shall be as follows:

(a) Any individual, person, or entity that offered advanced deposit account wagering to Kentucky residents prior to {EFFECTIVE



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DATE OF REG), shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" 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]~~ individual, person, or entity may continue to operate. The commission shall render a decision within ninety (90) days of receipt of a completed license application. The license shall be effective upon approval of the commission.

(b) Any other individual, person, or entity shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering." The license shall be effective, and the advance deposit account wagering licensee may begin operations, upon approval of the commission.

(2) Renewal applications. A license to conduct advance deposit account wagering shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" on or before September 1 of the preceding year. The commission shall render a decision on the application on or before December 15 of the preceding year. 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 of the 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 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 five thousand dollars (\$5,000). 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 will be 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 reasonably 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 costs contained in subsections ~~(1) and (2)[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 of 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. The commission shall track the additional costs required to implement and enforce this administrative regulation and amend the annual fee in accordance with KRS Chapter 13A if necessary to recoup its regulatory costs, ~~except[however, in no event shall]~~ the annual license fee shall not exceed ten thousand dollars (\$10,000), as provided in KRS 230.260(2).

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 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 (3) 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 and protecting accounts;

(e) A detailed plan of how the advance deposit account wagering system will operate. The commission may require changes in the proposed plan of operations as a condition of granting a license. There shall not be[No] subsequent material changes in the plan of operations ~~[may occur]~~ unless ordered by the commission or until approved by the commission after receiving a written request;

(f) A list of all personnel processing wagers on races made by Kentucky residents. This list shall be kept current and be provided to the commission upon request; and

(g) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering."

(2) In addition to the application requirements contained in subsection (1) of this section, the commission may require:

(a) A Type II SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants, or other independent report in a form acceptable to the commission, completed within the preceding twelve (12) months and other pertinent information as required by the commission to evaluate the applicant's control objectives, control activities, and control processes. The commission may require that a SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license; and

(b) A bond from a surety company admitted in the Commonwealth of Kentucky or other form of financial security such as an irrevocable letter of credit in favor of the Commonwealth of Kentucky in an amount not to exceed five hundred thousand dollars (\$500,000) depending upon the financial stability of the applicant, as demonstrated in the applicant's audited financial statements 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 and protecting accounts. The bond or letter of credit shall, if necessary, be used to:

1. Comply with and perform the provisions and undertakings of the advance deposit account wagering licensee set forth in the application as finally approved by the commission;

2. Discharge the licensee's financial obligations to account holders who are Kentucky residents;

3. Discharge payment of all taxes and expenses due by the licensee to the Commonwealth; and

4. Discharge the licensee's financial obligations to any racing association or simulcast facility licensed by the commission.

(3) 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:

1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);

2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;

3. Whether the applicant or its principals has been a party to proceedings in which unfair labor practices, discrimination, or viola-

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tion of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and

5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes;[-]

(b) The quality of physical facilities and equipment;

(c) The financial ability of the applicant to conduct advance deposit account wagering;

(d) The protections provided to safeguard accounts, including a certification from the licensee's chief financial officer that account funds will not be commingled with other funds as required in Section 7(6) of this administrative regulation;

(e) The management ability of the applicant and its principals;

(f) Compliance of the applicant with applicable statutes, charters, ordinances, and **administrative** regulations;

(g) The efforts of the applicant to promote, develop, and improve the horse racing industry in the Commonwealth;

(h) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth; and

(i) The economic impact of the applicant upon the Commonwealth.

Section 5. Oral Presentation by Applicant. (1) The commission may require an applicant to make an oral presentation prior to its ruling in order to clarify or otherwise respond to questions concerning the application as a condition to the issuance or renewal of a license.

(a) 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.

**(b)** 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. ~~[(4)]~~ 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:

**(1)(a)** Copies of any documents used by the applicant in preparing the application; and

**(2)(b)** A list of all contracts between the applicant and third parties related to operations. The commission may review **the[such]** contracts any time upon request.

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(2) A licensee shall submit a copy of any documents required to be filed with the Kentucky Department of Revenue and any documents related to an audit or investigation by any local, state, or federal regulatory agency contemporaneously to the commission.

(3) 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 any local, state, or federal regulatory agency.

(4) A licensee shall submit quarterly reports to the commission providing amounts wagered by Kentucky residents and amounts wagered on Kentucky races as required by KRS 230.260(2).

(5) **A licensee[An applicant]** shall enter into an agreement with each licensed racing association in the Commonwealth on whose races the **licensee[applicant]** offers advance deposit account wagering regarding payment of host fees and any other applicable fees, costs, or payments of any kind to be paid to the licensed association. The licensed racing association and the applicable horsemen's organization shall negotiate a separate agreement for contributions to the purse account generated by advanced deposit account wagering.

(6) **A licensee[An applicant]** shall not commingle account funds with other funds.

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cial statements for the last three (3) years as referenced in Section 4(1)(d) of this administrative regulation shall provide quarterly financial statements to the commission for the first calendar year of operation.

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(9) A licensee **shall[must]** operate and communicate with the totalizator system in such a way as not to provide or facilitate a wagering advantage based on access to information and processing of wagers by account holders relative to persons who wager at licensed associations or simulcast facilities.

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(11) Accounts shall only be accepted in the name of an individual and shall not be transferable. Only individuals who have established accounts with a licensee may wager through a licensee.

(12) Each account holder shall provide **[such]** personal information as the licensee and the commission require, including, but not limited to:

(a) Name;

(b) Principal residence address;

(c) Telephone number;

(d) Social Security number;

(e) Date of birth; and

(f) Other information necessary for account administration.

(13) The information supplied by the account holder shall be verified by the licensee using means acceptable to the commission.

(14) The licensee shall provide each account holder a secure personal identification code and password to be used by the account holder to confirm the validity of every account transaction.

(15) **An[No]** employee or agent of the licensee shall **not** disclose any confidential information except:

(a) To the commission;

(b) To the account holder as required by this administrative regulation;

(c) To the licensee and its affiliates;

(d) To the licensed association as required by the agreement between the licensee and the association; and

(e) As otherwise required by law.

(16) The licensee shall provide each account holder a copy of account holder rules/terms of agreement and **[such]** other information and materials that are pertinent to the operation of the account.

(17) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(18) Each account shall be administered in accordance with the account holder rules/terms of agreement provided to account holders, including, but not limited to:

(a) Placing of wagers;

(b) Deposits to accounts;

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(g) Minimum deposit requirements;

(h) Fees per wager; and

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(19) Each licensee shall have protocols in place and shall publicize to its account holders when its wagers are excluded from a host track's wagering pool. These protocols shall include an immediate electronic mail message to affected account holders and immediate posting on the licensee's website.

(20) A licensee shall maintain complete records of the application and the opening of an account for the life of the account plus two (2) additional years. A licensee shall also maintain complete records of the closing of an account for two (2) years after closing. These records shall be provided to the commission upon request.

(21) A licensee shall maintain complete records of all transac-

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tions, including deposits, credits, debits, refunds, withdrawals, fees, wagers, rebates, and earnings for two (2) years. These records shall be provided to the commission upon request.

(22) All wagering conversations, transactions, or other wagering communications, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of ~~the~~such communications shall be kept by the licensee for a period of two (2) years. These tapes and other records shall be made available to the commission upon request.

(23) The recording of the confirmation of the transaction, as reflected in the voice or other data recording, shall be deemed to be the actual wager regardless of what was recorded by the totalizer system.

(24) A licensee shall not accept wagers if its recording system is not operable.

(25) The commission may monitor the equipment and staff and review the records of a licensee and any of the transactions conducted by the licensee with regards to wagers made by Kentucky residents.

(26) A licensee may suspend or close any account for violation of its account holder rules/terms of agreement, or any other reason it deems sufficient, ~~if it returns~~provided that when an account is closed, it shall return to the account holder all monies then on deposit within seven (7) calendar days.

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 has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11. 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 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.

(5) Any attempt to effect a substantial change in ownership under this section not in writing shall be considered void by the commission.

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.

(2) Additionally, with respect to any individual, person, or entity that offers advanced deposit account wagering to Kentucky residents without a license issued by the commission, the commission may take ~~the~~such measures ~~as~~ it deems necessary, including referral to the appropriate regulatory and law enforcement authorities for civil action or criminal penalties.

Section 11. ~~Severability. In the event that any section or provision of this administrative regulation is found to be invalid, the re-~~

~~maining sections and provisions of this administrative regulation shall not be affected or invalidated.~~

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

(a) "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering," KHRC 145-01, 06/11; and

(b) "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11.

(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](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 noon

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.

### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Mental Health and Mental Retardation Services Division of Administration and Financial Management (As Amended at ARRS, September 13, 2011)**

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

RELATES TO: KRS 210.710, 210.720, and 210.730  
STATUTORY AUTHORITY: KRS 194A.050, 210.710(4), 210.720(3), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.710(4) and 210.720(3) require the Secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the Cabinet for Health and Family Services, for the mentally ill or mentally retarded. This administrative regulation establishes the "Means test" for making that determination.

Section 1. Definitions. (1) "Allowed deduction" means an amount disregarded or deducted from income and assets for the purpose of determining the ability to pay for services rendered by a facility.

(2) "Available assets" means resources of the patient or person responsible for the patient in accordance with KRS 210.720(3), less the applicable protections specified in Section 2(7) of this administrative regulation.

(3) "Deductible" means an amount that a patient or person responsible for the patient is expected to pay toward their care by a third-party payor such as Medicare or a private insurance company.

(4) "Facility" is defined in KRS 210.710(2).

(5) "Income" means funds received by the patient or person responsible for the patient and includes the following:

- (a) Salaries;
- (b) Wages;
- (c) Self-employed gross revenues, less operating expenses;
- (d) Benefit payments, except for Supplemental Security Income payments;
- (e) Social Security payments;
- (f) Rents;
- (g) Royalties;
- (h) Pensions;
- (i) Retirement payments;
- (j) Veteran's Administration payments;
- (k) Black lung benefits;
- (l) Railroad retirement benefits;

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- (m) Gifts;
- (n) Settlements;
- (o) Trust receipts;
- (p) Alimony, but does not include child support payments;
- (q) Interest income; and
- (r) Income from investments.

(6) "Patient" means a person admitted to a facility.

(7) "Person responsible for the patient" is defined in KRS 210.710(5).

(8) "Personal Needs Allowance" means an amount of resources deducted from income for the patient's personal needs, including clothing and other miscellaneous items required by the patient.

(9) "Poverty Guidelines" means the latest federal poverty measurement guidelines issued by the United States Department of Health and Human Services and published annually in the Federal Register, under the authority of 42 U.S.C. 9902(2).

Section 2. Determination of the Ability to Pay for Services Rendered at Facilities. (1) The facility shall apply the means test to each patient who is admitted to the facility for treatment.

(2)(a) The means test shall include a determination of the responsible party or parties to pay for the patient's care, which shall be documented using the "PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD" form.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form along with the date the form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(3) The amount a patient or person responsible for the patient is required to pay for services shall be the lesser of:

(a) The cost per patient day in accordance with 908 KAR 3:050, less any amount paid by Medicare, Medicaid, and other third-party payment sources; or

(b) The amount the patient is deemed able to pay in accordance with this administrative regulation.

(4) The facility shall determine the financial resources available to the patient or person responsible for the patient including:

(a) Insurance and third-party payors;

(b) Income received or expected to be received during the period of hospitalization; and

(c) Available assets.

(5) The following shall be allowed deductions from income:

(a) Federal income taxes;

(b) State income taxes;

(c) Social security taxes;

(d) Normal retirement contributions;

(e) Unpaid medical and dental bills;

(f) Health insurance premiums;

(g) Medicare Part B insurance premiums;

(h) Long-Term Care insurance premiums;

(i) A personal needs allowance of forty (40) dollars per month;

(j) Student loan payments;

(k) Bed-hold reservation costs at another facility for up to fourteen (14) days as long as the patient's stay is expected to be shorter than the reservation period;

(l) Child support payments;

(m) Life insurance premiums if the patient's estate or a funeral home is the named beneficiary on the policy; and

(n) A basic maintenance allowance, derived from the Poverty Guidelines, as contained in the Basic Maintenance Allowance Table of Section 3(7) of this administrative regulation for the size of the patient's family if the following conditions are met:

1. The patient was maintaining a residence immediately prior to admission;

2. The residence will continue to be maintained during the period of hospitalization and resources of the patient are needed for this effort;

3. Facility staff expects the patient's hospital stay to be three (3) months or less in duration; and

4. Dependents used in the calculation of the basic maintenance allowance shall include a legally-recognized spouse and each individual less than eighteen (18) years of age and in the patient's care.

(6) An estimated income tax related deduction of twenty-five (25) percent of total income shall be allowed in lieu of the actual wage taxes contained in subsection (5) of this section. A patient or person responsible for the patient may request that actual tax amounts be used instead of the estimated deduction if they can substantiate the actual tax amounts.

(7) The following shall be excluded from the calculation of available assets:

(a) Prepaid burial plans of up to \$1,500 per family member;

(b) Automobiles;

(c) Housing structures;

(d) Land;

(e) Retirement accounts;

(f) Pension funds;

(g) Trust funds that cannot be accessed;

(h) The applicable amount contained in the Ability To Pay Assets Table of Section 3(7) of this administrative regulation for the size of the patient's family using the dependent counting guidelines contained in subsection (5)(n)4 of this section; and

(i) Other assets that are exempted under state law, if any.

Section 3. Calculation of the Amount the Patient or Person Responsible for the Patient is Able to Pay. (1) The facility shall calculate the ability to pay amount utilizing either the "ABILITY TO PAY WORKSHEET" or the "DEDUCTIBLE ABILITY TO PAY WORKSHEET" as appropriate **and by using the following formula:**

(a) Determine the total amount of income of the patient or person responsible for the patient;

(b) Determine the amount of allowed deductions from income in accordance with Section 2(5) of this administrative regulation;

(c) Subtract the allowed deductions from income; and

(d) The remaining available income shall be divided by 365 to obtain the average daily income of the patient or person responsible for the patient.

(2) If the patient or person responsible for the patient has available assets, the facility shall:

(a) Determine the amount of available assets in accordance with Section 2(7) of this administrative regulation; and

(b) Include available assets that remain after the deduction in the patient or person responsible for the patient's ability to pay amount.

(3) Payments to be made on behalf of the patient by a third-party, such as Medicare, Medicaid, or private insurance companies, shall be subtracted from the facility's per diem rate as contained in 908 KAR 3:050. Any remaining liability shall be satisfied as follows with the exception of ability to pay amounts arising from deductibles:

(a) The available income of the patient or person responsible for the patient shall first be applied to the patient's liability for services;

(b) Any liability that remains after application of the average available income shall be satisfied by available assets; and

(c) The applicable average income per day and available asset amount per day shall be combined to determine the ability to pay amount. The ability to pay amount shall be charged for each day the patient is in the facility.

(4) Ability to pay liabilities arising from deductibles shall first be applied to available assets of the patient or person responsible for the patient with any remaining liability being satisfied with available income.

(5) If the Department for Medicaid Services performs an income assessment for a Medicaid patient residing in a nursing facility, intermediate care facility for **individuals with mental retardation or a developmental disability**~~the mentally retarded and developmentally disabled~~, or psychiatric hospital in accordance with 907 KAR 1:655, that Medicaid income assessment shall be relied upon in lieu of the ability to pay provisions established in this administrative regulation.

(6)(a) After the ability to pay is determined for the patient or

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person responsible for the patient, a "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form shall be completed.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form including the date the form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(7) The patient liability shall be calculated based on the United States Department of Health and Human Services poverty threshold guidelines established in this subsection:

(a) The poverty guidelines effective **July 31, 2009** [July 1, 2008] [through the effective date of this administrative regulation] shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	\$10,830 [ <del>\$10,400</del> ]
2	\$14,570 [ <del>\$14,000</del> ]
3	\$18,310 [ <del>\$17,600</del> ]
4	\$22,050 [ <del>\$21,200</del> ]
5	\$25,790 [ <del>\$24,800</del> ]
6	\$29,530 [ <del>\$28,400</del> ]
7	\$33,270 [ <del>\$32,000</del> ]
8	\$37,010 [ <del>\$35,600</del> ]

\*For each additional dependent, add \$3,740 [~~\$3,600~~] dollars.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	\$2,000
2	\$4,000
3	\$4,050
4	\$4,100

\*For each additional dependent, add fifty (50) dollars

(b) The poverty guidelines effective the effective date of this administrative regulation shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	\$10,890 [ <del>\$10,830</del> ]
2	\$14,710 [ <del>\$14,570</del> ]
3	\$18,530 [ <del>\$18,340</del> ]
4	\$22,350 [ <del>\$22,050</del> ]
5	\$26,170 [ <del>\$25,790</del> ]
6	\$29,990 [ <del>\$29,530</del> ]
7	\$33,810 [ <del>\$33,270</del> ]
8	\$37,630 [ <del>\$37,010</del> ]

\*For each additional dependent, add \$3,820 [~~\$3,740~~] dollars.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	\$2,000
2	\$4,000
3	\$4,050
4	\$4,100

\*For each additional dependent, add fifty (50) dollars

Section 4. Revisions to Ability to Pay Amounts. (1) Facility staff shall update a patient's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:

- (a) Income revisions;
- (b) Asset revisions including exhaustion of available assets;
- (c) Change in allowed deductions;
- (d) Change in a dependent of the patient or person responsible for the patient; or
- (e) Change regarding the status of the person responsible for the patient.

(2) Upon a change to the ability to pay information, a revised

"ABILITY TO PAY WORKSHEET" or "DEDUCTIBLE ABILITY TO PAY WORKSHEET" shall be prepared along with a revised "PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD" form and a revised "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form. The revised forms shall be presented to the patient or person responsible for the patient in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) If the patient or person responsible for the patient fails to or will not provide the information necessary to calculate the ability to pay amount, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

(2) If the patient or person responsible for the patient fails to sign the assignment provision contained in the "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

Section 6. Payment Hardship, Appeal and Waiver Procedures. (1) Payment hardships.

(a) If the patient or person responsible for the patient believes that payment of the ability to pay amount results in a financial hardship, the patient or person responsible for the patient may request to make installment payments.

(b) This request shall be made in writing to the facility's patient billing supervisor and shall include documentation to support the claimed hardship.

(c) The patient billing supervisor shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request.

(2) Appeals.

(a) If the patient or person responsible for the patient is aggrieved by the facility charges or a payment plan determined in accordance with this administrative regulation, that person may appeal the determination to the facility director or the facility director's designee for informal resolution within thirty (30) days of the ability to pay amount or payment plan being calculated.

(b) The facility director or the facility director's designee shall review the appeal and issue a determination within thirty (30) days of receipt.

(c) If the patient or person responsible for the patient is dissatisfied with the informal resolution, that person may file an appeal within thirty (30) days of the facility's response to the Director of the Division of Administration and Financial Management, Department for **Behavioral Health, Developmental and Intellectual Disabilities** [Mental Health and Mental Retardation Services], 100 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40621-0001. The director shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(d) The appeal request shall fully explain the patient's or person responsible for the patient's position and include all necessary supporting documentation.

(3) Waivers.

(a) The director of each facility may waive payment of his or her facility's charges under this administrative regulation if waiver is deemed to be in the best interest of all parties.

(b) The Director of the Division of Administration and Financial Management shall have the authority to waive payment at any facility within the department if waiver is deemed to be in the best interest of all parties.

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

(a) "MHMR 3:060-1 ABILITY TO PAY WORKSHEET", June 2008;

(b) "MHMR 3:060-2 DEDUCTIBLE ABILITY TO PAY WORKSHEET", June 2008;

(c) "MHMR 3:060-3 PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT", August 2004; and

(d) "MHMR 3:060-4 PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD", March 2006.

(2) This material may be inspected, copied, or obtained, sub-

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ject to applicable copyright law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities [Mental Health and Mental Retardation Services], 100 Fair Oaks Lane, Frankfort, Kentucky 40621-0001, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHEN HALL, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

CONTACT PERSON: Jill Brown, Cabinet for Health and Family Services, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Ky 40601, phone (502) 564-7905, fax (502) 564-7573.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET  
Kentucky Board of Respiratory Care  
(Amended After Comments)

201 KAR 29:050. Continuing education requirements.

RELATES TO: KRS 314A.115

STATUTORY AUTHORITY: KRS 314A.205(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314A.115 requires the submission of proof of continuing education in order to renew certification. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic courses" means courses offered by an accredited postsecondary institution including:

(a) A respiratory care course, designated by a respiratory care course number, beyond the premandatory certification level; ~~and (b) An academic course in the biological, psychological, sociological, or physical sciences relevant to patient care and is beyond the premandatory certificate level; or~~

(b) [(e)] An academic course applicable to respiratory care practice and appropriate for the respiratory care practitioner employed in the areas of clinical practice, administration, education, or research.

(2) "American Association for Respiratory Care [for Continuing Respiratory Care Education] (AARC) [(AARC-CRCE)] approval" means any offering having received recognition by this organization.

(3) "Approved" means Kentucky Board of Respiratory Care (KBRC) recognized.

(4) "Continuing education unit" means sixty (60) contact minutes of participating in continuing education experiences.

(5) "Offering" means an organized learning experience planned and evaluated to meet behavioral objectives and may be presented in one (1) session or in a series. [(6) "Provider" means an organization approved by the Kentucky Board of Respiratory Care (KBRC) for offering continuing education programs.]

(6) [(7)] "Relevant" means having content applicable to the practice of respiratory care.

(7) "Sponsor" means an individual or organization, other than AARC, applying for approval of continuing education programs.

(8) "Successful completion" means that the practitioner has satisfactorily met and can appropriately document the specific requirements of the offering and earned the continuing education units.

Section 2. Accrual of Continuing Education Units Mandatory; Computation of Accrual. (1) A minimum of twenty-four (24) continuing education units shall be accrued by each person holding mandatory certification during the two (2) year certification period for renewal.

(2) The certification period shall be January 1 of one (1) year through December 31 of the following calendar year, regardless of when a mandatory certificate is issued.

(3) All units shall be in or relevant [related] to the field of respiratory care.

Section 3. Methods of Acquiring Continuing Education Units. Continuing education units applicable to the renewal of the mandatory certificate shall be directly relevant [related] to the professional growth and development of the respiratory care practitioner. Units may be earned by completing any of the following educational activities: [(1) Offerings having American Association for Respiratory Care (AARC) -- Continuing Respiratory Care Education (CRCE) approval (including traditional and nontraditional);]

[(1)(2)](a) Academic courses as defined in Section 1 of this administrative regulation; and [(b) General education courses, either electives or designated to meet degree requirements, shall

~~not be acceptable; and]~~

(b) [(e)] Academic credit equivalency for continuing education units shall be based on one (1) credit hour = fifteen (15) continuing education units;

(2) Continuing education units approved by AARC;

(3) Continuing education units offered by other organizations or institutions approved by the Board; ~~or~~ [(3) Offerings provided by the Committee on Accreditation for Respiratory Care (CoARC) or its equivalent accredited educational programs;

(4) Relevant offerings provided by:

(a) American Thoracic Society (ATS) and American Lung Association (ALA);

(b) Kentucky Board of Nursing (KBN);

(c) American Heart Association (AHA);

(d) American Medical Association (AMA);

(e) American Cancer Society; or

(f) Other organizations or institutions approved by the KBRC;]

(4) [(6)] Scientific and educational lectures, workshops, or seminars presented by a [the] person holding a mandatory certification [certification].

(a) A maximum of double [one-half (1/2) of] the continuing education units offered may be credited for scientific and educational lectures, workshops, or seminars presented by the certificate holder.

(b) Credit shall not be issued for repeated instruction of the same course; [(6) Related areas not specifically a part of the field of respiratory care may be approved for up to two (2) continuing education units if the board believes that those related areas may serve to enhance the certificate holder's ability to practice; or

(7) Presenters of nonacademic offerings may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of same course.]

Section 4. Procedure[s] for Preapproval [Accreditation] of Sponsors [and Approval of Continuing Education Activities]. (1) A sponsor [Any entity] desiring approval [to establish accreditation] of a continuing education offering prior to attendance shall apply for approval to the board at least forty-five (45) [seventy-five (75)] [forty-five (45)] days in advance of the date [commencement] of the offering, on the Application for Continuing Education Approval [Process] stating the type of learning activity, the subject matter, the date and time of the program, and the names and qualifications of the instructors, [, and the number of continuing education units offered.] A continuing education activity shall be approved [qualified for approval] if the board determines that the activity being presented:

(a) [(1)] Is an organized program of learning;

(b) [(2)] Pertains to subject matters which are integrally relevant [relate] to the practice of respiratory care;

(c) [(3)] Contributes to the professional competency of the licensee; and

(d) [(4)] Is conducted by individuals who have educational training, or experience acceptable to the board.

(2) A nonrefundable and one-time fee of ten (10) dollars shall be charged for each continuing education offering; and

(3) An approved continuing education offering shall expire two (2) years from the date of approval; and

(4) A continuing education offering shall be approved in increments of no less than thirty minutes; and

(5) Product based continuing education offerings shall be approved for a maximum of up to two (2) continuing education units per product [during each certification period]; and

(6) The Board may choose not to approve a sponsor's offerings if the Board finds the sponsor engaged in fraud, deceit, or misrepresentations concerning any continuing education offerings.

Section 5. Procedure for Postapproval of an Individual Holding a Mandatory Certificate [Individuals]. (1) An individual hold-

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ing a mandatory certificate desiring approval of a continuing education offering within ninety (90) days after the date the continuing education program is conducted shall submit an Application for Continuing Education Approval stating the type of learning activity, the subject matter, the date and time of the program, and the names and qualifications of the instructors. A continuing education activity shall be approved if the board determines that the activity being presented:

- (a) Is an organized program of learning;
  - (b) Pertains to subject matters which **are** integrally **relevant** ~~[relate]~~ to the practice of respiratory care;
  - (c) Contributes to the professional competency of the licensee; and
  - (d) Is conducted by individuals who have educational training, or experience acceptable to the board.
- (2) An approved continuing education offering shall expire two (2) years from the date of approval; and
- (3) A continuing education offering shall be approved in increments of no less than thirty (30) minutes; and
- (4) Product based continuing education offerings shall be approved for a maximum of up to two continuing education units **per product** ~~[during each certification period]~~; and
- (5) The Board may choose not to approve an individual's offerings if the Board finds the individual engaged in fraud, deceit, or misrepresentations concerning any continuing education offerings.

Section 6. All continuing education units and academic courses shall be preapproved or postapproved for credit.

Section 7 [5]. Responsibilities and Reporting Requirements of Certificate Holders. A certificate holder shall be responsible for obtaining required continuing education units. The certificate holder shall identify his or her own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding mandatory certification shall:

- (1) Select approved activities by which to earn continuing education units; and ~~[(2) Obtain from the board prior approval for continuing education activities not accredited by the board;]~~
- (2) ~~[(3)]~~ Maintain all documentation verifying successful completion of continuing education units for a period of three (3) years from conclusion of the certification period in which the continuing education unit was obtained. ~~[records of continuing education units.~~

~~(a) Each person holding mandatory certification shall maintain, for a period of three (3) years, all documentation verifying successful completion of continuing education units.~~

~~(b) During each certification renewal period, up to fifteen (15) percent of all certificate holders shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education units for the current renewal period.~~

~~(c) Verification of continuing education units is not otherwise reported to the board;~~

~~(4)(a) Document attendance and participation in a continuing education activity in the form of official documents including:~~

- 1. Transcripts;
- 2. Certificates;
- 3. Affidavits signed by instructors;
- 4. Receipts for fees paid to the sponsor; or
- 5. Less formal evidence including written summaries of experiences that are not otherwise formally or officially documented in any way.

~~(b) The type of documentation required may vary depending on the specific activity submitted to the board for approval; and]~~

Section 8. Audit Procedures. (1) In January following the certification period, the Board shall audit a minimum of fifteen (15) percent of certificate holders who were designated to complete continuing education by December 31 of the preceding year;

(2) Each certificate holder shall be required by the board to furnish documentation of completion of continuing education units for the certification period.

(3) Documentation shall include:

- (a) Official transcripts for completed academic courses;
- (b) A copy of the program showing an individual as a presenter of scientific and educational lectures, workshops or seminars;
- (c) Official verification from an official Registrar for academic courses taught;
- (d) Completion certificates or cards, including a course number, for relevant offerings whether preapproved or postapproved.

Section 9. [(5)] [Fully comply with the provisions of this administrative regulation.] Audit verification shall be submitted before March 1 of the year following the certification period. Failure to fully comply with the provisions of this administrative regulation shall constitute unprofessional conduct as set forth in KRS 314A.225 and may result in the refusal to renew, suspension, or revocation of the certification.

Section 10 [6]. Temporary Certificate Holders; Limited Mandatory Certificate Holders. Continuing education requirements shall not apply to the holders of a temporary certificate or a limited mandatory certificate.

Section 11 [7]. Audit verification ~~[Continuing education units]~~ shall be reported on the Audit Continuing Education Unit Verification Form ~~[Application for Renewal]~~.

Section 12 [8]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Continuing Education Approval [Process]", 6/11 [5/06] edition; and]
- (b) "Continuing Education Audit Verification Form" ~~["Application for Renewal"]~~, 6/11 [5/06] edition; and[.]
- (c) **"Application for Renewal", 8/11.**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Respiratory Care Board, Traditional Bank Bldg, 163 W Short St., Ste 350, Lexington Kentucky 40507. ~~[Spindletop Administration Building, 2624 Research Park Drive, Suite 306, Lexington, Kentucky 40511]~~, Monday through Friday, 8 a.m. to 4:30 p.m.

TAMARA G. MCDANIEL, Chair

APPROVED BY AGENCY: September 13, 2011

FILED WITH LRC: September 13, 2011 at 11 a.m.

CONTACT PERSON: Peggy Lacy-Moore, Executive Director, Kentucky Board of Respiratory Care, Traditional Bank Bldg., 163 W. Short St., Suite 350, Lexington, Kentucky 40507, phone (859) 246-2747, fax (859) 246-2750.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Peggy Lacy-Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the requirements for: preapprovals and postapprovals, continuing education requirements, and audit procedures.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 314A.115.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statutes that require the board to promulgate administrative regulations governing requirements for continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets out the requirements for: preapprovals and postapprovals, continuing education requirements, and audit procedures.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation clarifies procedures for pre-approval and post-approval of continuing education offerings and yearly audits. The amendments: clarify that up to 2 CEUs may be approved per product for product based education, authorize double CEUs to the presenter of scientific and educational lec-



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tures, substitute the word "relevant" instead of "related" throughout the regulation, changes the time for postapproval submission to 45 days, and add the renewal form as a form incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: Amendments were necessary to further clarify continuing education processes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314A.115 requires the board to promulgate administrative regulations regarding continuing education requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendments further clarify the continuing education regulation that is required by KRS 314A.115.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board issues mandatory certificates to approximately 3300 respiratory therapists who are required to obtain continuing education every two (2) years.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Respiratory therapists will obtain continuing education credit through pre-approval or post-approval of relevant continuing education offerings. Approximately 15% of renewing licensees will be audited each year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a one-time \$10 fee for continuing education courses that are offered by sponsors. An approval is good for two (2) years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Respiratory therapists shall have the benefit of knowing that pre or post approved courses will receive full continuing education credit at the time of renewal.

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

(a) Initially: The Board will pay reviewing board members per diems that will approximate \$2000 annually.

(b) On a continuing basis: The Board will pay reviewing board members per diems that will approximate \$2000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The \$10 fee paid by the sponsors of continuing education courses.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is a one-time \$10 fee charged to sponsors for preapproval of continuing education courses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish a one-time \$10 fee charged to sponsors for preapproval of continuing education courses.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all sponsors seeking preapproval, all individuals seeking postapproval, and all audited individuals.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact licensees of the Kentucky Board of Respiratory Care and sponsors of continuing education courses.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314A.115 authorizes the action taken by this ad-

ministrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Board expects the sponsor fees to generate approximately \$2,000 annually. The fees paid will cover the per diem payments to board members that review continuing education offerings. Since this is a "break even" measure, the Board expects no real revenue from the fees.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$2000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately \$2000.

(c) How much will it cost to administer this program for the first year? Approximately \$2000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$2000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### TOURISM, ARTS AND HERITAGE CABINET Kentucky Department of Fish and Wildlife Resources (Amended After Comments)

#### 301 KAR 2:228. Sandhill crane hunting requirements.

RELATES TO: KRS 150.010, 150.305, 150.340, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.170(3)(4), 150.330, 150.603(2), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.170(3)(4) authorizes license exemptions for people under twelve (12) and resident owners of farmlands, including their spouses and dependent children who hunt on those farmlands. KRS 150.330 authorizes take and possession of migratory birds when in compliance with the provisions of the Federal Migratory Bird Treaty Act and authorizes hunting of migratory birds with the appropriate permits. KRS 150.603(2) requires a person sixteen (16) years or older to possess a hunting license and a Kentucky migratory game bird permit or waterfowl permit in order to hunt migratory birds. This administrative regulation establishes the requirements for taking sandhill cranes within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. **(1) "Crane" means a sandhill crane.**

**(2) "Wildlife Management Area" or "WMA" means a tract of land that:**

**(a) [(+)]** Is controlled by the department through ownership, lease, license, or cooperative agreement; and

**(b) [(2)]** Has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Applications and Permits. (1) To apply for a [sandhill] crane hunting permit a person shall:

(a) Complete the online application process on the department's Web site at <http://fw.ky.gov> between **November 15 and November 30; [October 15 and October 31;]**

(b) Unless exempt pursuant to KRS 150.170, purchase a hunting license by **November 30; [October 31;]**

(c) Pay a three (3) dollar application fee; and

(d) Not apply more than once.

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- (2) The department shall:
- (a) Issue a maximum of 400 [sandhill] crane hunting permits;
  - (b) Select each permit recipient with a random electronic draw from all qualified applicants;
  - (c) Issue each permit via the department's Web site at <http://fw.ky.gov>;
  - (d) Issue two (2) metal leg tags to each permit recipient prior to the crane hunting season.
  - (e) Disqualify an applicant who does not possess a hunting license prior to **November 30**, [October 31,] unless exempted by KRS 150.170; and
  - (3) A person who does not have access to the internet may call the department's toll-free number at 1-800-858-1549 for assistance in applying.
  - (4) A [sandhill] crane hunting permit shall not be transferable.
  - (5) A person selected to receive a permit shall pass a bird identification test provided by the department prior to receiving a permit;
  - (6) A permit recipient shall complete and submit a post-season crane hunting survey on the department's website no later than January 25.
  - (7) A person who fails to complete the post-season survey by the date specified in subsection 6 of this section shall be ineligible to be drawn the following year.

Section 3. Season, Bag Limits, and Hunting Requirements. (1) Unless exempted by KRS 150.170, a person shall not hunt a [sandhill] crane without:

- (a) A valid Kentucky hunting license;
- (b) A valid Kentucky [sandhill] crane hunting permit; and
- (c) A Kentucky migratory bird permit; or
- (d) A Kentucky waterfowl permit.
- (2) A permit recipient shall possess a printed copy of a valid crane hunting permit:
  - (a) While crane hunting; and
  - (b) When in possession of a harvested crane.
- (3) The season shall:
  - (a) Begin on the Saturday closest to December 15 for thirty (30) consecutive days; or
  - (b) End at sunset on the day when a harvest of 400 [sandhill] cranes is projected to be attained;
- (4) The department shall notify hunters on the day that the crane season has closed by:
  - (a) Providing a pre-recorded message on the department's toll-free number at 1-800-858-1549; and
  - (b) Posting the closure on the department's website.
- (5) A permit recipient shall be responsible for checking if the crane season is closed on a daily basis prior to hunting cranes.
- (6) The season bag limit shall be two (2) cranes per person.
- (7) A person shall only hunt [sandhill] cranes from sunrise to sunset.
- (8) A person shall check a harvested [sandhill] crane by:
  - (a) Attaching one of the department-issued metal tags to the leg of the harvested crane prior to moving the carcass;
  - (b) Calling 1-877-245-4263 on the day the [sandhill] crane is harvested;
  - (c) Providing the information requested by the automated check-in system; and
  - (d) Recording and retaining the check-in confirmation number for the rest of the current season.
- (9) A hunter who has harvested a crane shall possess the check-in confirmation number when in the field during the current season.
- (10) A person shall not knowingly falsify **the harvest of a [a harvested]** crane on the automated check-in system.
- (11) A person hunting [sandhill] cranes shall not use or possess a shotgun shell containing:
  - (a) Lead shot; or
  - (b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting.
- (12) A person shall not use the following to take [sandhill] cranes:
  - (a) A shotgun larger than ten (10) gauge;
  - (b) A shotgun shell larger than three and one-half (3 1/2) inch-

es; or

- (c) A shotgun shell with shot larger than size "T".
- (13) A person hunting a [sandhill] crane on a Wildlife Management Area shall comply with the applicable WMA waterfowl hunting requirements, pursuant to 301 KAR 2:222, except that on Barren River WMA [sandhill] crane hunting shall be prohibited **within 100 yards of the normal summer pool level of 552 feet in the following embayments:**
  - (a) Beaver Creek;**
  - (b) Peters Creek; and**
  - (c) Skaggs Creek.** [on crane refuge areas that are delineated by signage and buoys.]

BENJY KINMAN, Deputy Commissioner

For MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: September 9, 2011

FILED WITH LRC: September 14, 2011 at 2 p.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building., #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

- (1) Provide a brief summary of:
  - (a) What the administrative regulation does: This administrative regulation establishes a hunting season for the Eastern Population of sandhill cranes, sets bag and season limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the U.S. Fish and Wildlife Service.
  - (b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2011–2012 sandhill crane hunting season in accordance with the U.S. Fish and Wildlife Service, Mississippi Flyway Council, and the department's management objectives.
  - (c) How does this administrative regulation conform to the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.330 authorizes take and possession of migratory birds when in compliance with the provisions of the Federal Migratory Bird Treaty Act and authorizes hunting of migratory birds with the appropriate permits. KRS 150.603(2) requires a person sixteen (16) years or older to possess a hunting license and a Kentucky migratory game bird permit or waterfowl permit in order to hunt migratory birds.
  - (d) How will this administrative regulation assist in the effective administration of the statutes: By establishing a sandhill crane hunting season and area-specific requirements, this administrative regulation will ensure management of the Eastern Population of sandhill cranes is consistent with state statutes and state, national, and international management objectives identified in the management plan.
  - (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
    - (a) How the amendment will change the existing administrative regulation: N/A. This is a new administrative regulation.
    - (b) The necessity of the amendment to this administrative regulation: N/A
    - (c) How does the amendment conform to 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 that will be affected: There are approximately 50,000 migratory bird hunters and 20,000 waterfowl hunters in Kentucky that will likely be affected by this administrative regulation, but all legal hunters are eligible to apply for one of the sandhill crane permits.
  - (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:

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(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: Individuals interested in hunting sandhill cranes will need to possess a valid Kentucky hunting license prior to September 30 unless exempt, pay a three (3) dollar application fee, and complete an online application process on the department's website. Those hunters who are successful in the random computerized draw will also be required to complete a bird identification test in order to legally participate in crane hunting. Hunters will also be required to possess either a migratory bird permit or a waterfowl permit to be legal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3) other than the \$3.00 application fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters will have an increased opportunity to pursue a new game species in Kentucky.

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

(a) Initially: This administrative regulation will result in a negligible administration cost to the department.

(b) On a continuing basis: There will be a negligible cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: Other than the \$3.00 application fee, no new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all hunters wanting to hunt sandhill cranes.

### 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's Divisions of Wildlife and Law Enforcement will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), KRS 150.330, and KRS 150.603(2), authorize this regulation. 50 C.F.R. Part 20 specifies the federal season frameworks. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds.

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 revenue will be generated by this administrative regulation during the first year; however, this increased hunting opportunity may have a positive economic impact at a local level.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The department does not anticipate a direct increase in revenue by this administrative regulation during subsequent years; however, this increased hunting opportunity may have a positive economic impact at a local level.

(c) How much will it cost to administer this program for the first year? There will be a small cost incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small cost incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the guidelines of the Eastern Population Management Plan approved jointly by the Atlantic and Mississippi Flyway Councils and the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum harvest limits allowed under the federal regulations. States are permitted to be more conservative, but shall not exceed federal frameworks. State management objectives necessitate more conservative regulations to protect local, regional and/or state stocks of birds important to Kentucky's migratory bird hunters. The largest concentration of wintering and migrating sandhill cranes is located on public lands managed by the department. The department imposes more restrictive hunting regulations on these lands in effort to meet international migratory bird management objectives while still providing quality hunting opportunity consistent with population objectives established in the management plan.

### TRANSPORTATION CABINET Office of Transportation Delivery (Amended After Comments)

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

RELATES TO: KRS [Chapters 96A,] 45A, 96A, 151B, 157, 163, 189.125, [194, 195,] 202A.011 [202A], 202B, 205, 209, 210, 216, 273, 281, 645, 45 C.F.R. 164, 49 C.F.R. 655, 42 U.S.C. 12102, 49 U.S.C. [Chapter] 53, Pres. EO 13330

STATUTORY AUTHORITY: KRS 96A.095 [281.600, 281.605], 281.870, 281.875[, 49 U.S.C. Chapter 53]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.870(3) requires the cabinet to promulgate administrative regulations specifying the duties and responsibilities of the Coordinated Transportation Advisory Committee (CTAC). KRS 281.875 requires the cabinet to promulgate administrative regulations concerning the human service transportation delivery program. This administrative regulation establishes procedures governing the human service delivery program on behalf of the CTAC. This administrative regulation also establishes the procedures required to provide efficient, safe, and coordinated transportation delivery to clients of the human service transportation delivery program. [49 U.S.C. Chapter 53 authorizes the formation and funding of human service transportation deliveries to transportation providers. KRS 96A.095 allows the Transportation Cabinet to accept funding to promote and

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develop mass transportation services in Kentucky. For the purpose of providing efficient, effective, safe, and coordinated transportation delivery to clients of the program groupings the Empower Kentucky Transportation Delivery work group recommended that a single agency be responsible for the transportation component of the programs. The function of this administrative regulation is to implement the procedures required to administer this program. Since many of the transportation providers are required by federal law or regulation to comply with safety and accountability procedures and the Transportation Cabinet is authorized in KRS 281.600 to establish safety criteria for a commercial transportation provider, all of the transportation providers, except a volunteer transportation provider, which receive funding under the provisions of this administrative regulation shall be required to comply with the same safety and accountability requirements].

Section 1. Definitions. (1) "Ambulance stretcher transportation" means an ambulance service used for transporting sick or injured people who are also bedridden.

(2) [(4)] "Broker" is defined by [in] KRS 281.014(8).

(3) [(2)] "Certificate Types 01, 02, 03, 04, 07, and 08" are [is] defined by [in] KRS 281.873(1)(a)-(f).

(4) [(3)] "CTAC" is defined by [in] KRS 281.014(10)

(5) [(4)] "Delivery area" is defined by [in] KRS 281.014(7).

(6) "Escort" means an individual attendant whose presence is required to assist a recipient during transport.

(7) "Eligible provider" means a transportation provider that has contracted with the regional broker, obtained a valid Medicaid provider number from the Department for Medicaid Services, and been approved by the cabinet to provide services to human service transportation delivery recipients upon verification of applicable transportation operating authority.

(8) [(5)] "Human service transportation delivery" is defined by [in] KRS 281.014(6).

(9) [(6)] "Level of eligibility" is defined by [in] KRS 281.873(1)(g).

(10) [(7)] "Mass transportation" is defined by [in] KRS 96A.010.

(11) "Medical necessity" means a condition requiring medical attention as established in 907 KAR 3:130.

(12) "Medical service area" means the Medicaid recipient's county of residence and contiguous counties.

(13) [(8)] "Mileage reimbursement" means a fixed rate set by the Commonwealth per mile that a motor vehicle is operated while the recipient is a passenger [that:

(a) Does not exceed the expense of operating the motor vehicle; or

(b) Is not considered a benefit of wage payment].

(14) [(9)] "Provider" means an individual with appropriate operating authority performing transportation operations for human service transportation delivery.

(15) [(10)] "Recipient" means a person who [that] is receiving benefits under one (1) of the service programs listed in Section 3 of this administrative regulation and who complies with [meets] the criteria of the participating program.

(16) [(11)] "RFP" means request for proposal.

(17) "Special circumstance" means an occasion for a broker to provide a trip after normal working hours, such as for a patient receiving dialysis, chemotherapy, or radiation treatment available only on nights and weekends, or TANF transportation for evening shift employment.

(18) [(12)] "Subcontractor" is defined by [in] KRS 281.014(9).

(19) [(13)] "TANF" means an acronym for Temporary Assistance for Needy Families Program administered by the Cabinet for Health and Family Services [Cabinet for Families and Children].

(20)(a) [(14)] "Urgent care" means:

(a) an unscheduled episodic situation in which [when] there is not a threat to life or limb, but the recipient needs to be [must] be seen within twelve (12) hours in order to avoid the likely onset of an emergency medical condition, [a time frame, which is less than the seventy-two (72) hour required notice, and treatment cannot be delayed; and]

(b) "Urgent care" does not include an emergency trip that is to be addressed by a qualified emergency service [:

1. Emergency trips which are to be addressed by qualified

emergency services; or

2. Instances whereby recipients are required to be seen by a licensed medical provider or another licensed medical provider to whom the person is being referred for medical treatment with less than seventy-two (72) hours' notice. See Section 10(7) of this administrative regulation].

(21) [(15)] "Volunteer transportation" means transportation provided by a person or entity as a charitable act without the expectation of receiving a benefit or payment[, or being paid a wage]. [(16) "24-7 (twenty-four seven) human service transportation delivery" means twenty-four (24) hours a day and seven (7) days a week.]

Section 2. Program availability. Active Human Service Transportation Delivery programs shall be available to eligible recipients in all 120 counties of the Commonwealth of Kentucky as divided into geographically coordinated service regions. [Section 2. Newly established transportation regions shall be in effect no later than July 1, 2001, and shall be as follows:

(1) Region 1:

(a) Ballard;  
(b) Calloway;  
(c) Carlisle;  
(d) Fulton;  
(e) Graves;  
(f) Hickman;  
(g) Marshall; and  
(h) McCracken.

(2) Region 2:

(a) Caldwell;  
(b) Christian;  
(c) Crittenden;  
(d) Hopkins;  
(e) Livingston;  
(f) Lyon;  
(g) Muhlenberg;  
(h) Todd; and  
(i) Trigg.

(3) Region 3:

(a) Daviess;  
(b) Hancock;  
(c) Henderson;  
(d) McLean;  
(e) Ohio;  
(f) Union; and  
(g) Webster.

(4) Region 4:

(a) Breckinridge;  
(b) Grayson;  
(c) Hardin;  
(d) Larue;  
(e) Marion;  
(f) Meade; and  
(g) Nelson.

(5) Region 5:

(a) Adair;  
(b) Allen;  
(c) Barren;  
(d) Butler;  
(e) Edmonson;  
(f) Green;

(g) Hart;  
(h) Logan;  
(i) Metcalfe;  
(j) Simpson;  
(k) Taylor; and  
(l) Warren.

(6) Region 6:

(a) Jefferson;

(b) The following counties shall be added to Region 6 effective July 1, 2001:

1. Bullitt;  
2. Oldham;  
3. Shelby; and

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4. Spencer.

(7) Region 7. The following counties shall be in Region 7 until July 1, 2001:

- (a) Bullitt;
  - (b) Henry;
  - (c) Oldham;
  - (d) Shelby;
  - (e) Spencer; and
  - (f) Trimble.
- (8) Region 8:
- (a) Anderson;
  - (b) Boyle;
  - (c) Casey;
  - (d) Franklin;
  - (e) Garrard;
  - (f) Jessamine;
  - (g) Lincoln;
  - (h) Mercer;
  - (i) Scott;
  - (j) Washington; and
  - (k) Woodford.
- (9) Region 9:
- (a) Boone;
  - (b) Campbell;
  - (c) Carroll;
  - (d) Gallatin;
  - (e) Grant;
  - (f) Kenton;
  - (g) Owen; and
  - (h) Pendleton.

(i) The following counties shall be added to Region 9 effective July 1, 2001:

- 1. Henry; and
  - 2. Trimble.
- (10) Region 10: Fayette.
- (11) Region 11:
- (a) Bourbon;
  - (b) Clark;
  - (c) Estill;
  - (d) Harrison;
  - (e) Madison;
  - (f) Montgomery;
  - (g) Nicholas; and
  - (h) Powell.
- (12) Region 12:
- (a) Bell;
  - (b) Clinton;
  - (c) Cumberland;
  - (d) Knox;
  - (e) Laurel;
  - (f) McCreary;
  - (g) Monroe;
  - (h) Pulaski;
  - (i) Rockcastle;
  - (j) Russell;
  - (k) Wayne; and
  - (l) Whitley.
- (13) Region 13:
- (a) Breathitt;
  - (b) Clay;
  - (c) Harlan;
  - (d) Jackson;
  - (e) Knott;
  - (f) Lee;
  - (g) Leslie;
  - (h) Letcher;
  - (i) Owsley;
  - (j) Perry; and
  - (k) Wolfe.
- (14) Region 14:
- (a) Floyd;
  - (b) Johnson;
  - (c) Magoffin;
  - (d) Martin; and

(e) Pike.

(15) Region 15:

- (a) Bath;
  - (b) Boyd;
  - (c) Carter;
  - (d) Elliott;
  - (e) Greenup;
  - (f) Lawrence;
  - (g) Menifee;
  - (h) Morgan; and
  - (i) Rowan.
- (16) Region 16:
- (a) Bracken;
  - (b) Fleming;
  - (c) Lewis;
  - (d) Mason; and
  - (e) Robertson.

Section 3. Service Programs. (1) Excluding nonemergency ambulance stretcher transportation, nonemergency medical transportation[~~;~~ as established in [pursuant to] KRS Chapter 205[, 907 KAR 1:060,] and 907 KAR 3:066[.];] shall be provided as follows:

(a) A broker shall transport a [any] Medicaid-eligible recipient, excluding qualified Medicare beneficiaries "QMB" and Phase 3 KCHIP recipients, with a county code residence in the broker's delivery area.

(b) The broker shall be responsible for transportation arrangements if: [when]

1. The recipient is coded in the broker's delivery area[~~;~~] but has moved or is living in another human service transportation delivery area[~~;~~]

2. The recipient is county coded 121;

3. The recipient is physically residing in the broker's region; or

4. The recipient is a guardianship case.

(c) [(b)] Services outside a [the] recipient's medical service area [county or contiguous county] shall require [have] a referral from [by] the recipient's:

1. Licensed physician;

2. Physician's assistant;

3. Advanced registered nurse practitioner; or

4. Qualified mental health professional as established in KRS 202A.011(12)[medical provider before transport].

(d) If a referral pursuant to paragraph (c) of this subsection cannot be obtained, services may be authorized by the contracting agency.

(e) A referral shall be to the closest appropriate medical service provider for the required service.

(f) A referral shall be valid for six (6) months.

(g) A referral shall be made by using the Office of Transportation Delivery form entitled Kentucky Non-Emergency Medical Transportation Program Medicaid Medical Referral Form.

(h) The Cabinet for Health and Family Services may waive this requirement if the waiver is in the best interests of the recipient or the Commonwealth.

Section 4. Nonemergency Medical Transportation. (1)(a) [(e)] Nonemergency medical transportation shall be available for a:

1. Kentucky Medicaid eligible recipient; [medically-covered] and

2. Medically-necessary service as established in 907 KAR 3:066 [in accordance with Medicaid regulations].

(b) A [The] Kentucky [nonemergency] Medicaid cardholder shall be transported to a Medicaid-covered service accompanied by a parent, guardian, or escort as established in KRS 281.873 [when necessary]. [(d) A parent or a guardian shall accompany a minor the age of twelve (12) years and under to a Medicaid-covered service. A parent or a guardian may accompany a minor between the ages of thirteen (13) and seventeen (17).]

(c) A [The] parent, guardian, or escort shall not be charged a fare.

(2) If an operational motor vehicle is registered to a Medicaid eligible recipient or household member, the recipient shall be denied non emergency medical transportation services unless:

(a) The recipient or a licensed driver in the recipient's home

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submits a licensed physician's statement to the Transportation Cabinet that he or she is medically unable to operate a motor vehicle;

(b) A recipient submits the statement of an automobile mechanic to the Transportation Cabinet certifying that the vehicle is mechanically inoperable;

(c) A recipient submits a statement to the Transportation Cabinet from an employer or a school indicating that the motor vehicle is used for work or school during the time the recipient needs to be transported to a medical appointment; or

(d) A recipient requires a special lift-equipped vehicle and none is available.

(3) A physician's statement submitted to the Transportation Cabinet by a recipient shall be valid for six (6) months and may be renewed every six (6) months.

(4) A statement by an automobile mechanic submitted to the Transportation Cabinet by a recipient shall be valid for thirty (30) days.

(5) A recipient may submit up to three (3) mechanic's statements per vehicle during a one (1) year time period for each vehicle owned by the recipient.

(6) An employer statement submitted by the recipient to the Transportation Cabinet shall be valid for three (3) months and may be renewed every three (3) months.

(7) A school statement submitted by a recipient to the Transportation Cabinet shall be valid only during a current school semester.

(8) A motor vehicle in the recipient's home may be sold, junked, transferred, or cancelled out of the household through the services of the recipient's local county clerk's office.

Section 5. [(2)] Kentucky Works Program. (1) [Transportation pursuant to the Kentucky Works Program shall be provided as follows:

(a)] Recipients participating in the Kentucky Works Program shall be transported to [covered] services or TANF component activities in the county of residence or contiguous county.

(2) Transportation services covered by the Kentucky Works Program shall include:

(a) Employment; [;]

(b) Child daycare centers; [;]

(c) Job interviews; [;] and

(d) Training.

(3) [(b)] Transportation shall be provided for training at vocational schools, community colleges, universities, and high schools within the recipient's county or human service transportation delivery area and contiguous to the human service delivery area. [(c) The broker shall pay a TANF recipient before or during the month of transportation services. Payment shall be contingent upon the TANF recipient receiving necessary authorization from the broker to use his or her private automobile, or the TANF recipient having access to an available automobile, to training, or employment activities.]

Section 6. Programs. (1) [(3)] Additional [Other] programs under the human service transportation delivery system shall include:

(a) Vocational rehabilitation as established in [pursuant to] KRS Chapter 151B or 157;

(b) Vocational rehabilitation for the blind as established in [pursuant to] KRS Chapter 151B or 163;

(c) Mental health, mental retardation, development disabilities, comprehensive care, or substance abuse services as established in [pursuant to] KRS Chapter 202A, 202B, 210, or 645; [and]

(d) The Office of Aging Services as established in [under] KRS Chapter 205, 209, 216, or 273; and

(e) Future Human Service Transportation Delivery programs as established in Presidential Executive Order 13330 (Section 3), effective February, 2004.

(2) [(4)] The state government agencies responsible for implementing the programs set forth in this section shall provide to the Transportation Cabinet:

(a) A monthly list of the persons eligible to receive human services transportation [pursuant to the programs set forth in this section;] including special Medicaid recipient waiver listings;

(b) The address of each person on the list; and

(c) The program for which each person on the list is eligible.

(3) [(5)] A denial of human services transportation to a recipient shall be as established in KRS 281.872 [a service as provided in subsections (1), (2), and (3) of this section shall be pursuant to the provisions of Section 14 of this administrative regulation].

Section 7. [Section 4.] Coordinated Advisory Transportation Committee (CTAC). (1) CTAC shall be composed of members designated by the:

(a) Cabinet for Health and Family Services;

(b) Education Cabinet;

(c) [Cabinet for Families and Children; Cabinet for Workforce Development; and] Transportation Cabinet; and

(d) Other future program partners as established in Presidential Executive Order 13330.

(2) The Cabinet for Health and Family Services[, Families and Children;] and the Transportation Cabinet shall each have two (2) voting members and the Education Cabinet [Workforce Development] shall have one (1) voting member.

(3) CTAC duties and responsibilities shall include:

(a) Providing information and assistance to the Transportation Cabinet [cabinet];

(b) Reviewing and recommending policies and operating procedures to the Transportation Cabinet; and

(c) Serving on broker evaluation committees as established in [; if designated, in accordance with] KRS Chapter 45A.

Section 8. [Section 5.] Transportation Broker Selection Process.

(1) A request for proposal (RFP) and the process of awarding a brokerage contract for each region shall comply with KRS Chapter 45A. The RFP evaluation process for broker selection shall[, at a minimum,] address areas that include the following:

(a) Overall quality in transportation delivery;

(b) [(1-)] Information regarding administration including:

1. [(a-)] Human resources, including staffing and employee categories by classification, number, and experience;

2. [(b-)] Insurance and risk management, types and levels of insurance coverage and emergency process, and training offered to reduce business risk;

3. [(c-)] Billing and accounting practice and procedures; and

4. [(d-)] Financial capability.

(c) [(2-)] Information regarding operations including:

1. [(a-)] Scheduling and reservations;

2. [(b-)] Fleet management;

3. [(c-)] Dispatching and radio communications;

4. [(d-)] Computer software and hardware;

5. [(e-)] Reporting for both the broker and subcontractor; [and]

6. [(f-)] Vehicle inspection or maintenance programs; and

7. [(b)] Experience.

(2) An applicant shall submit to the Commonwealth the documentation required by [in accordance with] KRS 281.875(2) and (3). [; a person that submits a request for proposal to be a broker under the human service transportation delivery program shall be required to submit documentation that he or she has at least one (1) year experience working with persons with special needs. The cabinet shall be prohibited from awarding higher scores, or giving any type of preferential treatment to any person that submits a request for proposal to be a broker, who is also a transportation provider, over a person who submits a request to be a broker and is not a transportation provider.]

(3) An applicant shall demonstrate to the Commonwealth an [(e)] ability to coordinate trips with:

(a) [(1-)] Local community based governmental offices;

(b) [(2-)] Training, educational, or medical centers; and

(c) [(3-)] Coordination with] Other transportation providers.

(4) [(d)] An applicant shall [have operational characteristics which include]:

(a) [(1-)] Maintain an office in the regional area where the bidding takes place [Locations of operations];

(b) [(2-)] Have sufficient infrastructure and other resources including:

1. Telephone and dispatching capability;

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2. Scheduling software; and

3. A building to serve as a place of business;

(c) [3.] Have sufficient capability to safely, securely, and confidentially store recipient and provider records and information [Storage of records];

4. Security and confidentiality of recipient and provider information;

(d) [5.] Demonstrate the ability to cover the delivery area including information regarding hours, days, and operator's availability [Coverage of the delivery area hours, days, and operators availability]; and

(e) [6.] Indicate if education and training programs are conducted on an ongoing basis.

Section 9. [(2)] Contractual Agreements [between the Transportation Cabinet and brokers]. (1) [(a)] A [Each] contract between the Commonwealth [cabinet] and a broker shall be for one (1) year with four (4) [three (3)] one (1) year options to renew.

(2) [(b)] Contracts shall be on a fiscal year basis, running July 1 through June 30.

(3) [Operating authority.] Except for a volunteer provider, each transportation provider shall have operating authority issued by the Transportation Cabinet pursuant to KRS Chapter 281 or 96A.

(4) A contract between the Commonwealth [cabinet] and the broker shall be subject to:

(a) Revocation in accordance with KRS 281.879; and [Furthermore, the contract shall be subject to]

(b) Termination [by the Commonwealth] in accordance with 200 KAR 5:312.

Section 10. [Section 6.] Transportation Broker. (1) A broker shall [may] coordinate the human service transportation delivery program [with general public transportation] as provided in KRS 281.877.

(2) A [The] broker shall make a report to the cabinet on [all] traffic accidents and moving violations involving either the [a] broker or subcontractor that occur in route to or while transporting a human service transportation passenger within twenty-four (24) hours of the occurrence.

(3)(a) A [The] broker shall have all completed reports [pertinent] for payment to the cabinet no [not] later than the seventh day of each month following the reporting period.

(b) The cabinet shall reimburse the broker no [not] later than the fifteenth day of each month[,] if the broker has submitted the required reports, and if the Medicaid eligible count is received from the Department of Medicaid Services allowing adequate processing time through the Commonwealth's processing system.

(c) A broker shall [promptly] reimburse a subcontractor and a Medicaid private auto provider as established in KRS 281.875(1)(f) [within three (3) business days of being paid by the cabinet each month for each valid invoice trip documentation].

(d) A valid subcontractor or private auto provider invoice post-dated after the first of the month shall be included in the next month's billing.

(e) A TANF private auto provider shall be paid by a broker within three (3) business days of receiving the TANF payment from the Transportation Cabinet [before the service month].

(f) Payment shall be contingent upon a TANF recipient:

1. Receiving written authorization from the broker to use his or her private automobile; or

2. Having access to an automobile for training or employment activities.

(4) A [The] broker shall have an established operating office located within the awarded delivery area.

(5) A [The] broker shall employ a sufficient number of [an adequate] staff to accommodate;

(a) Reservations;[,]

(b) Oversight of timely pickup and delivery;[,]

(c) Scheduling;[,]

(d) Accounting;[,]

(e) Complaint tracking;[,]

(f) Safety compliance;[,] and

(g) Reporting to the cabinet. [(6) All brokers shall provide transportation services for recipients eligible under Section 3 of this

administrative regulation.]

(6)(a) A broker or subcontractor shall immediately report allegations of criminal wrongdoing and Medicaid fraud to the Transportation Cabinet.

(b) A broker shall immediately report recipient abuse or neglect to the Cabinet for Health and Family Services.

(7) The cabinet shall utilize the peer-to-peer review process within the Department of Medicaid Services for any questionable documentation received from a medical provider during the delivery of transportation services.

(8) A broker shall require a subcontracting transportation company to provide its drivers with name tags and company photo identification.

(9) A broker that receives a complaint in writing from the Transportation Cabinet shall respond:

(a) Within twenty-four (24) hours of the complaint; or

(b) Immediately if a complaint is marked urgent.

Section 11. [Section 7.] Orientation Program. (1) A [All] broker shall provide an orientation program for [to] each subcontractor and potential subcontractor as established in KRS 281.875(1)(j). [The program shall at a minimum include:

(a) How and when payment will be made;

(b) Rates;

(c) Vehicle requirements;

(d) Driver conduct;

(e) Driver qualifications;

(f) Reporting requirements;

(g) Communication systems;

(h) Pickup and delivery standards;

(i) Training;

(j) Drug and alcohol testing;

(k) Safety;

(l) Confidentiality;

(m) Levels of transportation;

(n) Escort and attendants;

(o) Contract compliance;

(p) Scheduling and availability and standard state transportation requirements; and

(q) The role of the program coordinator as required by KRS 281.872.]

(2)(a) An orientation meeting between a [the] broker and subcontractor shall be held before transportation services are provided [the subcontractor provides transportation services].

(b) A subsequent meeting shall [may] be held as needed or requested by the cabinet, broker, or subcontractor [to clarify new policies and administrative regulations, or as directed by the cabinet].

Section 12. [Section 8.] Subcontractors and Volunteers. (1) A subcontractor[,] who has signed a contract with a broker to provide human service transportation delivery within a specific delivery area[,] shall meet human service transportation delivery requirements, including:

(a) Proper operating authority by state, county, or city; and

(b) The use of authorized and qualified vehicles.

(2) A [The] subcontractor shall not enter into an agreement with a broker without the prior approval of the Transportation Cabinet.

(3) A [Each] broker shall submit and request approval of the cabinet for a [each] potential subcontractor.

(4) A subcontractor shall not assign a trip to any other provider.

(5) A [The] subcontractor shall submit the following documentation to the broker:

(a) A copy of the subcontractor's operating authority;

(b) Proof of insurance including the subcontractor, or independent contractor's vehicle liability insurance, and proof of Kentucky workers compensation insurance coverage;

(c) A copy of the [draft of the] broker and subcontractor's agreement;

(d) A copy of all vehicle lease agreements; and

(e) A copy of the Medicaid provider's enrollment letter.

(6) [(e)] A [All] contract shall[, at a minimum,] include:

(a) [4.] Payment administration as established [required] in KRS

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281.875(1)(f);

(b)[2.] A copy of the hours of operation and other scheduling requirements;

(c)[3.] The rates for services;

(d)[4.] Pickup and delivery standards;

(e)[5.] Contract duration; [and]

(f)[6.] Termination clause and compliance penalty provisions;[-]

(g) Signed confidentiality agreement statements for subcontractor or volunteer employees; and

(f) A current list of all safety sensitive persons within the subcontractor's company.

(7) [(3)] A broker and subcontractor shall [ensure and] provide documentation to the cabinet certifying that all drivers and escorts during employment shall:

(a) Be legally licensed by the Commonwealth of Kentucky to operate the transportation vehicle to which they are assigned;

(b) Be courteous, patient, and helpful;

(c) Be [at least] eighteen (18) years of age or older;

(d) Have no more than two (2) convictions for moving violations in the last three (3) years;

(e) [Have no prior convictions for a drug or alcohol-related offense in the last five (5) years, if a driver or attendant;

(f) Have no convictions of any sexual crime or crime of violence;

(f) [(g)] Have had a pre employment drug test; and

(g) [(h)] Have received [Receive] orientation and safety training that includes:

1. First aid training;

2. Training regarding blood borne pathogens;

3. Passenger assistance training; and

4. Intellectual or developmental disability awareness training if offered by the cabinet.

(8) [(4)] A [Any] person who has been convicted of a misdemeanor or a felony during the last five (5) years shall drive or escort [attend] passengers only after review and approval by the broker, subcontractor, and the cabinet.

(9) [(5)] A volunteer transportation provider shall have:

(a) A valid driver's license;

(b) Proof of insurance and registration; and

(c) A vehicle that [which] meets the safety needs of the recipient.

(10) [(6)] In order to receive mileage reimbursement, a [The subcontractor and the] private auto provider shall submit a valid invoice to the broker by the first of each month to allow for [accounting, payment processing, and mailing time for] payment [to be paid] within three (3) business days of payment received from the cabinet.

(11) [(7)] A valid invoice postdated after the first [fifth] day of the month shall be included in the next month's billing.

(12) [(8)] A subcontractor and a private auto provider shall submit all valid invoices to the broker within six (6) months of the date of service for reimbursement by the broker.

(13) [(9)] A subcontractor shall immediately report to the broker a [any] moving violation or traffic accident that occurs in route or while transporting a human service transportation passenger [to the broker within thirty (30) days].

(14) [(10)] A subcontractor shall not participate in determining recipient eligibility or type of transport.

(15) A subcontractor shall not solicit for assignment of non-emergency Medicaid trips.

Section 13. [Section 9.] Vehicle Requirements. (1) A [The] broker shall assure that [all] transportation providers maintain [all] vehicles and vehicle equipment adequately.

(2) A vehicle and its [all] components shall comply with, or exceed the manufacturer's[,] state and federal[,] safety and mechanical operating and maintenance standards for the particular vehicle and model used.

(3) A vehicle shall comply with [all applicable federal laws including] The Americans With Disabilities Act of 1990, (ADA), 42 U.S.C. 12102.

(4) A [Any] vehicle that is noncompliant with licensing requirements, operating authority requirements, or safety requirements shall be immediately removed from human service transportation

delivery service by the broker service. [found noncompliant with the Cabinet, Department of Vehicle Regulation's licensing requirements, operating authority requirements, safety standards, or requirements shall be removed from service immediately. All vehicles shall meet the following requirements:]

(5)(a) A [The] transportation provider shall provide and use a [two (2)-way] communication system that links the dispatcher with the provider, and the provider with the dispatcher [linking all vehicles used in delivering the services]. A [The two (2)-way] communication system shall be used;

1. In a manner that facilitates communication and minimizes time in replacing or repairing [the time in which] out-of-service vehicles [can be replaced or repaired];

2. In a confidential manner adhering to 45 C.F.R. Part 164. The Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(b) A [All] vehicle shall be equipped with adequate heating and air conditioning for driver and passengers. A [Any] vehicle with a nonfunctioning climate control system shall be placed out-of-service until appropriate corrective action is taken.[-]

(c) A [All] vehicle shall have functioning, clean, and accessible seat belts for each passenger seat, [position and]

(d) Seat belts shall be stored off the floor when not in use.

(e) A [Each] vehicle shall utilize child safety seats pursuant to KRS 189.125 [when transporting children under age five (5)].

(f) A [Each] vehicle shall have at least two (2) seat belt extensions provided.

(g) [Additionally,] A [Each] vehicle shall be equipped with a seat belt cutter[,] mounted above the driver's door[,] for use in emergency situations;

(h) [(d)] A [All] vehicle shall have a functioning speedometer and odometer;

(i) [(e)] A [All] vehicle shall have [a] functioning interior lights within the passenger compartment;

(j) [(f)] A [All] vehicle shall have adequate sidewall padding and ceiling covering;

(k) [(g)] A [All] vehicle shall be smooth riding;

(l) [(h)] A [All] vehicle shall have two (2) exterior rear view mirrors, one (1) on each side of the vehicle;

(m) [(i)] A [All] vehicle shall be equipped with an interior mirror for the purpose of monitoring the passenger compartment that [which] shall be either clear-view laminated glass, or clear-view glass bonded to the back that [which] retains the glass in the event of breakage[-This interior mirror shall be for monitoring the passenger compartment];

(n) [(j)] A [The] vehicle's interior and exterior shall be clean and [have exteriors] free of;

1. Broken mirrors or windows;

2. Torn upholstery or floor covering;

3. Damaged or broken seats;

4. Protruding or sharp edges;

5. Dirt, oil, grease; or

6. Litter. [(k) The vehicle shall have passenger compartments that are clean, free from torn upholstery or floor covering, damaged or broken seats, and protruding sharp edges and shall also be free of dirt, oil, grease or litter;]

(o) [(l)] The vehicle floor shall be covered with commercial anti-skid, ribbed, rubber flooring, or carpeting. Ribbing shall not interfere with wheelchair movement between the lift and the wheelchair positions;

(p) [(m)] A [All] vehicle shall have the transportation provider's name, vehicle number, and the program coordinator's customer service phone number prominently displayed within the interior of each vehicle. This information shall also be available in written form on each vehicle for distribution to a rider on request;

(q) [(n)] A [All] vehicle shall have the following signs posted in the [all] vehicle interior, easily visible to the passengers and driver:

1. "No Smoking, Eating or Drinking;" and

2. "All passengers shall use seat belts";

(r) [(o)] A [All] vehicle shall be equipped with a functional fire extinguisher and shall display a current inspection tag or sticker;

(s) [(p)] A [All] vehicle with a floor threshold of greater than twelve (12) inches shall include a retractable step or a step stool as approved by the cabinet to aid in passenger boarding. A step stool



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shall:

1. ~~[The step stool shall]~~ Be used to minimize ground-to-first-step height; ~~[; shall]~~

2. Have four (4) legs with antiskid tips; ~~[;]~~

3. Be made of sturdy metal with nonskid tread; ~~[; with]~~

4. Have a height of eight and one-fourth (8 1/4) inches, a width of fifteen (15) inches, and a depth of fourteen (14) inches ~~[or an equally suitable replacement].~~

5. ~~[Under no circumstances shall]~~ A milk crate or similar substitute shall not be considered a suitable replacement or a viable alternative for a step stool. ~~[Milk crates or similar substitutes shall not be permitted on any vehicle];~~

(U) ~~[(q)]~~ A ~~[All]~~ vehicle shall have on board three (3) portable triangular reflectors mounted on stands;

(U) ~~[(r)]~~ A ~~[All]~~ vehicle shall include a vehicle information packet to be stored in the driver compartment~~;~~ or securely stored on or in the driver's side visor. This packet shall include:

1. Vehicle registration;

2. Insurance card;

3. Bus or vehicle card; and

4. Accident procedures and forms;

(V) ~~[(s)]~~ A ~~[All]~~ vehicle shall be provided with a fully equipped first aid kit and a "spill kit" including:

1. Liquid spill absorbent~~;~~;

2. Latex gloves~~;~~;

3. Hazardous waste disposal bags~~;~~;

4. Scrub brush~~;~~ and

5. Disinfectant and deodorizer~~;~~ and

(W) ~~[(t)]~~ A ~~[Each]~~ vehicle shall contain maps or global positioning devices with sufficient detail to locate recipients and destinations.

(X) A vehicle shall have the transportation provider's company signage posted on the exterior of the vehicle identifying the company's legal name.

(Y) Signage shall be displayed on the driver and passenger side doors in two (2) inch block letters.

(2) A lift-equipped vehicle ~~[requirements. All vehicles]~~ used to transport wheelchair passengers~~;~~ shall ~~[at a minimum,]~~ meet the requirements and specifications of The Americans with Disabilities Act of 1990 (ADA). ~~[the following ADA requirements:~~

(a) A floor-to-ceiling height clearance of at least fifty-six (56) inches for vehicles up to twenty-two (22) feet and of at least sixty-eight (68) inches for vehicles above twenty-two (22) feet in the passenger compartment;

(b) An engine-wheelchair lift interlock system which requires the vehicle's transmission be placed in park and emergency brake engaged to prevent vehicle movement ~~if~~ ~~[when]~~ the lift is deployed;

(c) A hydraulically or electromechanically powered wheelchair lift mounted so as not to impair the structural integrity of the vehicle that meets the following specifications:

1. Capable of elevating and lowering a 600-pound load and shall not cause the outer edge of the lift to sag, or tilt downwards more than one (1) inch, nor shall the platform deflection be more than three (3) degrees under a 600-pound load;

2. The lift platform is at least thirty (30) inches wide and forty-eight (48) inches long;

3. The lift platform shall not have a gap between the platform surface and the roll-off barrier greater than five-eighth (5/8) inch. When raised, the gap between the platform and the vehicle floor shall not exceed one-half (1/2) inch horizontally and five-eighth (5/8) inch vertically;

4. The lift controls shall be operable and accessible from inside and outside the vehicle, and shall be secure from accidental or unauthorized operation;

5. The lift shall be powered from the vehicle's electrical system. In the event of a power failure, the lift platform shall be able to be raised or lowered manually with passengers, and shall provide a method to slow free-fall in the event of power or component failure;

6. The lift operation shall be smooth without any jerking motion. Movement shall be less than or equal to six (6) inches per second during lift cycle and less than or equal to twelve (12) inches per second during stowage cycle;

7. When in storage in the passenger compartment, the lift platform shall not be capable of falling out of or into the vehicle, even if

the power should fail;

8. The lift platform shall have a properly functioning, automatically engaged, anti-roll-off barrier, with a minimum of one and one-half (1 1/2) inch on the outbound end, to prevent ride over;

9. It is preferable but not required, that the platform, when in a stored position, not intrude into the body of the vehicle more than twelve (12) inches and be equipped with permanent vertical side plates to a height of at least two (2) inches above the platform surface;

10. The lift platform surface shall be a nonskid expanded metal, mesh or equivalent, to allow for vision through the platform;

11. The lift shall be furnished with reflector tape on each side except the side adjacent to the vehicle and on all step edges, thresholds and the boarding edge of lift platform; and

12. The lift platform on vehicles shall be equipped with a handrail on both sides of the lift platform for the purpose of loading or unloading ambulatory passengers. The handrail shall meet the following requirements: maximum height range thirty (30) inches to thirty-eight (38) inches; knuckle clearance handhold one and one-half (1 1/2) inch; shall be able to withstand force of 100 pounds; the handrail shall not reduce the lift platform width of at least thirty (30) inches; and shall be a ramp-equipped vehicle meeting ADA specifications.

(d) Wheelchair restraint system - for each wheelchair position, a wheelchair securement device (or tie down) shall be provided that shall:

1. Be placed as near to the accessible entrance as practical, providing clear floor area of thirty (30) inches by forty-eight (48) inches. Up to six (6) inches may be under another seat if there is nine (9) inches height clearance from floor. Vehicles in excess of twenty-two (22) feet shall have at least one (1) forward-facing position. Additional positions may be forward-facing or rearward, if there is a padded barrier;

2. Be tested to meet a thirty (30) m.p.h./twenty (20) gm standard;

3. Securely restrain the wheelchair during transport from movement forward, backward, lateral and overturning movements in excess of two (2) inches;

4. Be adjustable to accommodate all wheel bases, tires (including pneumatic) and motorized wheelchairs;

5. Be a lock system, belt system or both and acceptable to the cabinet. If a belt system is used the cargo strap shall be retractable or stored on a mounted clasp or in a storage box when not in use. A tract mounting lock system on the floor for wheelchair securement shall be flush with the floor so as not to be an obstruction or become a tripping hazard. In all cases, the straps shall be stored properly when not in use; and

6. Provide seat belts or a shoulder harness that are attached to the floor or to the sidewall of the vehicle, which shall be capable of securing both the passenger and wheelchair.

(e) Wheelchair entrance door shall:

1. Maintain a minimum vertical clearance of fifty-six (56) inches for vehicles or less in length (sixty-eight (68) inches for vehicles over twenty-two (22) feet in length) and a minimum clear door opening of thirty (30) inches wide;

2. Have no lip or protrusion at the door threshold of more than one-half (1/2) inch; and

3. Be equipped with straps or locking devices to hold the door open when the lift is in use.]

Section 14. ~~[Section 10.]~~ Scheduling. (1)(a) The recipient or his or her guardian shall call the regional broker of the coded county of the recipient's residence ~~[recipient's county residence]~~ at least seventy-two (72) hours prior to the scheduled appointment to schedule a trip.

(b) If a recipient is not county coded to the county of residence, the broker shall assist with arranging service with the assigned county coded broker.

(c) Weekends and holidays shall be included in determining the seventy-two (72) hour period for scheduling.

(2)(a) All brokers shall provide ~~[offer]~~ scheduling services ~~[and transportation services]~~ between 8 a.m. and ~~[to]~~ 4:30 p.m., Monday through Friday, and from 8 a.m. to 1 p.m. on Saturday.

(b) ~~[In addition,]~~ Transportation services shall be provided ~~[of-~~

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ferred] between 6 a.m. and [to] 8 p.m., Monday through Friday, and from 8 a.m. to 1 p.m. on Saturday.

(c) Scheduling services, transportation services, and business functions shall [may] be closed for:

1. New Year's Day; [-]
2. Memorial Day; [-]
3. July 4th; [-]
4. Labor Day; [-]
5. Thanksgiving Day; [-] and
6. Christmas Day.

(3)(a) The broker shall have[-at a minimum,-] paging services available after normal scheduling hours [periods] for urgent care transportation service.

(b) Urgent care transportation service shall be provided twenty-four (24) hours a day, seven (7) days a week, including any holiday.

(c) Urgent care transportation service may be [scheduled-or] requested anytime.

(d) TANF recipients may request [have a need for] immediate transportation from employment or training, including transport of a recipient's child from a daycare facility[-] due to an illness or a family emergency.

(e) In-patient discharges shall be provided during the usual daily Human Service Transportation operating hours, but shall not require a seventy-two (72) hour notice of scheduling in advance. [An immediate transportation need may be requested anytime.]

(4)(a) A [The] broker may schedule and provide trips for recipients after the normal [scheduling] hours of operation for special circumstances as established in Section 1 of this administrative regulation.

(b) The broker may [provide the eligible recipient transportation service and may] contact the Transportation Cabinet for guidance. [For purposes of this section, special circumstances shall, at a minimum, include dialysis treatments available only on weekends, or TANF transportation for evening shift employment.]

(5) The broker shall collect the following information from each eligible recipient requesting transportation services [on each incoming call]:

(a) Name of recipient;

(b) Recipient's Medicaid identification number [Address-of pickup and delivery];

(c) Recipient's pickup and delivery address;

(d) [(c)] Date of appointment;

(e) [(d)] Time of appointment;

(f) [(e)] Program identification;

(g) [(f)] Telephone number; [and]

(h) [(g)] **Type of covered service;** and

(i) Special needs including:

1. Child safety seats; or
2. Lift-equipped vehicle.

(6) The broker shall confirm the trip has been scheduled and shall provide the recipient with a reservation confirmation number.

(7)(1) In order to waive the twelve (12) [seventy-two (72)] hour notice requirement[-] for urgent care, the cabinet shall receive verification from a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner; or

(d) Qualified mental health professional as defined in KRS 202A.011.

(8) The verification required in subsection seven (7) of this section shall be transmitted by [the licensed medical provider verification may be transmitted in any of the following methods]:

(a) Oral verification over a telephone;

(b) [(a)] Written verification on the licensed medical provider's letterhead delivered in person [by the person directly] to the broker;

(c) [(b)] Written verification transmitted electronically by computer or by facsimile on the [The transmittal shall include the] licensed medical provider's letterhead [or office name] and [be] submitted from the licensed medical provider's office directly to the broker's office.

(9) [-] or

(c) Oral verification over the telephone.

4.] If written verification cannot be submitted, the broker may

initiate a telephone call to the licensed medical provider requesting oral verification that the recipient is required to [must] be seen at the appointed time.

(10) [2-] If the licensed medical provider initiates the call, the broker shall [may] return the call if there is a question concerning the call's legitimacy [to verify legitimacy of the call].

Section 15. [Section 44-] Eligibility. (1)(a) With the Transportation Cabinet and Cabinet for Health and Family Service's assistance [direction], a [each] broker shall have direct computer access to all relevant data bases needed to determine eligibility.

(b) If there is a question regarding eligibility, [and time does not warrant technological updates,-] the broker shall contact the cabinet for assistance in determining eligibility.

(c) The cabinet shall [initially] investigate all complaints regarding subcontractors and the broker for the area, and attempt to immediately resolve the problem to the satisfaction of all parties.

(d) The cabinet shall forward all complaints relating to Medicaid fraud or abuse to the Cabinet for Health and Family Services.

(2)[(a)] A trip for a nonemergency medical recipient who does [do] not require a [escorts-or] special-equipped vehicle[-] may be [transported] by taxi, community or [and] city bus, or private auto and shall be coordinated by the broker so that if it is feasible one (1) recipient may be transported with other recipients [to the greatest extent possible]. [(b) Escorts or attendants shall be individuals whose presence is required to assist a recipient during transport].

(3)(a) The broker shall ensure as established in KRS 281.873(6) that an escort accompanies all Certificate Type 07 and Certificate Type 08 recipients certified for an escort pursuant to the cabinet's specialty carrier form entitled Medical Transportation Classification Form.

(b) A Medical Transportation Classification Form shall be submitted by the broker directly to the physician and sent from the physician directly to the broker.

(c) [(b)] One (1) escort [only] shall be required for each recipient.

(d) [(c)] A family member may serve as an escort.

(e) [(d)] One (1) escort may serve several recipients if the recipients are grouped and have the same destination.

(f) [(e)] An escort shall not be charged a fare.

(g) A transportation provider or a provider's employee shall not serve as a designated guardian for a child twelve (12) years or under.

Section 16. [Section 42-] Standards for Recipients [Passengers]. (1)(a) A trip for a recipient [Passengers] may be coordinated with public transit [the general public population for transportation services].

(b) [(2)(a)] A recipient [Passengers] shall give all pertinent information needed to the broker[-] including a request for an escort required, or information regarding special needs.

(2) [(b)] If the recipient is under the TANF Program, the recipient shall convey to the broker the number of children to be transported.

(3) Transportation to childcare shall not be provided under nonemergency medical transportation [unless the child is an eligible recipient and in need of covered medical service].

(4) A recipient shall not be under the influence of alcohol or illegal drugs.

(5) A recipient shall be ready at least [within] fifteen (15) minutes before scheduled pickup.

(6) Except for medical necessity, a recipient shall abide by signs in the vehicle and observe safety rules including seat belt requirements [-including no food or drink].

[(7) A recipient shall abide by the nonsmoking requirement and observe safety rules.

(8) A recipient shall abide by applicable safety seat belt administrative regulations.]

(7) [(9)] A recipient shall not hold a child in his or her [children in] lap during transport.

(8) [(10)] A recipient shall call seventy-two (72) hours in advance for the transport unless it is an urgent care situation [or verified by a licensed medical provider request in accordance with Section 10(7) of this administrative regulation].

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(9)(a) A [(44)] recipient shall cancel a [the] trip as soon as possible, but no less than twenty-four (24) hours in advance.

(b) A recipient who fails to show for a scheduled transportation service shall receive a letter from the Transportation Cabinet informing the recipient of their responsibility in scheduling and cancelling trips.

(10) A [(42)] recipient that engages in abusive, violent, seriously disruptive, or illegal conduct or contact shall [may] lose his or her [their] transportation privileges[. Privileges may be removed] with approval from the cabinet [and applicable state agency].

(11) [(43)] If a recipient poses an immediate danger to the driver or other passengers, the driver shall call for emergency assistance.

(12) A [(44)] recipient may [shall have the right to] call a broker or the cabinet's toll free complaint phone line to lodge a complaint.

(13) [(45)] Failure to abide by subsections (3) through (11) [(43)] of this section shall be cause for trip denial as established in Section 15 [pursuant to Section 14] of this administrative regulation. [Section 13. Education Guidelines. Each broker shall educate interested persons in the delivery area regarding:

(1) Scheduling procedures contained in Section 10 of this administrative regulation;

(2) Rates for each service type;

(3) Recipient information as required in Section 10(5) of this administrative regulation;

(4) Pickup and delivery standards as provided for in Sections 8 and 12 of this administrative regulation;

(5) Denial of service to as provided for in Section 14 of this administrative regulation;

(6) Permissibility of escorts and attendants, as provided for in this administrative regulation and 907 KAR 1:064;

(7) Procedures for governing urgent care provided for in Section 10 of this administrative regulation;

(8) Standards for driver conduct as provided for in Section 8 of this administrative regulation;

(9) Standards for passengers as provided for in Section 12 of this administrative regulation; and

(10) Complaint process for recipients as provided for in Section 14 of this administrative regulation.]

Section 17. [Section 14.] Program Coordinators. (1) The cabinet shall employ [a pool of] program coordinators as established in [required by] KRS 281.872. [(a) These employees shall be responsible for complaint resolution regarding recipients, subcontractors, and brokers.

(b) These employees shall work with other state agencies to resolve complaints.

(2) Issues of eligibility that result in the recipient being denied transportation shall be investigated by the program coordinators.

(3)(a) Eligibility issues shall be attempted to be resolved immediately.

(b) If eligibility cannot be resolved immediately, the recipient shall continue to receive transportation until the program coordinator:

1. Resolves the question of the person's eligibility; and

2. Verifies to the broker that the person is actually ineligible to receive transportation services.

(4)(a) The cabinet shall inform the recipient, in writing, of a denial of transportation services.

(b) The denial letter shall include information about recipients' rights, including appeals and representation.

(5)(a) The Department for Community-Based Services shall advise each recipient, in writing, of the availability of the program coordinators and the manner in which they may be contacted.

(b) The recipient may contact the program coordinator regarding complaints or questions about the services provided.]

Section 18. [Section 15.] Cabinet Performance Monitoring and Oversight. (1) A [The cabinet shall be satisfied as to the operational readiness of the broker. The] broker shall demonstrate operational readiness to the cabinet in an onsite inspection in the following areas:

(a) Hours of service and operation;

(b) Scheduling procedures;

(c) Pickup and delivery standards;

(d) Urgent care and immediate TANF transportation;

(e) Driver conduct, [and driver] qualification, and training;

(f) Passenger requirements;

(g) Vehicle requirements, inspections, and vehicle inventory;

(h) Back-up service;

(i) Appeals and complaint procedures;

(j) Telephone systems and reporting procedures, including TTY;

(k) Computer and technological capabilities;

(l) Driver manifest form procedures submittal and receipt;

(m) Roles and job descriptions of staff; and

(n) Educational and orientation procedures[; and]

(2) A broker shall [(e)] develop a Transportation Cabinet approved operational procedures manual for each region.

(2) Each regional [region] broker shall set up toll free lines giving the human service transportation delivery recipients and the general public information about the availability of services.

(3)(a) A [The] broker shall be available for scheduled visits by the Transportation Cabinet twice a year [on a periodic basis] to assess operations and [,] performance, and discuss service issues.

(b) A subsequent meeting or visit may be held as needed or requested by the broker or the cabinet.

(c) [(b) At a minimum,] One (1) meeting shall consist of a comprehensive assessment compliance review by the cabinet.

(d) A [(c) The] broker shall [also] be available for periodic conference calls with the cabinet to discuss issues, policy, and procedures.

(4)(a) A driver performing under the human service delivery network shall be subject to random drug and alcohol testing [to be administered by the cabinet].

(b) A new hire [new] safety-sensitive employee for a [of] transportation provider shall be required to pass a pre employment drug test.

(c) A [All] provider shall develop a drug and alcohol policy. [(d) Brokers shall submit monthly testing activities.]

(5)(a) Each broker shall submit the results of random drug and alcohol screenings to the Kentucky Transportation Cabinet on a monthly basis [information on each one (1) way trip performed during a month in the broker's region to the cabinet].

(b) All broker and subcontractor trips shall be reported and the dollar amount paid for each one (1) way trip.

(c) This information shall be reported in a computer ACCESS or Excel format utilizing the same field formats statewide.

(6)(a) The Transportation Cabinet shall compile a monthly report containing operating information on each program operated by the brokers[,], including rural public transportation, and denoting fleet, miles, hours, fuel, revenues, and expenses.

(b) The statistics shall be used for analysis and reporting to other state agencies and to the Federal Transit Administration (FTA). The cabinet shall issue a standard monthly summary form to each broker.

(7) The broker shall submit line item invoice forms each month to the cabinet with the request for reimbursement and detail current month's expenses broken out by line item, including salaries, sub-contractor payments [subpayments], maintenance, and fuel.

(8)(a) The broker, at its own expense, shall have an independent audit performed for the past fiscal year.

(b) This audit shall be conducted in accordance with applicable federal and state law, and be delivered to the cabinet by March 31 of the following fiscal year of service [upon completion].

(9)(a) Formalized program integrity plans shall be submitted by the broker to the Transportation Cabinet that [which] define the broker's program for identifying and deterring any suspected fraud or abuse activities within the human service transportation delivery program.

(b) The Transportation Cabinet shall issue a statewide program integrity plan format for all brokers.

(10)(a) Each broker shall develop and maintain a quality assurance plan. The plan shall address the following:

1. The scheduling and delivery of transportation services;

2. The broker's methodology for the identification and correction of problems relating to the scheduling and delivery of transportation services; and

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3. Subcontractor payment efficiency.

(b) The Transportation Cabinet shall [may] require the broker to compile and provide to the cabinet additional reports that [which] further track the broker's performance including:

1. Those items in Section 21(3) of this administrative regulation; and

2. Drug and alcohol reports.

(11)(a) Each broker shall have a disaster recovery plan.

(b) The broker shall not transport in [unsafe] conditions that may negatively affect the health and safety of a driver or a passenger.

(c) The broker shall establish and maintain an inclement weather transportation policy that has been approved by the Transportation Cabinet.

(d) [(e)] In emergencies, the broker shall contact the National Guard or other emergency units to assist in the transport of dialysis clients or urgent care.

(e) [(d)] The broker shall operate on all routes or highways that are deemed safe, thereby offering limited services during inclement weather.

(12) A broker shall submit a monthly vehicle inventory report listing the number of vehicles used by each transportation provider in the delivery of human services transportation.

Section 19. [Section 16.] Fines and Penalties. (1)(a) A broker that fails to perform according to contractual obligations or statutory requirements and whose noncompliance causes a recipient to miss a scheduled appointment shall receive a written warning from the Transportation Cabinet outlining the provisions of noncompliance.

(2) A broker that receives a second written warning from the cabinet within a thirty (30) day period shall submit a corrective action plan to the cabinet within ten (10) days of receipt of the written warning.

(3) A broker that receives a third written notice from the cabinet within a thirty (30) day period shall:

(a) Receive a written reprimand outlining the provisions of non compliance;

(b) Receive notice in writing of a fine of \$1,000 as established in KRS 281.872(3).

Section 20. Broker Appeal Process. (1) A broker shall have fifteen (15) days to appeal the notice of a fine pursuant to KRS 281.872(3).

(2) An appeal shall be in writing and mailed to: Kentucky Transportation Cabinet, Executive Quality Management Committee (EQMC), Office of Transportation Delivery, 200 Mero Street, Frankfort, Kentucky 40622.

(3) The appeal of a fine shall be received ten (10) days prior to the next regularly scheduled EQMC meeting in order to be included on that agenda.

(4) An imposed fine shall be deducted from the monthly capitated payment made to the broker prior to the issuance of the monthly invoice.

Section 21. Revocation. (1) A broker who is required to pay a fine pursuant to KRS 281.872(3) shall be subject to having his or her contract revoked by the Transportation Cabinet within ninety (90) days of:

(a) The notice of a fine if it is accepted by the broker and not appealed; or

(b) The date of the EQMC hearing of the appeal.

(2) A broker whose contract is revoked shall be prohibited from participating in the human service transportation delivery program for five (5) years.

Section 22. Recipient Appeal Process. A recipient shall have the right to appeal a denial of transportation as established in 907 KAR 1:563.

Section 23. Right to Choose Transportation Provider. (1) A participant may select a broker within the delivery area as established in KRS 281.874(1) [Persons participating in the human service transportation delivery program and designated a level of

eligibility under a Certificate Type 07 or 08 shall be ensured the freedom of personal choice in selecting an eligible provider, which may include the broker within the delivery area in accordance with KRS 281.874(1)].

(2)(a) The broker shall schedule the trip with a participating provider if the recipient does not express a preference.

(b) A person expressing a personal preference under this section shall contact the broker as established in KRS 281.874(2) [in accordance with KRS 281.874(2), to arrange transportation services, even if the person is requesting an eligible subcontractor to provide the services].

(3)(a) [In accordance with KRS 281.874(2), the broker may select himself or herself if that broker also provides transportation services.

(b) However, The broker shall establish a scheduling and reservation system of trip distribution approved by the cabinet.

(c) If the recipient allows the broker to choose a provider, the criteria for trip distribution shall include[;] in order of priority:

1. Coordination;

2. Cost efficiencies; or [and]

3. If the first two (2) criteria are not met[;] the broker shall rotate certificate type 07 and certificate type 08 trips among providers, including the broker.

(3)[(4)](a) The broker and transportation provider shall evaluate routes presently utilized by the eligible recipients.

(b) If the broker determines that a route is inefficient, the broker shall elect a more efficient route.

(4) [(5)] The Transportation Cabinet shall resolve any disputes regarding choice of transportation provider.

Section 24. Cabinet Responsibilities. [Section 17. (1) Pursuant to KRS Chapter 45A, the Transportation Cabinet shall select and contract with a transportation broker in each region established in this administrative regulation.] (1)(a) [(2)(a)] The Transportation Cabinet shall establish provider rates for each certificate type for each human service transportation delivery area.

(b) The rates shall be uniform for the same certificate types for all providers, including the broker in each delivery area.

(c) The following factors shall be considered in determining the rates:

1. Geographical terrain;

2. Trip distance;

3. Recipient population;

4. Availability of medical and employment facilities;

5. Labor and economic factors; and

6. Utilization of services.

(2)(a) [(3)(a)] A forty-five (45) day notice shall be given to all brokers by the cabinet prior to any changes made to the subcontractor rates.

(b) A broker may waive the forty-five (45) day notice requirement in writing to the cabinet.

Section 25. [Section 18.] Safety and Accountability. (1) A [The] broker and subcontractor shall maintain [all] records for five (5) years.

(2) Employees of a [All] broker and subcontractor [employees and employees of the subcontractors] shall sign confidentiality statements regarding access to, and disclosure of confidential information or records.

(3) Collection and retention of records to be maintained by each broker and subcontractor pertaining to human service transportation delivery shall[; at a minimum;] include:

(a) Encounter data;

(b) Complaint tracking;

(c) Monthly summary reports;

(d) Trip invoices;

(e) Phone reports;

(f) Subcontractor requests;

(g) Audits;

(h) Line-item budgets; [and]

(i) Monthly pay document submittals; and

(j) Vehicle inventory reports.

(4) Collection and retention of encounter data on each trip shall be made by the broker[;] if the broker provides transportation ser-

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vices, and by each subcontractor.

(5) Failure of a broker to timely record and report all data and broker trips as established in KRS 281.875 [required by the cabinet] shall be grounds for the Commonwealth [cabinet] to terminate the broker's contract.

(6) ~~[Each transportation broker/provider and subcontractor subject to the provisions of 601 KAR 1:005 shall comply with the provisions of that administrative regulation.]~~

A ~~[(7) Each] transportation broker or~~ [provider and] subcontractor exempted in [not subject to the provisions of] 601 KAR 1:005 shall comply with the provisions of 49 C.F.R. Part 655 [the following federal regulations:

(a) 49 C.F.R. 653, "Prevention of Prohibited Drug Use in Transit Operations", effective October 1, 1999; and

(b) 49 C.F.R. 654, "Prevention of Alcohol Misuse in Transit Operations", effective October 1, 1999].

~~(7)(a) [(8)(a)]~~ A [Each] transportation broker ~~or~~ [provider and] subcontractor[,] who operates a motor vehicle that [which] is not subject to the provisions of 601 KAR 1:005[,] shall maintain each of the vehicles in a safe operating condition consistent with Section 13 of this administrative regulation.

(b) A [Each] motor vehicle being operated pursuant to the provisions of this administrative regulation[,] that [and which] is not subject to the provisions of 601 KAR 1:005[,] shall be inspected on an annual basis by an automotive technician.

(c) Prior to being operated pursuant to this administrative regulation, the transportation broker ~~or~~ [provider shall obtain written [have] proof that the motor vehicle has passed a safety inspection by an automotive technician.

Section 26. Incorporation by Reference. (1) "Medical Transportation Classification Form", June, 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Transportation Delivery, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. The telephone number is (502) 564-4733. ~~[Section 19. Adoption Without Change. (1) The following federal regulations are adopted without change:~~

(a) 49 C.F.R. 37, "Transportation Services for Individuals With Disabilities (ADA)", effective October 1, 1999;

(b) 49 C.F.R. 38, "Americans With Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles", effective October 1, 1999;

(c) 49 C.F.R. 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Program", effective October 1, 1999;

(d) 49 C.F.R. 653, "Prevention of Prohibited Drug Use in Transit Operations", effective October 1, 1999; and

(e) 49 C.F.R. 654, "Prevention of Alcohol Misuse in Transit Operations", effective October 1, 1999.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Transportation Delivery, 3rd Floor, State Office Building Annex, 125 Holmes Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is (502) 564-4733.]

REBECCA GOODMAN, Executive Director

MIKE HANCOCK, Secretary

APPROVED BY AGENCY: September 12, 2011

FILED WITH LRC: September 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.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann D'Angelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures governing the human service transportation delivery program in order to provide efficient, safe, and coordinated transportation delivery to the clients who use

the service.

(b) The necessity of this administrative regulation: This regulation is necessary to establish procedures for the human service transportation delivery program so that clients of the service, brokers, and contractors will understand what is expected of them.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 281.870(3) requires the cabinet to promulgate administrative regulations specifying the duties and responsibilities of the CTAC. KRS 281.875 requires the cabinet to promulgate regulations concerning the human service transportation delivery program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The updates to procedures and law will insure that those affected by the program, as well as the brokers and sub contractors hired to carry out the requirements of the program, have the latest information assisting in more effective administration of the statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment will: update any changes in the law, procedures, and forms; add language to further define the use of human service transportation delivery by a recipient whose household has an operational motor vehicle; establish the procedures for a broker to receive a fine pursuant to KRS 281.872(3); and increase the program's flexibility by removing the list of regions and counties associated with each region. This change will allow individual counties to move to different regions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the existing administrative regulation to reflect changes in law and procedures since the last amendment in 2000.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment follows the structure and mandates provided by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: Amendments to the language and forms will more clearly establish the responsibilities and duties of recipients of the service, and the brokers and subcontractors who provide service.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are between 800,000 and 900,000 Kentuckians eligible for human services transportation. There are 15 brokers, and approximately 200 transportation providers such as taxicab companies and transit operators. There are four state government cabinets involved in the human service transportation delivery program

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any new or different actions for any of the entities in (4). Rather, this amended regulation should update and clarify the program for all those involved.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The parties will benefit by having the most current forms and procedures for the human service transportation delivery program,

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no costs associated with implementing these amendments.

(a) Initially:

(b) On a continuing basis:

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

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

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

(9) TIERING: Is tiering applied? No. All who qualify will be able to participate.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts procedures in the Transportation Cabinet's Office of Transportation Delivery.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 96A.095, 281.870, 281.875

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional costs are required or expected.

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

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

(c) How much will it cost to administer this program for the first year? No costs are required or expected based on these amendments.

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

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

Revenues (+)

Expenditures (-)

Other Explanation:

### PUBLIC PROTECTION CABINET Department of Insurance Agent Licensing Division (Amended After Comments)

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

RELATES TO: KRS 304.09, 304.12-130

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes that the Commissioner [~~Executive Director~~] of Insurance to make [~~reasonable rules and~~] administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. This administrative regulation prohibits the use of names, titles, degrees, certificates, accomplishments, or the like, that implies a greater skill or knowledge than the person actually possesses.

Section 1. Definitions [Definition]. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Annuity" is defined in KRS 304.5-030.

(3) "Consultant" is defined in KRS 304.9-040.

(4) "Commissioner" is defined in KRS 304.1-050(1).

(5) "Insurer" is defined in KRS 304.1-040.

(6) "Licensee" means agent, insurer, if an agent is not involved, and consultant.

(7) "Life Insurance" is defined in KRS 304.5-020. [~~Executive director~~] means the Executive Director of the Office of Insurance.]

Section 2. A person licensed pursuant to KRS Chapter 304, Subtitle 9, shall not, in the conduct of business, use, or knowingly permit to be used on the person's behalf, any name, title, letters, degrees, certificate, accomplishment, award, designation or the like, which:

(1) [(a)] Implies or purports to convey that the person possesses a greater skill, knowledge, experience or qualification than is actually a fact; [or]

(2) [(b)] Exceeds the maximum requirements for licensing under the Kentucky Insurance Code as defined in KRS 304.1-010; or[-]

(3) Implies or purports to convey that the person possesses a greater skill, knowledge, experience or qualification in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product.

Section 3. Section 2 of this administrative regulation shall not prohibit the use of names, titles, letters, degrees, certificates, recognition of accomplishments, awards, designations or the like which have been properly conferred upon a licensee by:

(1) A duly accredited and recognized college or university; or

(2) A duly accredited and recognized professional association or society.

Section 4. Factors Constituting a Certification or Designation. In determining if a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

(1)(a) Use of the words "senior", "retirement", "elder", or similar words;

(b) Combined with "certified", "registered", "chartered", "advisor", "specialist", "consultant", "planner", or similar words; and

(2) The manner in which those words are combined.

Section 5. Certain Job Titles. A job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates insurance licensees, is not a certification or professional designation, unless:

(1) It [it] is used in a manner that would confuse or mislead a reasonable consumer; and

(2) The [in a] job title;

(a) Indicates [(1)-Indicating] seniority or standing within the organization; or

(b) Specifies [(2)-Specifying] an individual's area of specialization within the organization.

Section 6. Nothing in this administrative regulation shall exempt an individual from compliance with the registration requirements of KRS 292.330(1) if the individual transacts business in this state as a broker-dealer, investment adviser, agent, or investment adviser representative.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 15, 2100 at 9 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.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prohibits the use of names, titles, degrees, certificates, accomplishments, or the like, that implies a greater skill or

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knowledge than the person actually possesses.

(b) The necessity of this administrative regulation: This administrative regulation will provide protection for Kentucky citizens by prohibiting the use of false or deceptive names, titles, certifications and designations in the sale of insurance products.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. KRS Chapter 304 subtitle 9 establishes the licensure and education requirements for Agents, Consultants, Solicitors and Adjusters. KRS Chapter 304 subtitle 12 prohibits various practices that are unfair or misleading to Kentucky citizens.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation will assist by stating that use of misleading false or deceptive names, titles, certifications and designations is prohibited by this administrative regulation and the Kentucky Insurance Code.

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

(a) How the amendment will change this existing administrative regulation: This amendment sets forth requirements relating to the use of senior specific certifications and designations.

(b) The necessity of the amendment to this administrative regulation: This amendment will provide protection for Kentucky citizens by prohibiting the use of the misleading senior specific certifications and designations in the sale of insurance products, in particular life and annuity products.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. KRS Chapter 304 Subtitle 9 establishes the licensure and education requirements for Agents, Consultants, Solicitors and Adjusters. KRS Chapter 304 Subtitle 12 prohibits various practices that are unfair or misleading to Kentucky citizens.

(d) How the amendment will assist in the effective administration of the statutes: The Amendment will assist by stating that use of misleading senior specific certifications and designation is prohibited by this administrative regulation and the Kentucky Insurance Code.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect approximately 129,543 agents offering insurance products.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Since this is an amendment to a current regulation, regulated entities are most likely in compliance with these requirements. To the extent that a licensee is using a prohibited title or designation, the licensee will need to cease.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The cost should be minimal since licensees should be complying with the current regulation and this amendment is a clarification to address senior-specific certifications or designations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The insurers and agents will be in compliance with state law and will not be competing with licensees using misleading titles or designations.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all licensees.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: DJ Wasson

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statute 304.2-110 (1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance code.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of administering this program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program will not change.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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PROPOSED AMENDMENTS RECEIVED THROUGH NOON, SEPTEMBER 15, 2011

COUNCIL ON POSTSECONDARY EDUCATION  
(Amendment)

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky.

RELATES TO: KRS 156.160, 158.6451, 158.6453, 164.001, [164.011,] 164.020[(3),] (5), (8), 164.030

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the council to set the minimum qualifications for admission to the state-supported postsecondary education institutions. It is the intent of the council that all prospective students have available to them an opportunity for postsecondary education appropriate to their interests and abilities. This administrative regulation establishes the minimum qualifications related to admission at state-supported postsecondary education institutions. [The college-readiness standards established in this administrative regulation shall not release institutions from the requirements contained in 13 KAR 2:060, degree program approval, equal opportunity goals.]

Section 1. Definitions. (1) "Adult learner [student]" means a student who is twenty-one (21) years of age or older.

(2) "Certified, nonpublic school" means a Kentucky non-public school that has voluntarily agreed to comply with the Kentucky Board of Education curriculum and textbook standards, received accreditation by an agency approved by the Kentucky Board of Education, been recommended for certification by the Kentucky Non-Public School Commission, and had the recommended certification approved by the Kentucky Board of Education.

(3) "Council" is defined by KRS 164.001(8).

(4) [(3)] "Developmental course" means a college or university class or section that prepares a student for college-level study and does not award credit toward a degree.

(5) [(4)] "Institution" [or "institutions"] means a state-supported postsecondary education institution as defined in KRS 164.001(12).

(6) [(5)] "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(13).

(7) "Pre-college curriculum" means the Kentucky high school graduation requirements or other approved course of study established in 704 KAR 3:303, and two units of a single world language.

(8) "Student eligible to pursue a GED®" means a student who has met the federal ability to benefit guidelines.

(9) "Supplemental course or program" means a college or university class, additional class hours, tutoring, or mentoring beyond that required for a student who meets the system-wide standards for readiness.

(10) [(6)] "System-wide standard" means an ACT Assessment sub-score of eighteen (18) in English, nineteen (19) in mathematics, or twenty (20) in reading.

Section 2. Minimum Qualifications for Institutional Admission as a First-time Student to a State-supported University [Students].

(1)(a) Except as provided by paragraph (b) of this subsection, an applicant who is a resident of Kentucky and who seeks admission to a Kentucky state-supported university [seeking to enter a community and technical college] shall have fulfilled the minimum requirements for admission to a baccalaureate degree program [degree program established by the Kentucky Community and Technical College System consistent with this administrative regulation] if the applicant has met the admission criteria established by the institution and: [1. Graduated from a public high school or a certified nonpublic high school; or

— 2. Earned a high school general equivalency diploma (GED).

(b) The Kentucky Community and Technical College System may choose to exempt students who are eligible to pursue a GED from the requirements of paragraph (a) of this subsection if the KCTCS publishes the exemption policy in the student catalog.

(c) An applicant to a community college type program at a

university shall:

— 1. Satisfy the minimum requirements for admission to a two (2) year degree program established by the admitting institution consistent with this administrative regulation; and

— 2. Take the ACT Assessment.

(2)(a) Except as provided in paragraph (b) of this subsection, an applicant shall have fulfilled the minimum requirements for admission to a baccalaureate program at a university if the applicant has:]

1. Graduated from a public high school or a certified non-public high school;

2. Completed the pre-college curriculum [~~established in Section 3 of this administrative regulation;~~] and

3. Taken the ACT Assessment.

(b) An applicant who has earned a high school general equivalency diploma (GED®) [(GED)] or who is a graduate of a Kentucky based non-certified non-public high school, including a home school, shall have fulfilled the requirements for admission [may be admitted] to a baccalaureate program [at a university] by meeting the admission criteria established by a university, in writing, and by taking the ACT Assessment and by scoring at levels established by the university.

(c) [(3)] Notwithstanding the provisions of paragraphs (a) and (b) of subsection[s] (1) [and (2)] of this section, a university may substitute the SAT for the ACT Assessment. A university may substitute the ACT RESIDUAL, ASSET Testing Program, COMPASS Testing Program, KYOTE Testing Program, or ACCUPLACER Testing Program [may be substituted] for the ACT Assessment requirement for an adult learner[student].

(d) Provide that KCTCS graduates of approved associate of arts and associates of science programs shall receive priority for admission to a state public university over out-of-state students if they meet the same admission criteria (KRS 164.2951, Section 2).[(4) An institution shall establish a written policy for admitting a student if an applicant has attended a noncertified or nonpublic high school and completed a course of study. Noncertified nonpublic schools shall include a home school.]

(2) [(5)] A non-resident [seeking admission to a baccalaureate degree program at a university] shall have fulfilled the minimum requirements for admission to a baccalaureate degree program at a university if the applicant has met the admission criteria established by the institution and [complete]:

(a) [The ACT recommended college core courses for the pre-college curriculum which are listed in the Benefits of a High School Core Curriculum, ACT 2006; or

(b)] Completed a college preparatory curriculum comparable to Kentucky's pre-college curriculum; and

(b) Taken the ACT Assessment or the SAT Assessment [established in Section 3 of this administrative regulation].

(3) [(6)] (a) A university may[, under extenuating circumstances,] admit a student who has not met the testing requirements of subsection (1) [(2)](a)3 or (2)(b) of this section if the university has a written policy defining the [extenuating] circumstances that require the testing be delayed.

(b) [(#)] A university admitting a student under paragraph (a) of this subsection, [the student] shall satisfy the provisions of subsection (1) [(2)](a)3 or (2)(b) of this section during the first semester of enrollment.

(4) The requirement to complete the pre-college curriculum shall apply to:

(a) A first-time university student pursuing a baccalaureate degree with or without a declared major;

(b) A university student who is already enrolled and who is converting from non-degree status to baccalaureate degree status;

(c) A student changing from certificate or associate degree status to baccalaureate degree status; or

(d) A student transferring from another institution who has been admitted to baccalaureate degree status by a state-supported university.

(5) A university shall accept a waiver of a pre-college curriculum course if:



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(a) A student is unable to complete the course because of a physical handicap;

(b) The school district superintendent or designee verifies that a student's handicapping condition prevents the student from completing the course in question; and

(c) The student completes a course substituted by the local school in accordance with 704 KAR 3:305, Section 3(2).

(6) The requirement to complete the pre-college curriculum as set forth in Section 2(1)(a)2. shall not apply to:

(a) An adult student;

(b) A student entering baccalaureate degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a grade point average (GPA) of at least 2.00 on a 4.00 scale;

(c) Active duty military personnel, their spouses, and their dependents;

(d) A student enrolled in a community or technical college or a community college type program at a university;

(e) A non-resident student subject to the provisions of subsection (2) of this section; or

(f) An international student.

(7) A university may establish, in writing, additional admission criteria to supplement these minimum requirements.

(8) An applicant of superior ability, as demonstrated by exceptional academic achievement, a high ACT Assessment score, and social maturity, may be granted early admission. An applicant granted early admission shall be exempt from the requirement of meeting the pre-college curriculum as set forth in subsection (2)(a)2.

(9) A university may admit a person who does not meet the entrance requirements established in this section, for the purpose of enrolling in a college course or courses as a non-degree student.

(10) A state-supported university who admits a student in an associate or baccalaureate degree program and who does not meet the system-wide readiness standards for English, mathematics, and reading shall use a placement exam to place a student in the proper course. If a student scores below the system-wide standard of readiness in English, mathematics, and reading as outlined in the College Readiness Indicators document incorporated by reference, a university shall place the student in an:

(a) Appropriate developmental course in the relevant discipline within two semesters following a student's initial enrollment; or

(b) Appropriate entry-level college course within two semesters following a student's initial enrollment, provided that the course offers supplementary academic support such as extra class sessions, additional labs, tutoring, and increased monitoring of students beyond that usually associated with an entry-level course.

(11)(a) A student shall not be required to enroll in a developmental or supplemental course in English if the student has:

1. A sub-score on the ACT Assessment of eighteen (18) or higher;

2. Met an English benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a high school English transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness document; or

4. Successfully completed a developmental or supplemental English course at a public postsecondary education institution where the course meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(b) A student shall not be required to enroll in a developmental or supplemental mathematics course if the student is enrolling in a liberal arts mathematics course, and has:

1. A sub-score on the ACT Assessment of nineteen (19) or higher;

2. Met a liberal arts mathematics benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a high school mathematics transitional course or intervention program and met the system-wide mathematics benchmark for readiness for a mathematics liberal arts course outlined in the College Readiness Indicators document; or

4. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(c) A student shall not be required to enroll in a developmental or supplemental course in college algebra if the student has:

1. A sub-score on the ACT Assessment of twenty-two (22) or higher in mathematics;

2. Met a college algebra mathematics benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes for college algebra identified in the College Readiness Indicators document.

(d) A student shall not be required to enroll in a developmental or supplemental course in reading if the student has:

1. A sub-score on the ACT Assessment of twenty (20) or higher;

2. Met a reading benchmark placement score outlined in the College Readiness Indicators document;

3. Completed twelve (12) hours of reading intensive work at a postsecondary education institution;

4. Successfully completed a high school reading transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness Indicators document; or

5. Successfully completed a developmental or supplemental reading course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(e) A student who scores twenty-seven (27) or high on the ACT Assessment in mathematics shall be permitted to enroll in a credit-bearing calculus course.

(f) A student who demonstrates a level of competence by achieving the standards established in the College Readiness Indicators document, and by achieving the scores contained in sub-section (11) (a) through (e) shall be guaranteed placement in credit-bearing course work.

(12) An adult student who has been admitted without taking the ACT Assessment or the SAT may be placed into an appropriate course based on the following tests:

(a) The ACT Residual Test

(b) The ASSET Testing Program;

(c) The COMPASS Testing Program;

(d) The KYOTE Testing Program;

(e) The ACCUPLACER Testing Program; or

(f) An institutional placement test.

(13) An institution shall be responsible for determining the remediation required including the number of developmental courses required.

(14) An institution shall enroll a student who scores below the state-wide readiness standards in an appropriate developmental or entry-level course until readiness for credit-bearing courses has been demonstrated. An institution shall ensure that a student who completes a developmental or supplemental course shall enroll in a credit-bearing course in that subject or discipline, or in the case of reading, in an appropriate course requiring college-level reading skills.

(15) A university shall report to the Council data that monitors the performance of first-time students in developmental and entry-level courses. The core elements of the first-time student performance monitoring system shall include:

(a) ACT or SAT scores;

(b) institutional placement exam results;

(c) Information that identifies whether a course is developmental, entry-level, or entry-level with supplementary academic support provided; and

(d) Trades in developmental entry-level courses.

Section 3. Minimum Qualifications for Institutional Admission as a First-time Student to the Kentucky Community and Technical College System (KCTCS). (1) Except as provided by paragraph (b) of this subsection, an applicant who is a resident of Kentucky and

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who seeks admission to a community and technical college degree program established by the Kentucky Community and Technical College System if the applicant has:

(a) Graduated from a public high school or certified non-public high school; or

(b) Earned a general equivalency diploma (GED®).

(2) An applicant who has earned a high school general equivalency diploma (GED®) or who is a graduate of a Kentucky based non-certified non-public high school, including a home school, shall have fulfilled the requirements for admission to a community or technical college by meeting the admission criteria established by KCTCS, in writing.

(3) KCTCS may waive the requirement to take the GED® as set forth in subsection (1)(b) pursuant to a written policy published by KCTCS.

(4) An applicant of superior ability, as demonstrated by exceptional academic achievement, a high ACT Assessment score, and social maturity, may be granted early admission without meeting the requirements of subsection (1)(a) and (b).

(5) KCTCS may admit a person who does not meet the entrance requirements established in this section, for the purpose of enrolling in a college course or courses as a non-degree student.

(6) KCTCS, in admitting a student to a degree program who does not meet the system-wide readiness standards for English, mathematics, and reading, shall use a placement exam to place a student in the proper course. If a student scores below the system-wide standard of readiness in English, mathematics, and reading as outlined in the College Readiness Indicators document incorporated by reference, the institution shall place the student in an:

(a) Appropriate developmental course or adult education course of study in the relevant discipline within two semesters following a student's initial enrollment; or

(b) Appropriate entry-level college course within two semesters following a student's initial enrollment, provided that the course offers supplementary academic support such as extra class sessions, additional labs, tutoring, and increased monitoring of students beyond that usually associated with an entry-level course.

(7)(a) A student shall not be required to enroll in a developmental or supplemental course in English if the student has:

1. A sub-score on the ACT Assessment of eighteen (18) or higher;

2. Met an English benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a high school English transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness document; or

4. Successfully completed a developmental or supplemental English course at a state-supported postsecondary education institution where the course meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(b) A student shall not be required to enroll in a developmental or supplemental mathematics course if the student is enrolling in a liberal arts mathematics course, and has:

1. A sub-score on the ACT Assessment of nineteen (19) or higher;

2. Met a liberal arts mathematics benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a high school mathematics transitional course or intervention program and met the system-wide mathematics benchmark for readiness for a mathematics liberal arts course outlined in the College Readiness Indicators document; or

4. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(c) A student shall not be required to enroll in a developmental or supplemental course in college algebra if the student has:

1. A sub-score on the ACT Assessment of twenty-two (22) or higher in mathematics;

2. Met a college algebra mathematics benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes for college algebra identified in the College Readiness Indicators document.

(d) A student shall not be required to enroll in a developmental or supplemental course in reading if the student has:

1. A sub-score on the ACT Assessment of twenty (20) or higher;

2. Met a reading benchmark placement score outlined in the College Readiness Indicators document;

3. Completed twelve (12) hours of reading intensive work at a postsecondary education institution;

4. Successfully completed a high school reading transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness Indicators document; or

5. Successfully completed a developmental or supplemental reading course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(e) A student who scores twenty-seven (27) or high on the ACT Assessment in mathematics shall be permitted to enroll in a credit-bearing calculus course.

(f) A student who demonstrates a level of competence by achieving the standards established in the College Readiness Indicators document, and by achieving the scores contained in sub-section (7)(a) through (d) shall be guaranteed placement in credit-bearing course work.

(8) An adult student who has been admitted without taking the ACT Assessment or the SAT may be placed into an appropriate course based on the following tests:

(a) The ACT Residual Test;

(b) The ASSET Testing Program;

(c) The COMPASS Testing Program;

(d) The KYOTE Testing Program;

(e) The ACCUPLACER Testing Program; or

(f) An institutional placement test.

(9) An institution shall be responsible for determining the remediation required including the number of developmental courses required.

(10) An institution shall enroll a student who scores below the state-wide readiness standards in an appropriate developmental or entry-level course until readiness for credit-bearing courses has been demonstrated. An institution shall ensure that a student who completes a developmental or supplemental course shall enroll in a credit-bearing course in that subject or discipline, or in the case of reading, in an appropriate course requiring college-level reading skills.

(11) KCTCS may exempt students enrolled in selected certificate and diploma programs from an assessment and placement in English, mathematics, and reading. The list of certificate and diploma programs that exempt students from the required assessment and placement shall be published by KCTCS in the student catalog.

(12) KCTCS shall report to the Council data that monitors the performance of first-time students in developmental and entry-level courses. The core elements of the first-time student performance monitoring system shall include:

(a) ACT or SAT scores;

(b) Institutional placement exam results;

(c) Information that identifies whether a course is developmental, entry-level, or entry-level with supplementary academic support provided; and

(d) Trades in developmental entry-level courses. [Precollege Curriculum. (1) An applicant to a baccalaureate degree program at an institution shall complete twenty-two (22) or more approved high school units including the following courses in the precollege curriculum. The precollege curriculum established in this section shall include the following categories and courses of study:

(a) Four (4) units of high school study in English/language arts, specifically including English I, English II, English III, and English IV or AP English;

(b) Except as provided in subparagraphs 1, 2, and 3 of this

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paragraph, three (3) units of high school study in mathematics, including Algebra I, Algebra II, and Geometry.

— 1. An integrated, applied, interdisciplinary, or technical/occupational course may be substituted for a traditional Algebra I, Geometry, or Algebra II course if the course meets the appropriate content standards described in the Program of Studies, which is incorporated by reference in 704 KAR 3:303;

— 2. A mathematics course whose content is more rigorous than Algebra I shall be accepted as a substitute for Algebra I.

— 3. An Algebra I course taken prior to high school shall be counted as a required mathematics course if the academic content of the course is at least as rigorous as the appropriate high school algebraic thinking standards outlined in the Program of Studies, which is incorporated by reference in 704 KAR 3:303;

(c) Three (3) units of high school study in science, to include physical science, life science, and earth and space science. At least one (1) unit shall be a laboratory course;

(d) Three (3) units of high school study in social studies, from the following content areas: United States history, economics, government, world geography, and world civilization;

(e) One-half (1/2) unit in health education;

(f) One-half (1/2) unit in physical education;

(g) One (1) unit in history and appreciation of visual and performing arts; and

(h) Two (2) units in the same foreign language unless:

— 1. The applicant's local school has diagnosed the student as having a learning disability as set forth in KRS 157.200 and 707 KAR 1:340; and

— 2. Either:

— a. The school has determined that the learning disability precludes the student from successfully completing a foreign language course; or

— b. The applicant demonstrates linguistic competence and awareness of a foreign language at least equivalent to two (2) years of high school language.

(2) In addition to the requirements of subsection (1) of this section, a student shall take five (5) electives. Three (3) of the five (5) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and shall be in the following areas of study:

(a) Social studies;

(b) Science;

(c) Mathematics;

(d) English/language arts;

(e) Arts and humanities;

(f) Physical education and health. A student shall be limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health;

(g) Foreign language; or

(h) Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways.

(3)(a) An integrated, applied, interdisciplinary, or higher-level course shall be substituted for a course listed in subsections (1) or (2) of this section, if the substituted course offers the same or greater academic rigor and the course covers or exceeds the minimum required content.

(b) Integrated mathematics courses shall be taken as a sequence. A student shall choose either the algebra/geometry sequence or the integrated mathematics sequence.

(c) An approved substitute course may include an honors course, advanced placement course, dual credit course, or a course taken at an institution.

(4) An institution may establish additional requirements to supplement this minimum academic preparation.

(5)(a) An institution shall accept a waiver of a required precollege curriculum course if:

— 1. A student is unable to complete a course because of a physical handicap; and

— 2. The school district superintendent or designee verifies that a student's handicapping condition prevents the student from completing the course in question.

(b) Following a determination that a student is unable to complete a course based upon paragraph (a) of this subsection, a local

school may substitute another course in accordance with 704 KAR 3:305, Section 3(2).

(6) An institution shall determine whether an applicant has met these minimum academic preparation requirements.

(7) The precollege curriculum requirement shall apply to:

(a) A first-time student pursuing a baccalaureate degree with or without a declared major;

(b) A student converting from nondegree status to baccalaureate degree status;

(c) A student changing from certificate or associate degree level to baccalaureate degree level; or

(d) A student who, transferring from another institution, has been admitted to baccalaureate degree status by the receiving institution.

(8) The following shall be exempted from the requirements of the precollege curriculum:

(a) An adult student;

(b) A student entering baccalaureate degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a GPA (grade point average) of at least 2.00 on a 4.00 scale;

(c) Active duty military personnel, their spouses, and their dependents;

(d) A student enrolled in a community or technical college or a community college type program at a university;

(e) A nonresident student because he or she is subject to the provisions of Section 2(5) of this administrative regulation; or

(f) An international student.

Section 4. Conditional Admissions Qualifications. (1) A university shall have the option of admitting conditionally a first-time student applicant to a baccalaureate degree program who has not met the requirements of Section 3 of this administrative regulation. A first-time student admitted conditionally shall remove or otherwise satisfy academic deficiencies in a manner and time period established by the enrolling institution.

(2) An institution enrolling students in a baccalaureate degree program under the conditional admission provisions in subsection (1) of this section shall admit conditionally each academic term not more than five (5) percent of a base figure. The base figure shall be the average number of students reported as enrolled with baccalaureate degree status over the preceding four (4) years.

(3) Although not subject to the precollege curriculum for admission purposes, the precollege curriculum status of students enrolled in a community college type program in a university shall be assessed and reported to the Council on Postsecondary Education.

(4) An applicant of superior ability, as demonstrated by exceptional academic achievement, a high ACT Assessment score, and social maturity, may be granted early admission. An applicant granted early admission by an institution shall be exempt from the provisions of Sections 2 and 3 of this administrative regulation.

(5) At the discretion of the institution, a person who does not meet college entrance requirements, including high school students, may enroll in a college course as a nondegree student.]

Section 4 [5]. Transfer Students. (1) The council's General Education Transfer Policy and Implementation Guidelines, incorporated by reference, shall direct an institution's policy on the acceptance of transfer credits.

(2) An institution shall assure that a transferring student receives academic counseling concerning the transfer of credit among institutions.

(3) A university or the KCTCS [An institution], consistent with the provisions of subsection (1) of this section, shall accept a student's college credit earned when a course is taken both for high school credit and college credit. Credit earned through a dual enrollment arrangement shall be treated the same as credit earned in any other college course. [Section 6. Assessment and Placement of Students. (1) The Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics shall apply to:

(a) A first-time student enrolled in an associate or baccalaureate degree program or a certificate or diploma program at an institution;

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(b) A student who transfers from a degree program at one (1) institution into a degree program at another institution and who has not taken and successfully passed college-level courses in mathematics and English;

(c) A student who transfers from a certificate or diploma program into a degree program and who has not taken and successfully passed college-level courses in mathematics and English; or

(d) A student converting from nondegree status to degree status who has not taken and successfully passed college-level courses in mathematics and English.

(2) A nondegree-seeking student shall be exempt from systemwide mandatory assessment and placement policies.

(3) Except as provided in subsection (11) of this section, an institution shall use the ACT Assessment to evaluate student competencies in mathematics, English, and reading. An institution may accept scores on the SAT in lieu of the ACT Assessment for placement in college-level courses.

(4) If a student is determined to have not met the systemwide standards for readiness, an institution shall use a placement exam to help place the student in the proper course.

(5) An institution shall place a student who scores below the systemwide standard in mathematics, English, or reading in an:

(a) Appropriate developmental course in the relevant discipline; or

(b) Entry-level college course, if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that usually associated with an entry-level course.

(6) Effective with the fall semester of 2010, an institution shall satisfy the provisions of subsection (5) of this section by placing a student in the appropriate developmental course or entry-level college course within the first two (2) academic terms that a student is enrolled.

(7)(a) A student shall not be required to enroll in a developmental course in English if the student has a sub score on the ACT Assessment of eighteen (18) or higher in English. The student shall be permitted to enroll in a credit-bearing writing course.

(b) A student shall not be required to enroll in a developmental course in Mathematics if the student has a subscore on the ACT Assessment of nineteen (19) or higher in Mathematics.

1. A student who scores between nineteen (19) and twenty-one (21) shall be permitted to enroll in a credit-bearing mathematics course.

2. A student who scores twenty-two (22) through twenty-six (26) on the ACT Assessment in Mathematics shall be permitted to enroll in a credit-bearing algebra course.

3. A student who scores twenty-seven (27) or higher on the ACT Assessment in Mathematics shall be permitted to enroll in a credit-bearing calculus course.

(c) A student who has been admitted to an institution and who demonstrates a level of competence by achieving the standards established in the Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics, which is incorporated by reference, and by achieving the scores contained in paragraph (a) or (b) of this subsection shall be guaranteed placement in credit-bearing coursework.

(8) An adult student who has been admitted without the ACT Assessment test or the SAT may be placed into an appropriate course using:

(a) The ACT Residual Test;

(b) The ASSET Testing Program;

(c) The COMPASS Testing Program;

(d) The AGCUPLACER Testing Program; or

(e) An institutional placement test.

(9) An institution shall be responsible for determining the remediation required including the number of developmental courses required, if necessary.

(10) Effective with the fall semester of 2010, an institution shall enroll a student who scores below the statewide standards in an appropriate developmental or entry-level course until readiness for credit-bearing courses has been demonstrated. An institution shall ensure that a student who completes a developmental or supplemental course shall enroll in a credit-bearing course in that subject or discipline, or in the case of reading, appropriate course work

requiring college-level reading skills.

(11)(a) KCTCS shall select campus placement tests for the community and technical colleges that assess mathematics, English, and reading skills.

(b) KCTCS may use the ACT Assessment scores or SAT scores to place a student into an appropriate developmental course.

(12) KCTCS shall place a degree-seeking student who scores below the systemwide standard in mathematics, English, or reading in an:

(a) Appropriate developmental course in the relevant discipline; or

(b) Entry-level college course if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that which is usually associated with an entry-level course.

(13) KCTCS may exempt students enrolled in selected certificate and diploma programs from an assessment and placement in mathematics, English, and reading. The list of certificate and diploma programs that exempt students from the required assessment and placement in mathematics, English, and reading shall be published by KCTCS in the student catalog.

(14) an institution shall report to the council data that monitors the performance of first-time students in developmental and entry-level courses. The core elements of the first-time students performance monitoring system shall include, as appropriate:

(a) ACT or SAT scores;

(b) Institutional placement exam results;

(c) Information that identifies whether a course is developmental, entry-level, or entry-level with supplementary academic support provided; and

(d) Grades in developmental and entry-level courses.]

Section 4 [7]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "General Education Transfer Policy and Implementation Guidelines", 2011[2004], Council on Postsecondary Education;

(b) College Readiness Indicators, 2010["Benefits of a High School Core Curriculum", 2006, ACT; and

(c) "Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics", 2004.]

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

PAUL E. PATTON, Chair

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 15, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26 at 1:30 p.m. local time at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. 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 to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments will be accepted until October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dr. Sue Cain, Coordinator, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 320, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 254, fax 502.573.1535, email [sue.cain@ky.gov](mailto:sue.cain@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

## VOLUME 38, NUMBER 4 – OCTOBER 1, 2011

Contact person: Dr. Sue Cain

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets out the minimum admission and placement standards for students who attend public postsecondary education institutions.

(b) The necessity of this administrative regulation: KRS 164.020(8) requires that the Council on Postsecondary Education set minimum admission standards for students who wish to enroll at state-supported postsecondary education institutions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Prospective students, local school districts, and the public postsecondary education institutions all need to understand the requirements for admission to college so that students can take the required courses in secondary school, local schools can offer the courses that are required and adopt standards that prepare students for college, and so that colleges and universities can evaluate whether students have met the required standards for placement in credit-bearing coursework.

(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: High school graduation requirements for the graduating class of 2012 were revised by the Kentucky Board of Education in 2008 to include mathematics every year a student is in high school, including algebra I and II and geometry. Based on these changes, the Guidelines for Admission to the State-supported Postsecondary Education Institutions in regulation can be simplified to align with the new graduation requirements.

(b) The necessity of the amendment to this administrative regulation: The regulation needed revised to create an alignment of public K-12 and postsecondary institutions curriculum and readiness requirements and assessments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms exactly to the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The set of college readiness indicators and learning outcomes create a unified statement about college readiness that will be used by public K-12 schools and postsecondary institutions. Students meeting a readiness benchmark, as outlined in the College Readiness Indicators document, will be guaranteed placement into credit-bearing coursework across Kentucky's public postsecondary campuses. These indicators and learning outcomes will inform the design of the high school intervention, college accelerated learning, and bridge programming.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Eight state-supported postsecondary education institutions and the Kentucky Community and Technical College System (KCTCS) are affected. All high school students who might attend a public postsecondary education institution upon graduation are affected, as are the local school districts who must prepare those students, and the Kentucky Department of Education who must set the standards for graduation from high school.

(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: Campuses may need to add additional indicators of readiness in the student database system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are anticipated as a result of the change in the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question 3: The standards and assessments for high school graduation and the minimum standards for entrance into college will be aligned for the first time which should reduce

the need for developmental education and placement testing on postsecondary campuses.

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

(a) Initially: No additional costs due to reallocation of funds.

(b) On a continuing basis: See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Institutions have general fund appropriations to assist with implementation of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in these circumstances.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State-supported colleges and universities, local 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 164.020(8)

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? See 4.(c) above.

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

Revenues (+/-): This is a revenue neutral proposal

Expenditures (+/-):

Other Explanation: N/A

### PERSONNEL BOARD (Amendment)

#### 101 KAR 1:335. Employee actions.

RELATES TO: KRS 18A.075(1), 18A.0751(1), (4), 18A.115(4)  
STATUTORY AUTHORITY: KRS 18A.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1) and (4) require the Personnel Board to promulgate administrative regulations for the classified service governing demotion, transfer, reinstatement and reemployment. KRS 18A.115(4) establishes requirements governing the promotion of a career employee to a position exempted from classified service. This administrative regulation establishes the method for determining an employee's work station and the requirements governing a demotion, transfer, or reinstatement of an employee.



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Section 1. Definitions. "Class series" means a group of positions that are similar as to the duties performed and have:

(1) Varying levels of:

(a) Discretion;

(b) Responsibility; and

(c) Minimum requirements of training, experience, or skill; and

(2) Schedules of compensation that are commensurate with minimum requirements.

Section 2. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of a field employee shall be that address to which the employee is assigned at the time of appointment to the employee's current position.

(3) Except as provided by Sections 3, 4, and 5 of this administrative regulation, an appointing authority may assign an employee to work at a site other than his work station if the:

(a) Site is within his county of employment; and

(b) Assignment is not a transfer, demotion, or reinstatement.

Section 3. Demotion. (1) A demotion for cause shall be intra-agency.

(2) Voluntary demotion.

(a) A voluntary demotion shall be made if an employee with status requests a voluntary demotion on the Voluntary Transfer or Voluntary Demotion Form prescribed by the Personnel Cabinet.

(b) The form shall include:

1. A statement of the reason for the request;

2. The effective date of the demotion;

3. The position from which he requests demotion;

4. The position to which he will be demoted; and

5. A statement that the employee waives his right to appeal the demotion.

(c) The employee shall forward a copy of the request to the Secretary of Personnel.

(3) A voluntary demotion shall be interagency or intra-agency.

Section 4. Transfers. (1) The transfer of an employee with status shall conform to the requirements established in this section.

(2)(a) A transfer shall be on a voluntary or involuntary basis.

(b) An appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.

(c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary.

(3) Involuntary transfer, same county.

(a) Prior to the effective date of an involuntary transfer to a position with a work station in the same county, an employee shall receive a written notice of involuntary transfer.

(b) The notice shall state the:

1. Employee has been selected for transfer;

2. New work station;

3. Reason for the transfer;

4. Employee is required to report to the new work station;

5. Effective date of the transfer; and

6. Right of the employee to appeal the transfer to the board within sixty (60) days of receipt of the notice of involuntary transfer, excluding the date the notice is received.

(c) A copy of the notice shall be forwarded to the Secretary of Personnel.

(d) An employee shall report to the new work station upon the date specified in the notice.

(4) Involuntary transfer, out of county. If an involuntary transfer is to a position with a work station in a different county:

(a) An employee shall be entitled to travel and moving expenses as provided by 200 KAR 2:006;

(b) An employee shall receive a written notice of involuntary transfer at least thirty (30) days prior to the effective date of the transfer;

(c) The notice shall contain:

1. The information specified in subsection (3)(b) of this section; and

2. A statement that the employee is entitled to:

a. Reimbursement of travel expenses incurred within thirty (30)

days of the effective date of the notice; and

b. Moving expenses, if any.

(5) An involuntary transfer shall be intra-agency.

(6) Voluntary transfer.

(a) Prior to a voluntary transfer, an employee with status shall request a voluntary transfer on the Voluntary Transfer or Voluntary Demotion Form prescribed by the Personnel Cabinet.

(b) The form shall include:

1. A statement of the reason for the request;

2. The effective date of the transfer;

3. The position, including identifying number, from which he requests a transfer;

4. The position, including identifying number, to which he requests a transfer; and

5. A statement that the employee waives his right to appeal the transfer.

(c) The employee shall forward a copy of the request to the Secretary of Personnel.

(7) A voluntary transfer shall be interagency or intra-agency.

Section 5. Reinstatement. (1) A request for reinstatement shall be submitted by the appointing authority to the secretary of Personnel.

(2) The request shall include a finding that the candidate for reinstatement:

(a) Meets the current qualifications for the job classification to which he is being reinstated; and

(b) Has previously held status at that grade level or higher.

(3) If the reinstatement is to a classification outside of the classification series where the employee has previously held status, the candidate shall pass the appropriate examination prior to reinstatement.

(4) The request for reinstatement shall contain a copy of the board's order ordering reinstatement, if applicable.

Section 6. Written Reprimand. (1) An employee or former employee may petition the Personnel Cabinet Secretary for removal of a written reprimand and all related documentation from the employee's official personnel file after a period of three (3) years.

(a) An employee's request shall not be granted if the employee has received any disciplinary action or written reprimand in the three (3) years prior to the request for removal.

(b) A petition for removal shall:

1. Be made by the employee, and be dated and signed; and

2. Include the following information:

a. The employee's current position, agency, work phone number, and work address;

b. The employee's immediate supervisor at the time of the petition for removal;

c. The date the written reprimand was issued;

d. A statement by the employee that the employee has not received any disciplinary actions or written reprimands in the three (3) years prior to the petition; and

e. A statement that the information contained in the petition is correct and complete to the best of the employee's knowledge, and that the employee has provided a copy of the petition to the employee's current appointing authority.

(c) The petition for removal shall be mailed by first-class mail or hand-delivered to the office of the Personnel Cabinet Secretary.

(2) A petition for removal of a written reprimand shall be subject to the approval of the Personnel Cabinet Secretary.

(a) The Personnel Cabinet Secretary shall approve or deny the petition for removal within thirty (30) days of receipt of the petition.

(b) If the petition is denied, the Personnel Cabinet Secretary shall notify the employee in writing and provide justification for denial. The decision by the secretary with respect to the petition shall be final and not appealable to the Personnel Board.

(c) If the petition is approved, the Personnel Cabinet Secretary shall notify the employee and the appointing authority of the employee's agency in writing of the approval.

(3) Upon removal from an employee's official personnel file maintained by the Personnel Cabinet, a written reprimand shall be handled as follows.

(a) The written reprimand shall be delivered to the Office of

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Legal Services and remain in the custody and care of the Office of Legal Services.

(b) The Office of Legal Services shall maintain the document as confidential work-product materials for the availability or use in any future legal proceeding.

(c) If no legal proceeding has been filed within five (5) years of receipt, the written reprimand shall be permanently destroyed.

(d) Upon removal from the official personnel file, but prior to destruction, a written reprimand shall not be considered as part of any personnel action.

(e) The employing agency shall be notified by the Personnel Cabinet of the removal of a written reprimand from an employee's official personnel file.

Section 7. Incorporation by Reference. (1) "Voluntary Transfer or Voluntary Demotion" form, March 2011 [04-15-94], Personnel Cabinet, is incorporated by reference.

(2) This material [t] may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, State Office Building 501 High Street, 3rd Floor [Room 531, 5th Floor, 200 Fair Oaks Lane], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through [to]4:30 p.m.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 14, 2011 at 3 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 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 October 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 October 31, 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 promulgates the new Voluntary Transfer/Demotion/Salary Retention Agreement Form and Personnel Cabinet's new address.

(b) The necessity of this administrative regulation: The regulation promulgates the new Voluntary Transfer/Demotion/Salary Retention Agreement Form and Personnel Cabinet's new address.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.0751(4)(e) requires the Personnel Board to promulgate an administrative regulations relative to the classified service and rights of classified employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By updating the Voluntary Transfer/Demotion/Salary Retention Agreement Form and updating the Personnel Cabinet's new address.

(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: By updating the Voluntary Transfer/Demotion/Salary Retention Agreement Form and updating the Personnel Cabinet's new address.

(b) The necessity of the amendment to this administrative regulation: The Personnel Cabinet is updating its Voluntary Transfer/Demotion/Salary Retention Agreement Form. The Personnel Cabinet has a new physical address.

(c) How the amendment conforms to the content of the authorizing statutes: Updating the form serves the requirements of KRS 18A.0751

(d) How the amendment will assist in the effective administration of the statutes: Update the Voluntary Transfer/Demotion/Salary Retention Agreement Form and the Personnel Cabinet's new address.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A state employees

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The updated Voluntary Transfer/Demotion/Salary Retention Agreement Form better suits the needs of the Personnel Cabinet and employees.

(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: 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 establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? 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 departments, or school districts)? Yes

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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### PERSONNEL CABINET Office of the Secretary (Amendment)

#### 101 KAR 2:210. 2012 [2014] Plan Year Handbook for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2012 [2014] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2012 [2014] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. Incorporation by Reference. (1) "2012 [2014] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2012 [2014] edition, 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, 8:00 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2011 at 10:00 a.m. at 501 High Street, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Joe R. Cowles, Deputy Executive Director, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-7603.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Joe R. Cowles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2012 plan year Benefits Selection Guide for health benefit plans offered through the Public Employee Health Insurance Program. The Benefits Selection Guide is distributed to all health plan participant plan holders. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits,

co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the 2012 self-insured plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254 requires the Personnel Cabinet to incorporate by reference the 2012 plan year handbook distributed to the public employees covered by the Public Employee Health Insurance Program in an administrative regulation. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the statute authorizing the self-insured health benefit plan and the statute mandating the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2012 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(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 an amendment. This administrative regulation constitutes a compilation of the health contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for the plan year 2012. The 2012 Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the health benefit plans to public employees for the 2012 plan year and the statutory mandate to annually update the regulations incorporating the plan year handbook contained in KRS 18A.2254.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2012 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2012 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: State and select county and local government entities, including employees of the local school boards and districts, and retirees will be affected. More specifically, this encompasses approximately 159,460 eligible employees under KRS 18A.225(1)(a) and a total of 270,555 (which would include qualifying beneficiaries and dependents).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by entities to comply with the incorporation of these provisions in an administrative regulation. The 2012 Benefits Selection Guide will provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the health benefit plans offered for the 2012 plan year; specifically, the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for the 2012 plan year.



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(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Complying with this administrative regulation will have a cost impact to participants or beneficiaries covered under the Public Employee Health Insurance Program.

(c): As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants and dependents covered under the Public Employee Health Insurance Program for plan year 2012 will have comparable benefit structure to the 2011 plan year. There were necessary employee premium contribution and health benefit modifications for plan year 2012 as a result of projected health care inflation, two percent budgeted employer contribution increase for plan year 2012 and federal health care mandates effective January 1, 2012.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust 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: This is an amendment. The implementation of this administrative regulation will not require an increase in funding or fees.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all participants in the Public Employee Health Insurance Program which includes state government, retirees, select local government entities and employees of local school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287, and 26 U.S.C. 105, 106, 125, 152, 129 and 152 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1-7; H.R. 3590, the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (PPACA); H.R. 4872, the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (HCERA).

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, school boards 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, school boards or school districts) for the first year? The administrative regulation will not generate any 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? The administrative regulation will not generate any revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law an amended administrative regulation will be promulgated in 2012 and each subsequent plan year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

#### 105 KAR 1:440. Kentucky Retirement Systems Trustee Education Program.

RELATES TO: KRS 61.645(18)

STATUTORY AUTHORITY: KRS 61.645(9)(g) and KRS 61.645(18)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.645(18) provides that the board shall establish a formal trustee education program for all trustees of the board, which shall be incorporated by reference in an administrative regulation. This administrative regulation establishes the Kentucky Retirement Systems Trustee Education Program.

Section 1. Incorporation by Reference. (1) The "Kentucky Retirement Systems Trustee Education Program", adopted August 18, 2011, [~~November 20, 2008.~~] is incorporated by reference.(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, Monday through Friday, 8 a.m. to 4:30 p.m.

JENNIFER L. ELLIOTT, Chair

APPROVED BY AGENCY: August 18, 2011

FILED WITH LRC: August 25, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2011, at 9:00 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative

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tive regulation establishes the "Kentucky Retirement Systems Trustee Education Program."

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 61.645(18) requires the Board of Trustees of Kentucky Retirement Systems to establish a formal trustee education program for all trustees of the board, which shall be incorporated by reference into an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is conforms to the content of the authorizing statutes by establishing a formal trustee education program for all trustees of the board, which shall be incorporated by reference into this administrative regulation as required by KRS 61.645(18)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will incorporate by reference the "Kentucky Retirement Systems Trustee Education 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 updates the incorporated document, "Kentucky Retirement Systems Trustee Education Program" which were made in response to recommendations made by the Auditor of Public Accounts.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement recommendations made to Kentucky Retirement Systems by the Auditor of Public Accounts to improve the "Kentucky Retirement Systems Trustee Education Program."

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is conforms to the content of the authorizing statutes by amending the formal trustee education program for all trustees of the board, which shall be incorporated by reference into this administrative regulation as required by KRS 61.645(18)(c).

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will incorporate by reference the amendments to the "Kentucky Retirement Systems Trustee Education Program."

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The members of the Board of Trustees of Kentucky Retirement Systems.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will be required to comply with the "Kentucky Retirement Systems Trustee Education Program."

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the members of the Board of Trustees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The members of the Board of Trustees will be better able to administer the retirement systems.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

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

crease any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The training requirements apply to all members of the Board of Trustees 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 Board of Trustees of Kentucky Retirement Systems.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.645(18)

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? Normal administrative costs.

(d) How much will it cost to administer this program for subsequent years? Normal administrative costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### GENERAL GOVERNMENT CABINET Kentucky State Board Of Accountancy (Amendment)

#### 201 KAR 1:160. Peer reviews.

RELATES TO: KRS 325.301(12 [8])

STATUTORY AUTHORITY: KRS 325.240(2), 325.301(42 [8])

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.301(12 [8]) requires a firm that performs an audit, review, or compilation to enroll in and complete an approved peer review program. This administrative regulation establishes the standards and procedures that a CPA firm must follow to comply with the requirements of KRS 325.301(12 [8]).

Section 1. Definitions. (1) "Sponsoring Organization" means an entity administering a peer review program whose standards of review are equivalent to or better than the "Standards for Performing and Reporting on Peer Reviews" of the American Institute of Certified Public Accountants.

(2) "Peer Review Web site" means a web page operated and maintained by a Sponsoring Organization on which documents associated with peer reviews performed by that organization's approved agent are posted and made available to the board.

Section 2. Initial Firm License and Renewal Applications. (1)(a) When [H] a firm applies to receive an initial license or renew an existing license it shall advise the board if it performs audits, reviews, or compilations. A firm that indicates it is going to perform or is currently performing one of these services shall submit with its license application:

1. Proof from a Sponsoring Organization that it is currently enrolled in a peer review program; and

2. A copy of the firm's most recent peer review report and the Sponsoring Organization's acceptance letter [that was] received by

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the firm within three (3) years prior to submitting the application. If the firm has not received a peer review report within the three (3) year time period it shall notify the board of that fact.

(b) Failure to submit proof of enrollment, and, if applicable, a copy of the peer review report and the Sponsoring Organization's acceptance letter shall result in the:

1. Application being ineligible for consideration until proof of enrollment, and, if applicable, the peer review report and the Sponsoring Organization's acceptance letter is received by the board; and

2. The firm being prohibited from providing any audit, review or compilation services.

(c)1. A firm that is applying for an initial license or to renew an existing license that received a[n] [adverse-] fail, [second successive modified] or second successive pass with deficiencies report within three (3) years prior to submitting the application shall also submit with its license application a copy of:

a. The firm's letter of [written] response to any of the reports listed in (c)1 that was sent to the sponsoring organization; [and]

b. A letter or letters signed by [from] the firm indicating it agrees to take any remedial actions required by the Sponsoring Organization as a condition of acceptance of the firm's peer review; and

c. A letter provided by the Sponsoring Organization notifying the firm that all required remedial actions have been appropriately completed [that describes the current status of deficiencies that comprised the basis for any of the reports listed in (c)1].

2. Peer review documents required in Section 2(1)(a) and Section 2(1)(c)1a shall be made available to the board via a Peer Review Web site within thirty (30) days of the date of the Sponsoring Organization's acceptance letter.

3. Peer review documents required in Section 2(1)(c)1b shall be made available to the board via a Peer Review Web site within thirty (30) days of the date that the firm signs such letter.

4. Peer review documents required in Section 2(1)(c)1c shall be made available to the board via a Peer Review Web site within thirty (30) days of the date of the letter from the Sponsoring Organization.

5. If a Sponsoring Organization cannot provide access to the peer review documents in Sections 2(1)(a) and 2(1)(c) via a Peer Review Web site, the firm shall provide copies of such documents by mail or facsimile within fifteen (15) days of receipt of the applicable document except for the documents required in Section 2(1)(c)1b which shall be submitted within fifteen (15) days of the date the firm signs such letter.

6. The board shall review and consider each [any] of the reports listed in this section [(c)1 the firm's response, and the letter submitted by the firm] to determine if the firm shall be issued a license.

7. [3-] If the board decides to issue a license it may impose restrictions on the firm after taking into consideration the reported deficiencies and any remedial action since the issuance of any of the reports listed in this section [(c)1].

8. If a firm, when initially applying for or renewing its license, advised the board that it does not provide services defined in Section 1 but subsequently begins to provide such services prior to its next license renewal date, the firm shall:

(a) Immediately notify the board;

(b) Immediately enroll in a board-approved peer review program;

(c) Provide evidence of enrollment to the board within thirty (30) days;

(d) Undergo a peer review within eighteen (18) months of the fiscal year end of the initial engagement performed as described in the Sponsoring Organization's peer review Standards; and

(e) Submit the peer review documents to the board for its consideration in the manner identified in this section.

Section 3. (1)(a) [On or after the effective date of this administrative regulation staff of the board shall review the board records and determine if a firm with a current license is required to be enrolled in a peer review program. If staff determines the firm shall be or is currently enrolled in a peer review program a letter shall be sent to the firm manager advising him or her to submit to the board

~~a copy of its most recent peer review report and letter of acceptance within thirty (30) days from receipt of the letter. Failure to submit a copy of its most recent peer review report and letter of acceptance shall result in the board initiating disciplinary action against the firm's license.]~~

~~[(b)] Staff of the board shall review every peer review report and acceptance letter when they are received in the board office. A report graded [characterized] as [unmodified,] pass, or as [modified or] pass with deficiencies but is not [neither of which is] the second successive such report shall be discarded according to the board's record retention schedule. A [n-adverse,] fail, or a second successive [modified-or] pass with deficiencies peer review report and the firm's responses to the report shall be presented to the board for review and determination of any action to be taken against the firm after taking into consideration:~~

~~1. The deficiencies described in the report;~~

~~2. The firm's written response to the report that was sent to the sponsoring organization;~~

~~3. Any remedial actions required by the Sponsoring Organization [A letter from the firm that describes the current status of deficiencies that comprised the basis for the report]; and~~

~~4. The firm's compliance with the required [Any] remedial actions [instituted by the firm since the issuance of the report].~~

Section 4. [(1) Upon completion of the process prescribed in Section 3 of this administrative regulation, when in the future a firm receives a peer review report, the firm shall provide the board with a copy of the report within fifteen (15) business days of receiving the report.

(2) If the report is [classified as pass, unmodified, or either pass with deficiencies or modified but neither is a second successive report no further action on the part of the firm or the board is required. Board staff shall dispose of the documents according to its retention schedule.

(3) If the report is classified as adverse, fail, or is a second successive report classified as pass with deficiencies or modified the firm shall submit the acceptance letter for any of the reports from the sponsoring organization to the board for review and determination of any action to be taken against the firm after taking into consideration:

(a) The deficiencies described in the report;

(b) The firm's written response to the report that was sent to the sponsoring organization;

(c) A letter from the firm that describes the current status of deficiencies that comprised the basis for the report; and

(d) Any remedial action instituted by the firm since the issuance of the report.]

—Section 5.] If a firm is granted an extension of time to complete the peer review process, the firm shall immediately submit to the board a copy of a letter from the S[s]ponsoring O[e]rganization that granted the extension.

Section 5 [6]. (1) A S[s]ponsoring O[e]rganization shall report to the board on a quarterly basis the name of every firm enrolled in the peer review program and the name of every firm dropped or terminated from the program since the last quarterly report was provided by the sponsoring organization. This information may also be provided through a Peer Review Web site.

(2) A S[s]ponsoring O[e]rganization shall bear the costs of verifying that it is operating the program in compliance with the standards for performing peer reviews.

Section 7. If a firm is not enrolled in an approved peer review program when it enters into an agreement to engage in performing an audit, review or compilation, it shall not continue to work on the engagement until it has:

(1) Enrolled in an approved peer review program; and

(2) Submitted to the board a letter of enrollment in an approved peer review program from a sponsoring organization.

Section 8. (1) Documents Available on Web Site. In lieu of submitting a copy of a peer review report and all accompanying documents, a firm manager may notify the board staff that the

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documents requested are available for viewing and downloading at a specific website.

(2) Board staff may then attempt to obtain a copy of the required documents from the referenced website.

(3) If staff is not able to download a copy of the requested documents the firm manager shall submit the required copy to the board staff. 6 [9]. Exclusion from Peer Review. [The following report or procedure shall be excluded from the peer review process:]

(1) A proposal or other communication that describes the work proposed by a firm or its employees that is a prerequisite to deciding whether to perform an audit, review or compilation of financial statements shall be excluded from the peer review process. [-or

(2) The exclusion from the peer review process provided for in the "Standards for Performing and Reporting on Peer Reviews" regarding compiled financial statement designated for management use only shall not apply. [A letter of engagement or other information prepared by a firm in accordance with the Statements on Standards for Accounting and Review Services (SSARS) No.8 which solely involves preparing compiled financial statements for management use only as described in SSARS 8.]

Section 7[10]. Incorporation by Reference. [(4) The following material is incorporated by reference:

—(a) The "Standards for Performing and Reporting on Peer Reviews," June [January 1,] [2005] 2011 is incorporated by reference. [-and

(b) "Statements on Standards for Accounting and Review Services No.8", December 31, 2000.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the office of the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m. These standards are also located on a website maintained by the American Institute of Certified Public Accountants at www.aicpa.org.

JOSEPH HANCOCK, CPA, President

APPROVED BY AGENCY: September 12, 2011

FILED WITH LRC: September 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2011 at 10 a.m., local prevailing time at the administrative office of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by, five work days prior to the meeting, 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 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 October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes the procedures to be followed with the peer review process.

(b) The necessity of this administrative regulation: To insure that CPAs are aware of the requirements and procedures associated with the peer review process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.301(12) requires CPA firms to be enrolled in the peer review process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By having CPAs be aware of the peer review process.

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

(a) How the amendment will change this existing administrative regulation: An exemption from peer review for compilations prepared under SSARS8 will be eliminated, the updated standards to perform a peer review will be incorporated by reference, and the older grading standards for peer review reports will be eliminated.

(b) The necessity of the amendment to this administrative regulation: To incorporate the new standards to conduct a peer review.

(c) How the amendment conforms to the content of the authorizing statutes: Incorporates the new peer review standards.

(d) How the amendment will assist in the effective administration of the statutes: Incorporates the proper peer review standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 CPA firms per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: CPA firms that issued compilations prepared under SSARS 8 will now be required to enroll in the peer review program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If a firm is not issuing compilations there will be no additional fees. If there are issuing such reports there will be a fee to enroll in the program of approximately \$1,000 every 3 years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All compilations will now be subject to the peer review requirements.

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

(a) Initially: Nothing.

(b) On a continuing basis: Nothing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board operates solely on the funds contained its trust and agency account.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering is not applied since CPAs may still choose to renew with a paper application.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.301(12)

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 gen-

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erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No new expenses.

(d) How much will it cost to administer this program for subsequent years? No new expenses.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The agency will not incur any new costs only those few CPA firms that were previously exempted from the program will now be required to be enrolled in the program.

### GENERAL GOVERNMENT CABINET Kentucky Board of Social Work (Amendment)

#### 201 KAR 23:050. Renewal, termination, reinstatement of license.

RELATES TO: KRS 335.010-335.160, 335.990

STATUTORY AUTHORITY: KRS 335.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070 authorizes the board to promulgate administrative regulations establishing requirements for license renewal. This administrative regulation establishes the requirements for license renewal.

Section 1. Definition. "Licensee" means a person licensed under KRS 335.010 through 335.160 as:

- (1) A certified social worker;
- (2) A licensed social worker; or
- (3) A licensed clinical social worker.

Section 2. (1)(a) Pursuant to KRS 335.130(1), a licensee shall renew the licensee's license on a three (3) year basis in order to continue to practice social work in Kentucky.

(b) The three (3) year renewal cycle shall be calculated based on the date of the issuance of the initial license.

(2) A Renewal Form shall be submitted with the appropriate fee and continuing education requirements as established in 201 KAR 23:020 and 201 KAR 23:075.

(3) A licensee shall file the licensee's current mailing address with the board and shall immediately notify the board in writing if the address changes.

Section 3. (1) If a licensee reapplies after the date of expiration and before ~~three (3) months~~ [six (6) months], the licensee shall:

(a) Pay [pay] a penalty of 100 dollars [fifty (50) dollars];

(b) Cease and desist the practice of social work immediately;

(c) Submit a renewal form along with documentation of completed continuing education requirements per 201 KAR 23:075, Section 2; and

(d) Submit official documentation of employment beginning with the date of expiration of license.

~~[(2) If a licensee reapplies after six (6) months and before twelve (12) months, the licensee shall pay a penalty of \$100.~~

~~(3) If a licensee reapplies after twelve (12) months and before the end of eighteen (18) months, the licensee shall pay a penalty of \$200.]~~

Section 4. If a licensee has not renewed the licensee's license at the end of ~~three (3) months~~ [eighteen (18) months], the licensee shall submit a new application in accordance with existing requirements for initial applicants under KRS Chapter 335 and 201 KAR Chapter 23.

Section 5. Upon payment of the renewal fee and the late renewal penalty, the date of the license shall be retroactive to the date of expiration.

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

- (a) "LCSW Application For Renewal", 10/2010;
- (b) "CSW Application For Renewal", 10/2010; and
- (c) "LSW Application For Renewal", 10/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON SANDERS, Chair

APPROVED BY AGENCY: September 12, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 31, 2011 at 3:00 p.m., local time, at the Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Margaret Hazlette, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Margaret Hazlette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes renewal requirements.

(b) The necessity of this administrative regulation: This administrative is necessary to set the requirements for continuing education for licensure renewal

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.130(4) allows the board to require establish renewal requirements by promulgation of an administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the licensees of the continuing education requirements established by the board.

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

(a) How the amendment will change this existing administrative regulation: Licensees expiration dates will remain the same; however, the regulation defines the requirements for renewal.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for licensees to comply with the KRS 335 and to meet the requirements of federal laws.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335:130 requires that each certified social worker, licensed social worker, and licensed clinical social worker renew his license every three (3) as established by the promulgation of an administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation informs the applications of renewal dates and penalty fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5000 persons are licensed by the Kentucky Board of Social Work.

(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,

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including: No impact as the licensees expiration dates will not change.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will have to be taken by licensees as the licensee must currently renew every three (3) years.

(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): Licensees will be compliant with the KRS 335.

(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: The board's operation is funded by fees paid by the licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation amendment does not directly establish or increase fees.

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

(9) TIERING: Is tiering applied? No. The mandate established by this administrative regulation is required of all licensees.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.080(1)(d), KRS 335.090(1)(d), KRS 335.100(1)(c), KRS 335.080(1)(g), KRS 335.090(1)(g), and KRS 335.100(1)(f), and KRS 335.130(1).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## GENERAL GOVERNMENT CABINET Kentucky Board Of Social Work (Amendment)

### 201 KAR 23:075. Continuing education.

RELATES TO: KRS 335.130(4)

STATUTORY AUTHORITY: KRS 335.070(3), (6), 335.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means a social work course, at the graduate level:

(a) Designated by a social work title or content; or

(b) An academic course, at the graduate level, relevant to social work.

(2) "Approved" means recognized by the Kentucky Board of Social Work.

(3) "Continuing education hour" means fifty (50) clock minutes of participation in continuing educational programs.

(4) "Program" means an organized educational experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or series.

(5) "Provider" means a person or an organization approved by the Kentucky Board of Social Work to provide a single continuing education program.

(6) "Relevant" means having content applicable to the practice of social work.

(7) "Sponsor" means a person or an organization approved by the Kentucky Board of Social Work to provide more than one (1) continuing education program over the course of a year.

Section 2. Accrual and Computation of Continuing Education Hours. (1) A minimum of thirty (30) continuing education hours shall be accrued by each licensed clinical social worker and certified social worker holding licensure during the three (3) year period for renewal.

(2) A minimum of fifteen (15) continuing education hours shall be accrued by each licensed social worker holding licensure during the three (3) year period for renewal.

(3) All continuing education hours shall be in or relevant to the licensee's level of licensure.

(4) Three (3) of the continuing education hours during each renewal period shall be acquired in the area of the social work code of ethics as established in 201 KAR 23:080.

(5) Licensed clinical social workers who are board approved supervisors pursuant to 201 KAR 23: 070, Section 3(1)(c)2, shall complete a board approved supervision course every licensure renewal period as part of their thirty (30) continuing education hours.

(6) Every third renewal period, two (2) of the continuing education hours shall be on HIV/AIDS courses approved by the Cabinet for Health and Family Services pursuant to KRS 214.610.

(7) Three (3) of the continuing education hours ~~[during each renewal period]~~ shall be completed in the area of domestic violence related training courses pursuant to KRS 194A.540 during the three (3) year cycle following initial licensure.

(8) One and one-half (1.5) hours of continuing education shall be completed one (1) time every six (6) years in the area of the recognition and prevention of pediatric abusive head trauma pursuant to KRS 335.130(5).

(9) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of the licensee. The hours may be earned by completing any

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of the following education programs:

(1) Programs not requiring board review and approval. Except for courses on ethics which are provided to meet the requirements of Section 2(4) of this administrative regulation and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2, an educational program from any of the following providers shall be deemed to be relevant to the practice of social work and shall be approved without further review by the board if it is:

(a) Sponsored or approved by:

1. The National Association of Social Workers or any of its affiliated state chapters; or

2. The Association of Social Work Boards;

(b) Sponsored by:

1. Clinical Social Work Association or any of its affiliated state chapters;

2. The American Psychological Association or any of its affiliated state chapters;

3. The American Counseling Association or any of its affiliated state chapters;

4. The National Board for Certified Counselors or any of its affiliated state chapters;

5. The American Psychiatric Association or any of its affiliated state chapters; or

6. A college, school, department, or program of social work in Kentucky which is accredited by the Council on Social Work Education; or

(c) An academic course offered by an accredited postsecondary institution directly related to social work, counseling, or psychology.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved by the board.

(a) Relevant programs, including home study, distance learning or teleconference courses, and in-service training provided by other organizations, educational institutions, or other service providers approved by the board.

1. Board approval for home study, distance learning and teleconference courses shall be obtained each year unless the program does not require board approval under subsection (1) of this section.

2. The combined total number of hours for home study, distance learning or teleconference courses shall not exceed one-half (1/2) of the individual's continuing education hours.

3. Courses on the board's code of ethics which are taken to meet the requirements of Section 2(4) of this administrative regulation and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2, shall be attended in person before a live presenter, and shall not be taken through home study, distance learning or teleconference courses.

(b) Relevant programs or academic courses presented by the licensee. A presenter of relevant programs or academic courses shall earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course.

(c) Authoring an article in a relevant, professionally recognized or juried publication. Credit shall not be granted unless an article was published within the one (1) year period immediately preceding the renewal date. A licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal under the provisions of this subsection. More than one (1) publication shall not be counted during each renewal period.

(d) Courses on ethics required by Section 2(4) of this administrative regulation shall be submitted to the board for approval and shall not be automatically approved under Section 3(1) of this administrative regulation.

Section 4. Procedures for Approval of Continuing Education Providers and Programs. (1) A program, which is offered by a provider, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:

(a) A published course outline or similar description which includes an explanation of the course objectives;

(b) Names and qualifications of the instructors presented in the form of curriculum vitas or resumes;

(c) Copies of the evaluation sheet or instrument by which the attendees can comment on the program, and the program agenda indicating hours of education, including all breaks;

(d) Number of continuing education hours requested and a statement whether the provider is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation;

(e) Official certificate of completion or college transcript from the sponsoring agency or college; and

(f) A completed Provider Application for Continuing Education Credit Approval form.

(2) The board may approve a specific continuing education program if the provider of the program:

(a) Files a written request for approval;

(b) Pays an application fee of \$100 for each one day program of eight (8) hours or less; and

(c) Provides information about each continuing education program that it proposes to present which meets the requirements established in subsection (1) of this section.

(3) The approval of a program pursuant to this section shall permit the provider to offer the program for one (1) year.

(4) The provider shall submit a request for renewal and a fifty (50) dollar renewal fee for each subsequent request to offer the same approved program.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any sponsor seeking to obtain approval of a continuing education program prior to its offering shall:

(a) Apply to the board at least thirty (30) days in advance of the commencement of the program, and shall provide the information required in Section 4(1) of this administrative regulation; and

(b) Provide proof to the board that the sponsor seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in subsection (2) of this section; and

2. Does not exclude any licensee from its programs.

(2) A continuing education program shall be qualified for approval if the board determines that the program being presented:

(a) Is relevant to the practice of social work;

(b) Contributes to the professional competency of the licensee; and

(c) Has competent instructors with appropriate academic training, professional license or certification, or professionally recognized experience.

(3) The sponsor shall specify whether it is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation.

(4)(a) The board may approve an organization that is not listed in Section 3(1) of this administrative regulation as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a written request for approval by submitting the Sponsorship Application for Continuing Education Credit Approval form;

2. Pays an initial application fee of \$250; and

3. Proposes to sponsor continuing education programs that meet the requirements established in Section 3 of this administrative regulation.

(b) The board shall periodically review the programs that a sponsor has provided to determine if the sponsor continues to meet the requirements of this administrative regulation.

(c) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(d) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a 150 renewal fee annually and notifying the board that the original information required in this section remains current.

Section 6. (1) A licensee or a certificate holder may request an

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individual review of a continuing education program that was otherwise not approved if it was completed during the appropriate time period if the individual has:

- (a) Made a timely request by applying for individual review by submitting the Individual Application for Continuing Education Credit Approval form; and
  - (b) Paid a fee of ten (10) dollars.
- (2) The review shall be based on the standards for continuing education established by this administrative regulation.
- (3) Approval by the board of a continuing education program under this section shall:
- (a) Qualify as if it has been obtained from an approved provider; and
  - (b) Be limited to the particular offering upon which the request for individual review is based.

Section 7. Responsibilities and Reporting Requirements of Licensees. Each licensee shall be responsible for obtaining required continuing education hours. The licensee shall identify his or her own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills, and attitudes. Each person holding licensure shall:

- (1) Select approved programs by which to earn continuing education hours;
- (2) Submit to the board, if applicable, a request for continuing education programs requiring approval by the board as established in Section 4 of this administrative regulation;
- (3) Maintain the licensee's own records of continuing education hours;
- (4) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;
- (5) Furnish documentation of attendance and participation in the appropriate number of continuing education hours at the time of his or her renewal, as follows:
  - (a) Each person holding licensure shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours;
  - (b) In each calendar year, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period;
  - (c) Verification of continuing education hours shall not otherwise be reported to the board;
  - (d) Documentation shall take the form of official documents including:
    1. Transcripts;
    2. Certificates;
    3. Affidavits signed by instructors; or
    4. Receipts for fees paid to the sponsor; and
  - (e) Each licensee shall retain copies of his or her documentation.

Section 8. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) Providers of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 7(5) of this administrative regulation, directly to the licensee.

(2) Sponsors of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 9. Board to Approve Continuing Education Hours; Appeal if Approval Denied. If an application for approval of continuing education hours is denied, in whole or part, a licensee or a provider may request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 10. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waiv-

ers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding licensure and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.

Section 11. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of thirty (30) hours of continuing education within the thirty-six (36) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) The person may request, and the board, at its discretion, may reinstate the licensure, with the provision that the person shall receive thirty (30) hours of continuing education within six (6) months of the date on which the licensure is reinstated.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

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

- (a) "Provider Application for Continuing Education Credit Approval", 10/2010;
  - (b) "Sponsorship Application for Continuing Education Credit Approval", 10/2010; and
  - (c) "Individual Application for Continuing Education Credit Approval", 10/2010.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Licensure for Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON SANDERS, Chair

APPROVED BY AGENCY: September 12, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 31, 2011 at 3:00 p.m., local time, at the Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Margaret Hazlette, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Margaret Hazlette

- (1) Provide a brief summary of:
- (a) What this administrative regulation does: This administra-



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tive regulation establishes continuing education requirements.

(b) The necessity of this administrative regulation: This administrative is necessary to conform the requirements for continuing education for licensure renewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the licensees of the continuing education requirements established by the board.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes continuing education requirements related to, domestic violence.

(b) The necessity of the amendment to this administrative regulation: This administrative is necessary to identify the requirements for continuing education for licensure renewal.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation informs licensees of the board's requirements for continuing education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5000 persons are licensed by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment requires the courses that licensees shall take for renewal.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Continuing education help keep licensees informed of current practice.

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

(a) Initially: The board estimates that no additional costs will be incurred by this amendment.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment.

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

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

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

(9) TIERING: Is tiering applied? No. The mandate established by this administrative regulation is required of all licensees.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

cities, counties, fire departments, or school districts)? Yes

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.070(3), (6), 335.130.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 2:225. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.603

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dove" means mourning dove or white-winged dove.

(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.

(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

(4) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation.

(2) The following seasons shall apply to migratory bird hunting:

(a) Dove, beginning on:

1. September 1 for fifty-four (54) consecutive days;

2. Thanksgiving Day for nine (9) consecutive days; and

3. The Saturday after Christmas for seven (7) consecutive

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days.

(b) Woodcock, beginning on November 1 [~~the third Saturday in October~~] for forty-five (45) consecutive days.

(c) Common snipe, beginning on:

1. The third Wednesday in September for forty (40) [~~forty-seven (47)~~] consecutive days; and

2. Thanksgiving Day for sixty-seven (67) [~~sixty (60)~~] consecutive days.

(d) Wood duck and teal, beginning on the third Wednesday in September for five (5) consecutive days.

(e) Virginia rail, sora rail, common moorhen, and purple gallinule, beginning on September 1 for seventy (70) consecutive days.

(f) Canada goose, beginning September 1 for fifteen (15) [~~the first Saturday in September for nine (9)~~] consecutive days except that the following areas, as established in 301 KAR 2:224, shall be closed:

1. Ballard reporting area;
2. Public lands in the West-Central Goose Zone; and
3. The Northeast Goose Zone.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:

(a) Dove:

1. Daily limit of fifteen (15); and
2. Possession limit of thirty (30).

(b) Eurasian collared dove: No limit, except that a hunter, if in the field or during transport, shall keep one (1) of the following attached to the bird:

1. The head; or
2. A fully-feathered wing.

(c) Woodcock:

1. Daily limit of three (3); and
2. Possession limit of six (6).

(d) Common snipe:

1. Daily limit of eight (8); and
2. Possession limit of sixteen (16).

(e) Virginia and sora rail, singly or in aggregate:

1. Daily limit of twenty-five (25); and
2. Possession limit of twenty-five (25).

(f) Common moorhen and purple gallinule, singly or in aggregate:

1. Daily limit of fifteen (15); and
2. Possession limit of thirty (30).

(g) Wood duck and teal:

1. Daily limit of four (4), which shall not include more than two (2) wood ducks; and
2. Possession limit of eight (8), which shall not include more than four (4) wood ducks.

(h) Canada goose:

1. Daily limit of two (2); and
2. Possession limit of four (4).

(2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the following attached to the bird:

- (a) The head; or
- (b) A fully-feathered wing.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section. (1) If hunting dove on WMA land, a person shall hunt:

(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(2) If hunting dove on private land, a person shall hunt:

(a) Between 11 a.m. and sunset on September 1; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

- (1) Longer than three and one-half (3 1/2) inches; or
- (2) Containing:
  - (a) Lead shot;
  - (b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. 20, 21 for waterfowl hunting; or
  - (c) Shot larger than size "T".

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:

- (1) Hunting waterfowl or doves; or
- (2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:

(a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222;

(b) Hunt in an area marked by a sign as closed to hunting; or

(c) Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on any of the following areas shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. 20, 21:

- (a) Ballard WMA;
- (b) Boatwright WMA;
- (c) Doug Travis WMA;
- (d) Duck Island WMA;
- (e) Kaler Bottoms WMA;
- (f) Kentucky River WMA;
- (g) Ohio River Islands WMA;
- (h) Sloughs WMA;
- (i) South Shore WMA;
- (j) Yatesville Lake WMA; and
- (k) A WMA wetland management unit that is posted by sign.

(3) At Ballard WMA, a person shall not hunt:

(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or

(b) Woodcock.

(4) In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:

(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or

(b) Woodcock.

(5) At Miller Welch - Central Kentucky WMA, a person shall not hunt:

(a) Dove or snipe after October 13; or

(b) Woodcock.

(6) At Grayson Lake WMA, a person shall not hunt:

(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;

(b) On Deer Creek Fork; or

(c) On Camp Webb property or the state park, except for youths drawn for the quota dove hunt on Camp Webb property on the first Saturday in September.

(7) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.

(8) At West Kentucky WMA, a person shall not hunt:

(a) On "A" Tracts; or

(b) Canada geese during the September season.

(9) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.

(10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 3, 2011

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FILED WITH LRC: August 18, 2011 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on October 21, 2011, at 9 a.m. (EST) at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made available unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business October 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the United States Fish and Wildlife Service (USFWS). In addition, it establishes hunter restrictions for hunting migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2011–2012 migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to establish hunting season dates and bag limits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national and international management goals.

(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 extends the September Canada goose season from 9 days to 15 days, shifts the season for woodcock approximately 2 weeks later and aligns the season for common snipe to better overlap the November – January waterfowl season, exempts mourning dove and waterfowl hunters for hunter orange requirements during the firearm deer and elk seasons.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to increase waterfowl opportunity during the September season, and set woodcock and common snipe seasons to correspond with peak abundance and public desire.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 63,000 migratory bird hunters in Kentucky that may be affected by this administrative regulation.

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

dates, bag limits and/or wildlife management area requirements will be published in the annual Migratory Bird Hunting Guide and on the department's website. Hunters must review the hunting guide or website for the updated information to hunt legally during the specified season. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3). As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be increased opportunity to hunt migratory game birds.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or increase funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all migratory game bird hunters.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

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

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

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Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum days and bag limits permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives may necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's migratory bird hunters.

### JUSTICE AND PUBLIC SAFETY CABINET

#### Parole Board (Amendment)

#### 501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS 119.025, 197.410(2), 346.185, 439.340, 439.3401, 439.563, 532.043, 532.060, 532.080, 640.080.

STATUTORY AUTHORITY: KRS 439.340(3).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. (1) "Board" is defined by KRS 439.250(5).

(2) "Chair" means the chairman of the board.

(3) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.

(4) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.

(5) "Evidence Based Program" means a program certified by the Kentucky Department of Corrections as having a positive impact on recidivism if successfully completed by an offender.

(6) "Parole" means the release of an inmate with a signed parole certificate to:

(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision; or

(b) Answer the detainer.

(7) "Parole eligibility date" means the date set by the board for conducting parole hearings at the location designated for an inmate's parole release hearing to take place during the month the inmate becomes eligible for parole.

(8) [(7)] "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence.

(9) [(8)] "Parole rescission" means a decision of the board to terminate or rescind an inmate's parole recommendation, before the inmate is actually released on parole.

(10) [(9)] "Parole for violent offender" is defined in KRS 439.3401.

(11) [(10)] "Parole revocation" means the formal procedure by which the board may terminate or revoke an offender's release on parole.

(12) [(11)] "Physical injury" is defined in KRS 500.080(13).

(13) [(12)] "Preliminary revocation hearing" means the initial hearing conducted by a hearing officer to determine whether probable cause exists to believe an offender has violated the conditions of his parole.

(14) [(13)] "Reconsideration" means a decision to review a previous board action.

(15) [(14)] "Restitution" is defined in KRS 532.350(1)(a).

(16) [(15)] "Serious physical injury" is defined in KRS 500.080(15).

(17) [(16)] "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence.

(18) [(17)] "SOTP" means Sex Offender Treatment Program.

(19) [(18)] "Youthful offender" is defined in KRS 600.020(64).

Section 2. Ineligibility. (1) An eligible sex offender, as defined in KRS 197.410(2), convicted prior to July 15, 1998 shall not be eligible for a parole consideration hearing unless:

(a) He has been denied entrance into the Sex Offender Treatment Program;

(b) He has been terminated from the SOTP; or

(c) He has successfully completed the SOTP.

(2) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).

(3) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his conditional discharge by the court pursuant to KRS 532.043 and 532.060 shall not be eligible for parole consideration.

(4) If an inmate is within sixty (60) days of being released by minimum expiration, administrative release, or maximum expiration at the time of his next scheduled parole hearing, the inmate shall not be eligible for parole.

Section 3. Parole Eligibility. (1) Initial parole review. Except as provided by Section 2 of this administrative regulation, a person confined to a state penal institution or county jail shall have his case reviewed by the board, in accordance with the following schedules:

(a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his or her parole eligibility date as established in KRS 439.340(3)(a).

(b) For a felony offense committed prior to December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

(c) For a felony offense committed after December 3, 1980:

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Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B, or C felony	10 years

(d) For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentence of life	12 years

(e) For a crime:

1. Committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1;

2. Committed on or after July 15, 2002, which is:

a. Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510;

b. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

c. Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

d. Robbery in the first degree;

3. Committed on or after July 12, 2006, which is:

a. A capital offense;

b. Class A felony;

c. Complicity to a Class A felony;

d. Class B felony involving the death of the victim or serious physical injury to a victim;

e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree; or

4. Committed on or after June 26, 2007, which is:

a. A capital offense;

b. Class A felony;

c. Complicity to a Class A felony;

d. Class B felony involving the death of the victim or serious physical injury to a victim;

e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in

KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or twenty 20, whichever is less
Sentences of life	20 years

(f) For an individual serving multiple sentences, if one (1) or more of the crimes resulted in a conviction committed under paragraph (e) of this subsection and one (1) or more of the crimes resulted in a conviction committed under paragraph (c) of this subsection, parole eligibility shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(2) Subsequent parole review. Except as provided in KRS 439.340(14), [by paragraphs (a) and (b) of this subsection,] after the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board. [(a) The maximum deferment given at one (1) time shall not exceed the statutory minimum parole eligibility for a life sentence.

(b) The maximum deferment given at one time shall not exceed twenty-four (24) months for an offender convicted of a Class D or Class C felony except for:

— 1. A violent offender as defined in KRS 439.3401;

— 2. An offender convicted of a sex offense listed in KRS Chapter 510, 530.020, 530.064(1)(a), 531.310, or 531.320; and

— 3. An offender who has ever been convicted of a crime in which the elements of the offense or the judgment of the court demonstrate that in the commission of the crime:

— a. A human life was taken;

— b. A serious physical injury occurred; or

— c. A sex offense listed in KRS Chapter 510, 530.020, 530.064(1)(a), 531.310, or 531.320 was committed.]

(c) Except as provided in KRS 439.340(14), the [The] board, at the initial or a subsequent review, may order a serve-out on a sentence. [If the sentence is a life sentence, the full board shall vote.]

(3) Parole review with new felony conviction.

(a) If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if this new conviction will be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

(b)1. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be set [calculated] on the length on the new sentence only, beginning from the date of his final sentencing, unless the board has previously set a new parole eligibility date.

2. If the board has previously set a new parole eligibility date, the parole eligibility date shall be the date which last occurs.

(c) If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before his release:

1. The recommendation of parole shall automatically be voided; and

2. The new parole eligibility date shall be set based upon [calculated from] the date of original admission on the aggregate sentences.

(4) Parole review for crimes committed while in an institution or while on escape. If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall

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include a life sentence.

(a) Except as provided by paragraph (b) of this subsection, in determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution, or on a sentence for a crime committed while on an escape, the total parole eligibility shall be set [calculated] by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1. The amount of time to be served for parole eligibility on the original sentence;

2. If the inmate has an additional sentence for escape, the amount of time to be served for parole eligibility on the additional sentence for the escape;

3. If the inmate has an additional sentence for a crime committed while in the institution, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while in the institution; and

4. If the inmate has an additional sentence for a crime committed while on escape, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while on escape.

(b) If the board has previously set a parole eligibility date for an inmate described in paragraph (a) of this subsection, and that date is later than that set [calculated] under paragraph (a) of this subsection, the later date shall be the parole eligibility date.

(c)1. Except as provided by paragraph (b) of this subsection, if a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date.

2.a. If the prisoner later receives a sentence for the escape, the previous deferment shall be automatically voided and the new parole eligibility date shall be set [calculated] based on the new sentence beginning from the date of sentencing for the new sentence, unless the deferment date set by the board is a later date than that set based on the new sentence [determined by the calculations].

b. If the deferment date set by the board is a later date, the parole eligibility date shall be the date which last occurs.

(d) If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, his parole eligibility date shall be set [calculated] from the date of his new sentence or from the date previously set by the board, whichever occurs last.

(e) If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be void. Upon return to a state institution, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines it may conduct a face-to-face hearing with this person at the institution with a three (3) member panel.

(5) Parole reviews for persons on shock probation or on prerelease probation. If a person is shock probated, or on prerelease probation, and is later returned to the institution as a shock probation violator or prerelease probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.

(a) If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

(b) If a person on parole is returned to the institution, has received a new sentence for a crime committed while on parole, and is probated or shock probated on the new sentence, the board

shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines, it may conduct a face-to-face hearing with this person at the institution with a panel of at least two (2) members.

VERMAN WINBURN, Chairman

APPROVED BY AGENCY: September 15, 2011

FILED WITH LRC: September 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2011 at 9:00 a.m. at the offices of the Kentucky Parole Board, 275 E. Main Street, Frankfort, Kentucky, in Room G-2. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: John C. Cummings, Counsel for the Kentucky Parole Board, Justice and Public Safety Cabinet, Office of Legal Services, 275 E. Main Street, Frankfort, Kentucky 40601, phone (502) 564-3620, fax (502) 564-8995.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Cummings

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for determining parole eligibility.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 439.320, 439.335, 439.340.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Kentucky Parole Board employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies and updates the Kentucky Parole Board's regulations governing parole eligibility.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 439.320, 439.335, 439.340.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations governing parole eligibility. The amendment clarifies and updates the Kentucky Parole Board's regulations governing parole eligibility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies and updates the Kentucky Parole Board's regulations governing parole eligibility.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Kentucky Parole Board members, the Board's staff, offenders eligible for parole or on parole, and members of the public that are victims of crime or that are affected by crime.

(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: Parole Board members, staff, and offenders will have to follow the changes made in policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the Kentucky Parole Board.

(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 funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Parole Board budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Budgeted Funds

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

### 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 administrative regulation and the amendments to it will impact the operation of the Kentucky Parole Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.320(8), 439.340(3).

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? No new programs are created. The amendments to this regulation do not increase costs from what was previously budgeted to the Kentucky Parole Board.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation are not expected to increase costs from what will be budgeted to the Kentucky Parole Board.

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.

## JUSTICE AND PUBLIC SAFETY CABINET Parole Board (Amendment)

### 501 KAR 1:080. Parole Board policies and procedure.

RELATES TO: KRS 439.310 – 439.440 and 532.040 -532.060.

STATUTORY AUTHORITY: KRS 439.340(3)(b).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3)(b) requires the Parole Board to promulgate administrative regulations with respect to the conduct of parole and parole revocation hearings and other matters that come before the board, and conditions to be imposed upon parolees. This administrative regulation establishes the policies and procedures for the Parole Board.

Section 1. Incorporation by Reference. (1) "Kentucky Parole Board Policies and Procedures," September 15, 2011 [February 14, 2014], are incorporated by reference. Kentucky Parole Board Policies and Procedures include:

KYPB 10-00 Parole Board Hearing Process (Amended 9/15/2011 [2/14/2014])

KYPB 10-01 Parole Release Hearings (Amended 9/15/2011 [2/14/2014])

KYPB 11-00 Conditions of Parole (Amended 9/15/2011 [2/14/2014])

KYPB 12-00 Final Discharge of Parole and: Payment of Restitution (Amended 9/15/2011 [2/14/2014])

KYPB 13-00 Revocation of Parole: Warrants and Determinations (Amended 9/15/2011 [2/14/2014])

KYPB 13-01 Revocation of Parole: Preliminary Hearings (Amended 9/15/2011 [2/14/2014])

KYPB 13-02 Revocation of Parole: Final Revocation Hearings and Dispositions (Amended 9/15/2011 [2/14/2014])

KYPB 13-03 Youthful Offenders (Amended 2/14/2011)

KYPB 14-00 Public and Legislative Relations (Amended 2/14/2011)

KYPB 13-04 Revocation of Parole: Good Cause Hearings (Added 9/15/2011)

KYPB 20-00 Mandatory Reentry Supervision Orders (Added 9/15/2011)

KYPB 21-00 Conditions of Mandatory Reentry Supervision (Added 9/15/2011)

KYPB 22-00 Final Discharge of Mandatory Reentry Supervision (Added 9/15/2011)

KYPB 23-00 Revocation of Mandatory Reentry Supervision: Warrants (Added 9/15/2011)

KYPB 23-01 Revocation of Mandatory Reentry Supervision: Preliminary Hearings (Added 9/15/2011)

KYPB 23-02 Revocation of Mandatory Reentry Supervision: Final Hearings (Added 9/15/2011)

KYPB 33-00 Revocation of Postincarceration Supervision: Warrants (Added 9/15/2011)

KYPB 30-01 Revocation of Postincarceration Supervision: Preliminary Hearings (Added 9/15/2011)

KYPB 30-02 Revocation of Postincarceration Supervision: Final Hearings (Added 9/15/2011)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Parole Board, 275 Main Street, 2nd Floor, 40602, telephone (502) 564-3620, fax (502) 564-8995, Monday through Friday, 8 a.m. to 4:30 p.m.

VERMAN WINBURN, Chairman

APPROVED BY AGENCY: September 15, 2011

FILED WITH LRC: September 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2011 at 10:00 a.m. at the offices of the Kentucky Parole Board, 275 E. Main Street, Frankfort, Kentucky, in Room G-2. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is

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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 October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

**CONTACT PERSON:** John C. Cummings, Counsel for the Kentucky Parole Board, Justice and Public Safety Cabinet, Office of Legal Services, 275 E. Main Street, Frankfort, Kentucky 40601, phone (502) 564-3620, fax (502) 564-8995

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Cummings

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Parole Board including the duties and responsibilities of the Board and its staff.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 439.320, 439.340, 439.335, 439.3406, 532.043, 532.060, 532.400, and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Parole Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Kentucky Parole Board members and the Board's staff concerning their duties and responsibilities of their jobs and to offenders concerning their rights and responsibilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not applicable - new administrative regulation.

(a) How the amendment will change this existing administrative regulation: The amendment incorporates new and amended Parole Board policies and procedures to implement requirements of HB 463, clarify existing policies and procedures, and integrates provisions currently found in 501 KAR 1:040, 1:050 and 1:070 into the Parole Board's policies and procedures so that 501 KAR 1:040, 1:050 and 1:070 can be repealed.

(b) The necessity of the amendment to this administrative regulation: To implement requirements of HB 463; to clarify existing policies and procedures; and to eliminate the potential for any inconsistencies between the Parole Board's policies and procedures and administrative regulations 501 KAR 1:040, 1:050 and 1:070.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment incorporates new and amended Parole Board policies and procedures to implement requirements of HB 463, and integrates provisions currently found in 501 KAR 1:040, 1:050 and 1:070 into the Parole Board's policies and procedures so that 501 KAR 1:040, 1:050 and 1:070.

(d) How the amendment will assist in the effective administration of the statutes: By implementing requirements of HB 463; by clarifying existing policies and procedures; and by eliminating the potential for any inconsistencies between the Parole Board's policies and procedures and administrative regulations 501 KAR 1:040, 1:050 and 1:070.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Kentucky Parole Board members, the Board's staff, offenders eligible for parole or on parole, and members of the public that are victims of, or affected by crime.

(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:

Parole Board members and staff will have to follow the policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The policies and procedures will assist in the orderly and effective management of the Kentucky Parole Board.

(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 funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Parole Board budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Budgeted Funds: None.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? NO. Tiering is not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will impact the operation of the Kentucky Parole Board and the Board's staff.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.320, 439.340(3), 439.335, 439.3406, 532.043, 532.060, and 532.400,

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? The regulation does not increase costs from what was previously budgeted to the Kentucky Parole Board.

(d) How much will it cost to administer this program for subsequent years? The regulation is not expected to increase costs from what will be budgeted to the Kentucky Parole Board.

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.

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office for the Blind (Amendment)

782 KAR 1:020. Definitions for 782 KAR Chapter 1.

RELATES TO: KRS 163.470(10)



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STATUTORY AUTHORITY: KRS 163.470(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the office to establish and implement policies and procedures for carrying out the program of services for the blind. This administrative regulation establishes definitions for the terms used in 782 KAR Chapter 1.

### Section 1. Definitions.

(1) "Applicant" means an individual who

(a) Has requested vocational rehabilitation services in writing; and

(b) Is available to complete an assessment.

(2) "Communication" means the ability to comprehend, respond, and exchange information through:

(a) Spoken words;

(b) Written words;

(c) Sign language;

(d) Braille;

(e) Concepts;

(f) Gestures; or

(g) Another means.

(3) "Comparable benefits" means service, benefit or financial assistance available to a consumer from a program other than the office which meets the cost of services to be provided under an individualized plan for employment.

(4) "Consumer" means an individual

(a) Who has a visual impairment and possible secondary disabilities;

(b) Whose impairment constitutes or results in a substantial impediment to employment;

(c) Who may benefit in terms of an employment outcome from the provision of vocational rehabilitation services; and

(d) Who has been determined eligible for vocational rehabilitation services by a rehabilitation counselor.

(5) "Consumer with a most significant disability" means a consumer whose:

(a) Severe impairment limits three (3) or more functional capacities in terms of employment outcome; and

(b) Rehabilitation requires two (2) or more services over an extended period of time.

(6) "Consumer with a significant [~~nonsignificant~~] disability" means a consumer whose:

(a) Impairment limits one (1) or two (2) [~~more~~] functional capacities in terms of an employment outcome; and

(b) Rehabilitation requires two (2) or more services for a period of time.

(7) "Consumer with a nonsignificant [significant] disability" means a consumer whose:

(a) Severe impairment limits zero [~~two (2) or more~~] functional capacities in terms of an employment outcome; or [~~and~~]

(b) Rehabilitation requires one (1) or no [~~two (2) or more~~] services over an extended period of time.

(8) "Correction" means the best visual functioning using conventional eyeglasses or contact lenses as prescribed by an ophthalmologist or optometrist.

(9) "Counselor" means a vocational rehabilitation counselor of the office.

(10) "Functional capacities" means:

(a) Communication;

(b) Interpersonal skills;

(c) Orientation and mobility;

(d) Self-care;

(e) Self-direction;

(f) Work skills; and

(g) Work tolerance.

(11) "Institution of postsecondary education" means a university, college, proprietary school, technical institution, or the Kentucky Community and Technical College System.

(12) "Interpersonal skills" means the ability to make and maintain a personal, family, and community relationship.

(13) "Office" is defined by KRS 163.460(1).

(14) "Orientation and mobility" means the ability to travel independently to and from a destination in the community.

(15) "Progressive visual disorder" means a visual impairment

that is:

(a) Not complete or fully developed at the time of medical diagnosis; and

(b) Predicted, medically, to increase in extent or severity.

(16) "Self-care" means the ability to engage in activities of daily living including:

(a) Personal grooming;

(b) Home management; and

(c) Health and safety needs.

(17) "Self-direction" means the ability independently to plan, initiate, problem solve, organize, and carry out a goal-directed activity.

(18) "Services" means any appropriate authorization for purchase to meet the vocational rehabilitation needs and to achieve the employment outcome of a consumer.

(19) "Work skills" means the ability to do a specific task required for a particular job.

(20) "Work tolerance" means the ability to sustain the required level of functioning in a work-related activity, with or without accommodations.

CHRISTOPHER H. SMITH, Executive Director

APPROVED BY AGENCY: September 7, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, October 28, 2011 at 10:00 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capital Plaza Tower, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than Friday, October 21, 2011, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601, phone (502) 564-1481, fax (502) 564-9990.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick B. Shirley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides definitions that will apply to the remainder of the regulations in this chapter of the KAR.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide understanding to the regulations that follow within this chapter of the KAR.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's consumer services for the Office for the Blind. The authorizing statute requires the Office for the Blind to implement regulations for carrying out the services of the blind.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides definitions that will apply throughout each of the consumer services regulations for the Office for the Blind. Consumers will be able to look at these definitions and have a better understanding of what the regulations are attempting to accomplish.

(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 amendments are made to adapt the regulations to provide better guidance to blind individuals. The

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changes are almost entirely aimed at redefining what types of disabilities that can be served by the Office for the Blind.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to define the type of disabilities that the Office for the Blind can serve.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the severity and types of disability that the Office for the Blind can serve. This is within the framework of the authorizing statute because the statute charges the Office for the Blind with setting out regulations to guide what services can be provided.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance to consumers. This will allow consumers to clearly see what types of disabilities and impairments that the Office for the Blind will serve.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The individuals that will be affected are all individuals that are Office for the Blind consumers, or potential consumers, in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action that needs to be taken by consumers to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not cost consumers anything.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Consumers will be eligible for services from the Office for the Blind when they meet the disability criteria.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment 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: Federal Funds received by the Office for the Blind.

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

(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 directly or indirectly.

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

### 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 Education and Workforce Development Cabinet, Office for the Blind.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 163.470, Rehabilitation Act, 29 U.S.C. 701 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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? No additional revenue will result from this regulation.

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

(c) How much will it cost to administer this program for the first year? There shall be no cost associated with administering this amendment.

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office for the Blind (Amendment)

#### 782 KAR 1:030. Scope and nature of services.

RELATES TO: KRS 163.470(3), 34 C.F.R. 361.48, 29 U.S.C. 706, 711, 723

STATUTORY AUTHORITY: KRS 163.470(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the office to establish and implement policies and procedures for carrying out the program of services for the blind and visually impaired. This administrative regulation establishes the scope, nature, conditions, criteria, and procedures of provided services.

Section 1. Communication. The office shall provide information to applicants and consumers using the most effective mode of communication for the consumer or applicant, including:

(1) Braille;

(2) Large print;

(3) Electronic format; or

(4) Augmentation communication devices, or the spoken language.

Section 2. Vocational Goal. A service shall be provided in accordance with an individualized plan for employment that:

(1) Emphasizes the determination and achievement of a positive employment outcome; and

(2) Is consistent with the consumer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Section 3. Vocational Training at Institutions of Postsecondary Education. (1) A service provided at an institution of higher education shall comply with the provisions governing comparable benefits established in Section 16 of this administrative regulation.

(2)(a) Except as provided in paragraph (b) of this subsection, the amount paid by the office for tuition shall not exceed the highest rate for tuition charged by an in-state public institution of higher education.

(b) If the consumer's vocational goal requires a degree program not offered by an in-state public institution, the amount paid by the office for tuition shall be the amount charged for that degree program after comparable benefits are applied.

(3) The office shall use the school budget, awards, and need analysis for costs of tuition and fees, books, supplies, room, board, personal expenses, and transportation prepared by the student financial aid office of the institution and shall negotiate with the consumer the allocation of those costs.

(4) The office may pay a fee associated with attendance at an educational institution if the fee is required of an individual who attends the institution.

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(5)(a) The consumer shall:

1. Maintain full-time status as defined by the institution;
  2. Maintain less than full-time status if full-time status is inconsistent with the consumer's unique strengths, abilities, and capabilities; or
  3. Maintain less than full-time status for one (1) semester if those hours are needed to graduate in the current year.
- (b) All coursework shall facilitate the achievement of positive employment outcomes.
- (6) By the end of the second term or semester and throughout each subsequent term or semester, a consumer [individual] shall achieve the higher of:
- (a) An overall "C" grade average; or
  - (b) Standing required for admission, licensure, or certification.
- (7) An exception to a requirement established in subsection (5) or (6) of this section shall:
- (a) Be granted if the consumer:
    1. Has a need or circumstance that renders him unable to meet the requirement; and
    2. Notifies the counselor of the need or circumstance prior to a change of standing at the institution;
  - (b) Not be granted for the requirements established in subsection (6) of this section for a period beyond one (1) semester.
- (8) The consumer shall provide the counselor with a copy of course grades as soon as possible after the end of each term or semester.
- (9) If a consumer does not maintain the standards of this section, the counselor shall:
- (a) Terminate services at the institution of higher education; and
  - (b) Simultaneously notify the consumer of the appeal procedure established in 782 KAR 1:040.
- (10) A service terminated under subsection (9) of this section shall be reinstituted if the consumer:
- (a) Successfully appeals the counselor's decision, in accordance with 782 KAR 1:040; or
  - (b) Subsequently meets the standard under which the service was terminated.

Section 4. On-the-job-training. On-the-job-training provided in private or public employment shall be subject to the conditions established in this section:

- (1) The consumer shall receive at least minimum wage and be paid commensurate with the prevailing wages for the job.
- (2) The employer shall provide to the consumer the same benefits and privileges that accrue to other employee.
- (3) Prior to training, a written agreement shall be:
  - (a) Completed by the counselor, describing the goals and objectives of the training consistent with the needs of the employer, including:
    1. The length of training;
    2. The skills taught;
    3. Wages earned;
    4. Responsibility of the office; and
  5. An understanding that the consumer shall be hired permanently after successful completion of the training program; and
- (b) Signed by the:
  1. Office; and
  2. Employer.
- (4) The consumer shall strive to make satisfactory progress in the training. The employer shall provide training reports in accordance with the agreement to the office documenting the satisfactory or unsatisfactory progress of the consumer.
- (5) The agreement for on-the-job training shall be terminated by the counselor [consumer], the employer, or the consumer if the conditions of this section are not met.

Section 5. Work Experience. A program of work experience in private or public employment shall be provided according to the conditions established in this section:

- (1) The individual shall not be sponsored for a period exceeding 520 total hours of work experience. If used as a trial work experience, up to three (3) different experiences may be allowed, but shall be completed within a year not to exceed a total of 520 work

hours.

- (2) The consumer shall at least receive minimum wage.
- (3) A written agreement shall be completed by the counselor and employer or [provider of services] to designate:
  - (a) The length of the work experience;
  - (b) Skills taught;
  - (c) The number of hours to be worked each week; and
  - (d) The payment that the individual shall receive; [and
- (e) Any payment to the provider by the office;]
- (4) The employer or provider shall monitor the performance of the individual in work experience and make periodic reports to the counselor.
- (5) The agreement may be terminated by either party if the terms of the agreement are not being accomplished.

Section 6. Physical and Mental Restoration. (1) An applicant or consumer shall choose [choose] a qualified specialist who:

- (a) Is licensed in the particular field of practice to provide the approved physical or mental restoration service; and
  - (b) Agrees to accept the office's allowable rate of payment.
- (2) The medical diagnosis and prognosis shall indicate and recommend necessary restoration services. The office may obtain a second opinion before agreeing to pay for any restoration services.

Section 7. Out of State Services. (1) A rehabilitation service may be provided outside the Commonwealth of Kentucky, if:

- (a) The service meets the consumer's rehabilitation need;
- (b) The service is more convenient for the consumer;
- (c) The service is cost saving;
- (d) The service is not provided in state; and
- (e) The provision of an in-state service would delay service to a consumer at extreme medical risk.

Section 8. Maintenance. (1) Maintenance shall be provided only if necessary to support and derive the full benefit of other rehabilitation services being provided. Maintenance shall not supplant a consumer's responsibility to maintain his own residence and daily subsistence.

(2) Maintenance shall cease after the consumer has achieved an employment outcome and received the first paycheck.

(3) The office shall not pay more for a consumer's room and board at an institution of higher education than the highest rate for double occupancy at an in-state public institution.

(4) The cost of lodging and meals provided in support of services other than at an institution of higher education shall not exceed the per diem rate established for a state employee in Section 7 of 200 KAR 2:006.

Section 9. Transportation. Transportation for a consumer shall be paid in accordance with the requirements established in this section:

(1) Transportation by a public common carrier shall be in the most economical means available and in accordance with the rehabilitation needs of the consumer.

(2) Private transportation by private vehicle shall not exceed the mileage rate established for a state employee in Section 7 of 200 KAR 2:006.

(3) Lodging and meals necessary during travel shall not exceed the per diem rates established for a state employee in Section 7 of 200 KAR 2:006.

(4) The total cost of transportation allowed for commuting between home and campus for a consumer who attends an institution of higher education shall not exceed the rate of on-campus residence and board at the institution.

(5) Transportation for a consumer who resides on campus at an institution of higher education shall be limited annually to two (2) [six (6)] round trips between the consumer's home and the campus and total expense shall not exceed the school budget analysis for transportation.

(6) Transportation shall include relocation and moving expenses if necessary for a consumer to achieve placement in employment.

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Section 10. Interpreter Services. Interpreter services shall be provided by qualified personnel:

- (1) If sign language or an interpreter of tactile interpreting is a necessary means of communication for the consumer; and
- (2) In conjunction with application and effective participation in other services.

Section 11. Reader Services. Reader services shall be provided for a consumer:

- (1) If printed material in alternative format is not readily available through the volunteer recording services of the office; and
- (2) In conjunction with application for services and to participate effectively in other rehabilitation services.

Section 12. Rehabilitation Technology. (1) The office shall obtain low vision devices for a consumer from ~~[form]~~ a provider who is licensed or certified to prescribe and fit the device.

(2) Assistive technology and adaptive devices recommended by an Assistive Technology Specialist shall be provided if necessary to improve the functional capabilities of the consumer in obtaining a positive employment outcome.

(3) Unusual or expensive assistive technology shall only be provided to an individual if use of a traditional aid or device is not feasible.

(4) A consumer shall return assistive technology to the office if it is no longer used for the purpose for which it was provided.

(5) Assistive technology shall be:

(a) Provided in a new or like new condition; and

(b) Repaired or replaced by the office if, during the course of the individualized plan for employment, it becomes:

1. Defective;
2. Worn out; or
3. Obsolete.

(6) The repair, maintenance, or replacement of the assistive technology shall be the responsibility of the consumer following closure or successful attainment of a positive employment outcome unless necessary to maintain, regain, or advance in employment or the Individualized Plan for Employment (IPE) includes extended services at the time of closure.

Section 13. Self-employment. The office shall approve a self-employment for a consumer if:

(1) The consumer participates in a feasibility evaluation and development of a business plan;

(2) The vocational goal is consistent with the consumer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choices;

(3) The consumer attempts to secure additional resources to support the outcome; and

(4) The consumer:

(a) Obtains the required:

1. License;
2. Permit;
3. Certificate; or
4. Lease; and

(b) Operates in conformity with federal, state, and local statutes and regulations.

(5) The office's financial participation may be negotiated and shall be limited by the allocation and expenditure of vocational rehabilitation funds.

Section 14. Tools and Equipment. The consumer shall return tools, equipment, and supplies provided for employment if use by the consumer for that purpose ceases.

Section 15. Printed Materials. A textbook or other vocational material shall be made available in alternative format through the office's Accessible textbook services or other service providers.

Section 16. Comparable Benefits. (1) When the individualized plan for employment is developed, the consumer and vocational rehabilitation counselor may negotiate applications for comparable services.

(2) Grant assistance, including a gift, endowment, or scholar-

ship not based upon merit, provided for a consumer enrolled in an institution of postsecondary education, shall be considered a comparable benefit.

(3) The following forms of financial assistance shall not be considered a comparable benefit for a consumer individual enrolled at an institution of postsecondary education:

(a) A guaranteed student loan;

(b) A national direct or student loan;

(c) A work-study payment;

(d) Other aid termed as self-help; or

(e) An unrestricted monetary award from a civic, professional, or social organization.

(4) Comparable benefits awarded for purposes of higher education shall be applied to the services designated by the granting authority.

(5) For any consumer who receives Social Security income benefits, one-third of the [his] monthly award shall be applied toward room and board for each month attending ~~[he attends]~~ school.

Section 17. Participation of a Consumer in the Costs of Services. (1) Subject to paragraph (2), the [The] financial need of an individual with a disability may [shall not] be considered by the office in the provision of services [although the consumer's participation shall be encouraged].

(2) Services Exempt from financial need shall include the following:

(a) Assessment for determining eligibility and priority for services;

(b) Assessment for determining vocational rehabilitation needs;

(c) Vocational rehabilitation counseling and guidance;

(d) Referral for other services;

(e) Job-related services;

(f) Personal assistance services; and

(g) Any auxiliary aid or service (e.g. interpreter services, reader services) for an individual with a disability required under section 504 of the Rehabilitation Act or the Americans with Disabilities Act.

Section 18. Emergency Denial of Services. The office shall immediately suspend or terminate services provided to an individual if during the course of those services the conduct of the individual poses a threat to personal safety or the safety of others.

Section 19. A waiver to any limit established for the scope and nature of services shall be made at the discretion of the director of consumer services with sufficient documentation supporting the rehabilitation needs of the consumer.

(1) A request for a waiver shall be submitted to the director by either the counselor or the consumer.

(2) A written decision based upon the rehabilitation needs of the consumer shall be provided to the counselor and consumer within ten (10) working days of submission of the request.

Section 20. Order of Selection. If the executive director and State Rehabilitation Council determine that the agency lacks available funds to serve all consumers, the office shall follow an order of selection to give priority for services according to a ranking of categories of consumers based on the severity of disability as follows:

(1) Priority Category One (1) which shall include an individual with a most significant disability whose:

(a) Severe impairment limits three (3) or more functional capacities in terms of employment outcome; and

(b) Rehabilitation requires two (2) or more services over an extended period of time.

(2) Priority Category Two (2) which shall include an individual with a significant disability whose:

(a) Severe Impairment limits two (2) ~~[or more]~~ functional capacities in terms of an employment outcome; and

(b) Rehabilitation requires two (2) or more services over an extended period of time.

(3) Priority Category Three (3) which shall include a consumer with a significant ~~[non-significant]~~ disability whose:

(a) Impairment seriously limits one (1) ~~[or more]~~ functional

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capacity [capacities] in terms of an employment outcome; and

(b) Rehabilitation requires two (2) or more services over a period of time.

(4) Priority Category Four (4) which shall include all other consumers, including consumers with a nonsignificant disability.

(5) The order of selection shall be implemented on a statewide basis.

(6) The office shall conduct an assessment to determine an individual's:

(a) Eligibility for vocational rehabilitation services; and

(b) Priority under the order of selection.

(7) The order of selection shall not apply to the following:

(a) The acceptance of a:

1. Referral; or

2. Applicant;

(b) The provision of assessment services to determine an individual's:

1. Eligibility for vocational rehabilitation services; or

2. Priority under the order of selection; or

(c) A consumer who is in the process of receiving services at the effective date of the order of selection.

(8) A consumer shall be immediately reclassified into a higher priority category if his level of impairment increases and is documented.

(9) In the order of selection, a consumer in a closed priority category shall be placed on a waiting list until the priority category is reopened.

(10) If vocational rehabilitation services cannot be provided to all consumers in a given category, a waiting list based upon the date of eligibility for vocational rehabilitation services shall be used within a category.

(11) If sufficient funds become available, the executive director and the State Rehabilitation Council shall adjust the priority categories to be served as appropriate to provide services to as many consumers as funds allow.

CHRISTOPHER H. SMITH, Executive Director

APPROVED BY AGENCY: September 7, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, October 28, 2011 at 10:00 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capital Plaza Tower, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than Friday, October 21, 2011, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601. phone (502) 564-1481, fax (502) 564-9990.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick B. Shirley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the type and scope of services provided by the Office for the Blind.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 163.470 and the Rehabilitation Act, 29 U.S.C. 701 et seq., in setting out what rehabilitation services the Office for the Blind will offer to consumers.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's consumer services for the Office for the Blind. The authorizing statute requires the Office for the Blind to implement regulations for carrying out the services of the blind.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's provision of rehabilitative services to blind consumers in Kentucky. This is the regulation that chiefly sets out the main rehabilitative services that the Office for the Blind offers, as authorized by KRS 163.470.

(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 corrects grammatical errors, changes the number of trips that a student that lives on campus at an institution of higher education may take using Office for the Blind funds, changes the priority of services that are offered to consumers if the Office for the Blind lacks funds, and allows the Office for the Blind to consider a consumer's financial resources when services are potentially being offered. However, there are no plans to actually begin considering those resources. It simply allows for that flexibility in the future if necessary and this change is specifically authorized by 34 C.F.R. 361.54.

(b) The necessity of the amendment to this administrative regulation: Changes were necessary to fix grammatical errors in the regulation. Changes were necessary to help the Office for the Blind with potential budgetary shortfalls in the future.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance to consumers on the services offered by the Office for the Blind. The statute allows for the Office for the Blind to create regulations governing the operation of the Office and the services provided. These amendments are within the authorization provided by KRS 163.470 because it allows the Office the flexibility to take into account a lack of funding.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance consumers as to what services are offered by the Office for the Blind, as well as conditions that may limit the scope of the services they are seeking.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The individuals that will be affected are all individuals that are Office for the Blind consumers, or potential consumers, in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action that needs to be taken by consumers to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It should not cost consumers anything. Consumers living on campus at institutions of higher education may take fewer trips home at the expense of the Office for the Blind, but will still be provided two instead of six. The Office for the Blind may be able to take into account consumer financial resources in the future if necessary but there are no plans to do so currently, so there is no cost to consumers. Most rehabilitation services are exempt from this pursuant to federal law and this proposed amendment. This latter change is specifically authorized by 34 C.F.R. 361.54.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The consumers will still be entitled to the same benefits of services that they were before the amendment.

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

(a) Initially: No additional costs are expected.

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(b) On a continuing basis: The proposed amendment 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: Federal Funds received by the Office of for the Blind.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be an increase in fees or funding.

(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.

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

### 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 Education and Workforce Development Cabinet, Office for the Blind.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 163.470, 29 U.S.C. 701 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.

(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 shall be no cost associated with administering this amendment. How much will it cost to administer this program for subsequent years? There shall be no cost to the agency in administering this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office for the Blind (Amendment)

#### 782 KAR 1:040. Appeal procedures.

RELATES TO: KRS 163.450-163.470, 29 U.S.C. 722, 34 C.F.R. Part 361

STATUTORY AUTHORITY: KRS 13B.170, 163.470(5), 29 U.S.C. 722(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B concerning administrative hearings. KRS 163.470(5) requires the Office for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. 29 U.S.C. 722(c) requires the office [department] to establish procedures so that a person seeking vocational rehabilitation services who is dissatisfied with determinations made by staff of the office concerning the furnishing, denial, reduction, suspension, or cessation of services may request a timely review of those determinations. This administrative regula-

tion establishes those procedures.

Section 1. Hearing Officer. (1) To conduct a hearing under this administrative regulation, a hearing officer shall:

(a) Be trained with respect to the performance of official duties;

(b) Have knowledge of:

1. The delivery of vocational rehabilitation services;

2. Federal and state laws; and

3. Administrative regulations governing the provision of vocational rehabilitation services;

(2) To conduct a hearing under this administrative regulation, a hearing officer shall not:

(a) Be an employee of a public agency other than an:

1. Administrative law judge;

2. Hearing examiner; or

3. Employee of an institution of higher education;

(b) Be a member of the Office for the Blind State Rehabilitation Council;

(c) Have been involved in a previous decision regarding the vocational rehabilitation of the applicant or eligible individual; or

(d) Have a personal or financial interest that conflicts with the objectivity of the individual.

Section 2. Mediation. (1) The office and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of benefits to mediation.

(2) The office shall maintain a list of qualified mediators.

(3) The director of consumer [client] services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation.

(4) A representative of the office who is authorized to bind the office to an agreement shall attend the mediation.

(5) The applicant or eligible individual shall attend the mediation and may be represented by an advocate or counsel.

(6) Discussions or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or civil proceeding.

Section 3. Right of Appeal and Information. (1) An applicant or eligible individual may appeal to the director of consumer [client] services determinations made by the office [department] affecting:

(a) Furnishing of vocational rehabilitation benefits; or

(b) Denial, reduction, suspension, or cessation of vocational rehabilitation services.

(2) An applicant or eligible individual shall:

(a) Be informed of the:

1. Entitlements available under this administrative regulation;

2. Right to appeal;

3. Right to be represented by an advocate or counsel; and

4. Names and addresses of office individuals with whom an appeal shall be filed.

(b) Request an appeal:

1. In writing;

2. By telephone through direct contact with the director of consumer [client] services or a designee; or

3. On tape, except that a voice mail message shall not constitute a request for a hearing.

(3) The director of consumer [client] services or a designee shall convene a hearing within sixty (60) days of the request. Reasonable time extensions, not to exceed one (1) year, may be granted for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:

(a) KRS Chapter 13B; and

(b) This administrative regulation.

(4) Pending a final determination of a hearing or other final resolution, the office shall not suspend, reduce, or terminate a service provided under the individualized plan for employment unless:

(a) It has evidence that the service was obtained by an applicant or eligible individual through:

1. Misrepresentation;

2. Fraud;

3. Collusion; or

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4. Criminal conduct; or

(b) This action is requested by an:

1. Applicant;

2. Eligible individual; or

3. Authorized representative of an applicant or eligible individual.

Section 4. Client Assistance Program. The office shall advise an applicant or eligible individual of:

(1) The existence of the Client Assistance Program, created by KRS 151B.225;

(2) The services provided by the program; and

(3) How to contact a program representative.

Section 5. Appeal Time and Hearing Procedures. (1) An applicant or eligible individual may appeal within sixty (60) days of becoming aware, through the exercise of due diligence, of a office determination affecting the provision or denial of vocational rehabilitation services. The applicant or eligible person may appeal, pursuant to the requirements of Section 3 of this administrative regulation.

(2) An applicant or eligible individual shall, at the time of requesting a hearing:

(a) Identify accommodations required; and

(b) Submit an issue statement for the hearing.

(3) A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the office and the State Rehabilitation Council.

(4) The applicant or eligible individual may disqualify for cause up to three (3) hearing officers randomly assigned by the Administrative Hearings Division of the Office of the Attorney General.

Section 6. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the Secretary of the Education Cabinet the written recommended order within thirty (30) days of receipt of the transcript of the hearing, unless both parties agree to a time extension.

(2) Either party shall have twenty (20) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the Secretary of the Education and Workforce Development Cabinet.

(3) The Secretary of the Education and Workforce Development Cabinet shall consider the record including the recommended order and any timely exceptions filed to the recommended order.

(4) The Secretary of the Education and Workforce Development Cabinet shall issue the final order within thirty (30) days from expiration of the time period for filing exceptions.

CHRISTOPHER H. SMITH, Executive Director

APPROVED BY AGENCY: September 7, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, October 28, 2011 at 10:00 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capital Plaza Tower, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than Friday, October 21, 2011, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601. phone

(502) 564-1481, fax (502) 564-9990.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick B. Shirley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the appeal procedures provided by the Office for the Blind should a consumer disagree with a decision by the Office.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 163.470 and the Rehabilitation Act, 29 U.S.C. 701 et seq., in setting out a remedy for consumers that disagree with the Office for the Blind.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for consumers to exercise their rights of appeal, which is required by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the consumers to exercise their right of appeal.

(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 only changes terminology from "client" to "consumer" and does not affect the consumer's rights of appeal. It also correctly identifies the Education and Workforce Development Cabinet.

(b) The necessity of the amendment to this administrative regulation: Changes were necessary to make the terminology correct.

(c) How the amendment conforms to the content of the authorizing statute: The amendment does not change any substantive matters and therefore continues to conform to the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment simply corrects terminology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The individuals that will be affected are all individuals that are Office for the Blind consumers, or potential consumers, in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action that needs to be taken by consumers to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not cost consumers anything.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The consumers will still be entitled to the same benefits of services that they were before the amendment.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment 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: Federal Funds received by the Office of for the Blind.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be an increase in fees or funding.

(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.

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

### 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 Education and Workforce Development Cabinet, Office for the Blind.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 163.470, 29 U.S.C. 701 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.

(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 shall be no cost associated with administering this amendment.

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office for the Blind (Amendment)

#### 782 KAR 1:070. Certified driver training program.

RELATES TO: KRS 186.480(1)(b), 186.576, 186.577(4), 186.578, 186.579

STATUTORY AUTHORITY: KRS 186.578(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.578(7) requires the Office for the Blind to promulgate administrative regulations setting the standards for a certified driver training program to serve persons with a visual impairment. This administrative regulation establishes standards and procedures for the certified driver training program.

Section 1. Definitions. (1) "Applicant" is defined by KRS 186.576(1).

(2) "Bioptic telescopic device" is defined by KRS 186.576(3).

(3) "Certified driver rehabilitation specialist" means a person who has met basic professional criteria, passed a written test, and maintained continuing education requirements to be certified by the Association for Driver Rehabilitation Specialists, ADED, for the purpose of evaluating, educating, and training persons with disabilities to operate or drive motor vehicles and to prepare for a driving skills test. [(4) "Coordinator" means the coordinator of the Office for the Blind Bioptic Driving Program.]

[(4) [(5)] "Office" is defined by KRS 186.576(8).

Section 2. Certified Driver Training Program Requirements. (1) Any person or entity may apply to the office [coordinator] to become a certified driver training program that satisfies the following requirements:

(a) At least one (1) instructor is a certified driver rehabilitation specialist or is supervised by a certified driver rehabilitation specialist;

(b) All instructors meet the requirements of subsection (4) of this section;

(c) Any vehicle utilized:

1. Has a valid registration;

2. Is in sound mechanical order;

3. Has one (1) operable instructor brake;

4. Has signage indicating student driver on two (2) sides and rear of vehicle; and

5. Has adaptive equipment suitable for functional limitations of students;

(d) Maintains liability coverage that meets the minimum Kentucky insurance limits; and

(e) Uses a curriculum which meets the requirements of subsection (3) of this section.

(2) The following shall be submitted to the office [coordinator]:

(a) Business name, address, telephone number, and office hours;

(b) Copy of the certifications and resumes of each proposed instructor;

(c) Description of the equipment, vehicles with adaptive devices, and facilities to be used in the certified driver training program;

(d) Copy of the valid vehicle registration;

(e) Copy of the liability insurance policy that includes a mandatory ten (10) day written cancellation notice by the insurer to the office;

(f) A detailed copy of the curriculum used; and

(g) The fees charged per hour, per lesson, or per course.

(3) The curriculum to be used shall consist of the following sections:

(a) A theoretical course of instruction that shall include:

1. Subject matter contained in the Kentucky Drivers Manual;

2. Safe driving practices and traffic laws;

3. The "SCAN, Identify, Predict, Decide, Execute" (SIPDE) approach to perceptive driving;

4. Signs, signals, highway markings, and highway design features required for the safe operation of a motor vehicle;

5. Driving emergencies such as brake or tire failure, skidding, stuck accelerator, and running off the roadway;

6. Potential crash locations and situations such as intersections, hydroplaning, railroad crossings, multiple vehicle types in the traffic mix, and pedestrian traffic;

7. Seatbelt usage;

8. Speeding as a major contributing factor in vehicle crashes; and

9. Driver responsibility and accident reporting.

(b) A practical course instruction that shall include:

1. Demonstration, instruction, and practice in the use of the bioptic telescopic device; and

2. Behind the wheel demonstration, instruction, and practice:

a. For a minimum of thirty (30) hours for applicants who have never had an operator's license and fifteen (15) hours for applicants who have had an operator's license; and

b. Consisting of:

(i) Stopping;

(ii) Starting;

(iii) Shifting;

(iv) Turning;

(v) Backing;

(vi) Parallel parking;

(vii) Steering; and

(viii) Driving in residential, medium city, and highway traffic.

(4) Any instructor in an approved certified driver training program shall:

(a) Be at least twenty-one (21) years of age;

(b) Have a four (4) year college degree. Experience as a professional driver education instructor may substitute year-for-year for the college education if the individual is a high school graduate or equivalent;

(c) Be of good moral character;

(d) Never have been convicted of a felony;

(e) Never have been convicted of a violation of KRS 189A.010



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or its equivalent from another jurisdiction;

(f) Never have been convicted or administratively found guilty of refusing to submit to a test to determine blood alcohol content or drugs in the system;

(g) Possess a valid driver's license and have fewer than six (6) points assigned pursuant to 601 KAR 13:025 on his driving history record;

(h) Not have had his driving privilege withdrawn for any reason in the past five (5) years;

(i) Enroll in and successfully complete the bioptic driving instructor training course offered by the office; and

(j) Obtain at least five (5) hours annually of continuing education in low vision.

(5) The certified driver training program shall review the driving history record and continuing education requirements of its instructors annually.

Section 3. Certification. (1) The office [coordinator] shall issue a certificate to an approved certified driver training program.

(2) Each certificate shall be valid for three (3) years from the date of issue. Certificates are not transferable. If there is a change of ownership, a new application shall be submitted.

Section 4. Performance Inspections. (1) The office [coordinator] may conduct a random or routine performance inspection of a certified driver training program.

(2) The certified driver training program shall be notified in writing of any deficiency discovered in the performance inspection.

(3) The deficiency shall be corrected prior to the next scheduled student or the certified driver training program's approval shall be withdrawn by the office.

Section 5. Acceptance Into a Certified Driver Training Program.

(1) An eligible applicant shall:

(a) Meet the minimum visual requirements of KRS 186.578(1);

(b) Obtain the bioptic telescopic device; and

(c) Successfully complete a functional visual assessment by the office [coordinator].

(2) An eligible applicant may be accepted into a certified driver training program.

CHRISTOPHER H. SMITH, Executive Director

APPROVED BY AGENCY: September 7, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, October 28, 2011 at 10:00 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capital Plaza Tower, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than Friday, October 21, 2011, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601. phone (502) 564-1481, fax (502) 564-9990.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick B. Shirley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the driver rehabilitation services provided

by the Office for the Blind should a consumer disagree with a decision by the Office.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 163.470 and the Rehabilitation Act, 29 U.S.C. 701 et seq., in setting out a remedy for consumers that disagree with the Office for the Blind.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for consumers to participate in rehabilitation services offered to individuals that drive, which is authorized by federal law, and therefore by KRS 163.470.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the consumers to be informed of the services that may receive concerning driver rehabilitation.

(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 only changes terminology from "coordinator" to "office" and does not affect the consumer's rights.

(b) The necessity of the amendment to this administrative regulation: Changes were necessary to make the terminology correct.

(c) How the amendment conforms to the content of the authorizing statute: The amendment does not change any substantive matters and therefore continues to conform to the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment simply corrects terminology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The individuals that will be affected are all individuals that are Office for the Blind consumers, or potential consumers, in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no action that needs to be taken by consumers to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not cost consumers anything.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The consumers will still be entitled to the same benefits of services that they were before the amendment.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment 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: Federal Funds received by the Office of for the Blind.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be an increase in fees or funding.

(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.

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

### 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

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cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Office for the Blind.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 163.470, 29 U.S.C. 701 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.

(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 shall be no cost associated with administering this amendment.

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office of Employment and Training (Amendment)

#### 787 KAR 1:210. Employer contribution rates.

RELATES TO: KRS 341.270, 341.272

STATUTORY AUTHORITY: KRS 151B.020, 341.115, 341.270(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.270(3) requires the Secretary of the Education and Workforce Development Cabinet to determine the rate schedule for employer contributions. This administrative regulation establishes the method by which the secretary shall publish the rate schedule in effect each year.

Section 1. Annual Employer Rate Notice (1) On or before December 15 of each year, the Division of Unemployment Insurance, on behalf of the secretary, shall issue to each active employer liable to pay unemployment contributions for the next calendar year a "Notice of Contribution Rate".

(2) The notice shall:

(a) Set forth the rate schedule determined by the secretary pursuant to KRS 341.270(3) to be in effect for the next calendar year;

(b) Inform each employer of:

1. The rate applicable to the employer's account for the next calendar year;

2. The tax, wage and benefit charge information regarding the employer's account; and

3. The statutory provisions used to calculate and assign the rate in accordance with KRS 341.270 and 341.272; and

(c) Be issued in either paper or electronic format.

Section 2. Incorporation by Reference. (1) The "Notice of Contribution Rate", UI-29, September [June] 2011, is incorporated by reference.

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

Division of Unemployment Insurance, 275 E. Main Street, 2E, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM MONTEROSSO, Executive Director

APPROVED BY AGENCY: September 14, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2011 at 11:00 a.m. at the offices of the Office of Employment and Training, 275 E. Main Street, 2nd floor, Executive Director's Office, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 2011, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: William Monterosso, Executive Director; Office of Employment and Training; 275 East Main, 2C; Frankfort, Kentucky 40602; phone (502) 564-5331; fax (502) 564-7452.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Monterosso

(1) Provide a brief summary of:

(a) What this administrative regulation does This administrative regulation establishes the method by which the secretary shall publish the rate schedule in effect each year.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the method and timeline for notifying employers of their contribution tax rate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary for the proper administration of KRS Chapter 341. KRS 341.270(3) requires the Secretary of the Education and Workforce Development Cabinet to determine the rate schedule for employers' contributions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will set the timeline and method required in issuing employers' contribution tax rates.

(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 only allow the employer to make a voluntary payment if it has a negative reserve balance and it will only be able to make a voluntary payment every other year. Currently, the administrative regulation allows a large range of employers to make a voluntary payment and it is eligible to do so every year.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary due to statutory changes in House Bill 5 of the 2010 Extraordinary Session of the Kentucky General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will only allow negative reserve employers to make a voluntary payment and will limit a voluntary payment to every other year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 83,000 active contributory

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employer accounts in Kentucky. This amendment will limit the number of employer accounts that will be eligible to make a voluntary payment. The Office of Employment and Training will be responsible for updating the current processing system to accommodate this.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Office of Employment and Training will need to provide technical resources to accommodate the necessary programming updates. The Division of Unemployment Insurance will be responsible for updating the contribution rate notice to identify the factors to identify those employers eligible for a voluntary payment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost associated to the employer. The Office of Employment and Training will be responsible for funding the technical upgrades.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The employer will receive notice of their contribution tax rate with detailed factors outlining the factors necessary to make a voluntary payment.

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

(a) Initially: There is no cost initially.

(b) On a continuing basis: There is no cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Unemployment Insurance is entirely federally funded. Unemployment insurance administrative funds will be used to make the necessary programming changes.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There will be no fees necessary for this change. The unemployment insurance program is entirely federally funded and technical changes necessary will be funded by unemployment insurance administrative funds.

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

(9) TIERING: Is tiering applied? The amendment will be applied uniformly to all contributory employers and tiering is not applicable.

### 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? Only those employers who have elected to pay quarterly unemployment taxes will be impacted. Most elect to simply reimburse benefits paid out in lieu of paying quarterly taxes.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 341.270, 341.272.

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

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

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

(c) How much will it cost to administer this program for the first full year? Implementation of this amendment will create no additional administrative costs in the first full year.

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

### PUBLIC PROTECTION CABINET Department of Insurance Agent Licensing Division (Amendment)

#### 806 KAR 9:070. Examinations

RELATES TO: KRS 304.1-050, 304.1-110(2), 304.4-010, 304.9-030(2), 304.9-105, 304.9-160, 304.9-190, 304.9-230, 304.9-320, 304.9-430, 304.9-505(5)(e), 304.15-700

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-160(1), 304.9-230(2), 304.15-700(2)(a), 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for, or as an aid to the effectuation of, any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.9-160(1) requires the commissioner to promulgate administrative regulations to develop and conduct [developing and conducting] examinations required by Subtitle 9 of the Kentucky Insurance Code. KRS 304.9-230(2) requires the commissioner to promulgate administrative regulations regarding examinations for limited lines of authority. KRS 304.15-700(2)(a) requires the commissioner to promulgate administrative regulations regarding the required training and examination for life settlement brokers, and KRS 304.15-720 authorizes the commissioner to promulgate regulations to implement KRS 304.15-700 through 304.15-720. This administrative regulation sets forth the timeframe during which [restricts the number of times] an applicant for an agent's, life settlement broker's, consultant's, independent adjuster's, staff adjuster's, or public adjuster's license may take the appropriate examination required by the Kentucky Insurance Code, as defined in KRS 304.1-010, establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Department" is defined by KRS 304.1-050(2) [KRS 304.1-050(4)].

(3) "Examination" means a written examination required to license an applicant in accordance with KRS Chapter 304 for an independent adjuster, staff adjuster, public adjuster, agent, consultant, or life settlement broker license.

(4) "License" is defined by KRS 304.1-110(2).

Section 2. A completed "NAIC Individual Insurance Producer License Application", incorporated by reference in 806 KAR 9:340, for the examination and documentation demonstrating successful completion of any required prelicensing training shall be filed with the commissioner by, or on behalf of, the applicant, prior to the date scheduled for the examination. The application shall be accompanied by fees specified in KRS 304.4-010 and [or] 806 KAR 4:010.

Section 3. Every applicant for a license who is required to take an examination shall answer correctly seventy (70) percent of the

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questions to successfully pass the examination.

Section 4. ~~[An applicant who takes an examination required by KRS Chapter 304 shall be permitted to take or retake an examination a total of three (3) times within 120 days of the receipt of an application by the commissioner.]~~ Applicable fees, as set out in KRS 304.4-010 and 806 KAR 4:010, Section 1(15), shall be submitted with the request to retake the examination. The request shall be made on an "Examination Retake Form", incorporated by reference in 806 KAR 9:340.

Section 5. An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully complete examinations as follows:

- (1) For life line of authority, a life examination;
- (2) For health line of authority, a health examination;
- (3) For property line of authority, a property examination;
- (4) For casualty line of authority, a casualty examination;
- (5) For personal lines, a property and casualty personal lines examination;
- (6) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and
- (7) For variable life and variable annuity products, no examination is required.

Section 6. (1) The provisions of this administrative regulation shall apply to every individual resident applicant for a limited line of authority identified in KRS 304.9-230(1).

(2) An individual applying for limited lines of authority as identified in KRS 304.9-230 shall successfully complete examinations as follows:

- (a) For surety limited line of authority, a surety examination;
- (b) For travel limited line of authority, a travel examination;
- (c) For crop limited line of authority, a crop examination;
- (d) For credit limited line of authority, an examination shall not be required; and
- (e) For rental vehicle limited line of authority, a rental vehicle examination shall be administered or monitored by the rental vehicle agent.

Section 7. An individual applying for a life settlement broker license shall successfully complete a life settlement examination unless exempt from examination pursuant to KRS 304.15-700(2)(b).

The examination shall be given by the commissioner or in accordance with provisions of an agreement the commissioner executes with another state.

Section 8. (1) An individual applying for a line of authority identified in KRS 304.9-430(7) or (8) shall:

- (a) For property and casualty line of authority, successfully complete a property and casualty adjuster examination;
- (b) For workers' compensation line of authority, successfully complete a workers' compensation adjuster examination; and
- (c) For crop line of authority, successfully complete a crop adjuster examination.

(2) In lieu of successfully completing the crop adjuster examination required by subsection (1)(c) of this section, an individual applying for a crop line of authority may demonstrate certification through the Crop Adjuster Proficiency Program, by providing to the department a copy of a Crop Adjuster Proficiency Program certification identification card with an active status issued by the federal Risk Management Agency, an agency within the U.S. Department of Agriculture, which specifies the applicant has passed a proficiency examination to adjust multi-peril crop claims.

Section 9. (1) If an applicant who applies to take the examinations required by KRS Chapter 304 does not take an examination or fails to pass an examination within 120 days of the filing the application, the application shall become invalid, unless the commissioner grants an extension for good cause shown. The applicant may file a new application at any time following the expiration of the 120 day period, and an examination may be taken when

scheduled by the department in the regular course of business.

(2) In determining good cause, the commissioner shall consider whether the delay to take the examination or the failure to pass the examination within the time period specified in subsection (1) of this section was due to extenuating circumstances beyond the applicant's control.

Section 10. Examination results are valid for one (1) year from the date the examination is taken. Application for additional lines of authority or licenses issued as a result of the same examination shall be received by the commissioner within the same one (1) year period. After this period, the applicant shall be retested.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 15, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2011, at 9:00 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 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 October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation restricts the number of times an applicant for an agent's, life settlement broker's, consultant's, independent adjuster's, staff adjuster's or public adjuster's license may take the appropriate examination required by the Kentucky Insurance Code, establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

(b) The necessity of this administrative regulation: This administrative regulation prescribes the examination process for licensees of the Department of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for, or as an aid to the effectuation of, any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.9-160(1) requires the commissioner to promulgate administrative regulations to develop and conduct examinations required by Subtitle 9 of the Kentucky Insurance Code. KRS 304.9-230(2) requires the commissioner to promulgate administrative regulations regarding examinations for limited lines of authority. KRS 304.15-700(2)(a) requires the commissioner to promulgate administrative regulations regarding the required training and examination for life settlement brokers, and KRS 304.15-270 authorizes the commissioner to promulgate regulations to implement KRS 304.15-700 through 304.15-720. This administrative regulation restricts the number of times an applicant for an agent's, life settlement broker's, consultant's, independent adjuster's, staff adjuster's, or public adjuster's license may take the appropriate examination required by the Kentucky Insurance Code, as defined in KRS 304.1-010, establishes the minimum score for successful

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completion of a written licensing examination, and establishes the period for which examination scores are valid.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory provisions for licensing and examination by specifying the minimum passing score, procedures to retake an examination, the examination required for each line of authority and the length of time in which results are valid.

(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 remove the limitation on the number of times an individual can test in a 120-day period. The current requirement is to allow for three (3) examinations in a 120-day period.

(b) The necessity of the amendment to this administrative regulation: The previous requirement was implemented prior to electronic testing and prior to remote testing sites. This standard better reflects the current practice in today's electronic environment. Further, it accommodates individuals who may otherwise lose employment opportunities by waiting 120 days prior to re-testing.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for, or as an aid to the effectuation of, any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.9-160(1) requires the commissioner to promulgate administrative regulations to develop and conduct examinations required by Subtitle 9 of the Kentucky Insurance Code. KRS 304.9-230(2) requires the commissioner to promulgate administrative regulations regarding examinations for limited lines of authority. KRS 304.15-700(2)(a) requires the commissioner to promulgate administrative regulations regarding the required training and examination for life settlement brokers, and KRS 304.15-270 authorizes the commissioner to promulgate regulations to implement KRS 304.15-700 through 304.15-720. This amendment removes the limitation on the number of times an individual may take an examination in a 120-day period.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will accommodate applicants who may need additional opportunities to successfully pass an examination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact an undetermined number of applicants for an agent's, life settlement broker's, consultant's, independent adjuster's, staff adjuster's, or public adjuster's license.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will have expanded opportunities to successfully pass a licensure examination.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Pursuant to 806 KAR 4:010, the cost to take an examination is fifty (\$50) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, individuals can complete the examination requirements necessary for licensure from the Department of Insurance.

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

(a) Initially: There should not be an initial cost to implement this regulation.

(b) On a continuing basis: There should not be a continuing cost to implement this regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budg-

et of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The Department does not anticipate an increase in fees or funding will be necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all applicants for licensure.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation and, specifically, the Agent Licensing Division.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.9-160(1), 304.9-230(2), 304.15-700(2)(a), 304.15-720

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

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

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

(c) How much will it cost to administer this program for the first year? There should not be a significant cost to administer this program initially.

(d) How much will it cost to administer this program for subsequent years? There should not be a significant cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The cost to take an examination is \$50. The amendment proposes to expand the opportunities to take an examination during a 120-day period from three (3) to an unlimited number. Anecdotally, the Department has received increase inquiries from applicants requesting a waiver to take an examination more than three (3) times in the 120-day period. However, it is unknown how many applicants will take advantage of the increased opportunities afforded through the proposed amendment.

### ENERGY AND ENVIRONMENT CABINET Kentucky State Board on Electric Generation and Transmission Siting (Amendment)

#### 807 KAR 5:100. Board application fees.

RELATES TO: KRS 278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, 278.716, 2011 Ky. Acts ch. 82, sec. 6  
STATUTORY AUTHORITY: KRS 278.702(3), 278.706(3), 278.706(5), 278.714(6) [KRS 278.040(3)]

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NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702 creates the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) directs the permanent members of the board to promulgate administrative regulations in accordance with KRS Chapter 13A to implement KRS 278.700 to 278.716. KRS 278.706(3) provides that application fees for a construction certificate shall be set by the board and deposited into a trust and agency account to the credit of the Kentucky Public Service Commission. KRS 278.706(5) directs the board to promulgate administrative regulations establishing fees to cover the expenses associated with review of applications filed pursuant to KRS 278.700 to 278.716[278-704]. KRS 278.706(5) provides that, if a majority of the members of the board find that an applicant's initial fees are insufficient to pay the board's expenses for review of the application, including the board's expenses associated with legal review of the application, the board shall assess a supplemental application fee to cover the additional expenses. An application filed with the board concerns: (1) construction of a merchant electricity generating plant; (2) transfer of authority to construct and operate a merchant electricity generating plant; [or] (3) construction of a nonregulated transmission line; or (4) construction of a carbon dioxide transmission pipeline. KRS 278.706(5) provides that an applicant's failure to pay a fee assessed pursuant to KRS 278.706 shall be grounds for denial of the application. KRS 278.714(6) directs the board to promulgate administrative regulations to establish an application fee for a construction certificate for nonregulated electric transmission lines and carbon dioxide transmission pipelines. This administrative regulation establishes an initial application fee for each type of application filed with the board and specifies the method by which a supplemental fee may be assessed.

Section 1. Application Fee to be Filed with an Application to Construct a Merchant Electricity Generating Plant. A person seeking to obtain a certificate to construct a merchant electricity generating plant shall submit with its application to the Kentucky State Board on Electric Generation and Transmission Siting, at the offices of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky, an initial application fee of \$1,000 per megawatt of electricity generating capacity, based on the manufacturer's nameplate rated capacity of the proposed construction, except that the initial application fee for each application for each plant shall be in an amount not less than \$40,000 and not more than \$200,000.

Section 2. Application Fee to be Filed with an Application to Construct a Nonregulated Transmission Line. A person seeking board approval of construction of a nonregulated transmission line shall file with its application to the board a fee of fifty (50) dollars per kilovolt of rated capacity per mile of length, except that the initial application fee shall be in an amount not less than \$10,000 and not more than \$200,000.

Section 3. Application Fee to be Filed with an Application to Construct a Carbon Dioxide Transmission Pipeline. A person seeking board approval of construction of a carbon dioxide transmission pipeline shall file with its application to the board a fee of \$500 per mile of length, except that the initial application fee shall be in an amount not less than \$10,000 and not more than \$200,000.

Section 4. Application Fee to be Filed with an Application to Transfer a Certificate to Construct a Merchant Electricity Generating Facility. A person seeking board approval to transfer any right or obligation associated with a certificate granted by the board to construct a merchant electricity generating facility shall file with its application to the board, at the offices of the Kentucky Public Service Commission, at 211 Sower Boulevard, Frankfort Kentucky, an initial application fee of \$5,000.

Section 5[4]. Supplemental Application Fee. No sooner than thirty (30) days after an application has been filed and no later than sixty (60) days after issuance of the board's final decision on an application or, if an applicant has sought judicial review in accordance with KRS 278.712(5), no later than sixty (60) days after all appeals of the board's decision have been exhausted, the board

may assess a supplemental application fee to cover an expense related to review of an application filed pursuant to KRS 278.704, 278.710, or 278.714, for which the initial application fee is insufficient. The supplemental fee shall be assessed by order containing an accounting of each expense for which the supplemental fee is assessed.

Section 6[5]. Refund. No later than sixty (60) days after issuance of the board's final decision on an application or, if judicial review has been sought, no later than sixty (60) days after all appeals of the board's decision have been exhausted, the board shall refund to the applicant any amount paid which exceeds the amount expended by the board.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 14, 2011 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2011 at 9:30 a.m. at the Public Service Commission's office, Hearing Room 2, 211 Sower Boulevard, Frankfort, Kentucky 40602. Individuals interested in attending this hearing shall notify this agency in writing October 17, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Quang Nguyen, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615, phone (502) 564-3940, fax (502) 564-3460.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Quang Nguyen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees related to applications filed under the jurisdiction of the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board or Board).

(b) The necessity of this administrative regulation: This administrative regulation establishes the initial filing fee for an application with the Siting Board for a construction certificate for a carbon dioxide transmission pipeline pursuant to KRS 278.714.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 278.706(5), this administrative regulation establishes the initial filing fee for an application with the Siting Board for a construction certificate for a carbon dioxide transmission pipeline pursuant to KRS 278.714. Pursuant to Senate Bill 50 (2011 Ky. Acts ch. 82, sec. 6), the Board was given jurisdiction over the siting of carbon dioxide transmission pipelines in Kentucky, in addition to its existing authority over the siting of merchant electric generating facilities and nonregulated electric transmission lines.

(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 implementation of the statutes by ensuring that the Siting Board's expenses for reviewing an application for a carbon dioxide transmission pipeline are funded by an appropriate application fee, as mandated by KRS 278.706(5). If, pursuant to KRS 278.714(1) (as amended by 2011 Ky. Acts ch. 82, sec. 6) the Board hires a consultant to review a carbon dioxide transmission pipeline application, the filing fee pays for the cost of the consultant's review and report. It is anticipated that a consultant's report for a carbon dioxide transmission pipeline could cost between \$20,000 and \$50,000 (or more), depending upon the length of the proposed pipeline and the complexity of the

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issues presented by the proposed route. The filing fee also funds Staff salaries, travel expenses for the Board and Staff to review the proposed route and conduct a local public hearing, and all other miscellaneous expenses (printing, postage, etc.) associated with review of an application. The costs associated with litigating an appeal of a Siting Board final order are also funded by the application fee. Pursuant to 807 KAR 5:100, Section 4, the Board can assess a supplemental filing fee if the expenses for reviewing the application or for conducting any subsequent appeals litigation are greater than the initial filing fee. If any amount of the filing fee deposited by the applicant is not expended by the Board in its review of the application or in any appeal, the Board must refund the remaining filing fee to the applicant within 60 days of the issuance of the final order (or 60 days after all appeals of a final order have been exhausted) pursuant to 807 KAR 5:100, Section 5.

(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 amended Section 3 will establish an initial filing fee of \$500 per mile of carbon dioxide transmission pipeline, as specified in the application, with a minimum fee of \$10,000 and a maximum fee of \$200,000. The "Relates To" section is amended to add "KRS 278.708" and "KRS 278.716" which were not previously included in the regulation for unknown reasons, as these statutes are also related to the substance of the regulation and are mentioned in the body of the regulation. The "Relates To" section is further amended to include "Ky. Acts ch. 82, sec. 6" as the authority to establish a filing fee for carbon dioxide transmission pipeline applications is contained in Senate Bill 50, which was passed during the 2011 Regular Session and signed into law on March 16, 2011. That law has not yet been codified in the Kentucky Registered Statutes. Therefore, in compliance with KRS 13A.222(4)(m)2, the reference to 2011 Ky. Acts ch. 82, sec. 6 is included herein. In compliance with KRS 13A.222(4)(m)3, the Siting Board will notify the regulations compiler of the proper citation of the Kentucky Revised Statutes in writing once the law is codified in the Kentucky Registered Statutes, at which time the regulations compiler should eliminate the reference to 2011 Ky. Acts ch. 82, sec. 6, as that law amended existing statutes which are already referenced in the "Relates To" section.

The "Statutory Authority" section is amended to eliminate "KRS 278.040(3)," which provides authority to the Public Service Commission to adopt regulations in conformity with KRS Chapter 13A. 807 KAR 5:100 is a regulation under the jurisdiction of the Siting Board, not the Public Service Commission. KRS 278.702(3) provides authority to the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716. Therefore, "KRS 278.702(3)" is added to the "Statutory Authority" section in order to properly reflect the appropriate statutory authority. "KRS 278.706(3)" and "KRS 278.714(6)" are also added to the "Statutory Authority" section, as each of those statutes also provides authorization to the board to promulgate regulations regarding filing fees. The "Necessity, Function, and Conformity" section is also amended to delete "KRS 278.704" and to substitute "KRS 278.700 to 278.716," in order to conform to the language in KRS 278.706(5), which mandates that filing fees be established for all applications "filed...pursuant to KRS 278.700 to 278.716," not just applications filed under KRS 278.704, as the regulation is currently worded. The "Necessity, Function, and Conformity" section is further amended to include "construction of a carbon dioxide transmission pipeline" among the items for which an application may be filed with the Board. In addition, the section numbers following the new Section 3 are renumbered.

(b) The necessity of the amendment to this administrative regulation: Without adding a new section establishing the initial application fee for an application for a carbon dioxide transmission pipeline the Siting Board would have no filing fee funds with which to carry out its review of such applications. The additional changes to the regulation are required in order to reflect the appropriate statutory authority under which the regulation is promulgated and in order to renumber the sections of the regulation following the addition of the new Section 3.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.706(5) mandates that the Board promul-

gate administrative regulations prescribing filing fees that must be used to pay the expenses associated with the Board's review of all applications filed pursuant to KRS 278.700 to 278.716. This regulatory amendment adds a filing fee for applications for carbon dioxide transmission pipelines, which were placed under the Siting Board's jurisdiction by 2011 Ky. Acts ch. 82, sec. 6.

(d) How the amendment will assist in the effective administration of the statutes: Under the current administrative regulation, there is no filing fee for a carbon dioxide transmission pipeline application. This amendment will provide a reasonable filing fee pursuant to KRS 278.706(5), which will allow the Siting Board to fund its review of such applications and any further judicial review made necessary by an appeal of a final order in such cases.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all individuals, businesses, organizations, and other entities that seek to construct merchant electric generation facilities capable of operating at a capacity of 10 MW or greater, nonregulated electric transmission lines capable of operating at or above 69 kilovolts, or carbon dioxide transmission pipelines of any size within the boundaries of the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The proposed administrative regulation will impact any party that files an application for a construction certificate for a carbon dioxide transmission pipeline with the Siting Board. The applicant will have to submit a filing fee along with the application in an amount as calculated by the number of miles of pipeline proposed in the application times \$500, but no less than \$10,000 and no greater than \$200,000.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Between \$10,000 and \$200,000, depending on the length of the proposed pipeline.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will be ensured that the Siting Board will have the appropriate resources necessary to provide timely review of their applications for construction certificates.

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

(a) Initially: Implementation of the administrative regulation does not involve costs in addition to those already implicated by statutory requirements.

(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 funding increase is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, it establishes a filing fee for carbon dioxide transmission pipeline applications before the Siting Board.

(9) TIERING: Is tiering applied? Tiering is not used in this proposed amendment. This amendment applies equally to all applicants for a certificate from the Siting Board, because there is no rational need to provide for different levels of filing fees for applicants seeking a construction certificate for a carbon dioxide transmission pipeline, as the Siting Board's review of such applications will be based on the same criteria regardless of who the applicant may be, and the applicants for such construction certificates will be companies or corporations which, pursuant to KRS 154.27-020(4)(f) (as amended by Senate Bill 50) must make a minimum capital investment of fifty million dollars (\$50,000,000) in order to qualify for the incentives under the Incentives for Energy Independence Act. All companies or corporations having the ability to make

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a capital investment of at least \$50 million dollars should have the ability to pay a filing fee under the amended regulation which will amount to a minor fraction of the total expense for the pipeline project. Therefore, tiering principles do not apply.

### 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 proposed administrative regulation will impact any party that files an application for a construction certificate for a carbon dioxide transmission pipeline.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 278.702(3), 278.706(5), 278.714 and 2011 Ky. Acts ch. 82, sec. 6.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? 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 (+/-): -0-

Expenditures (+/-): -0-

Other Explanation:

### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET Kentucky State Board on Electric Generation and Transmission Siting (Amendment)

#### 807 KAR 5:110. Board proceedings.

RELATES TO: KRS 278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, 278.716, and 2011 Ky. Acts ch. 82, sec. 6[278.702(3)]

STATUTORY AUTHORITY: KRS 278.702(3) [KRS 278.040(3)]

NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702 creates the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) requires the board to promulgate administrative regulations to implement KRS 278.700 to 278.716. KRS 278.712(2) requires the board to promulgate administrative regulations governing a board hearing. KRS 278.706(2)(c) requires an applicant seeking to obtain a construction certificate from the board to give proper notice of his intention to the public. This administrative regulation establishes procedures related to applications, filings, notice requirements, hearings, and confidential material.

Section 1. General Matters Pertaining to All Formal Proceedings. (1) Address of the board. Written communication may be addressed to "Kentucky State Siting Board on Electric Generation and Transmission Siting, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602-0615[40604]".

(2) Form of papers filed. A pleading in a formal proceeding shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double-spaced. (3) Signing of pleadings.

Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.

(4) Service of process. If a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

Section 2. Notice of Intent to File Application. (1) At least thirty (30) days but no more than six (6) months prior to filing an application to construct a carbon dioxide transmission pipeline, merchant electricity generating plant or nonregulated electric transmission line, an applicant shall file at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky [40604] 40602, a Notice of Intent to File Application. If an applicant fails to file an application within six (6) months of the filing of such a Notice, the Notice shall automatically expire without further notice to the applicant.

(2) A Notice of Intent to File Application shall include:

(a) The name, address, and telephone number of the person who intends to file the application;

(b) A brief description of the proposed construction that will be the subject of the application;

(c) A description of the location of the proposed construction, including:

1. The name of the city and county in which the construction will be proposed;

2. The street address and latitude and longitude of the site of the construction to be proposed; and

3. Whether the proposed construction will be within the boundaries of a city;

(d) The address of the planning and zoning commission, if any, with jurisdiction over the site of the construction to be proposed;

(e) If applicable, a description of the setback requirements of the planning and zoning commission with jurisdiction over the site of the construction to be proposed; and

(f) If the planning commission's setback requirements are less stringent than those prescribed by statute, or if the planning commission with jurisdiction, if any, has not established setbacks, a statement as to whether a deviation from the statutory setback requirements will be requested in the application.

Section 3. Board Applications and Subsequent Filings. (1) An applicant shall file an original and ten (10) paper copies, and one (1) copy in electronic format, of its application at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602[40604].

(2) A paper copy of an application shall:

(a) Be in a bound volume with each document tabbed; and

(b) Contain a table of contents that lists, for each document enclosed,

1. The number of the tab behind which the document is located;

2. The statutory provision pursuant to which the document is submitted; and

3. The name of the person who will be responsible for responding to questions concerning information contained in the document.

(3) Administrative staff for the board shall determine whether the application is administratively complete and shall inform the applicant of its determination by letter.

(4) The secretary may reject for filing any document that on its face does not comply with an administrative regulation of the board.

Section 4. Intervention and Parties. (1) A person who wishes to become a party to the proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene.

(2) A motion to intervene shall be granted if the movant has shown:

(a) That he has a special interest in the proceeding; or

(b) That his participation in the proceeding will assist the board in reaching its decision and would not unduly interrupt the proceeding.



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Section 5. Confidential Material. (1) Material on file with the board shall be available for examination by the public unless the material is determined to be confidential.

(2) Procedure for determining confidentiality.

(a) A person requesting confidential treatment of material related to his application shall file a petition with the Executive Director. The petition shall:

1. In accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884, set forth each basis upon which the petitioner believes the material should be classified as confidential; and

2. Attach one (1) copy of the material which identifies, by underscoring, highlighting with transparent ink, or other reasonable method, only the portion alleged to be confidential. A text page or portion thereof which does not contain confidential material shall not be included in the identification.

(b) The petition, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with the portion for which confidentiality is sought obscured, shall be filed with the board.

(c) The petition and a copy of the material, with only the portion for which confidentiality is sought obscured, shall be served on each party. The petition shall contain a certificate of service on each party.

(d) The burden of proof to show that the material is exempt from the disclosure requirements of the Kentucky Open Records Act shall be upon the person requesting confidential treatment.

(e) A person may respond to the petition for confidential treatment within five (5) days after it is filed with the board.

(3) Pending action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the petition for confidential treatment of material is denied, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to petition the board directly or to seek other remedy afforded by law.

(5) Procedure for requesting access to confidential material filed in any proceeding.

(a) A party to a proceeding before the board shall not cite confidentiality as a basis for failure to respond to a discovery request by the board or its staff or any other party to the proceeding. If a party responding to a discovery request seeks to have a portion or all of the response held confidential by the board, it shall follow the "Procedure for Determining Confidentiality" in subsection (2) of this section. A party's response to a discovery request shall be served upon each party, with only the portion for which confidential treatment is sought obscured.

(b) If confidential protection is granted and if each party has not entered into a protective agreement, then a party may petition the board requesting access to the material on the basis that it is essential to a meaningful participation in the proceeding. The petition shall include a description of any effort made to enter into a protective agreement. Unwillingness to enter into a protective agreement shall be fully explained. A party may respond to the petition within five (5) days after it is filed with the board. The board shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Request for access to records pursuant to KRS 61.870-61.884. A time period prescribed in this section shall not limit the right of a person to request access to a board record pursuant to KRS 61.870-61.884. Upon a request filed pursuant to KRS 61.870-61.884, the board shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) Procedure for requesting access to confidential material. A person denied access to a record requested pursuant to KRS 61.870-61.884 or to material deemed confidential by the board in accordance with the procedure set out in this section, may obtain the information only pursuant to KRS 61.870-61.884, and other applicable law.

(8) Use of confidential material during a formal proceeding. Material deemed confidential by the board may be addressed and relied upon during a formal hearing by the following procedure:

(a) The person seeking to address the confidential material shall advise the board prior to the use of the material.

(b) Except for members of the board or its staff, a person not a party to a protective agreement related to the confidential material

shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(9) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) ~~[(10)]~~ The petitioner who sought confidential protection shall inform the executive director in writing if any material granted confidentiality becomes publicly available.

(b) If the executive director becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, he shall by letter so advise the petitioner who sought confidential protection, giving ten (10) days to respond. If the executive director becomes aware that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or board order, such information shall not be deemed or considered to be publicly available and shall not be placed in the public record.

(c) The material shall not be placed in the public record for twenty (20) days following any order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.

Section 6. Evidentiary Hearings. (1) Upon its own motion or on written motion of a party to a case before it, filed no later than thirty (30) days after an application has been filed, the board may schedule an evidentiary hearing.

(2) A party wishing to present an expert witness at an evidentiary hearing shall, no later than five (5) days prior to the hearing date, file with the board, with a copy to each party of record, the report prepared by the expert and a full description of the credentials qualifying the witness to testify as an expert on the subject matter for which he will testify.

(3) No later than five (5) days prior to an evidentiary hearing, a party to the case shall file the name of each witness he expects to present at the hearing, together with a brief statement of each matter regarding which the witness will testify.

(4) An evidentiary hearing shall be conducted before the board or before a person designated by the board to conduct a specific hearing.

(5) Testimony before the board shall be given under oath or affirmation.

(6) If an objection is made to the admission or exclusion of evidence before the board, the objecting party shall state briefly the basis for his objection.

(7) The board shall cause to be made a record of an evidentiary hearing.

Section 7. Filing of Briefs. A party of record may file a brief no later than seven (7) days after the conclusion of the evidentiary hearing.

Section 8. Local Public Hearings and Local Public Information Meetings. (1) A local public hearing or local public information meeting may be conducted before the board or before a person designated by the board to conduct a specific hearing;

(2) A request for a local public hearing or local public information meeting shall be made in writing and shall be filed no later than thirty (30) days after a complete application is filed.

(3) The board shall, at least fourteen (14) ~~ten (10)~~ days before the hearing date, give notice of the hearing or local public information meeting to:

(a) All parties to the proceeding;

(b) The judge/executive of the county in which the construction of the facility is to be located;

(c) The mayor of the city in which the facility is to be located, if applicable; and

(d) The planning commission with jurisdiction over the area in which the facility is to be located, if applicable.

(4) The board or its designated hearing officer shall accept unsworn, oral comment from any member of the public who provides his name and address on a sign-in sheet to be provided at the hearing or local public information meeting.

(5) Within seven (7) calendar days after the local public hearing or local public information meeting, administrative staff for the

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board shall file in the official record of the case, with a copy to each party of record, a summary of public comments made at the local hearing or local public information meeting that:

- (a) Identifies each person who made oral comments; and
- (b) Summarizes the comments received.

Section 9. Notice Requirements. (1) Notice of an evidentiary hearing. At least ~~three (3)~~ ~~[five (5)]~~ days before the hearing date, the applicant shall submit to the board proof that it has given notice of the hearing to each party and to the general public by publication in a newspaper of general circulation in the county or municipality in which the pipeline, plant or transmission line is proposed to be located.

(2) Notice of a local public hearing or local public information meeting. At least ~~[five (5)]~~ ~~three (3)~~ days before the hearing date or local public information meeting date, the applicant shall submit to the board proof that it has given the general public notice of the hearing or local public information meeting in a newspaper of general circulation in the county or municipality in which the pipeline, plant or transmission lines is proposed to be located.

(3) An applicant giving public notice pursuant to KRS 278.706(2) shall include in the notice the following information:

(a) A person who wishes to become a party to a proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene;

(b) A party may, upon written motion filed no later than thirty (30) days after an application has been filed, request the board to schedule an evidentiary hearing at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky; and

(c) A request for a local public hearing or local public information meeting shall be made by at least three (3) interested persons who reside in the county or municipal corporation in which the pipeline, plant or transmission line is proposed to be located. The request shall be made in writing and shall be filed within thirty (30) days following the filing of a completed application.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 14, 2011 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2011 at 9:30 a.m. at the Public Service Commission's office, Hearing Room 2, 211 Sower Boulevard, Frankfort, Kentucky 40602. Individuals interested in attending this hearing shall notify this agency in writing by October 17, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Quang Nguyen, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615, phone (502)564-3940, fax (502)564-3460.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures related to applications, filings, notice requirements, hearings, and confidential material under the jurisdiction of the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board).

(b) The necessity of this administrative regulation: This administrative regulation establishes the procedural rules for the Siting Board to administer KRS 278.700-278.716. 2011 Ky. Acts ch. sec. amended KRS 278.714 to vest the Siting Board with jurisdiction to

site carbon dioxide transmission pipelines in Kentucky. Therefore, the amendments are necessary to add language regarding carbon dioxide pipelines to the existing regulation. The "Relates To" section is amended to add "278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, and 278.716," which were not previously included in the regulation for unknown reasons, as these statutes are also related to the substance of the regulation and are mentioned in the body of the regulation. The "Relates To" section is further amended to include "Ky. Acts ch. 82, sec. 6" as the authority to establish a filing fee for carbon dioxide transmission pipeline applications is contained in Senate Bill 50, which was passed during the 2011 Regular Session and signed into law on March 16, 2011. That law has not yet been codified in the Kentucky Registered Statutes. Therefore, in compliance with KRS 13A.222(4)(m)2, the reference to 2011 Ky. Acts ch. 82, sec. 6 is included herein. In compliance with KRS 13A.222(4)(m)3, the Siting Board will notify the regulations compiler of the proper citation of the Kentucky Revised Statutes in writing once the law is codified in the Kentucky Registered Statutes, at which time the regulations compiler should eliminate the reference to 2011 Ky. Acts ch. 82, sec. 6, as that law amended existing statutes which are already referenced in the "Relates To" section. The "Statutory Authority" section is amended to eliminate "KRS 278.040(3)," which provides authority to the *Public Service Commission* to adopt regulations in conformity with KRS Chapter 13A. 807 KAR 5:100 is a regulation under the jurisdiction of the Siting Board, not the Public Service Commission. KRS 278.702(3) provides authority to the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716. Therefore, "KRS 278.702(3)" is added to the "Statutory Authority" section in order to properly reflect the appropriate statutory authority. This amendment also provides the proper zip code for the address of the board in Sections 1, 2 and 3. Since the initial promulgation of this regulation in 2002, the zip code for the Board's mailing address has changed from "40601" to "40602" and "40602-0615" for its post office box address. In addition, Section 5(9), regarding confidential materials, is amended to add language regarding the procedures to be followed if material granted confidentiality later becomes publicly available or no longer warrants confidentiality protection.

Section 8 is amended to include language regarding a "local public information meeting." Senate Bill 50 amended KRS 278.714(5) to provide that the Siting Board shall conduct a local public information meeting upon receipt of request from three (3) persons living in the county or counties where a carbon dioxide pipeline will be constructed. The amended statute provides that the local public information meeting will "provide an opportunity for members of the public to be briefed and ask the party proposing the carbon dioxide pipeline questions about the pipeline." Section 8(3), regarding local public hearings and local public information meetings, is amended to shorten the time period for the Board to provide notice to the parties and local government officials from twenty (20) days to fourteen (14) days. This amendment will provide the Board with more flexibility to schedule a local public hearing or information meeting at a date and time that is most convenient to the public and to the parties involved. Finally, this amendment also changes the time period for the applicant to provide notice to the public of the evidentiary hearing and local public hearing, pursuant to Section 9(1) and Section 9(2), respectively. This will allow the applicant sufficient time to publish its notice of publication. The Board's statutory deadline of either 90 days or 120 days (if a local public hearing is held), provide a very tight timeframe within which to conduct its review of an application. KRS 278.712 requires that any local public hearing must be conducted within 60 days of the filing of an application. 807 KAR 5:110, Section 8(2) provides that any request for a local public hearing must be filed within 30 days of the filing of the application. As currently written, 807 KAR 5:110, Section 8(3) requires the Board to provide 20 days notice of a local public hearing to the parties, the local judge/executive, and the mayor of the city in which the facility is to be constructed. Working in concert, these statutory and regulatory provisions provide a very short, 10-day window within which the Board must hold a local public hearing, if requested. Shortening the notice provision to 14 days will enlarge that time period to a 14-

day window, which will allow much more flexibility to schedule a local public hearing at an appropriate time and place. In addition, reducing the period of time in which the applicant must file the proof of publication in advance of an evidentiary hearing or local public hearing would allow an applicant a reasonable period of time to arrange for the local publication of that notice and to file proof that such notice has been published in the record of that proceeding.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedural rules necessary to implement the authorizing statutes, KRS 278.700 to 278.716, as required by KRS 278.702(3).

(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 implementation of the statutes by ensuring that the Siting Board has procedures in place to process applications submitted to it.

(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 to the regulation

(b) The necessity of the amendment to this administrative regulation: 2011 Ky. Acts ch. 82, sec. 6 amended KRS 278.714 to place carbon dioxide transmission pipelines under the Siting Board's jurisdiction. As currently written, 807 KAR 5:110 does not mention carbon dioxide transmission pipelines. Therefore, it is necessary to add such language to the regulation to reflect the change to the statute.

It is also necessary to amend the regulation to provide the proper zip code for the Board in order to ensure that application materials are mailed to the proper location. Likewise, it is necessary to amend Section 5(9), regarding confidential materials, to include language that was unintentionally omitted when the regulation was initially promulgated in 2002. The amended language provides the procedures to follow in the event that material granted confidentiality later becomes publically available or no longer warrants confidential protection. It is necessary to add language regarding a "local public information meeting," to Section 8, as Senate Bill 50 amended the language of KRS 278.714(5) to require the Board to hold such a meeting if requested by three (3) interested persons. Currently, Section 8 refers only to a "local public hearing." It is necessary to amend Section 8(3) to shorten the notice provision for local public hearings from 10 days to 20 days in order to provide more flexibility to the Board to schedule such hearings at an appropriate time and place. KRS 278.712 mandates that any local public hearing must be conducted within 60 days of the filing of an application and Section 8(2) provides 30 days for persons to file a request for a local public hearing. Those requirements, combined with the current 20-day notice provision in Section 8(3), give the Board only a very small 10-day period within which a local public hearing may be scheduled. Changing the 20-day notice period to a 14-day notice period will provide a larger window of time within which a local public hearing can be scheduled. This will allow the Board to schedule the local public hearing at a time when proper facilities are available and at a time most convenient to the public and the parties involved. Furthermore, it will allow the Board flexibility to reschedule the local hearing if an emergency situation arises that might require such rescheduling. Finally, it is necessary to amend Sections 9(1) and (2) to shorten the requirement that an applicant must file proof of publication of notice of an evidentiary hearing and local public hearing from 5 days to 3 days in order to provide the applicant with a reasonable period of time in which to comply.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.702(3) provides authority to the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716. The addition of language concerning carbon dioxide transmission pipelines is required by the amendments to KRS 278.714 contained in 2011 Ky. Acts ch. 82, sec. 6. The additional amendments to the regulation are necessary in order to provide the correct the zip code for the Board's address, to provide procedures regarding confidential materials that were inadvertently omitted when the regulation was initially promulgated in 2002, and to provide language regarding a "local public information meeting."

The amendments to Sections 8(3), 9(1) and 9(2) regarding the notice provision for local public hearings and evidentiary hearings are reasonable changes, the necessity of which has been made evident by the Board's practical experience in administering the application review cases brought before it over the last nine years.

(d) How the amendment will assist in the effective administration of the statutes: The addition of language regarding carbon dioxide transmission pipelines will eliminate any question or confusion regarding whether an applicant for such construction certificate must follow the provisions of 807 KAR 5:100. The corrections to the Board's zip code will ensure that application materials are mailed to the appropriate address. Adding the missing procedures regarding confidential materials will eliminate any questions or confusion regarding the appropriate measures to be taken with confidential materials that are later released to the public or no longer warrant the protections of confidentiality. Adding language concerning a "local public information meeting" will ensure that there are procedures in place for both local public hearings and local public information meetings. Finally, amending the notice requirements regarding local public and evidentiary hearings will allow the Board greater flexibility to schedule such hearings when most convenient to the public and parties involved while at the same time providing the applicant reasonable time to comply with the proof of notice requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals, businesses, organizations, and other entities that seek to construct carbon dioxide transmission pipelines, merchant electric generation facilities, or nonregulated electric transmission lines.

(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 proposed administrative regulation will impact any party that files an application for a construction certificate for a carbon dioxide transmission pipeline, merchant electric generation facility, or nonregulated electric transmission line. The amended regulation applies the current requirements for applicants for generating facility or electric transmission line construction certificates to applicants for a construction certificate for a carbon dioxide transmission pipeline, pursuant to 2011 Ky. Acts ch. 82, sec. 6. The amendments correcting the zip code provided in the current regulation will require applicants to use the proper zip code on all filings with the Board. The remainder of the amendments concern procedures governing the manner in which the Siting Board administers the cases before it. Therefore, applicants will not have to take any actions concerning those matters.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): De minimis, if anything.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An applicant for a construction certificate for a carbon dioxide transmission pipeline will be ensured that his application to the Board will be handled in the same manner as applicants for construction certificates for merchant generating plants and nonregulated electric transmission lines.

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

(a) Initially: Implementation of the administrative regulation does not involve costs in addition to those already implicated by statutory requirements.

(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 funding increase is necessary.

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

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(9) TIERING: Is tiering applied? Tiering is not used in this proposed amendment. This amendment applies equally to all applicants for a certificate from the Siting Board, because there is no rational need to provide for alternative procedures based on applicable tiering principles.

### 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 proposed administrative regulation will impact any party that files an application for a construction certificate for a carbon dioxide transmission pipeline, a merchant electric generating facility, or a nonregulated electric transmission line.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 278.702(3), 278.712, and 278.714(6) (as amended by 2011 Ky. Acts ch. 82, sec. 6).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? 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 (+/-): -0-

Expenditures (+/-): -0-

Other Explanation:

### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

#### 810 KAR 1:090. Kentucky Thoroughbred Development Fund.

RELATES TO: KRS 230.225(7)(b), 230.400, 138.510

STATUTORY AUTHORITY: KRS 230.400

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.400 establishes the Kentucky Thoroughbred Development Fund and authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations as may be necessary to carry out its provisions and purposes. This administrative regulation establishes standards for eligibility and the administration of payments from the Kentucky Thoroughbred Development Fund.

Section 1. Definitions. (1) "Allowance race" means an overnight thoroughbred race for which eligibility and weight to be carried is determined according to specified conditions which include age, gender, earnings, and number of wins. "Allowance race" shall include allowance optional claiming races if the horse is entered under allowance conditions and not eligible to be claimed, but excludes starter allowance races.

(2) "Intra-state wagering" means monies wagered at a Kentucky thoroughbred association on thoroughbred races conducted at another Kentucky association.

(3) "Inter-state wagering" means monies wagered from a Kentucky thoroughbred association on thoroughbred races conducted

outside of Kentucky. [(4)] "KHRC" means the Kentucky Horse Racing Commission.

(4)[(5)] "KTDF" means the Kentucky Thoroughbred Development Fund.

(5)[(6)] "KTDF Advisory Committee" means the committee established by KRS 230.400(2) to advise and assist the KHRC in the development of a supplemental purse program pursuant to KRS 230.400(3)(a).

(6)[(7)] "KTOB" means the Kentucky Thoroughbred Owners and Breeders, Inc.

(7)[(8)] "Live racing handle" means the monies wagered by individuals present on association grounds on thoroughbred races physically conducted on association grounds.

(8)[(9)] "Nonclaiming maiden race" means a thoroughbred race in which:

(a) None of the runners have been previously declared a winner; and

(b) None of the runners are[is] eligible to be claimed.

(9)[(40)] "Nonlive racing handle" means the monies wagered at an association located in Kentucky on thoroughbred races not physically conducted at the association's grounds.

(10)[(41)] "Official Registrar" means the association recognized and designated as the sole official registrar of the KTDF for the purpose of registering Kentucky thoroughbred stallions and Kentucky bred thoroughbreds in accordance with KRS 230.400.

(11)[(42)] "KTDF eligible horse" means a horse registered with the Kentucky Thoroughbred Development Fund.

(12)[(43)] "Applicant" means the qualified entity who registers the foal or horse with the KTDF official registrar.

Section 2. KTDF Monies Earned. (1) One live thoroughbred association.

(a) Live racing handle. An association conducting live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of 0.75 percent of the total live racing handle pursuant to KRS 138.510(1).

(b) Nonlive racing handle. An association conducting live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of two (2) percent of the total nonlive racing handle pursuant to KRS 138.510(2), (3), and (4).

(2) More than one (1) live thoroughbred association. Unless there is an agreement among the thoroughbred associations conducting live racing to the contrary, if two (2) or more thoroughbred associations are conducting live racing on the same day, the monies earned from the handle for that day shall be divided as follows:

(a) The association conducting the live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of 0.75 percent of that association's live racing handle pursuant to KRS 138.510(1).

(b) The Intra-state wagering monies shall be allocated to that Kentucky thoroughbred associations[track] on which the wagering is placed for purposes of calculating that association's[track's] KTDF earnings.

(c) Inter-state wagering monies originating from an association conducting live thoroughbred racing shall be allocated to that association for purposes of calculating that association's[track's] KTDF earnings.

(d) Inter-State wagering monies from all other Kentucky associations shall be divided evenly among the associations conducting live racing.

Section 3. KTDF Reconciliation. (1) Each association shall file with the commission[KHRC] a copy of the pari-mutuel tax form filed with the Department of Revenue, along with a copy of the check submitted for each report. These reports shall be filed weekly.

(2) Each association shall report to the commission[KHRC] the actual KTDF purse distribution no later than fifteen (15) calendar days after the last day of a live race meeting.

(3) The commission[KHRC] shall on a monthly basis reconcile the weekly reports submitted by the association with the Department of Revenue's reports and deposits.

(4) If at the close of a live race meet, an association has a balance of monies earned for that meet which has not been distri-

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buted in actual KTDF purse distribution, then the association may choose one of the following options to distribute the remaining balance, subject to the approval of the KTDF Advisory Committee and the commission[KHRC]:

(a) Use KTDF monies previously earned to supplement purses at future live racing meets held by that association; or

(b) Use KTDF monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations.

(5) Reasonable and customary administrative charges for time spent reconciling the KTDF account shall be charged to each association by the commission[KHRC] based on the percentage of funds generated by each association for the previous calendar year.

(6) An association, at its option, may pay advertising charges billed to the association by the KTOB from the association's KTDF available balance.

(7) Each association shall sign an agreement stating that it accepts and agrees with the reconciliation prior to reimbursement of any KTDF funds.

Section 4. Purse Structure. Each association shall submit its KTDF purse structure proposal to the KTDF Advisory Committee for approval at least forty-five (45) days prior to the opening day of the live racing meet. The KTDF Advisory Committee shall review the proposed purse structure and make a recommendation to the commission[KHRC] whether or not to approve the proposed purse structure based upon the best interests of Kentucky racing.

Section 5. Consent to Investigate by KTDF Applicants. The filing of a registration with the official registrar shall authorize the KTDF Advisory Committee and commission to investigate and verify information provided by the Applicant.

Section 6. Denial or Revocation of Registration. (1) The KTDF Advisory Committee may recommend to the commission to deny or revoke the registration of a horse to the KTDF if the Applicant:

(a) Provides the official registrar of the KTDF, the KTDF Advisory Committee or the commission with incorrect, false, or misleading information concerning the registration of a foal or horse; or

(b) Violates this administrative regulation in any other manner.

(2) An applicant who provides incorrect, false or misleading information concerning the registration of a foal or horse or violates this administrative regulation in any other manner is subject to the following penalties:

(a) Denial or revocation of the registration of the horse with the KTDF; or

(b) A bar of the applicant from registering foals or horses to the KTDF for a period of one (1) to five (5) years, based on the seriousness of the violation, beginning with the year in which the violation occurred; and

(c) A second or subsequent violation of this administrative regulation may result in a lifetime bar of the applicant from being eligible to receive KTDF monies.

(3) The denial or revocation of the registration of a horse to the KTDF, and a bar of the applicant from registering foals or horses to the KTDF shall be subject to appeal and adjudication in accordance with 810 KAR 1:029 and KRS Chapter 13B.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 13, 2011

FILED WITH LRC: September 14, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, October 24, 2011 at 1:00 p.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by Monday, October 17, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on

the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of the Kentucky Thoroughbred Development Fund (the "KTDF").

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the efficient administration of the KTDF. It provides notice to participants regarding registration and eligibility standards for the program, as well as establishing a penalty structure for violations of the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.400(4), which created the KTDF, states: "The Kentucky Horse Racing Commission, with the advice and assistance of the Kentucky Thoroughbred Development Fund Advisory Committee, shall use the Kentucky thoroughbred development fund to promote, enhance, improve, and encourage the further and continued development of the thoroughbred breeding industry in Kentucky by providing, out of the Kentucky thoroughbred development fund, supplemental purses for designated stakes, handicap, allowance, and nonclaiming maiden races contested at licensed thoroughbred race meetings in Kentucky, the awarding and payment of which supplemental purses shall be conditioned upon the winning or placing in designated races by Kentucky bred thoroughbred horses." This administrative regulation establishes criteria by which racing associations can earn KTDF money to supplement purses for Kentucky bred horses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.400(7) states, "The Kentucky Horse Racing Commission shall promulgate administrative regulations as may be necessary to carry out the provisions and purposes of this section, including the promulgation of administrative regulations and forms as may be appropriate for the proper registration of Kentucky stallions and Kentucky bred thoroughbreds with the official registrar..." This administrative regulation establishes a registration system to facilitate participation in the program. It also creates a system by which racing associations can earn and distribute money for the benefit of owners and trainers of Kentucky-bred horses. The amendment establishes a penalty system for violations of the regulation so that the funds therein may be preserved for horsemen who participate in compliance with the rules.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes a penalty system for violations of the regulation so that the funds therein may be preserved for horsemen who participate in compliance with the rules.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.400(7) states, "[T]he Kentucky Horse Racing Commission shall promulgate administrative regulations as may be necessary to carry out the provisions and purposes of this section, including the promulgation of administrative regulations and forms as may be appropriate for the proper registration of Kentucky stallions and Kentucky bred thoroughbreds with the official registrar, and shall administer the Kentucky bred thoroughbred program created hereby in a manner best designed to promote and aid in the further development of the thoroughbred breeding industry in Kentucky, to upgrade the quality of thoroughbred racing in

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Kentucky, and to improve the quality of thoroughbred horses bred in Kentucky." The amendment fulfills that statutory mandate by ensuring that participants have complied with the regulation and, if they have not, it provides a penalty system to punish violations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment addresses violations of the regulation and creates a penalty structure to punish those that do not abide by the requirements of the regulation. The ability to punish violations by revoking or denying improper registrations ensures that KTDF money will not go to those who are not entitled to it.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation directly affects Kentucky's licensed racing associations that offer thoroughbred racing and owners of Kentucky bred thoroughbreds. The regulation indirectly affects everyone involved in thoroughbred racing, including farm owners and employees; veterinarians and equine health care facilities; horse transportation companies; farriers; suppliers of hay, feed and grain; equine supply companies providing medical sales, daily maintenance care and tack; Kentucky thoroughbred sale companies; equine tourism generating state/local room taxes for lodging, gasoline tax on travel and transportation of horses; farm equipment retail stores and maintenance services; and state and local payroll tax generated by the above businesses.

(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: Owners wishing to register horses to the KTDF will have to comply with the regulation and will be subject to the disciplinary procedures if they violate any of its provisions. The racing associations will have to comply with the reconciliation provisions to make certain they receive the proper KTDF allotments. The remainder of the entities identified in question (3) will not have any responsibilities under the amendment but will simply reap the benefits of a bigger and stronger thoroughbred industry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): See response to question (2)(a).

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

(a) Initially: There may be some costs associated with investigating potential violations. Those costs will depend on the scope of the alleged prohibited activity.

(b) On a continuing basis: See answer to question (5)(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KTDF is funded by the pari-mutuel tax established by KRS 138.510.

(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.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to all participants.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.400.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The greatest increase to the state & local government will be the increase in payroll taxes by all participants noted in Regulatory Impact Analysis & Tiering Statement, Section (3).

(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? Continued growth and participation in the program will increase benefits to the state and local government on an annual basis.

(c) How much will it cost to administer this program for the first year? There will be no additional costs beyond the nominal costs of investigating alleged violations of the regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs beyond the nominal costs of investigating alleged violations of the regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

#### 902 KAR 100:142. Wire line service operations.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 39[.77]

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 10 C.F.R. 39[.77]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires [authorizes] the Cabinet for Health and Family Services [Human Resources] to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides radiation safety requirements for persons using sources of radiation for wire line service operations including radioactive markers, mineral exploration, and subsurface tracer studies.

Section 1. Agreement with Well Owner or Operator. (1) A licensee shall not perform a wire line service operation [operations] with a sealed source in a well or well-bore unless, prior to commencement of the operation, the licensee has a written agreement with the well operator, well or land owner, or drilling contractor that:

(a)[(4)] If a sealed source is lodged downhole, a reasonable effort at recovery shall be made;

(b)[(2)] If a decision is made to abandon the sealed source downhole, the requirements of this administrative regulation shall be met;

(c)[(3)] A person shall not attempt to recover a sealed source in a manner, which, in the licensee's opinion, may result in its rupture;

(d)[(4)] The radiation monitoring required in Section 14[20] of this administrative regulation shall be performed;

(e)[(5)] If the environment, equipment, or personnel are contaminated with radioactive material, decontamination shall be performed prior to release from the site or for unrestricted use; and

(f)[(6)] If the sealed source is classified as not retrievable after reasonable efforts at recovery have been expended, the requirements of Section 23 of this administrative regulation shall be met.

(2)[(7)] The licensee shall retain a copy of the written agree-

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ment with the well operator, well or land owner, or drilling contractor for three (3) [two (2)] years after completion of the well logging operations.

Section 2. Limits on Levels of Radiation. Radioactive materials shall be used, stored, and transported in a manner that the requirements of 902 KAR 100:019 and ~~[902 KAR] 100:070[.]~~ shall be met.

Section 3. Storage Precautions. (1) Sources of radiation, except accelerators, shall be provided with a lockable storage or transport container.

(2) The container shall be provided with a lock (or tamper seal for calibration sources) to prevent unauthorized removal of, or exposure to, the source of radiation.

~~(3)[(2)]~~ Sources of radiation shall be stored in a manner that [which] shall minimize the danger from explosion or fire.

Section 4. Transport Precautions. Transport containers shall be physically secured to the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal.

Section 5. Radiation Survey Instruments. (1) The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments, capable of detecting beta and gamma radiation, at each field station and temporary jobsite to make physical radiation surveys as required by this administrative regulation and by 902 KAR 100:019.

(2) Instrumentation required by this section shall be capable of measuring one-tenth (0.1) millirem [milliroentgen] (.001 mSv) per hour through at least fifty (50) millirem [milliroentgens] (0.5 mSv) per hour.

(3) A radiation survey instrument shall be calibrated:

(a) At intervals not to exceed six (6) months and after each instrument servicing;

(b) At energies and exposure levels appropriate for use; and

(c) So that accuracy within plus or minus twenty (20) percent of the true radiation level shall [may] be demonstrated on each scale.

(4) Records of calibration shall be maintained for a period of two (2) years for inspection by the cabinet.

Section 6. Leak Testing of Sealed Sources. (1) A licensee who uses a sealed source[Sealed-sources] of radioactive material shall have the source [be] tested for leakage as specified in this section [and contamination pursuant to 902 KAR 100:060]. The licensee shall keep a record of leak test results in units of microcuries and retain the record for inspection by the cabinet.

(2) Method of Testing.

(a) The wipe of a sealed source shall be performed using a leak test kit or method approved by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state;

(b) The wipe sample shall be taken from the nearest accessible point to the sealed source where contamination might accumulate;

(c) The wipe sample shall be analyzed for radioactive contamination; and

(d) The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample and shall be performed by a person approved by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state.

(3) Test Frequency.

(a) Each sealed source, except an Energy Compensation Source (ECS), shall be tested at intervals not to exceed six (6) months;

(b) In the absence of a certificate from a transferor that a test has been made within the six (6) months before the transfer, the sealed source shall not be used until tested.

(4)(a) Each ECS, not exempted by subsection (6) of this section, shall be tested at intervals not to exceed three (3) years. In the absence of a certificate from a transferor that a test has been made with the three (3) years before the transfer, the ECS shall not be used until tested.

(5) Removal from service:

(a) If the test conducted under subsections (1) and (2) of this

section reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed by a cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee authorized to perform these functions:

(b) The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by a cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee that is authorized to perform these functions.

(6) The licensee shall submit a report to the cabinet within five (5) days of receiving the test results, and the report shall describe the equipment involved in the leak, the test results, contamination that resulted from the leaking source, and the corrective actions taken up to the time that report is made.

(7) The following sealed sources shall be exempt from the periodic leak test requirements in subsections (1) through (5) of this section:

(a) Hydrogen – 3 (tritium) sources;

(b) Sources containing radioactive material with a half-life of thirty (30) days or less;

(c) Sealed sources containing radioactive material in gaseous form;

(d) Sources of beta- or gamma-emitting radioactive material with an activity of ten (10) microcuries (0.37 Bq) or less; and

(e) Sources of alpha- or neutron-emitting radioactive material with an activity of ten (10) microcuries (0.37 Bq) or less.

Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for sources of radiation received or possessed by the licensee or registrant.

(2) Records of inventories shall be maintained for two (2) years from the date of

the inventory for inspection by the cabinet and shall include:

(a) The quantities and kinds of sources of radiation;

(b) The location where sources of radiation are assigned;

(c) The date of the inventory; and

(d) The name of the individual conducting the inventory.

Section 8. Utilization Records. A licensee or registrant shall maintain current

records, which shall be kept available for inspection by the cabinet for two (2) years from the date of the recorded event showing the following information for each source of radiation:

(1) A description (or make and model number or serial number) of each source of radiation used;

(2) The identity of the logging supervisor responsible for the radioactive material

and identity of logging assistant present;

(3) Locations where used and dates of use; and

(4) In the case of tracer materials and radioactive markers, the utilization record shall also indicate the radionuclide and activity used at a particular well site.

Section 9. Design and Performance Criteria for Sealed Sources used in Downhole Operations. (1) A sealed source, except those containing radioactive material in gaseous form, used in downhole operations shall, as a minimum, meet the following criteria:

(a) Be of double encapsulated construction; [and]

(b) Contain radioactive material whose chemical and physical form shall be as insoluble and nondispersible as practicable; and [.]

(c) Meets the requirements of paragraphs (2), (3) and (4) of this section.

(2) For a sealed sources [sources] manufactured on or before July 14, 1989, a licensee may use the sealed source in well logging applications if it meets the requirements of USASI N5.10-1968, Classification of Sealed Radioactive Sources, or the requirements in paragraphs (3) or (4) of this section [except those containing radioactive material in gaseous form, in the absence of a certificate from a transferor certifying that an individual or a prototype sealed source meets the above criteria, the sealed source shall not be put into use until the determinations and testing have

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been performed].

(3) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well logging applications if it meets the oil-well logging requirements of ANSI/HPS N43.6-1997, Sealed Radioactive Sources – Classification [or sealed source prototype, except those containing radioactive material in gaseous form, used in downhole operations, shall be certified by the manufacturer, or other testing organization acceptable to the cabinet, as meeting the sealed source performance requirements for temperature, impact, vibration, puncture, and pressure tests for oil well logging as contained in the American National Standard N542, "Sealed Radioactive Sources, Classification]."

(4) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well logging applications if the sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(a) Temperature. The test source shall be held at minus forty (40) degrees Centigrade for twenty (20) minutes, 600 degrees Centigrade for one (1) hour, and then be subject to a thermal shock test with a temperature drop from 600 degrees Centigrade to twenty (20) degrees Centigrade within fifteen (15) seconds;

(b) Impact test. A five (5) kilogram steel hammer, two and five-tenths (2.5) centimeters in diameter, shall be dropped from a height of one (1) meter onto the test source;

(c) Vibration test. The test source shall be subject to a vibration from twenty-five (25) Hz to 500 Hz at five (5) g amplitude for thirty (30) minutes;

(d) Puncture test. A one (1) gram hammer and pin, three-tenths (0.3) centimeter in diameter, shall be dropped from a height of one (1) meter onto the test source.

(e) Pressure Test. The test source shall be subject to an external pressure of  $1.695 \times 10^7$  pascals (24,600 pounds per square inch absolute).

(5) The requirements in subsections (1) through (4) of this section shall not apply to sealed sources that contain radioactive material in gaseous form.

(6) The requirements in subsections (1) through (4) of this section shall not apply to ECS sources, which shall be registered with the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state.

(7) Certification documents shall be maintained for inspection by the cabinet for a period of two (2) years after source disposal.

(8) For sources abandoned downhole, certification documents shall be maintained until their disposal is authorized by the cabinet.

Section 10. Labeling. (1) A source, source holder, or logging tool containing radioactive material shall bear a durable, legible, and clearly visible marking or label that [which] has, as a minimum, the standard radiation symbol without color requirement and the following wording: DANGER (or CAUTION) RADIOACTIVE.

(2) This labeling shall be on the smallest component, for example, source, source holder, or logging tool, that is transported as a separate piece of equipment.

(3) A transport container shall have permanently attached to it a durable legible and clearly visible label that [which] has, at [as] a minimum, the standard radiation symbol and the following wording: DANGER (or CAUTION) RADIOACTIVE. Notify civil authorities (or name of company) if found.

Section 11. Inspection and Maintenance. (1) A licensee or registrant shall conduct, at intervals not to exceed six (6) months, a program of inspection of sealed sources and inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools to assure proper labeling, operation, and physical condition.

(2) Records of inspection and maintenance shall be maintained for a period of two (2) years for inspection by the cabinet.

(3) If an inspection conducted pursuant to this section reveals damage to labeling or components critical to radiation safety, the device shall be removed from service until repairs have been made.

(4) The repair, opening, or other modification of a sealed source shall be performed only by persons specifically authorized

to do so by the cabinet, the U. S. Nuclear Regulatory Commission, or an Agreement State.

(5) If a sealed source is stuck in the source holder, the licensee shall not perform any operation, for example drilling, cutting, or chiseling on the source holder unless the licensee is specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state to perform the operation.

Section 12. Training Requirements. (1) A licensee or registrant shall not permit an individual to act as a logging supervisor until the individual has:

(a) [Has successfully] Completed a course recognized by the cabinet, an Agreement State, or the U. S. Nuclear Regulatory Commission[;] covering the subjects outlined in Section 28[24] of this administrative regulation and shall have demonstrated an understanding of the subjects;

(b) [Has] Received copies of and demonstrated an understanding of the following:

1. The requirements contained in this administrative regulation;

2. [Other applicable] Provisions of 902 KAR Chapter 100;

3. The conditions of the license or registration certificate issued by the cabinet; and

4. The licensee's or registrant's approved operating and emergency procedures;

(c) [Has] Completed on-the-job training and demonstrated competence in the use of sources of radiation, related handling tools, and radiation survey instruments that [which] shall be employed in his assignment; and

(d) [Has] Demonstrated an understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written test.

(2) A licensee or registrant shall not permit an individual to act as a logging assistant until the individual has:

(a) [Has] Read and received instruction in the licensee's or registrant's operating and emergency procedures, the requirements contained in this administrative regulation[;] and other applicable provisions of 902 KAR Chapter 100 and shall have demonstrated understanding of the subjects;

(b) [Has] Demonstrated competence to use, under the personal supervision of the logging supervisor, the sources of radiation, related handling tools, and radiation survey instruments that [which] will be employed in his assignment; and

(c) [Has] Demonstrated understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written or oral test.

(3) A licensee or registrant shall maintain employee training records[;] for inspection by the cabinet for two (2) years following termination of employment.

Section 13. Operating and Emergency Procedures. The licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(1) The handling and use of sources of radiation to be employed so that an individual is not likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:019, Section 3;

(2) The handling and use of radioactive material including the use of sealed sources in wells without surface casing for protecting fresh water aquifers, if appropriate;

(3) The use of remote handling tools for handling sealed source and radioactive tracer material except low-activity calibration sources;

(4) Methods and occasions for conducting radiation surveys, including surveys for detecting contamination;

(5) Methods and occasions for locking and securing sources of radiation;

(6) Personnel monitoring and the use of personnel monitoring equipment;

(7) Transportation to temporary job sites and field stations, including:

(a) Packaging of sources of radiation in the vehicles;

(b) Placarding of vehicles, if needed; and

(c) Physically securing sources of radiation during transportation to prevent accidental loss, tampering, or unauthorized removal.



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al;

(8) Minimizing exposures of individuals from inhalation and ingestion of radioactive tracer material;

(9) The procedure for notifying proper personnel in the event of an accident;

(10) Maintenance of records, including records generated by logging personnel at temporary jobsites;

(11) The inspection of sealed sources;

(12) The inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools;

(13) The procedures that shall be followed in the event a sealed source is lodged downhole;

(14) Picking up, receiving, and opening packages containing radioactive material;

(15) Decontamination of the environment, equipment, and personnel, if tracers are used; and

(16) Actions to be taken if a sealed source is ruptured or a sealed source is lodged in a well, including steps to:

(a) Prevent the spread of contamination;

(b) Minimize inhalation and ingestion of radioactive material; and

(c) Obtain suitable radiation survey instruments as required by Section 5[6] of this administrative regulation.

Section 14. Personnel Monitoring. (1) A licensee or registrant shall not permit an individual to act as a logging supervisor or logging assistant unless the individual wears at all times [either a film badge or a thermoluminescent dosimeter (TLD)] during well service operations utilizing sources of radiation, a personal dosimeter that is processed and evaluated by an accredited NVLAP processor.

(2) A personal dosimeter [film badge or thermoluminescent dosimeter (TLD)] shall be assigned to and worn by only one (1) individual.

(3) Film badges shall be replaced monthly and other personal dosimeters [TLDs] replaced at least quarterly.

(4) After replacement, a personal dosimeter [film badge or TLD] shall be promptly processed.

(5) Personnel monitoring records shall be maintained for inspection by the cabinet until it authorizes their disposal.

Section 15. Security. During logging or tracer applications, the logging supervisor or other designated employee shall maintain direct surveillance of the operation to protect against unauthorized or unnecessary entry into a restricted area.

Section 16. Handling Tools. The licensee shall provide and require the use of tools that shall assure remote handling of sealed sources other than low activity calibration sources.

Section 17. Tracer Studies. (1) Protective gloves and other appropriate protective clothing shall be used by personnel handling radioactive tracer material.

(2) Care shall be taken to avoid ingestion or inhalation of radioactive material.

(3) A licensee shall not permit injection of radioactive material into potable aquifers without prior written authorization from the cabinet.

Section 18. Uranium Sinker Bars. The licensee may use a uranium sinker bar in well logging applications only if it is legibly impressed with the words "CAUTION – RADIOACTIVE – DEP-LETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."

Section 19. Energy Compensation Source (ECS). (1) The licensee may use an energy compensation source which is contained within a logging tool, or other tool components, only if the ECS contains quantities of radioactive material not exceeding 100 microcuries (3.7 MBq).

(2) For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of Sections 6, 7, and 8.

(3) For well logging applications without a surface casing for protecting fresh water aquifers, use of the energy compensation source is only subject to the requirements of Sections 1, 6, 7, 8, and 25.

Section 20. Use of a Sealed Source in a Well Without a Surface Casing. A licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure, approved by the Cabinet, for reducing the probability of the source becoming lodged in the well.

Section 21 [48]. Particle Accelerators. A licensee or registrant shall not permit above ground testing of particle accelerators if the testing will result [which results] in the production of radiation except in areas or facilities controlled or shielded so that the requirements of 902 KAR 100:019 shall be met.

Section 22. Tritium Neutron Generator Target Source. (1) Use of a tritium neutron generator target source, containing quantities not exceeding thirty (30) curies (1,110 GBq) and in a well with a surface casing to protect fresh water aquifers shall be established in this administrative regulation, except Sections 1, 9, and 27.

(2) Use of a tritium neutron generator target source, containing quantities exceeding thirty (30) curies (1,110 GBq) and in a well without a surface casing to protect fresh water aquifers shall be established in this administrative regulation, except Section 9.

Section 23 [49]. Radiation Surveys. (1) A radiation survey [Radiation surveys] shall be made and recorded for [of] each area where radioactive materials are stored and used.

(2) A radiation survey [Radiation surveys] shall be made and recorded of the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive materials.

(3) Each survey [The surveys] shall include each source of radiation and combination of sources of radiation transported in the vehicle.

(4) After removal of the sealed source from the logging tool and before departing the job site, the logging tool detector shall be energized, or a survey meter used, to assure that the logging tool is free of contamination.

(5) [(4)] A radiation survey [Radiation surveys] shall be made and recorded at the job site or well head for tracer operations, except for those using hydrogen-3, carbon-14, and sulfur-35.

(6) [(5)] Each survey [The surveys] shall include radiation levels prior to and after the operation.

(7) [(6)] Records required pursuant to this section shall include:

(a) The dates;

(b) The identification of the individual making the survey;

(c) Identification of survey instrument used; and

(d) An exact description of the location of the survey.

(8) [(7)] Each survey record [Records of these surveys] shall be maintained for inspection by the cabinet for two (2) years after completion of the survey.

Section 24 [20]. Radioactive Contamination Control. (1) If the licensee has reason to believe that, as a result of an operation involving a sealed source, the encapsulation of the sealed source may be damaged by the operation, the licensee shall conduct a radiation survey, including a contamination survey, during and after the operation.

(2) If the licensee detects evidence that a sealed source has ruptured or radioactive materials have caused contamination, the licensee shall initiate immediately the emergency procedures required by Section 13 of this administrative regulation.

(3) If contamination results from the use of radioactive material in well logging, the licensee shall decontaminate work areas, equipment, and unrestricted areas.

(4) During efforts to recover a sealed source lodged in the well, the licensee shall continuously monitor, with an appropriate radiation detection instrument or a logging tool with a radiation detector, the circulating fluids from the well, if present, to check for contamination resulting from damage to the sealed source.

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Section 25 [24]. Records Required at Field Stations. A licensee or registrant maintaining field stations from which well service operations are conducted shall have copies of the following records available at each station for inspection by the cabinet:

- (1) Appropriate license or certificate of registration;
- (2) Operating and emergency procedures;
- (3) A copy of 902 KAR 100:019, 100:142, and 100:165;
- (4) Survey records required pursuant to Section 23[19] of this administrative regulation;
- (5) Quarterly inventories required pursuant to Section 7 of this administrative regulation;
- (6) Utilization records required pursuant to Section 8 of this administrative regulation;
- (7) Records of inspection and maintenance required pursuant to Section 11 of this administrative regulation;
- (8) Records of the latest survey instrument calibration pursuant to Section 5[6] of this administrative regulation;
- (9) Records of the latest leak test results pursuant to Section 6 of this administrative regulation; and
- (10) Training records required by Section 12 of this administrative regulation.

Section 26 [22]. Records Required at Temporary Job Sites. (1) A licensee or registrant conducting a well service operation [operations] at a temporary job site shall have the following records available at that site for inspection by the cabinet:

- (a) Operating and emergency procedures;
- (b) Survey records required pursuant to Section 23[19] of this administrative regulation for the period of operation at the site;
- (c) Evidence of current calibration for the radiation survey instruments in use at the site; and
- (d) The shipping papers for the transportation of radioactive materials.

(2) In addition to the record requirements of this section, at each temporary job site where a well service operation is [operations are being] conducted under cabinet authorization granted pursuant to 902 KAR 100:065, a licensee or registrant shall have the following records available for inspection by the cabinet:

- (a) Current leak test records for the sealed sources in use at the site;
- (b) The appropriate license and[,] certification of registration or equivalent document; and
- (c) Shipping papers for the transport of radioactive material.

Section 27 [23]. Notification of Incidents and Lost Sources. (1) If the licensee knows or has reason to believe that a sealed source has been ruptured, the licensee shall:

(a) Immediately notify by telephone the Cabinet for Health and Family Services [Human Resources], Radiation Health [Control] Branch at (502) 564-3700 from 8 a.m.-4:30 p.m. Monday through Friday or [and] at (800) 255-2587 [(502) 564-8715] at other hours; and

(b) Within thirty (30) days, notify by confirmatory letter to the Manager, Radiation Health [Control] Branch, 275 East Main Street, Frankfort, Kentucky 40621[, if the licensee knows or has reason to believe that a sealed source has been ruptured].

[(2)] The letter shall:

1. [(a)] Designate the well or other location;
2. [(b)] Describe the magnitude and extent of the escape of radioactive materials;
3. [(c)] Assess the consequences of the rupture; and
4. [(d)] Explain efforts planned or being taken to mitigate these consequences.

(2) [(3)] The licensee shall notify the Cabinet for Health and Family Services [Human Resources], Radiation Health [Control] Branch of the theft or loss of radioactive materials, radiation over-exposures, excessive levels and concentrations of radiation, and certain other accidents as required by 902 KAR 100:019, Sections 38, 39, and 40 and [902 KAR] 100:040, Section 15[18].

(3) [(4)] If a sealed source or device containing radioactive material is lodged in a well and it becomes apparent that efforts to recover the sealed source will not be successful [downhole], the licensee shall:

- (a) ~~Monitor at the surface for the presence of radioactive con-~~

~~tamination with a radiation survey instrument or logging tool during recovery operations; and~~

(b) Notify the Cabinet for Health and Family Services [Human Resources], Radiation Health [Control] Branch, immediately by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m., Monday through Friday or [and] at (800) 255-2587 [(502) 564-8715] at other hours of the circumstances that resulted in the inability to retrieve [if radioactive contamination is detected at the surface or if] the source [appears to be damaged.] and

obtain cabinet approval to implement abandonment procedures; or  
(b) That the licensee implemented abandonment before receiving cabinet approval because the licensee believed there was an immediate threat to public health and safety.

(4) [(5)] If it becomes apparent that efforts to recover the radioactive source shall not be successful, the licensee shall:

(a) Advise the well owner or well-operator of the requirements of this administrative regulation regarding abandonment and an appropriate method of abandonment, which shall include:

1. The immobilization and sealing in place of the radioactive source with a cement plug;

2. A means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations [The setting of a whipstock or other deflection device]; and

3. The mounting of a permanent identification plaque, containing information required by this section, at the surface of the well, unless the mounting of the plaque is not practical;

(b) Either ensure that abandonment procedures are implemented within thirty (30) days after the sealed source has been classified as irretrievable or request an extension of time if unable to complete the abandonment procedures [Notify the Cabinet for Human Resources, Radiation Control Branch by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m., Monday through Friday and at (502) 564-8715 at other hours, giving the circumstances of the loss, and request approval of the proposed abandonment procedures]; and

(c) File a written report on the abandonment with the Manager, Radiation Health [Control] Branch, 275 East Main Street, Frankfort, Kentucky 40621 within thirty (30) days after a sealed source has been classified as irretrievable. [of the abandonment] The report shall be sent to each appropriate state or federal agency that issued permits or approved of the drilling operation and [, which] shall include [provides] the following information:

1. Date of occurrence and a brief description of attempts to recover the source;

2. Description of the radioactive source involved, including radionuclide, quantity, and chemical and physical form;

3. Surface location and identification of well;

4. Results of efforts to immobilize and seal the source in place;

5. A brief description of the attempted recovery effort;

6 [5]. Depth of the radioactive source;

7 [6]. Depth of the top of the cement plug;

8 [7]. Depth of the well; [and]

9 [8]. The immediate threat to public health and safety justification for implementing abandonment if prior cabinet approval was not obtained in accordance with Section (27)(6);

10. Information [Information] such as a warning statement, contained on the permanent identification plaque; and

11. State and federal agencies receiving a copy of this report.

(5) [(6)] If a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque mounted at the surface of [for posting] the well [or well-bore]. This plaque shall:

(a) Be constructed of long-lasting material, such as [for example,] stainless steel, brass, bronze, or Monel. The size of the plaque shall be at least [convenient for use on active or inactive wells; for example, a] seven (7) inch, seventeen (17) cm square and one-eighth (1/8) inch (3mm) thick. Letter size of the word "Caution" shall be approximately twice the letter size of the rest of the information, for example, one-half (1/2) inch and one-fourth (1/4) inch letter size, respectively; and

(b) Contain the following engraved information on its face:

1. The word "Caution;"
2. The radiation symbol (color not required);
3. The date of abandonment;

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4. The name of the well operator or well owner;
  5. The well name and well identification number [number(s)] or other designation;
  6. The sealed source [source(s)] by radionuclide[,] and quantity of activity;
  7. The source depth[,] and the depth to the top of the plug;
  8. An appropriate warning, depending on the specific circumstances of an abandonment, for example, "Do not drill below plug depth;" or "Do not enlarge casing;" and
  9. The words "Do not reenter hole before contacting Radiation Health [Control] Branch, Kentucky Cabinet for Health and Family Services [Human Resources]."
- (6)(7) If the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source, the licensee shall:
- (a) Immediately notify the Cabinet for Health and Family Services [Human Resources], Radiation Health [Control] Branch by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m. Monday through Friday or [and] at (800) 255-2587 [(502) 564-7845] at other hours; and
  - (b) Confirm by [by confirming] letter, within thirty (30) days, to the Manager, Radiation Health [Control] Branch, 275 East Main Street, Frankfort, Kentucky 40621 [if the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source].
- (7) [(8)] The notice shall designate the well location and shall describe the magnitude and extent of loss of radioactive material, assess the consequences of the loss, and explain efforts planned or being taken to mitigate consequences.

Section 28 [24]. Minimum Training Requirements for Logging Supervisors. Logging supervisors shall receive minimum training in the following areas:

- (1) Fundamentals of radiation safety:
  - (a) Characteristics of gamma, neutron, and x-radiation;
  - (b) Units of radiation dose (mrem);
  - (c) Quantity of radioactivity (curie);
  - (d) Significance of radiation dose:
    1. Radiation protection standards; and
    2. Biological effects of radiation dose;
  - (e) Levels of radiation from sources of radiation;
  - (f) Methods of controlling radiation dose:
    1. Working time;
    2. Working distance; and
    3. Shielding; and
  - (g) Radiation safety practices including prevention of contamination and methods of decontamination;
- (2) Radiation detection instrumentation to be used:
  - (a) Use of radiation survey instruments:
    1. Operation;
    2. Calibration; and
    3. Limitations;
  - (b) Survey techniques; and
  - (c) Use of personnel monitoring equipment;
- (3) Equipment to be used:
  - (a) Remote handling equipment;
  - (b) Sources of radiation;
  - (c) Storage and transport containers; and
  - (d) Operation and control of equipment;
- (4) The requirements of 10 C.F.R. [C.F.R.] Part 39 and 902 KAR Chapter 100;
- (5) The licensee's or registrant's written operating and emergency procedures;
- (6) The licensee's or registrant's recordkeeping procedures; and
- (7) Case histories of well logging accidents.

Section 29 [25]. Material Incorporated by Reference. (1) The following material is incorporated by reference:

- (a) "USASI N5.10-1968, Classification of Sealed Radioactive Sources", edition 1968; and
- (b) "ANSI/HPS N43.6-1997, "Sealed Radioactive Sources – Classification", edition 1997. [American National Standard N542, "Sealed Radioactive Sources, Classification", ANSI N542-1977,

Revision of N5.10-1968, (July 1978), is incorporated by reference.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m. [A copy of the "Sealed Radioactive Sources, Classification" may be viewed or obtained at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.]

STEVE DAVIS, MD, Acting Commissioner

For JANIE MILLER, Secretary

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 14, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2011, at 9:00 a.m. in the Health Services Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 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 October 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley, (502) 564-3700, extension 3701

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This regulation establishes guidelines for wire line service operations.
  - (b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:142 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By updating the Kentucky Administrative Regulations to be consistent with the Code of Federal Regulations, it will ensure that Kentucky licensees are bound by the same requirements as their counterparts across the country.

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

- (a) How the amendment will change this existing administrative regulation: It updates 902 KAR 100:142 to add specific leak testing requirements for wire line operations, adds a specific requirement

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for making of uranium sinker bars and energy compensation sources, defines the use of tritium neutron generator target sources and, updates existing abandonment procedures

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. This amendment puts the radiation program in compliance with federal regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make the federal and state regulations the same thus making enforcement easier.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will assist the 9 wire line service licensees in making Kentucky Administrative Regulations consistent with the Code of Federal Regulations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not be directly impacted by this amendment as they are already following federal standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the regulated entity to comply with this regulation because they are currently in compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will be in conformance with both state and federal regulations as the regulations will be consistent.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds are used to operate this program but no additional funds are required to implement this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All parts of state and local government are impacted if there are radioactive materials in their area.

3. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:142 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not cause the program to incur any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cause the program to incur any additional cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 10 C.F.R. Part 39 Licenses and Radiation Safety Requirements for Well Logging

2. State compliance standards. Control of sources of radiation is mandated to the Cabinet for Health and Family Services by KRS 211.842 and KRS 211.843. Accordingly, Kentucky Administrative Regulation prescribes requirements for registration, licensing, and oversight to control sources of radiation.

3. Minimum or uniform standards contained in the federal mandate. USA/SIC N5.4 1967, ANSI/HPS N43.6 1997

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky Administrative Regulation 902 KAR 100 prescribes requirements for registration, licensing, and oversight to control

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, SEPTEMBER 15, 2011

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Financial Standards and Examination Division  
(New Administrative Regulation)**

**806 KAR 49:050. Captive risk retention groups.**

RELATES TO: KRS 304.1-050, 304.3-400 - 304.3-430, 304.3-500 - 304.3-570, 304.5-130, 304.5-140, 304.5-150, 304.9-020(10), 304.9-700 - 304.9-759, 304.24-100, 304.37-010 - 304.37-150, 304.45-020(11), 304.45-030, 304.49-010, 304.49-060, 304.49-110, 304.49-170

STATUTORY AUTHORITY: KRS 304.2-110, KRS 304.49-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to make 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. KRS 304.49-140 permits the commissioner to establish administrative regulations relating to captive insurance companies that are necessary to carry out the provisions of KRS 304.49-010 to 304.49-230. This administrative regulation provides reinsurance, financial solvency, and consumer protection requirements for captive risk retention groups.

Section 1. Definitions. (1) "Captive insurer" is defined in KRS 304.49-010(3).

(2) "Commissioner" is defined in KRS 304.1-050(1).

(3) "Department" is defined in KRS 304.1-050(2).

(4) "Insurance producer" is defined in KRS 304.9-020(10)

(5) "Protected cell" is defined in KRS 304.49-010(20);

(6) "Reinsurance intermediary" is defined in KRS 304.9-700(5);

(7) "Risk retention group" is defined in KRS 304.45-020(11).

Section 2. Permitted Reinsurance for Risk Retention Groups Licensed as Captive Insurers. Risk retention groups shall not receive credit on a quarterly or annual financial statement if all policies are ceded through 100 percent reinsurance arrangements.

Section 3. Credit for Reinsurance. (1) Credit for reinsurance shall be permitted if the reinsurer complies with KRS 304.5-130, KRS 304.5-140, KRS 304.5-150 and 806 KAR 5:025.

(2) Credit for reinsurance may be permitted if the reinsurer:

(a) Maintains an A- or higher A.M. Best rating, or other comparable rating from a nationally recognized statistical rating organization;

(b)1. Maintains a minimum policyholder surplus in an amount acceptable to the commissioner based upon a review of the reinsurer's most recent audited financial statements; and

2. Is licensed and domiciled in a jurisdiction in the United States or an established offshore domicile; or

(c) Satisfies all of the following requirements:

1. The captive manager or risk retention group licensed as a captive insurer shall file annually, on or before June 30, the reinsurer's audited financial statements, which shall be analyzed by the commissioner to assess the appropriateness of the reserve credit or the initial and continued financial condition of the reinsurer;

2. The reinsurer shall demonstrate that it maintains a ratio of net written premium, wherever written, to surplus and capital of not more than three (3) to one (1);

3. The affiliated reinsurer shall not write third-party business without obtaining prior written approval from the commissioner;

4. The reinsurer shall not use a protected cell arrangement without obtaining prior written approval from the commissioner;

5. The reinsurer shall be licensed and domiciled in a jurisdiction either in the United States or in an established offshore domicile; and

6. The reinsurer shall submit to the examination authority of the commissioner.

Section 4. Additional Reinsurance Requirements. (1) The

commissioner shall require a reinsurer not domiciled in the United States to:

(a) Include language in the reinsurance agreement that states in the event of the reinsurer's failure to perform its obligations under the terms of its reinsurance agreement, the reinsurer shall submit to the jurisdiction of any court of competent jurisdiction in the United States; or

(b) Be compliant with subsection (2) of this section.

(2) For credit for reinsurance and solvency regulatory purposes, the commissioner may require a reinsurer to provide to the ceding company an approved funds-held agreement, letter of credit, trust or other acceptable collateral based on unearned premium, loss and loss adjustment expense reserves, and incurred but not reported claims reserves.

Section 5. Requirements for Waiver. (1)(a) Upon application by the risk retention group, the commissioner may waive either of the reinsurance requirements in Section 3(2)(c)2. or Section 3(3)(c)6. of this administrative regulation in circumstances where the risk retention group licensed as a captive insurer or reinsurer can demonstrate that:

1. The reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements;

2. The reinsurer is licensed and domiciled in a jurisdiction in the United States or in an established offshore domicile; and

3. The proposed reinsurance agreement adequately protects the risk retention group licensed as a captive insurer and its policyholders.

(b) Any waiver granted in accordance with subsection (1)(a) of this section shall be:

1. Included in the risk retention group's plan of operation, or any subsequent revision or amendment of the plan; and

2. Submitted by the risk retention group licensed as a captive to the commissioner of its state of domicile and each state in which the risk retention group licensed as a captive intends to do business or is currently registered.

(c) Any waiver of a requirement in Section 3(2)(c)2. or Section 3(2)(c)6. of this administrative regulation shall be considered a change in the risk retention group's plan of operation in each of those states.

(2)(a) Upon application by the risk retention group, the commissioner may waive the requirements of Section 4(1) or Section 4(2) of this administrative regulation if the risk retention group licensed as a captive insurer or reinsurer can demonstrate that:

1. The reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements;

2. The reinsurer is licensed and domiciled in a jurisdiction in the United States or in an established offshore domicile; and

3. The proposed reinsurance agreement adequately protects the risk retention group licensed as a captive insurer and its policyholders.

(b) Any waiver granted in accordance with subsection (2)(a) of this section shall be disclosed in Note 1 of the risk retention group's annual statutory financial statement.

Section 6. Limits on Risk. A risk retention group shall not retain any risk on any one (1) subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten (10) percent of its surplus to policyholders. Authorized reinsurance ceded shall be deducted in determining risk retained. The requirements on limits of risk in KRS 304.24-100 shall apply to newly formed domestic mutual insurers.

Section 7. Holding Company. Risk retention groups licensed as captive insurers shall make all required holding company filings mandated in KRS Chapter 37 on forms prescribed in 806 KAR 37:010. If a disclaimer of affiliation is filed, a copy of the disclaimer shall be filed as a change in business plan with all other states in which the company is registered.

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Section 8. Reinsurance Intermediaries, Managing General Agents, and Producer Controlled Agents. A risk retention group licensed as a captive insurer shall comply with KRS 304.3-400 to KRS 304.3-430, KRS 304.3-500 to KRS 304.3-570, and KRS 304.9-700 to KRS 304.9-759.

SHARON P. CLARK, Commissioner  
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 15, 2011 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on October 27, 2011, at 9:00 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502)564-0888, fax (502)564-1453.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides detailed financial standards for captive risk retention groups, including limits on reinsurance, limits on risk, and risk based capital. In addition, it clarifies compliance with the holding company act and use of reinsurance intermediaries, MGAs, and producer controlled agents.

(b) The necessity of this administrative regulation: This administrative regulation will provide protection for Kentucky citizens by further strengthening the financial regulation of captive risk retention groups.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to make 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. KRS 304.49-140 permits the commissioner to establish administrative regulations relating to captive insurance companies that are necessary to carry out the provisions of KRS 304.49-010 to 304.49-230. This administrative regulation provides reinsurance, financial solvency, and consumer protection requirements for captive risk retention groups.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation will assist by providing more detail and clarification regarding application of, and compliance with, provisions applicable to captive risk retention groups, including KRS 304.49-020, KRS 304.49-040, KRS 304.49-060, KRS 304.49-110, and related Subtitles 2, 3, 5, 24, and 37.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect four (4) currently licensed and active Kentucky domiciled captive risk retention groups.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities are already complying with these provisions pursuant to Department Bulletin 2011-02, which was issued March 22, 2011. All entities have certified their compliance with these standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The cost of future compliance should be minimal for routine filings with the Department and internal operational costs to ensure compliance with restrictions. Some of the companies had legal and accounting costs for making initial holding company filings, but on-going compliance costs should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)?

The insurers will be in compliance with state law and will be operating in a safe and financially sound manner. In addition, the regulation provides clarity for future regulatory compliance.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all licensees.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statute 304.2-110 (1) and KRS 304.49-140 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance code.

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

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

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

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(c) How much will it cost to administer this program for the first year? The cost of administering this program will be very minimal and will be provided by Financial Division staff adding review of holding company filings to their on-going financial monitoring and analysis work.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program will not change.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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### ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

#### Minutes of September 13, 2011

##### Call to Order and Roll Call

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 13, 2011, at 1:00 p.m., in Room 149 of the Capitol Annex. Representative Johnny Bell, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the August 2011 meeting were approved.

##### Present were:

**Members:** Senators Joe Bowen, David Givens, and Joey Pendleton, and Representatives 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:** Glenn Birdwhistell, J.R. Bush, Marilyn Kennedy, Stephen Van Zant, Board of Auctioneers; Connie Calvert, Jerald F. Combs, William Reynolds, Board of Optometric Examiners; C. Lloyd Vest II, Board of Medical Licensure; Nathan Goldman, Board of Nursing; Becky Klusch; Board of Physical Therapy; Ryan Halloman, Denise Logsdon, Board of Licensure for Massage Therapy; Gerard L. Buynak, Benji Kinman, Mark Mangeot, Department of Fish and Wildlife Resources; Tony Hatton, Lori R. Terry, Bruce Scott, Division of Waste Management; Rodney Ballard, Amy Barker, Jeff Burton, Debra Kays, Department of Corrections; Clay Lamb, Education and Workforce Development Cabinet; Malinda Shepherd, Department of Insurance; Stephanie Bell, Gerald Wuetcher, Public Service Commission; Jamie H. Eads, Greg Lamb, Tim West, Kentucky Horse Racing Commission; Virginia Carrington, Elizabeth Caywood, Eric Friedlander, Kevin Mudd, and Ray Peters, Cabinet for Health and Family Services; Ben Gaddie, Kentucky Optometric Association; Bill Doll, Betsy Johnson, Kentucky Medical Association; Julie Lee, Woodford Van Meter, Academy of Eye Physicians and Surgeons.

##### The Administrative Regulation Review Subcommittee met on Tuesday, September 13, 2011, and submits this report:

##### Administrative Regulations Reviewed by the Subcommittee:

##### DEPARTMENT OF STATE: Registry of Election Finance: Reports and Forms

32 KAR 1:050 & E. Political committee registration. Emily Dennis, general counsel, represented the registry.

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

A motion was made and seconded to approve the following amendment: to make a CONFORMING AMENDMENT to the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct an inconsistency between the currently effective administrative regulation and the proposed administrative regulation filed by the agency. Without objection, and with agreement of the agency, the amendment was approved.

##### GENERAL GOVERNMENT CABINET: Board of Auctioneers: Board

201 KAR 3:045. Recordkeeping and accounting. E. Glenn Birdwhistell, chair; J.R. "Randy" Bush, commissioner; and Marilyn Kennedy, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Sections 1, 2, 3, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to: (a) clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (b) 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.

201 KAR 3:081. Repeal of 201 KAR 3:015 and 3:080.

201 KAR 3:090. Administrative fees for applications and services.

In response to questions by Representative Damron, Mr. Bush stated that there was a fee increase for a new licensee card or change of address. All licensees had been notified, and there were no complaints regarding the fee increase.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 4, 5, and 6 to specify fees for licensure, licensure renewal, grace period renewal, late fee, post-grace period renewal, reactivation, change of address, initial recovery, and renewal recovery; and (2) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

##### Board of Optometric Examiners: Board

201 KAR 5:110. Expanded therapeutic procedures. Dr. Jerald F. Combs, board president, and Dr. William "Bill" Reynolds, board vice president, represented the board. Dr. Ben Gaddie, president, Kentucky Optometric Association, appeared in support of this administrative regulation. Betsy Johnson, attorney representing Kentucky Academy of Eye Physicians and Surgeons; Bill Doll, attorney representing the Kentucky Medical Association; Dr. Julie Lee, Kentucky Academy of Eye Physicians and Surgeons; and Dr. Woodford Van Meter, Kentucky Academy of Eye Physicians and Surgeons, appeared in opposition to this administrative regulation.

Dr. Combs stated that Senate Bill 110 was enacted by the General Assembly in the 2011 Regular Session and the bill specified education, training, and competency standards for certain laser procedures to be performed by optometrists.

Dr. Rush stated that other boards that wished to license new services by licensees did not require new certifications or examinations. This administrative regulation established education, training, and competency standards for certain laser procedures to be performed by optometrists. Optometrists were required to complete specific continuing education and be approved by a board-approved preceptor prior to being allowed to perform each type of laser procedure. Optometrists also had to complete annual continuing education in order to maintain certification to perform laser procedures.

Mr. Doll stated that the Kentucky Medical Association was concerned about the safety of these procedures being performed by optometrists.

Dr. Lee stated that the Kentucky Academy of Eye Physicians and Surgeons supported restarting the administrative regulation drafting process because her organization believed that the administrative regulation task force substantively violated Kentucky Open Meetings Law. June board minutes stated that the board convened to draft an administrative regulation by task force. Governor Beshear's office stated that the governor did not establish this task force or appoint its members. The Kentucky Optometric Association established the task force and appointed the members. The task force failed to give public notice of the administrative regulation discussion, task force creation, or meetings. For three (3) months it was erroneously believed that the task force had been created by the Executive Branch. Dr. Lee stated that she had concerns about how the members were appointed, if there was a balance of appropriately certified academics, and if members had conflicts of interest. She stated that the failures of the administrative regulation process threatened public health.

Dr. Van Meter stated that there were numerous violations that occurred during the drafting of this administrative regulation, including: (1) certification requirements were vague; (2) preceptor standards were



inferior to university standards and did not address matters of conflicts of interest between preceptor and optometrist; (3) in the case of non-laser procedures, the board did not require that procedures be performed on living eye tissue for preceptor approval; (4) cancer diagnosis training was omitted; (5) the board circumvented the peer-review process; and (6) the board did not establish rigorous education requirements for laser procedures. Dr. Van Meter further stated that small community medical doctors will leave Kentucky if optometrists take over laser procedures.

Dr. Ben Gaddie stated support for this administrative regulation and explained that it established stringent requirements to be completed before certain procedures can be performed. Dr. Gaddie chaired the task force, which was made up of medical professionals with technical medical expertise. Other boards that wished to license new services by licensees did not require new certifications or examinations, and this administrative regulation will get care to people in small and rural communities.

In response to a question by Co-Chair Bowen, Dr. Combs respectfully declined to defer consideration of this administrative regulation to the October Subcommittee meeting.

In response to questions by Representative Ford, Co-Chair Bell stated that an alleged violation of the Kentucky Open Meetings Law should be considered by the court system, not by this Subcommittee. Dr. Van Meter stated that his concerns involved violation of Open Meetings Law and risks to public health. This administrative regulation was insufficient to protect public safety. Dr. Van Meter supported redrafting this administrative regulation to make the standards more rigorous and specific. This administrative regulation should also address conflicts of interest regarding preceptors determining competence. This administrative regulation should specify criteria for failure of intraocular surgery competency, as determined by the preceptor. Dr. Lee stated that surgery was different from other medical care and required lengthy training. Following Open Meetings Law and providing for public input would make this administrative regulation more protective of the public health.

In response to questions by Senator Givens, Dr. Combs stated that members of the Board of Optometric Examiners were appointed by the governor. There were four (1) optometrists and one (1) public member on the board, with four (4) year, staggered terms. The board proceeded carefully with the drafting of this administrative regulation. The board would have credibility problems if standards in this administrative regulation were not appropriate. This administrative regulation may keep someone in a rural area from losing vision. Dr. Reynolds stated that board members took an oath to protect public health. He stated that the board followed Open Meetings Law and that Dr. Lee's concerns addressed the task force, not the board. Dr. Combs stated that the board received public comments and amended this administrative regulation in response to those public comments, both supportive and in opposition.

Representative Lee stated that, as a member of this Subcommittee, his obligation was to determine if this administrative regulation complied with Kentucky statutes, not to debate the law itself. This administrative regulation seemed to comply with the applicable statutes. The question of whether the task force violated the Open Meetings Law was one for the courts. The statute authorizing this administrative regulation passed without Representative Lee's vote, but because this administrative regulation seemed to comply with that statute, he had no choice but to allow this administrative regulation to move forward in the process.

In response to questions by Representative Damron, Dr. Gaddie stated that Oklahoma required a thirty-two (32) hour education course and passage of an examination prior to an optometrist being allowed to do specific laser procedures. There was not a full, proctored case for each optometrist, as required by this administrative regulation. This administrative regulation also did not allow a certain procedure that is permitted in Oklahoma. The requirements in this administrative regulation were different and, in some cases, more stringent than those in Oklahoma. Dr. Gaddie stated that the task force made recommendations to the board regarding requirements and standards. There were equal numbers of physicians and optometrists on the task force.

In response to questions by Co-Chair Bell, Dr. Van Meter stated that, after the law passed, the public was promised protec-

tion of health through promulgation of an administrative regulation. This administrative regulation did not adequately protect public health. Dr. Van Meter agreed that, other than matters pertaining to the task force, this administrative regulation went through the typical rulemaking process, as established in KRS Chapter 13A. A public hearing and comment period was held, comments were received, this administrative regulation was amended in response to those public comments, and this Subcommittee meeting was open to the public.

Co-Chair Bell stated that many of his constituents did not have access to an ophthalmologist and had to drive many hours to see one. Dr. Van Meter stated that many people drive long distances for appointments with other surgical specialists. Lax training may result in poor care. This administrative regulation should be drafted pursuant to the Open Meetings Law, with an opportunity for public participation. Most of the money that would be made through this administrative regulation would go to Oklahoma, not to the University of Kentucky or the University of Louisville.

In response to questions by Co-Chair Bell, Dr. Van Meter stated that public access was not the primary issue regarding public health because this administrative regulation did not improve access significantly because the laser machines cost approximately \$30,000 each, and small communities would not be able to purchase one. He did note that lasers could be rented. Practice on one (1) eye did not establish quality of care of patients. Ms. Johnson stated that the Kentucky Academy of Eye Physicians and Surgeons had filed a complaint in compliance with KRS Chapter 61, alleging that the board violated the Open Meetings Law. The board's Web site did not have information on the meeting places, times, or agendas, as required by KRS Chapter 61. The board abdicated rulemaking authority to the task force and to trade groups.

In response to questions by Co-Chair Bell, Ms. Johnson stated that this administrative regulation and the Subcommittee did not violate KRS Chapter 13A. She wanted this administrative regulation to be redrafted for compliance with KRS Chapters 13A and 61. The Open Meetings Law was violated prior to this administrative regulation being filed with LRC.

In response to a question by Senator Pendleton, Dr. Gaddie stated that the task force was comprised of three (3) ophthalmologists from Kentucky and one (1) from Oklahoma.

In response to Co-Chair Bowen's second request to defer consideration of this administrative regulation to the October meeting, Dr. Combs respectfully declined.

A motion was made and seconded to approve the following amendment: to amend Section 1(2)(a)1.w. to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

#### **Board of Medical Licensure: Board**

201 KAR 9:091. Repeal of 201 KAR 9:090. C. Lloyd Vest II, general counsel, represented the board.

#### **Board of Nursing: Board**

201 KAR 20:161. Investigation and disposition of complaints. Nathan Goldman, general counsel, represented the board.

201 KAR 20:370. Applications for licensure.

#### **Board of Physical Therapy: Board**

201 KAR 22:045. Continued competency requirements and procedures. Becky Klusch, executive director, represented the board.

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

#### **Board of Licensure for Massage Therapy: Board**

201 KAR 42:035. Application process, exam, and curriculum requirement. Denise Logsdon, board member, and Ryan Halloran, assistant attorney general, represented the board.

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

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301 KAR 1:015. Boats and motor restrictions. Gerard L. Buynak, assistant director; Benjy Kinman, deputy commissioner; and Mark Mangeot, legislative liaison, represented the department.

In response to questions by Senator Givens, Mr. Buynak stated that the horsepower restriction was removed because it was archaic. Other similarly sized lakes had authorized unlimited horsepower and had not had problems. Additionally, it was difficult to enforce the standard. This administrative regulation still provided for no wake zones. Mr. Kinman added that, in addition to no wake zones, reckless boating was still prohibited. The current statute did not provide for revocation of a boating license for reckless boating.

In response to questions by Representative Damron, Mr. Mangeot stated that a meeting was held in Dawson Springs on April 21, 2011, to apprise the community about the proposed changes to this administrative regulation. Mr. Kinman stated that the response at the public meeting was mixed. Anglers tended to support the changes, while some residents wanted the change to be seasonal. In-board boats had been an enforcement problem because the horsepower was not posted on the vehicles themselves. Most jetskis were over 150 horsepower. If this change was not made, all jetskis would have to be prohibited. Cedar Creek Lake was a dual-purpose lake, providing for fishing and recreational boating.

In response to a question by Co-Chair Bowen, Mr. Kinman stated that noise considerations were unnecessary because noise was based on if the exhaust was underwater or not. As it pertained to this administrative regulation, underwater exhaust was already required on smaller lakes.

301 KAR 1:152. Asian Carp Harvest Program.

301 KAR 1:201. Recreational fishing limits.

### **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. Lori R. Terry, environmental scientist; Tony Hatton, division director; and Bruce Scott, commissioner, represented the division. (These administrative regulations were discussed, and many amended, prior to their deferral from the August 2011 Administrative Regulation Review Subcommittee meeting. Those amendment summaries were included in the August report of this Subcommittee.)

In response to a question by Representative Ford, Mr. Scott stated that these administrative regulations were not more stringent than federal requirements, but did include Kentucky-specific requirements.

Senator Pendleton stated that he was satisfied that cleanup of underground storage tank sites would be faster if these administrative regulations were implemented.

In response to questions by Senator Givens, Mr. Scott stated that the annual differential between closed sites and sites added was approximately ten (10) years. At that point, the sites closed and added should be approximately equal. Mr. Hatton added that there were three (3) categories of cost for sites that may be closed. The first category was minimal and included sites that may close due to tank removal. The second category included those tanks not able to be closed and that may need corrective action. The third category included significantly contaminated sites, with groundwater involvement. The cost increased for each category. Ms. Terry stated that seventeen (17) percent of sites were in the second category, and three (3) percent were in the first category.

In response to a question by Representative Lee, Mr. Scott stated that the division was investigating other methods to reuse properties by providing prohibitions from using the properties for certain activities that may pose contamination danger.

401 KAR 42:011. Scope of underground storage tank program.

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 Section 8(1) to clarify training deadlines; and (2) to amend Section 16 to revise material incorporated by reference. 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 amendment: to amend Section 7(6) to correct a cross-reference citation. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 42:040. UST system release detection.

401 KAR 42:045. Delivery prohibition.

401 KAR 42:050. UST system release reporting, investigation, and confirmation.

401 KAR 42:060. UST system release response and corrective action for UST systems containing petroleum or hazardous substances.

401 KAR 42:070. Out-of-service UST systems, temporary closure and permanent closure of UST systems, and change in service of UST systems.

401 KAR 42:080. Classification of UST systems containing petroleum and listing of associated cleanup levels.

401 KAR 42:090. Financial responsibility.

401 KAR 42:095. Lender liability.

401 KAR 42:200. Annual fee for underground storage tanks.

401 KAR 42:250. Petroleum storage tank environmental assurance fund reimbursement procedures.

401 KAR 42:290. Ranking system.

401 KAR 42:300. Third-party claims.

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.

401 KAR 42:320. Hearings.

401 KAR 42:330. Small owners tank removal account.

A motion was made and seconded to approve the following amendment: to amend Section 4(3) to correct a cross-reference citation. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 42:335. Financial audits.

401 KAR 42:340. Laboratory certification.

### **Solid Waste Facilities**

401 KAR 47:205. Contents of the application for petroleum contaminated soil treatment facilities.

401 KAR 47:207. Public information procedures for petroleum contaminated soil treatment facilities.

### **Standards for Solid Waste Facilities**

401 KAR 48:205. Technical requirements for petroleum contaminated soil treatment facilities.

401 KAR 48:206. Petroleum contaminated soil treatment facility liner soil layer quality assurance and quality control.

401 KAR 48:207. Petroleum contaminated soil treatment facility liner geosynthetic quality assurance and quality control.

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401 KAR 48:208. Petroleum contaminated soil treatment facility liner high-permeability layer quality assurance and quality control.

### **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 of local facilities, represented the department. (Some of these administrative regulations were discussed, and amended, prior to their deferral from the August 2011 Administrative Regulation Review Subcommittee meeting. Those amendment summaries were included in the August report of this Subcommittee.)

Representative Ford, Co-Chair Bowen, and Senator Givens thanked the department for revising these administrative regulations.

Co-Chair Bell stated his thanks, but noted that his concerns had not been completely addressed. He stated his hope that his concerns regarding medication disbursement would be resolved in a future amendment.

A motion was made and seconded to approve the following amendments: to amend Section 1 to specify different staffing level requirements depending on the size of the jail: (1) for category I jails with eighty (80) beds or less, only two (2) jail personnel were required; (2) for category I jails with eighty-one (81) to 100 beds, three (3) jail personnel were required except for the night shift; (3) for the night shift, only two (2) personnel were required; and (4) For category II-V jails (jails with over 100 beds), three (3) jail personnel were required for all shifts. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:050. Physical plant.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the definitions for "renovation" and "expansion" in accordance with 2011 House Bill 463; (2) to amend Sections 3, 6, and 7 to clarify which requirements apply depending on if it is construction of a new jail or a renovation or expansion of an existing facility; (3) to amend Section 8 to clarify when an existing jail is exempt from subsequently adopted physical plant standards; (4) to amend Section 9(6)(b)3. to correct the minimum number of required bathrooms for diversion holding areas depending on the holding area's capacity; (5) to amend the RELATES TO paragraph to include additional relevant citations; (6) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, 6, 7, 9, and 10 for clarification and to comply with the drafting requirements of KRS Chapter 13A; and (7) to amend Section 11 and the material incorporated by reference to: (a) align definitions with 501 KAR 3:010; (b) update references and citations; (c) clarify provisions; and (d) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:090. Medical services.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1(2) to expressly state that telehealth services cannot be used for mental health evaluations for involuntary commitments under KRS Chapter 202A; and (2) to amend Section 1(16) for clarity. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:140. Prisoner rights.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) specify what is required when providing an inmate with confidential access to his attorney; and (2) clarify provisions. Without objection, and with agreement of the agency, the amendments were approved.

### **Office of the Secretary**

501 KAR 6:060. Northpoint Training Center.

A motion was made and seconded to approve the following amendments: to amend various policies for clarity and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amend-

ments were approved.

### **Jail Standards for Restricted Custody Center Facilities**

501 KAR 7:050. Physical plant.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 6 to conform to the new construction, renovation, and expansion requirements for local jails as enacted in 2011 House Bill 463; (2) to amend the RELATES TO paragraph to include additional relevant citations; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 6 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 7:140. Prisoner rights.

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.

### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office of Employment and Training: Unemployment Insurance**

787 KAR 1:010. Application for employer account; reports. Clay Lamb, staff attorney, 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, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **PUBLIC PROTECTION CABINET: Department of Insurance: Health and Life Division: Trade Practices and Frauds**

806 KAR 12:150. Annuity disclosures. Malinda Shepherd, program manager, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a citation; and (2) to amend Section 1 to correct punctuation. Without objection, and with agreement of the agency, the amendments were approved.

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. Stephanie Bell, deputy executive director, and Gerald Wuetcher, executive advisor, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 7, 9 through 14, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend the two (2) forms incorporated by reference to conform. Without objection, and with agreement of the agency, the amendments were approved.

### **PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing**

810 KAR 1:027. Entries, subscriptions, and declarations. Jamie H. Eads, director; Greg Lamb, supervisor of pari-mutuel wagering; and Tim West, assistant general counsel, represented the commission.

In response to a question by Co-Chair Bowen, Mr. West stated that a mistake was made when this administrative regulation was last amended. The amendment clarified the horse selection process for preferences in that stakes races did not count toward preferences. This exclusion was inadvertently overlooked during the previous amendment of this administrative regulation.

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Senator Givens expressed thanks for this administrative regulation on behalf of Senator Thayer.

810 KAR 1:070. Kentucky Thoroughbred Breeders' Incentive Fund.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, 4 through 7, and 10 for clarity and 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 1:145. Advance deposit account wagering.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(4) to clarify that the annual fee can only be amended by amending the administrative regulation in accordance with KRS Chapter 13A; and (2) to amend Sections 1 through 8, 10, 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 1:285. Advance deposit account wagering.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(4) to clarify that the annual fee can only be amended by amending the administrative regulation in accordance with KRS Chapter 13A; and (2) to amend Sections 1 through 8, 10, 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 2:185. Advance deposit account wagering.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(4) to clarify that the annual fee can only be amended by amending the administrative regulation in accordance with KRS Chapter 13A; and (2) to amend Sections 1 through 8, 10, 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.

### **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. Eric Friedlander, deputy secretary, represented the office.

### **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. Kevin Mudd, division director, and Ray Peters, program administrator, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **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. Virginia Carrington, branch manager, and Elizabeth Caywood, internal policy analyst, represented the division.

In response to a question by Senator Givens, Ms. Carrington stated that this administrative regulation combined two (2) forms to streamline processing. Eligibility requirements were not changed.

### **Food Stamp Program**

921 KAR 3:090 & E. Simplified assistance for the Elderly Program or "SAFE".

**The following administrative regulations were deferred to the October 11, 2011, meeting of the Subcommittee:**

**FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Ad Valorem Tax; State Assessment**  
103 KAR 8:010. Watercraft allocation.

### **GENERAL GOVERNMENT CABINET: Real Estate Appraisers Board: Board**

201 KAR 30:330 & E. Application for registration.

### **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.

201 KAR 39:090. Continuing education requirements.

201 KAR 39:100. Complaint procedure.

201 KAR 39:120. Code of ethics.

### **Kentucky Applied Behavior Analysis Licensing Board: Board**

201 KAR 43:010 & E. Licensed behavior analyst or licensed assistant behavior analyst: application procedures.

201 KAR 43:020 & E. Temporary licensed behavior analyst or temporary licensed assistant behavior analyst: application procedures.

201 KAR 43:030 & E. Fees.

201 KAR 43:040 & E. Code of ethical standards and standards of practice.

### **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.

### **PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Elevator Safety**

815 KAR 4:010 & E. Annual inspection of elevators.

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

815 KAR 4:030 & E. Elevator contractor licensing requirements.

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

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

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

815 KAR 4:070 & E. Fees and refunds.

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**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need**

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.

**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 Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to work, State Supplementation**

921 KAR 2:050. Time and manner of payments.

**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 October 11, 2011.**

VOLUME 38, NUMBER 4 – OCTOBER 1, 2011

OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT**  
**Meeting of August 24, 2011**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of August 24, 2011, having been referred to the Committee on August 3, 2011, pursuant to KRS 13A.290(6):

815 KAR 10:070 & 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 24, 2011 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON AGRICULTURE**  
**Meeting on September 6, 2011**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on **Error! Reference source not found.** for its meeting of September 9, 2011, having been referred to the Committee on September 6, 2011, pursuant to KRS 13A.290(6):

302 KAR 29:061E

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 September 9, 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 on September 13, 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 September 13, 2011, having been referred to the Committee on September 6, 2011, pursuant to KRS 13A.290(6):

201 KAR 8:008E  
201 KAR 8:532 & E  
201 KAR 8:562 & E  
900 KAR 7:040

**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 September 13, 2011 meeting, which are hereby incorporated by reference.

**INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT**  
**Meeting on September 28, 2011**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on **Error! Reference source not found.** for its meeting of September 9, 2011, having been referred to the Committee on September 6, 2011, pursuant to KRS 13A.290(6):

302 KAR 29:061E

**VOLUME 38, NUMBER 4 – OCTOBER 1, 2011**

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 September 9, 2011 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.





## **CUMULATIVE SUPPLEMENT**

### **Locator Index - Effective Dates**

**D - 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**

**D - 11**

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**

**D - 16**

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**

**D - 17**

The Subject Index is a general index of administrative regulations published in VOLUME 38 of the Administrative Register, and is mainly broken down by agency.

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
VOLUME 37					
The administrative regulations listed under VOLUME 37 are those administrative regulations that were originally published in Volume (last year's) issues of the Administrative Register but had not yet gone into effect when the 2011 bound Volumes were published.					
SYMBOL KEY:			32 KAR 1:030		
* Statement of Consideration not filed by deadline			Amended	1502	
** Withdrawn, not in effect within 1 year of publication			32 KAR 1:190		
*** Withdrawn before being printed in Register			Amended	1504	
**** Emergency expired after 180 days			32 KAR 2:130		
(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.			Amended	2256	
			101 KAR 1:325		7-21-11
			Amended	2666	
			101 KAR 2:095		
			Amended	2669	(See 38 Ky.R.)
			101 KAR 2:102		
			Amended	2672	(See 38 Ky.R.)
EMERGENCY ADMINISTRATIVE REGULATIONS:			101 KAR 3:015		
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)			Amended	2677	(See 38 Ky.R.)
			102 KAR 1:178	2303	
			103 KAR 3:010		
			Amended	2258	
			As Amended	2543	
			103 KAR 3:030		
			Amended	2263	
			As Amended	2547	
			103 KAR 3:040		
			Amended	2273	
			As Amended	2556	
			103 KAR 3:050		
			Amended	760	
			103 KAR 15:195	2769	(See 38 Ky.R.)
			201 KAR 3:045		
			Amended	2891	
			201 KAR 3:081(r)	3020	
			201 KAR 3:090	3021	
			201 KAR 8:532	3022	(See 38 Ky.R.)
			201 KAR 8:550	2308	9-13-11
			Amended	2876	8-5-11
			201 KAR 8:560	626	
			201 KAR 8:562	3027	(See 38 Ky.R.)
			201 KAR 12:083		
			Amended	2282	
			As Amended	2829	7-1-11
			201 KAR 20:056		
			Amended	2892	(See 38 Ky.R.)
			201 KAR 20:059		
			Amended	2046	
			201 KAR 20:062		
			Amended	2895	8-17-11
			201 KAR 20:070		
			Amended	2900	8-17-11
			201 KAR 20:110		
			Amended	2902	8-17-11
			201 KAR 20:215		
			Amended	2905	8-17-11
			201 KAR 20:225		
			Amended	2907	8-17-11
			201 KAR 20:240		
			Amended	2909	8-17-11
			201 KAR 20:310		
			Amended	2911	8-17-11
			201 KAR 20:411		
			Amended	2913	8-17-11
			201 KAR 20:470		(See 38 Ky.R.)
			Amended	2915	8-17-11
			201 KAR 26:115		
			Amended	1511	
			As Amended	1976	
			201 KAR 26:121		
			Amended	1513	
			201 KAR 26:125		
ORDINARY ADMINISTRATIVE REGULATIONS:					
13 KAR 2:060					
Amended					
As Amended					
16 KAR 3:050					
Amended					
As Amended					
16 KAR 6:030					
Amended					
31 KAR 5:010					
Amended					
As Amended					
31 KAR 6:030					
Amended					
As Amended					

**LOCATOR INDEX - EFFECTIVE DATES**

<b>Regulation Number</b>	<b>37 Ky.R. Page No.</b>	<b>Effective Date</b>	<b>Regulation Number</b>	<b>37 Ky.R. Page No.</b>	<b>Effective Date</b>
Amended	1514		201 KAR 42:020		
As Amended	1977		Amended	1011	
201 KAR 26:130			Amended	1696	
Amended	1516		As Amended	1989	
As Amended	1977		201 KAR 42:030		
201 KAR 26:155			Amended	1012	
Amended	1518		As Amended	1989	
As Amended	1978		201 KAR 42:035		
201 KAR 26:171			Amended	1013	
Amended	1520		Amended	1697	
As Amended	1979		As Amended	1990	
201 KAR 26:175			201 KAR 42:040		
Amended	1523		Amended	1015	
201 KAR 26:180			Amended	1699	
Amended	1526		As Amended	1991	
201 KAR 26:185			201 KAR 42:050		
Amended	1527		Amended	1016	
As Amended	1982		Amended	1700	
201 KAR 26:190			As Amended	1992	
Amended	1529		201 KAR 42:060		
As Amended	1983		Amended	1018	
201 KAR 26:200			Amended	1702	
Amended	1532		As Amended	1993	
As Amended	1984		201 KAR 42:070		
201 KAR 26:215			Amended	1020	
Amended	1533		Amended	1704	
201 KAR 26:230			As Amended	1993	
Amended	1535		201 KAR 42:080	1113	
As Amended	1985		Amended	1705	
201 KAR 26:270			As Amended	1994	
Amended	1537		201 KAR 42:040	2700	
201 KAR 26:290			201 KAR 42:110		
Amended	1539		Amended	1022	
201 KAR 26:310	1597		As Amended	1996	
As Amended	1987		201 KAR 43:010	3031	
201 KAR 30:040			201 KAR 43:020	3032	
Amended	101		201 KAR 43:030	3034	
201 KAR 39:010	2507		201 KAR 43:040	3035	
Withdrawn		9-15-11	301 KAR 1:152	2772	
201 KAR 39:030			Withdrawn		7-8-11
Amended	2451		301 KAR 1:155		
Withdrawn		9-15-11	Amended	2056	
201 KAR 39:040			Amended	2430	
Amended	2453		As Amended	2565	
Withdrawn		9-15-11	301 KAR 2:049		
201 KAR 39:050			Amended	228	
Amended	2453		301 KAR 2:095		
Withdrawn		9-15-11	Amended	2682	8-4-11
201 KAR 39:060			301 KAR 2:178		
Amended	2457		Amended	2065	
Withdrawn		9-15-11	As Amended	2568	
201 KAR 39:070			301 KAR 2:300		
Amended	2459		Amended	2683	(See 38 Ky.R.)
Withdrawn		9-15-11	400 KAR 2:090		
201 KAR 39:080			Amended	2920	
Amended	2460		401 KAR 5:006		
Withdrawn		9-15-11	Amended	1757	
201 KAR 39:090			Amended	2434	
Amended	2461		401 KAR 8:020		
Withdrawn		9-15-11	Amendment	2924	(See 38 Ky.R.)
201 KAR 39:100			401 KAR 10:030		
Amended	2464		Amended	2071	
Withdrawn		9-15-11	Amended	2655	8-5-211
201 KAR 39:120			401 KAR 42:005		
Amended	2466		Amended	2686	(See 38 Ky.R.)
Withdrawn		9-15-11	401 KAR 42:011		
201 KAR 41:100	1112		Amended	2691	(See 38 Ky.R.)
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.)
As Amended	1988		401 KAR 42:040		

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
Amended	2700	(See 38 Ky.R.)	Amendment	2954	(See 38 Ky.R.)
401 KAR 42:045	2773	(See 38 Ky.R.)	501 KAR 3:100		
401 KAR 42:050			Amendment	2956	(See 38 Ky.R.)
Amended	2702	(See 38 Ky.R.)	501 KAR 3:110		
401 KAR 42:060			Amendment	2958	(See 38 Ky.R.)
Amended	2704	(See 38 Ky.R.)	501 KAR 3:120		
401 KAR 42:070			Amendment	2959	(See 38 Ky.R.)
Amended	2706	(See 38 Ky.R.)	501 KAR 3:130		
401 KAR 42:080			Amendment	2961	(See 38 Ky.R.)
Amended	2709	(See 38 Ky.R.)	501 KAR 3:140		
401 KAR 42:090			Amendment	2964	(See 38 Ky.R.)
Amended	2711	(See 38 Ky.R.)	501 KAR 3:150		
401 KAR 42:095	2775	(See 38 Ky.R.)	Amendment	2966	(See 38 Ky.R.)
401 KAR 42:200			501 KAR 3:160	3038	(See 38 Ky.R.)
Amended	2713	(See 38 Ky.R.)	501 KAR 3:170	3040	(See 38 Ky.R.)
401 KAR 42:250			501 KAR 7:010		
Amended	2715	(See 38 Ky.R.)	Amended	2969	(See 38 Ky.R.)
401 KAR 42:290			501 KAR 7:020		
Amended	2726	(See 38 Ky.R.)	Amended	2970	(See 38 Ky.R.)
401 KAR 42:300			501 KAR 7:030		
Amended	2729	(See 38 Ky.R.)	Amended	2972	(See 38 Ky.R.)
401 KAR 42:315	2777		501 KAR 7:040		
401 KAR 42:316			Amended	2973	(See 38 Ky.R.)
Amended	2731	(See 38 Ky.R.)	501 KAR 7:050		
401 KAR 42:320			Amended	2975	(See 38 Ky.R.)
Amended	2733	(See 38 Ky.R.)	501 KAR 7:060		
401 KAR 42:330			Amended	2978	(See 38 Ky.R.)
Amended	2735	(See 38 Ky.R.)	501 KAR 7:070		
401 KAR 42:335			Amended	2979	(See 38 Ky.R.)
Amended	2738	(See 38 Ky.R.)	501 KAR 7:080		
401 KAR 42:340			Amended	2981	(See 38 Ky.R.)
Amended	2739	(See 38 Ky.R.)	501 KAR 7:090		
401 KAR 47:205	2778	(See 38 Ky.R.)	Amended	2982	(See 38 Ky.R.)
401 KAR 47:207	2781	(See 38 Ky.R.)	501 KAR 7:100		
401 KAR 48:205	2784	(See 38 Ky.R.)	Amended	2984	
401 KAR 48:206	2788	(See 38 Ky.R.)	501 KAR 7:110		
401 KAR 48:207	2792	(See 38 Ky.R.)	Amended	2985	(See 38 Ky.R.)
401 KAR 48:208	2795	(See 38 Ky.R.)	501 KAR 7:120		
401 KAR 49:080			Amended	2987	(See 38 Ky.R.)
Amended	1349		501 KAR 7:130		
Amended	1707		Amended	2989	(See 38 Ky.R.)
401 KAR 51:052			501 KAR 7:140		
Amended	2470	8-4-11	Amended	2990	(See 38 Ky.R.)
500 KAR 8:010			501 KAR 7:150	3041	(See 38 Ky.R.)
Amendment	2927	(See 38 Ky.R.)	501 KAR 13:010		
501 KAR 2:020			Amended	2992	(See 38 Ky.R.)
Amendment	2929	(See 38 Ky.R.)	502 KAR 12:010		
501 KAR 2:040			Amended	1546	
Amendment	2930		As Amended	1997	
501 KAR 2:050			505 KAR 1:130		
Amendment	2932		Amended	2289	
501 KAR 2:060			Amended	2881	8-5-2011
Amendment	2933	(See 38 Ky.R.)	601 KAR 1:018		
501 KAR 2:070			Amended	808	
Amendment	2935		As Amended	2000	
501 KAR 3:010			603 KAR 4:035		
Amendment	2936	(See 38 Ky.R.)	Amended	2741	
501 KAR 3:020			Withdrawn		7-13-2011
Amendment	2938	(See 38 Ky.R.)	702 KAR 7:125		
501 KAR 3:030			Amended	2291	
Amendment	2940	(See 38 Ky.R.)	As Amended	2572	
501 KAR 3:040			703 KAR 5:200	3042	
Amendment	2942	(See 38 Ky.R.)	787 KAR 1:070		
501 KAR 3:050			Amended	2994	9-2-11
Amendment	2943	(See 38 Ky.R.)	787 KAR 1:090		
501 KAR 3:060			Amended	2996	(See 38 Ky.R.)
Amendment	2949	(See 38 Ky.R.)	787 KAR 1:210		
501 KAR 3:070			Amended	2898	(See 38 Ky.R.)
Amendment	2951	(See 38 Ky.R.)	787 KAR 2:020		
501 KAR 3:080			Amended	1551	
Amendment	2952	(See 38 Ky.R.)	803 KAR 25:089		
501 KAR 3:090			Amended	1078	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
Amended	1492		As Amended	2575	
803 KAR 25:091			811 KAR 2:010		
Amended	1080		Amended	847	
As Amended	2005		As Amended	2872	7-1-11
806 KAR 2:150	1938		Reprint		(See 38 Ky.R.)
Amended	2438		811 KAR 2:060		
806 KAR 3:170			Amended	851	7-1-11
Amended	2746		811 KAR 2:150	1136	
806 KAR 9:220			Amended	1723	
Amended	1554	(See 38 Ky.R.)	As Amended	2015	
806 KAR 12:120			811 KAR 2:160	900	7-1-11
Amended	2754		811 KAR 2:180	2328	
806 KAR 13:120			As Amended	2584	
Amended	1557		811 KAR 2:190	2338	
As Amended	2007		Amended	2883	(See 38 Ky.R.)
806 KAR 44:010	1603		815 KAR 7:120		
As Amended	2010		Amended	1092	
808 KAR 10:010			Amended	1727	
Amended	2482		815 KAR 7:125		
As Amended	2836	7-1-11	Amended	1095	
808 KAR 10:030			Amended	1729	
Amended	2484		815 KAR 10:070	3045	(See 38 Ky.R.)
As Amended	2837	7-1-11	815 KAR 20:030		
808 KAR 10:050			Amended	2757	
Amended	2487		815 KAR 20:034		
As Amended	2839	7-1-11	Amended	1568	
808 KAR 10:200			As Amended	2017	
Amended	2488		815 KAR 20:070		
As Amended	2839	7-1-11	Amended	2759	8-5-11
808 KAR 10:240			815 KAR 35:060		
Amended	2492		Amended	3000	(See 38 Ky.R.)
As Amended	2842	7-1-11	815 KAR 35:100		
808 KAR 10:260			Amended	3002	(See 38 Ky.R.)
Amended	2493		900 KAR 5:020		
As Amended	2842	7-1-11	Amended	3005	
808 KAR 10:280			900 KAR 6:030		
Amended	2494		Amended	2762	(See 38 Ky.R.)
As Amended	2843	7-1-11	900 KAR 7:030		
808 KAR 10:410			Amended	2763	(See 38 Ky.R.)
Amended	2498		902 KAR 8:160		
As Amended	2845	7-1-11	Amended	3006	(See 38 Ky.R.)
808 KAR 10:440			902 KAR 8:165		
Amended	2500		Amended	3010	(See 38 Ky.R.)
As Amended	2847	7-1-11	902 KAR 8:170		
808 KAR 10:450			Amended	3012	(See 38 Ky.R.)
Amended	2503		902 KAR 20:410	1142	
As Amended	2849	7-1-11	Amended	1731	
808 KAR 10:480	2509		As Amended	2019	
As Amended	2850	7-1-11	902 KAR 100:010		
808 KAR 10:490	2511		Amended	1799	
As Amended	2851	7-1-11	As Amended	2594	
810 KAR 1:001			902 KAR 100:021		
Amended	825		Amended	1814	
As Amended	2852	7-1-11	As Amended	2607	
810 KAR 1:011			902 KAR 100:058		
Amended	828		Amended	1820	
As Amended	2855	7-1-11	As Amended	2612	
810 KAR 1:120	895		902 KAR 100:070		
As Amended	2859	7-1-11	Amended	1827	
811 KAR 1:005			As Amended	2618	
Amended	834		902 KAR 100:072		
As Amended	2860	7-1-11	Amended	1837	
Reprint		(See 38 Ky.R.)	As Amended	2627	
811 KAR 1:125			902 KAR 100:165		
Amended	837		Amended	1863	
As Amended	2862	7-1-11	As Amended	2651	
811 KAR 1:240	1130		907 KAR 1:014		
Amended	1720		Amended	551	
As Amended	2013		As Amended	984	
811 KAR 1:250	898		907 KAR 1:715		
As Amended	2871	7-1-11	Amended	2298	
811 KAR 1:280	2318		Amended	2886	(See 38 Ky.R.)

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
908 KAR 3:050 Amended	1358		* 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		
As Amended	2022				
922 KAR 1:420 Amended	2092				

## SYMBOL KEY:

## VOLUME 38

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

32 KAR 1:050E	206	7-1-11
32 KAR 1:070E	207	7-1-11
101 KAR 2:095E		(See 37 Ky.R.)
Replaced	482	9-28-11
101 KAR 2:102E		(See 37 Ky.R.)
Replaced	484	9-28-11
101 KAR 2:210E	731	9-15-11
101 KAR 3:015E		(See 37 Ky.R.)
Replaced	488	9-28-11
103 KAR 15:195E		(See 37 Ky.R.)
Replaced	13	8-5-11
201 KAR 8:532E		(See 37 Ky.R.)
Replaced	501	9-13-11
201 KAR 8:562E		(See 37 Ky.R.)
Replaced	504	9-13-11
201 KAR 30:310E	209	7-7-11
201 KAR 30:320E	210	7-7-11
201 KAR 30:330E	211	7-7-11
301 KAR 2:225E	732	8-18-11
302 KAR 29:061E	11	6-3-11
302 KAR 45:010E	456	8-2-11
815 KAR 4:010E	212	7-8-11
815 KAR 4:025E	215	7-8-11
815 KAR 4:030E	217	7-8-11
815 KAR 4:040E	219	7-8-11
815 KAR 4:050E	221	7-8-11
815 KAR 4:060E	223	7-8-11
815 KAR 4:070E	225	7-8-11
815 KAR 10:070E		(See 37 Ky.R.)
Replaced	241	8-17-11
902 KAR 15:020E	227	6-30-11
907 KAR 1:595E	459	7-21-11
921 KAR 3:090E	232	6-30-11

### ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 3:100		
Amended	49	
As Amended	464	
11 KAR 15:090		
Amended	64	
As Amended	476	
13 KAR 2:020		
Amended	804	
16 KAR 2:010		
Amended	68	
As Amended	479	
16 KAR 2:040		
Amended	635	
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## SYMBOL KEY:

\* Statement of Consideration not filed by deadline

\*\* Withdrawn, not in effect within 1 year of publication

\*\*\* Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 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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