

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 38, NUMBER 7
SUNDAY, JANUARY 1, 2012

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet January 9, 2012, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 1275-1276 of this Administrative Register.

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

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

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, JANUARY 9, 2012, at 1:00 p.m., Room 149 Capitol Annex**

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Public Educational Institutions

13 KAR 2:110. Advanced practice doctoral degree programs at comprehensive universities.

KENTUCKY STATE BOARD OF ELECTIONS

Statewide Voter Registration

31 KAR 3:020. Designated Disability Services Agencies.

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101 KAR 2:102. Classified leave administrative regulations.

101 KAR 2:140. Workers' Compensation Fund and Program.

Personnel Cabinet, Unclassified

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

GENERAL GOVERNMENT CABINET

Board of Barbering

Board

201 KAR 14:180. License fees, examination fees, renewal fees, and expiration fees.

Board of Nursing

Board

201 KAR 20:085. Licensure periods and miscellaneous requirements.

201 KAR 20:260. Organization and administration standards for precicensure programs of nursing.

201 KAR 20:340. Students in precicensure registered nurse and practical nurse programs.

201 KAR 20:410. Expungement of records.

Kentucky Boxing and Wrestling Authority

Athletic Commission

201 KAR 27:016. General requirements for mixed martial arts matches, shows, or exhibits.

201 KAR 27:017. Requirements for elimination events.

201 KAR 27:035. Seconds.

201 KAR 27:055. Physicians.

201 KAR 27:100. General requirements for amateur mixed martial arts shows.

Board of Licensed Professional Counselors

Board

201 KAR 36:060. Qualifying experience under supervision. (Deferred from December)

201 KAR 36:070. Education and examination requirements. (Deferred from December)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 2:082. Transportation and holding of exotic wildlife. (Amended After Comments)

GENERAL GOVERNMENT

Department of Agriculture

Office of State Veterinarian

Division of Animal Health

Livestock Sanitation

302 KAR 20:052 & E. Animal Carcass Composting. ("E" expires 5/4/2012)

TRANSPORTATION CABINET

Department of Highways

Division of Maintenance

Right-of-Way

603 KAR 4:035. Logo signs; placement along fully controlled and partially controlled access highways.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Commission on the Deaf and Hard of Hearing

Telecommunication Device for the Deaf

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired.

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

Data Reporting and Public Use Data Sets

900 KAR 7:030 & E. Data reporting by health care providers. ("E" expires 4/25/2012)

Department for Medicaid Services

Division of Administration and Financial Management

Medicaid Services

907 KAR 1:018 & E. Reimbursement for drugs. ("E" expires 4/29/2012) (Amended After Comments)

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

Institutional Care

908 KAR 3:050. Per diem rates.

REMOVED FROM JANUARY 2012 AGENDA

EDUCATION PROFESSIONAL STANDARDS BOARD

Educator Preparation

16 KAR 5:020. Standards for admission to educator preparation. (Comments Received)

**GENERAL GOVERNMENT CABINET
Kentucky Boxing and Wrestling Authority**

Athletic Commission

201 KAR 27:011. General requirements for boxing and kickboxing shows. (Comments Received)

201 KAR 27:012. Wrestling show requirements. (Comments Received)

Real Estate Appraisers Board

Board

201 KAR 30:375. Fees paid to appraisers. (Comments Received, SOC ext.)

Board of Interpreters for the Deaf and Hard of Hearing

Board

201 KAR 39:011. Definitions. (Comments Received)

201 KAR 39:030. Application; qualifications for licensure; and certification levels. (Comments Received, SOC ext.)

201 KAR 39:040. Fees. (Comments Received, SOC ext)

201 KAR 39:050. Renewal of licenses, extension of temporary licenses and reinstatement. (Comments Received, SOC ext.)

201 KAR 39:060. Reinstatement of license subject to disciplinary action. (Comments Received, SOC ext.)

201 KAR 39:070. Application and qualifications for temporary licensure. (Comments Received, SOC ext)

201 KAR 39:080. Reciprocity. (Comments Received, SOC ext)

201 KAR 39:090. Continuing education requirements. (Comments Received, SOC ext)

201 KAR 39:100. Complaint procedure. (Comments Received, SOC ext)

201 KAR 39:120. Code of ethics. (Comments Received, SOC ext)

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

Hunting and Fishing

~~301 KAR 3:011. Quota hunts voluntary hunter access program lands. (Withdrawn by agency 12/1/12)~~

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

**Kentucky Board of Education
Department of Education**

Alternate Education Programs

~~704 KAR 19:001. Alternative Education Programs. (Comments Received)(Withdrawn by agency 12/7/2011)~~

**Department of Workforce Investment
Office for the Blind**

Department of the Blind

782 KAR 1:010. Kentucky business enterprises. (Comments Received)

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office**

Managed Care

907 KAR 17:005 & E. Managed care organization requirements and policies. ("E" expires 4/25/2012) (Comments Received, SOC ext.)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

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

STATEMENT OF EMERGENCY
103 KAR 3:040E

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers the forms and information necessary to comply with Kentucky tax laws. This administrative regulation must be filed as soon as possible in order to incorporate by reference such tax forms and instructions as may be needed by taxpayers and their representative to comply with Kentucky tax laws. An ordinary administrative regulation is not sufficient, because the public relies on these forms and instructions in order to make timely and accurate filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
THOMAS B. MILLER, Commissioner

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Emergency Amendment)

103 KAR 3:040E. Income Tax Forms Manual.

RELATES TO: KRS 131.041, 131.051, 131.061, 131.071, 131.081, 131.110, 131.130, 131.155, 131.170, 131.180, 131.190, 131.250, 131.340, 131.500, 131.510(1), (2)(a), 131.540, 141.010, 141.0101, 141.011, 141.016, 141.020, 141.0202, 141.030, 141.040, 141.0401, 141.0405, 141.041, 141.042, 141.044, 141.062, 141.065, 141.066, 141.067, 141.068, 141.069, 141.070, 141.071, 141.120, 141.121, 141.160, 141.170, 141.180, 141.200, 141.205, 141.206, 141.207, 141.208, 141.300, 141.310, 141.325, 141.330, 141.335, 141.347, 141.370, 141.381, 141.382, 141.383, 141.384, 141.385, 141.386, 141.390, 141.395, 141.400, 141.401, 141.402, 141.403, 141.405, 141.407, 141.412, 141.415, 141.418, 141.420, 141.421, 141.423, 141.424, 141.4242, 141.4244, 141.428, 141.430, 141.434, 141.436, 141.437, 141.438, 141.985, 141.990, 151B.127, 154.12-2086, 154.20-050, 154.22-060, 154.23-035, 154.24-110, 154.25-030, 154.26-090, 154.28-090, 154.32-010, 154.34-080, 154.45-090, 154.48-025, 155.170

STATUTORY AUTHORITY: KRS 131.130(3)

EFFECTIVE: December 9, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of income taxes by the Department of Revenue.

Section 1. Corporation Income Taxes. (1) Revenue Form 41A720, "Form 720, 2011[2010] Kentucky Corporation Income Tax and LLET Return", shall be used by a C corporation to determine its corporation income tax due in accordance with KRS 141.040 and its limited liability entity tax due in accordance with KRS 141.0401 for tax years beginning in 2011[2010].

(2) Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass-through entities taxable both within and without Kentucky)", shall be used by a corporation or a pass-through entity taxable both within and without Kentucky to apportion and allocate its net income to Kentucky in accordance with KRS 141.120 or 141.206.

(3) Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet[~~For a corporation or pass-through entity taxable both within and without Kentucky that is also a partner or member of a limited liability pass-through entity or general partnership~~]", shall be used by a corporation or a pass-through entity taxable both within and without Kentucky that is also

a partner or member of a pass-through entity to determine the sales, property and payroll amounts to be entered on Revenue Form 41A720A.

(4) Revenue Form 41A720A-N, "Schedule A-N, Apportionment Factor Schedule", shall be used by a corporation filing a mandatory nexus consolidated return to show the Kentucky and total sales, property, and payroll of the corporation and each subsidiary included in the apportionment factor.

(5) Revenue Form 41A720BIO, "Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Biodiesel", shall be used by a taxpayer who is a biodiesel producer, biodiesel blender, or renewable diesel producer to report the biodiesel gallons produced or used by the blender and request approval from the Kentucky Department of Revenue of the tax credit amount allowed by KRS 141.423.

(6)[(5)] Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", shall be used by a corporation to compute the tax credit allowed by KRS 141.041 for coal used or substituted for other fuels in an eligible heating facility as described by KRS 141.041(1).

(7)[(6)] Revenue Form 41A720-CCI, "Schedule CCI, Application and Credit Certificate of Clean Coal Incentive Tax Credit", shall be used by a taxpayer to request approval from the Department of Revenue of the tax credit amount allowed by KRS 141.428 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(8)[(7)] Revenue Form 41A720CELL, "Schedule CELL, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol", shall be used by a taxpayer who is a producer of cellulosic ethanol to report the number of cellulosic ethanol gallons and request approval from the Department of Revenue of the tax credit amount allowed by KRS 141.4244.

(9)[(8)] Revenue Form 41A720-CI, "Schedule CI, Application for Coal Incentive Tax Credit", shall be used by a taxpayer to request approval for the amount of tax credit allowed by KRS 141.0405 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(10)[(9)] Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule", shall be used by a C corporation filing a consolidated return to show its federal pro forma consolidated return.

(11)[(10)] Revenue Form 41A720CR-C, "Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet", shall be used by a C corporation filing a consolidated return as a continuation of Revenue Form 41A720CR.

(12)[(11)] Revenue Form 41A720ES, "Form 720-ES Kentucky, 2012 [2011] Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher", shall be used by a corporation or a limited liability pass-through entity to submit payments of estimated corporation income or limited liability entity tax as required by KRS 141.044.

(13)[(12)] Revenue Form 41A720ETH, "Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol", shall be used by a taxpayer who is a producer of ethanol to report ethanol gallons produced and request approval from the Kentucky Department of Revenue of the tax credit amount allowed by KRS 141.4242.

(14)[(13)] Revenue Form 41A720Ezc, "Schedule EZC, Enterprise Zone Tax Credit", shall be used by a qualified taxpayer to determine the tax credit allowed by KRS 154.45-090.

(15)[(14)] Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", shall be used by an individual, corporation, fiduciary, or pass-through entity to determine the deduction allowed by KRS 141.0202.

(16)[(15)] Revenue Form 41A720(I), "Instructions, 2011[2010] Kentucky Corporation Income Tax and LLET Return", shall be used by a corporation to file its 2011[2010] Kentucky Corporation Income Tax and LLET Return and related schedules.

(17)[(16)] Revenue Form 41A720KCR, "Schedule KCR, Kentucky Consolidated Return Schedule", shall be used by a C corporation filing a nexus consolidated return showing the income or loss of each entity included in the nexus consolidated tax return.

(18) [(47)] Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule - Continuation Sheet", shall be used by a C corporation filing a nexus consolidated return as a continuation of Revenue Form 41A720KCR.

(19) Revenue Form 41A720KESA, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation)", shall be used by a corporation which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.430.

(20) Revenue Form 41A720KESA-SP, "Schedule KESA-SP, Tax Credit Computation Schedule (For a KESA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.430.

(21) Revenue Form 41A720KESA-T, "Schedule KESA-T, Tracking Schedule for a KESA Project", shall be used by a company which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to maintain a record of the approved costs and tax credits for the duration of the agreement.

(22) [(48)] Revenue Form 41A720LLET, "Schedule LLET, Limited Liability Entity Tax", shall be used by a corporation or a limited liability pass-through entity to determine the limited liability entity tax in accordance with KRS 141.0401.

(23) [(49)] Revenue Form 41A720LLET-C, "Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet [~~For a corporation or limited liability pass-through entity subject to the limited liability entity tax that is also a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006]~~", shall be used by a corporation or a limited liability pass-through entity that is a partner in a general partnership organized or formed as a general partnership after January 1, 2006, or ~~a corporation or limited liability pass-through entity that is a member or partner~~ partner or member in a ~~[another]~~ limited liability pass-through entity to determine its Kentucky gross receipts and Kentucky gross profits and its total gross receipts and total gross profits from all sources to be entered on Revenue Form 41A720LLET.

(24) [(20)] Revenue Form 41A720LLET(K), "Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass-through Entity with Economic Development Project(s))", shall be used by limited liability pass-through entities with economic development projects to determine the limited liability entity tax.

(25) [(24)] Revenue Form 41A720LLET(K)-C, "Schedule LLET(K)-C, Limited Liability Entity Tax - Continuation Sheet [~~For a limited liability pass-through entity with economic development project(s) subject to the limited liability entity tax that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006]~~", shall be used by a limited liability pass-through entity with an economic development project that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006, to determine its Kentucky gross receipts and Kentucky gross profits and its total gross receipts and total gross profits from all sources to be entered on Revenue Form 41A720LLET(K).

(26) [(22)] Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule", shall be used by a C corporation with a current year net operating loss or net operating loss carry-forward.

(27) [(23)] Revenue Form 41A720NOL-CF, "Schedule NOL-CF, Kentucky NOL Carry forward Schedule", shall be used by a corporation filing a nexus consolidated income tax return as provided by KRS 141.200, in addition to Revenue Form 41A720NOL, to show the Kentucky net operating loss (KNOL) carry forward balance for each new member of the affiliated group.

(28) [(24)] Revenue Form 41A720-O, "Schedule O-720, Other Additions and Subtractions To/From Federal Taxable Income", shall be used by a corporation filing Kentucky Form 720 to show other additions to and subtractions from federal taxable income on Revenue Form 41A720, Part III, Lines 9 and 16, respectively.

(29) [(25)] Revenue Form 41A720QR, "Schedule QR, Qualified

Research Facility Tax Credit", shall be used by a corporation, individual, or pass-through entity to determine the credit against the income tax liability or LLET liability allowed by KRS 141.395.

(30) [(26)] Revenue Form 41A720RC, "Schedule RC, Application for Income Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling Project", shall be used by a taxpayer to request approval for the amount of credit allowed by KRS 141.390 for the purchase and installation of recycling or composting equipment or a major recycling project. This form shall also be used by an individual, corporation, fiduciary, or pass-through entity to substantiate and keep a record of the amount of approved credit claimed on their tax return.

(31) [(27)] Revenue Form 41A720RC-C, "Schedule RC-C, Schedule RC - Part I Continuation", shall be used by an individual, corporation, fiduciary, or pass-through entity, in addition to Revenue Form 41A720RC, to list additional equipment for which approval of the credit allowed by KRS 141.390 is being requested.

(32) [(28)] Revenue Form 41A720RC(I), "Instructions for Schedule RC", shall be used by taxpayers filing Revenue Form 41A720RC and Revenue Form 41A720RC-C requesting approval of a tax credit for recycling equipment, composting equipment, or a major recycling project.

(33) [(29)] Revenue Form 41A720RC-R, "Schedule RC-R, Recycling or Composting Equipment Tax Credit Recapture", shall be used by a taxpayer disposing of recycling or composting equipment before the end of the recapture period to compute the tax credit recaptured to be reported on the applicable tax return.

(34) [(30)] Revenue Form 41A720RR-E, "Schedule RR-E, Application and Credit Certificate of Income Tax/LLET Credit Railroad Expansion", shall be used by a corporation or pass-through entity requesting approval of a railroad expansion tax credit allowed by KRS 141.386.

(35) [(34)] Revenue Form 41A720RR-I, "Schedule RR-I, Railroad Maintenance and Improvement Tax Credit", shall be used by a corporation, individual, or pass-through entity to determine the credit against the income tax liability or LLET liability allowed by KRS 141.385.

(36) [(32)] Revenue Form 41A720S, "Form 720S, 2011 [2040] Kentucky S Corporation Income Tax and LLET Return", shall be used by an S corporation to determine the amount of tax due in accordance with KRS 141.040 and 141.0401 and to report the shareholders' share of income, loss, credits, deductions, etc. for tax years beginning in 2011 [2040].

(37) [(33)] Revenue Form 41A720S(I), "Instructions, 2011 [2040] Kentucky S Corporation Income Tax and LLET Return", shall be used by an S corporation to file its 2011 [2040] Kentucky S Corporation Income Tax and LLET Return and related schedules.

(38) [(34)] Revenue Form 41A720S(K), "Form 720S(K), Kentucky Schedule K for S Corporations With Economic Development Project(s)", shall be used for tax years beginning in 2011 by S Corporations with economic development projects to determine the shareholders' shares of income, credit, deductions, etc., excluding the economic development projects.

(39) [(35)] Revenue Form 41A720S(K-1), "Schedule K-1 (Form 720S), 2011 [2040] Shareholder's Share of Income, Credits, Deductions, Etc.", shall be used by an S corporation to report to each of its shareholders the amount of income, credit, deduction, etc., that the shareholder shall report for Kentucky income tax purposes.

(40) [(36)] Revenue Form 41A720S-O, "Schedule O-PTE, Other Additions and Subtractions To/From Federal Ordinary Income", shall be used by a pass-through entity filing Revenue Form 41A720S, Form 41A765, or Form 42A765-GP to show other additions to and subtractions from federal ordinary income on Revenue Form 41A720S, 41A765, or 42A765-GP Part I, Lines 5 and 9, respectively.

(41) [(37)] Revenue Form 41A720SL, "Application for Six-Month Extension of Time to File Kentucky Corporation or Limited Liability Pass-Through Entity Return", shall be used by a corporation or a limited liability pass-through entity to request a six (6) month extension of time to file a tax return or an LLET return or to submit payment of unpaid tax.

(42) [(38)] Revenue Form 41A720TCS, "Schedule TCS, Tax Credit Summary Schedule", shall be used by a corporation or a limited liability pass-through entity to summarize tax credits

claimed and shall be attached to the tax return.

(43)[(39)] Revenue Form 41A720-VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit", shall be used by an entity claiming a tax credit provided by KRS 141.418.

(44)[(40)] Revenue Form 41A720-S1, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income and License Tax Return for tax periods beginning prior to January 1, 2005, as previously filed.

(45)[(41)] Revenue Form 41A720-S2, "Form 720-AMENDED, Amended Kentucky Corporation Income Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax Return for periods beginning on or after January 1, 2005 and before January 1, 2007, as previously filed.

(46)[(42)] Revenue Form 41A720-S3, "Form 720-AMENDED (2007-2008), Amended Kentucky Corporation Income Tax and LLET Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax and LLET Return for periods beginning on or after January 1, 2007 and before January 1, 2009, as previously filed.

(47)[(43)] Revenue Form 41A720-S4, "Form 851-K, Kentucky Affiliations and Payment Schedule", shall be used by a corporation filing a consolidated Kentucky income tax return on Revenue Form 41A720 to identify the members of the affiliated group which are subject to the Kentucky corporation tax and to list the amount of tax paid.

(48)[(44)] Revenue Form 41A720-S6, "Form 2220-K, Underpayment and Late Payment of Estimated Income Tax and LLET", shall be used by a corporation or limited liability pass-through entity required by KRS 141.042 and 141.044 to file a declaration of estimated tax, to compute the underpayment penalty as provided by KRS 131.180(3) and 141.990, and to compute the interest on any late payment or underpayment of an estimated tax installment as provided by KRS 131.183(2).

(49)[(45)] Revenue Form 41A720-S7, "Form 5695-K, Kentucky Energy Efficiency Products Tax Credit", shall be used by a taxpayer to claim a tax credit for installation of energy efficiency products for residential and commercial property as provided by KRS 141.436.

(50)[(46)] Revenue Form 41A720-S9, "Form 8903-K, Kentucky Domestic Production Activities Deduction", shall be used by a corporation to determine the Domestic Production Activities Deduction amount for Kentucky corporation income tax purposes and shall be attached to the corporation income tax return.

(51)[(47)] Revenue Form 41A720-S11, "Form 8908-K, Kentucky ENERGY STAR (Homes and Manufactured Homes) Tax Credit", shall be used by a taxpayer to claim a tax credit for the construction of an ENERGY STAR home or the sale of an ENERGY STAR manufactured home as provided by KRS 141.437.

(52)[(48)] Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (For a KREDA Project of a Corporation)", shall be used by a corporation which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.347.

(53)[(49)] Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", shall be used by a company which has a Kentucky Rural Economic Development Act (KREDA) project to maintain a record of the debt service payments, wage assessment fees and tax credits for the duration of the project.

(54)[(50)] Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (For a KREDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.347.

(55)[(51)] Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (For a KIDA Project of a Corporation)", shall be used by a corporation which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against its Kentucky corporation income tax liability and

limited liability entity tax liability in accordance with KRS 141.400.

(56)[(52)] Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project", shall be used by a company which has a Kentucky Industrial Development Act (KIDA) project to maintain a record of the debt service payments and tax credits for the duration of the project.

(57)[(53)] Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (For a KIDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.400.

(58)[(54)] Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (For a KIRA Project of a Corporation)", shall be used by a corporation which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.403.

(59)[(55)] Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", shall be used by a company which has a Kentucky Industrial Revitalization Act (KIRA) project to maintain a record of the approved costs, wage assessment fees and tax credits for the duration of the project.

(60)[(56)] Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (For a KIRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.403.

(61)[(57)] Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (For a KJDA Project of a Corporation)", shall be used by a corporation which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.407.

(62)[(58)] Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", shall be used by a company which has a Kentucky Jobs Development Act (KJDA) project to maintain a record of the approved costs, wage assessment fees, in-lieu-of credits and tax credits for the duration of the project.

(63)[(59)] Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (For a KJDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.407.

(64)[(60)] Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Reinvestment Act (KRA) project to compute the allowable KRA credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

(65)[(61)] Revenue Form 41A720-S36, "Schedule KRA-SP, Tax Computation Schedule (For a KRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Reinvestment Act (KRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

(66)[(62)] Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule For a KRA Project", shall be used by a company which has entered into a Kentucky Reinvestment Act (KRA) project to maintain a record of the balance of approved costs and tax credits for the duration of the agreement.

(67)[(63)] Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Economic Opportunity Zone (KEOZ) Act project to compute the allowable KEOZ credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.401.

(68)[(64)] Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ Project of a Pass-Through Entity)", shall be used by a pass-through entity which has

entered into a Kentucky Economic Opportunity Zone (KEOZ) Act project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.401.

~~(69) [(65)] Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", shall be used by a company which has entered into an agreement for a Kentucky Economic Opportunity Zone (KEOZ) Act project to maintain a record of the debt service payments, wage assessment fees, approved costs and tax credits for the duration of the agreement. [(66) Revenue Form 41A720-S43, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Environmental Stewardship Act (KESA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.430.~~

~~(67) Revenue Form 41A720-S44, "Schedule KESA-T, Tracking Schedule for a KESA Project", shall be used by a company which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to maintain a record of the approved costs and tax credits for the duration of the agreement.]~~

~~(70) [(68)] Revenue Form 41A720-S45, "Schedule KJRA, Tax Credit Computation Schedule (For a KJRA Project of a Corporation)", shall be used by a company which has entered into a Kentucky Jobs Retention Act (KJRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.402.~~

~~(71) [(69)] Revenue Form 41A720-S46, "Schedule KJRA-T, Tracking Schedule For a KJRA Project", shall be used by a company which has entered into an agreement for a Kentucky Jobs Retention Act (KJRA) project to maintain a record of the debt service payments, wage assessment fees, approved costs, and tax credits for the duration of the agreement.~~

~~(72) Revenue Form 41A720-S47, "Schedule KJRA-SP, Tax Computation Schedule (For a KJRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into a Kentucky Jobs Retention Act (KJRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.402.~~

~~(73) [(70)] Revenue Form 41A720-S50, "Schedule IEIA, Tax Credit Computation Schedule (For an IEIA Project of a Corporation)", shall be used by a company which has entered into an Incentives for Energy Independence Act (IEIA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.421.~~

~~(74) [(71)] Revenue Form 41A720-S51, "Schedule IEIA-T, Tracking Schedule for an IEIA Project", shall be used by a company which has entered into an Incentives for Energy Independence Act (IEIA) project to maintain a record of the balance of approved costs, wage assessments, and tax credits for the duration of the agreement.~~

~~(75) Revenue Form 41A720-S52, "Schedule IEIA-SP, Tax Computation Schedule (For a IEIA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into an Incentives for Energy Independence Act (IEIA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.421.~~

~~(76) [(72)] Revenue Form 41A720-S53, "Schedule KBI, Tax Credit Computation Schedule (For a KBI Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Business Investment (KBI) project to compute the allowable KBI credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.415.~~

~~(77) [(73)] Revenue Form 41A720-S54, "Schedule KBI-SP, Tax Computation Schedule (For a KBI Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into a Kentucky Business Investment (KBI) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.415.~~

~~(78) [(74)] Revenue Form 41A720-S55, "Schedule KBI-T, Tracking Schedule for a KBI Project", shall be used by a company which has entered into an agreement for a Kentucky Business Investment (KBI) project to maintain a record of approved costs,~~

wage assessments, and tax credits for the duration of the agreement.

~~(79) [(75)] Revenue Form 41A720-S80, "Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit", shall be used by a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment eligible for the tax credit provided by KRS 141.434.~~

~~(80) [(76)] Revenue Form 41A720-S81, "Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification", shall be used by a qualified community development entity to provide proof to the Kentucky Department of Revenue of the receipt of cash for a taxpayer's qualified equity investment.~~

~~(81) [(77)] Revenue Form 41A720-S82, "Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture", shall be used by the Kentucky Department of Revenue to notify a taxpayer of a recapture of the New Markets Development Program tax credit.~~

~~(82) [(78)] Revenue Form 41A725, "Form 725, 2011 [2010] Kentucky Single Member LLC Individually Owned LLET Return", shall be used by a single member individually-owned LLC to file an LLET return in accordance with KRS 141.0401 for tax years beginning in 2011 [2010].~~

~~(83) [(79)] Revenue Form 41A725CP, "Schedule CP, Form 725, 2011 [2010] Kentucky Single Member LLC Individually Owned Composite Return Schedule", shall be used by a single member individual with multiple LLC entities to file LLET returns in accordance with KRS 141.0401 for tax years beginning in 2011 [2010].~~

~~(84) [(80)] Revenue Form 41A725(I), "Instructions, 2011 [2010] Kentucky Single Member LLC Individually Owned LLET Return", shall be used by a single member LLC individually owned to file its 2011 [2010] Kentucky LLET return and related schedules.~~

~~(85) [(81)] Revenue Form 41A750, "Form 750, Business Development Corporation Tax Return", shall be used by a corporation organized under the provisions of KRS Chapter 155 to determine its excise tax due in accordance with KRS 155.170 for tax years beginning in 2011 [2010].~~

~~(86) [(82)] Revenue Form 41A765, "Form 765, 2011 [2010] Kentucky Partnership Income and LLET Return", shall be used by an entity taxed as a partnership and organized as a LLC, LLP or LP to file its Kentucky income and LLET return in accordance with KRS 141.0401 and 141.206 for tax years beginning in 2011 [2010].~~

~~(87) [(83)] Revenue Form 41A765(I), "Instructions, 2011 [2010] Kentucky Partnership Income and LLET Return", shall be used by an entity taxed as a partnership and organized as a LLC, LLP, or LP to file its 2011 [2010] Kentucky income and LLET return and related schedules.~~

~~(88) [(84)] Revenue Form 41A765(K), "Form 765(K), Kentucky Schedule K For Partnerships With Economic Development Project(s)", shall be used for tax years beginning in 2011 by partnerships with economic development projects to determine the partners' share of income, credits, deductions, etc., excluding the economic development projects.~~

~~(89) [(85)] Revenue Form 41A765(K-1), "Schedule K-1 (Form 765), 2011 [2010] Partner's Share of Income, Credits, Deductions, Etc.", shall be used by an entity taxed as a partnership and organized as a LLC, LLP, or LP to report to its partners the amount of income, credit, deduction, etc., that the partners shall report for Kentucky income tax purposes.~~

~~(90) [(86)] Revenue Form 41A800, "Corporation and Pass-through Entity Nexus Questionnaire", shall be used by a corporation or pass-through entity to determine if the entity has nexus with the Commonwealth of Kentucky.~~

Section 2. Individual Income and Withholding Taxes. (1) Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", shall be submitted to the Department of Revenue to request an installment agreement to pay tax due.

(2) Revenue Form 40A100, "Application for Refund of Income Taxes", shall be presented to the Department of Revenue to request a refund of income taxes paid.

(3) Revenue Form 40A102, "2011 [2010] Application for Extension

sion of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", shall be submitted to the Department of Revenue by individuals, partnerships, and fiduciaries prior to the date prescribed by law for filing a return to request a six (6) month extension to file the return or to remit payment of tax prior to the date the return is due.

(4) Revenue Form 40A103, "Application for New Home Tax Credit", shall be submitted to the Department of Revenue by individuals to request approval for the new home tax credit.

(5) Revenue Form 40A200, "Form PTE-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income", shall be used by a pass-through entity doing business in Kentucky to report Kentucky income tax withheld on each nonresident individual or corporate partner doing business in Kentucky only through its ownership interest in the pass-through entity.

(6) Revenue Form 40A201, "Form 740NP-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income [Transmittal] Report and Composite Income Tax Return", shall be used by a pass-through entity doing business in Kentucky to report and pay Kentucky income tax withheld on nonresident individual and corporate partners.

(7) Revenue Form 40A201ES, "Form 740NP-WH-ES, Instructions – 2012 Pass-Through Entity Nonresident Distributive Share Withholding Report and Composite Income Tax Return Voucher", shall be used by every pass-through entity for the declaration and payment of estimated tax if required.

(8) Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", shall be used by a taxpayer or tax preparer to order individual income tax forms.

(9)[(8)] Revenue Form 42A003, "Withholding Kentucky Income Tax Instructions for Employers", shall provide instructions for employers and shall contain forms used for withholding and reporting Kentucky income tax withholding.

(10)[(9)] Revenue Form 42A003(T), "2012[2014] Withholding Tax Tables Computer Formula", shall be used by an employer for computing employees' Kentucky income tax withholding each pay period.

(11)[(40)] Revenue Form 42A740, "Form 740, 2011[2010] Kentucky Individual Income Tax Return, Full-Year Residents Only", shall be completed by a resident individual to report taxable income and income tax liability for taxable years beginning in 2011[2010], and shall be due within three and one-half (3 1/2) months after the close of the taxable year.

(12)[(41)] Revenue Form 42A740-A, "Schedule A, Form 740, 2011[2010] Kentucky Itemized Deductions", shall be completed by resident individuals and attached to Form 740 to support itemized deductions claimed for 2011[2010].

(13)[(42)] Revenue Form 42A740ES, "Form 740-ES, 2012[2014] Individual Income Tax Kentucky Estimated Tax Voucher", shall be submitted to the Department of Revenue by individuals with payment of quarterly estimated tax.

(14)[(43)] Revenue Form 42A740-EZ, "Form 740-EZ, 2011[2010] Kentucky Individual Income Tax Return for Single Persons with No Dependents", shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning in 2011 [2010], and shall be due within three and one-half (3 1/2) months after the close of the taxable year.

(15)[(44)] Revenue Form 42A740(I), "2011[2010] Kentucky Individual Income Tax Instructions for Forms 740 and 740-EZ", shall be used by resident individuals to file the 2011[2010] Kentucky Individual Tax Return and related schedules.

(16)[(45)] Revenue Form 42A740-J, "Schedule J, Kentucky Farm Income Averaging", shall be completed by individuals and attached to Form 740 to compute tax liability by averaging farm income for taxable years beginning after December 31, 1997.

(17)[(46)] Revenue Form 42A740-KNOL, "Schedule KNOL, 2011[2010] Kentucky Net Operating Loss Schedule", shall be used by individuals to compute and carry forward a net operating loss to subsequent years.

(18)[(47)] Revenue Form 42A740-M, "Schedule M, 2011[2010] Kentucky Federal Adjusted Gross Income Modifications", shall be completed by individuals and attached to Form 740 in support of additions to and subtractions from federal adjusted gross income.

(19)[(48)] Revenue Form 42A740-NP, "Form 740-NP,

2011[2010] Kentucky Individual Income Tax Return, Nonresident or Part-Year Resident", shall be completed by part-year or full-year nonresident individuals to report taxable income and income tax liability for taxable years beginning in 2011[2010], and shall be filed within three and one-half (3 1/2) months after the close of the taxable year.

(20)[(49)] Revenue Form 42A740-NP-A, "Schedule A, Form 740-NP, 2011[2010] Kentucky Schedule A Itemized Deductions", shall be completed and attached to Form 42A740-NP by part-year or full-year nonresidents to support the itemized deductions claimed for 2011[2010].

(21)[(20)] Revenue Form 42A740-NP-ME, "Schedule ME, Form 740-NP, 2011 [2010] Moving Expense and Reimbursement", shall be completed and attached to Form 42A740-NP by part-year or full-year nonresidents to support moving expenses and reimbursement by employers for moving expenses for 2011 [2010].

(22)[(24)] Revenue Form 42A740-NP(I), "Instructions for 2011[2010] Kentucky Form 740-NP, Nonresident or Part-Year Resident Income Tax Return", shall be used by nonresident or part-year resident individuals to file the 2011[2010] Kentucky Form 740-NP and related schedules.

(23)[(22)] Revenue Form 42A740-NP-R, "Form 740-NP-R, 2011[2010] Kentucky Income Tax Return Nonresident - Reciprocal State", shall be completed by resident individuals of reciprocal states to request a refund of Kentucky withholding for 2011[2010].

(24)[(23)] Revenue Form 42A740-NP(P), "2011[2010] Kentucky Income Tax Return, Nonresident or Part-Year Resident", shall be a packet containing forms and instructions and shall be mailed to nonresident and part-year resident individuals for use in filing a Kentucky individual tax return for 2011[2010].

(25)[(24)] Revenue Form 42A740(PKT), "2011[2010] Kentucky Individual Income Tax Forms", shall be a packet containing forms and instructions and shall be mailed to resident individuals for use in filing a Kentucky individual tax return for 2011[2010].

(26)[(25)] Revenue Form 42A740-P, "Schedule P, 2011[2010] Kentucky Pension Income Exclusion", shall be completed by individuals and attached to Form 740 to compute the amount of allowable pension exclusion for 2011[2010].

(27)[(26)] Revenue Form 42A740-UTC, "Schedule UTC, Form 740, Unemployment Tax Credit", shall be completed by individuals and attached to Form 740 or Form 740-NP to provide the Office of Employment and Training~~Department for Employment Services~~ Certificate Numbers in support of credit claimed for hiring an unemployed person.

(28)[(27)] Revenue Form 42A740-X, "Form 740-X, Amended Kentucky Individual Income Tax Return", shall be completed by individuals and filed with the Department of Revenue to amend a previously filed tax return for 2005 or future years.

(29)[(28)] Revenue Form 42A740-XP, "Form 740-XP, Amended Kentucky Individual Income Tax Return, 2004 and Prior Years", shall be completed by individuals and filed with the Department of Revenue to amend a previously filed tax return for 2004 or prior years.

(30)[(29)] Revenue Form 42A740-S1, "Form 2210-K, 2011[2010] Underpayment of Estimated Tax by Individuals", shall be filed by individuals to request a waiver of estimated tax penalty or to compute and self assess an estimated tax penalty for a tax year beginning in 2011[2010].

(31)[(30)] Revenue Form 42A740-S4, "2012[2014] Instructions for Filing Estimated Tax Vouchers", shall be used to compute the amount of estimated tax due for 2012[2014].

(32)[(34)] Revenue Form 42A740-S18, "Form 8582-K, 2011[2010] Kentucky Passive Activity Loss Limitations", shall be completed by an individual taxpayer and attached to the individual tax return in support of an allowable passive loss deduction and carryover of a passive activity loss.

(33)[(32)] Revenue Form 42A740-S21, "Form 4972-K, 2011[2010] Kentucky Tax on Lump-Sum Distributions", shall be completed by an individual taxpayer to compute tax liability on a lump sum distribution and attached to the taxpayer's individual income tax return.

(34)[(33)] Revenue Form 42A740-S22, "Form 8879-K[8453-K], 2011[2010] Kentucky Individual Income Tax Declaration for Electronic Filing", shall be completed, signed by the individual taxpayer

or taxpayers and maintained by the preparer or taxpayer in support of an electronically filed return.

(35) [(34)] Revenue Form 42A740-S23, "Form 740-V, 2011[2010] Kentucky Electronic Payment Voucher", shall be used by the individual taxpayer or taxpayers for the payment of additional tax due on an electronically filed return and submitted to the Department of Revenue.

(36) [(35)] Revenue Form 42A740-S24, "Form 8863-K, 2011[2010] Kentucky Education Tuition Tax Credit", shall be used by an individual taxpayer or taxpayers to claim a tuition tax credit on the taxpayer's individual Kentucky income tax return.

(37) Revenue Form 42A740-S25, "Form 8948-K, "Preparer Explanation For Not Filing Electronically", shall be used to indicate the reason the return is not being filed electronically.

(38) [(36)] Revenue Form 42A741, "Form 741, 2011[2010] Kentucky Fiduciary Income Tax Return", shall be used by a fiduciary of an estate or trust to report income and tax liability of an estate or trust and be filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year.

(39) [(37)] Revenue Form 42A741-D, "Schedule D, Form 741, 2011[2010] Kentucky Capital Gains and Losses", shall be completed and attached to Form 741 by a fiduciary to report income from capital gains and losses.

(40) [(38)] Revenue Form 42A741(I), "Instructions - Form 741, Kentucky Fiduciary Income Tax Return", shall be the instruction guide provided by the Department of Revenue for completing the 2011 [2010] Form 741.

(41) [(39)] Revenue Form 42A741(K-1), "Schedule K-1, Form 741, 2011[2010] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc.", shall be filed by the fiduciary with Form 741 to report each beneficiary's share of income, deductions, and credits.

(42) [(40)] Revenue Form 42A765-GP, "Form 765-GP, 2011[2010] Kentucky General Partnership Income Return", shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year by a general partnership to report income, deductions, and credits of a general partnership for 2011[2010].

(43) [(41)] Revenue Form 42A765-GP(I), "Instructions, 2011[2010] Kentucky General Partnership Income Return", shall be provided to assist the general partnership in completing a general partnership income return.

(44) [(42)] Revenue Form 765-GP(K-1), "Schedule K-1, Form 765-GP, 2011[2010] Partner's Share of Income, Credits, Deductions, etc.", shall be filed by the general partnership with Form 765-GP to report each general partner's share of income, deductions, and credits.

(45) [(43)] Revenue Form 42A765-GP(K), "Form 765-GP(K), Kentucky Schedule K for General Partnerships with Economic Development Project(s)", shall be used by a general partnership which has one (1) or more economic development projects to determine the total general partners' share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects.

(46) [(44)] Revenue Form 42A801, "Form K-1, Kentucky Employer's Income Tax Withheld Worksheet", shall be used by employers to report wages and taxes withheld for the filing period.

(47) [(45)] Revenue Form 42A801(D), "Form K-1, Amended Employer's Return of Income Tax Withheld", shall be used by employers to correct wages and taxes reported for the filing period.

(48) [(46)] Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", shall be used by employers who remit taxes withheld electronically to report wages and tax withheld for the filing period.

(49) [(47)] "Form W-2, 2011[2010] Wage and Tax Statement", shall be used by an employer to report each of its employees' wages and Kentucky tax withheld for the calendar year 2011[2010].

(50) [(48)] Revenue Form 42A803, "Form K-3, Kentucky Employer's Income Tax Withheld Worksheet", shall be used by employers to report wages and tax withheld for the filing period and annually reconcile wages and taxes reported.

(51) [(49)] Revenue Form 42A803(D), "Form K-3, Amended Employer's Return of Income Tax Withheld", shall be used by em-

ployers to amend wages and taxes reported for the filing period and the annual reconciled wages and taxes reported.

(52) [(50)] Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", shall be used by employers to report wages and tax withheld for the filing period and to annually reconcile wages and taxes reported.

(53) [(51)] Revenue Form 42A804, "Form K-4, Kentucky Department of Revenue Employee's Withholding Exemption Certificate", shall be used by an employee to inform the employer of the number of exemptions claimed in order to determine the amount of Kentucky tax to withhold from wages each pay period.

(54) [(52)] Revenue Form 42A804-A, "Form K-4A, Kentucky Department of Revenue Withholding Exemptions for Excess Itemized Deductions", shall be used by an employee to determine additional withholding exemptions.

(55) [(53)] Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", shall be used by employees to inform employers of special tax exempt status.

(56) [(54)] Revenue Form 42A804-M, "Form K-4M, Nonresident Military Spouse Withholding Tax Exemption Certificate", shall be used by employees to inform employers of special tax exempt status as a nonresident military spouse.

(57) [(55)] Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", shall be used by employers annually to submit Form W-2 Wage and Tax Statements.

(58) [(56)] Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", shall be completed by nonresident employees working at Fort Campbell, Kentucky, to inform employers of special tax exempt status.

(59) [(57)] Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky Department of Revenue Web Site", shall be used by employers to request authorization to annually submit wage and tax statements via the Kentucky Department of Revenue Web site.

(60) [(58)] Revenue Form 42A809, "Certificate of Nonresidence", shall be used by employees to inform employers of special tax exempt status as a result of being a resident of a reciprocal state.

(61) [(59)] Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax", shall be used by individuals to submit a sworn statement concerning residency status.

(62) [(60)] Revenue Form 42A811, "KREDA Annual Report", shall be completed by employers to report KREDA employee wage assessment fee information to the Department of Revenue.

(63) [(61)] Revenue Form 42A812, "KIDA Annual Report", shall be completed by employers to report KIDA employee wage assessment fee information to the Department of Revenue.

(64) [(62)] Revenue Form 42A813, "KJDA Annual Report", shall be completed by employers to report KJDA employee wage assessment fee information to the Department of Revenue.

(65) [(63)] Revenue Form 42A814, "KIRA Annual Report", shall be completed by employers to report KIRA employee wage assessment fee information to the Department of Revenue.

(66) [(64)] Revenue Form 42A815, "Withholding Tax Refund Application", shall be completed by employers to request a refund of withholding tax paid.

(67) [(65)] Revenue Form 42A816, "KEOZ Annual Report", shall be completed by employers to report KEOZ employee wage assessment fee information to the Department of Revenue.

(68) [(66)] Revenue Form 42A817, "KJRA Annual Report", shall be completed by employers to report KJRA employee wage assessment fee information to the Department of Revenue.

(69) [(67)] Revenue Form 42A818, "KBI Annual Report", shall be completed by employers to report KBI employee wage assessment fee information to the Department of Revenue.

(70) [(68)] Revenue Form 42D003, "2011[2010] Kentucky Wage and Tax Statements (W-2/K-2) Order Form", shall be used by employers to order wage and tax statements.

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

(a) Corporation income taxes - referenced material:

1. Revenue Form 41A720, "Form 720, 2011[2010] Kentucky

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Corporation Income Tax and LLET Return", 2011[2040];

2. Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass-through entities taxable both within and without Kentucky)", October 2011[2040];

3. Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet[(For a corporation or pass-through entity taxable both within and without Kentucky that is also a partner or member of a limited liability pass-through entity or general partnership)]", October 2011[2040];

4. Revenue Form 41A720A-N, "Schedule A-N, Apportionment Factor Schedule", October 2011.

5. Revenue Form 41A720BIO, "Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Biodiesel", October 2011 [2040];

6.[5.] Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", October 2011[2040];

7.[6.] Revenue Form 41A720-CCI, "Schedule CCI, Application and Credit Certificate of Clean Coal Incentive Tax Credit", October 2011[2040];

8.[7.] Revenue Form 41A720CELL, "Schedule CELL, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol", October 2011[2040];

9.[8.] Revenue Form 41A720-CI, "Schedule CI, Application for Coal Incentive Tax Credit", October 2011[2040];

10.[9.] Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule", October 2011[2040];

11.[40.] Revenue Form 41A720CR-C, "Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet", October 2011 [2040];

12.[44.] Revenue Form 41A720ES, "Form 720-ES Kentucky, 2012 [2044] Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher", June 2011 [2040];

13.[42.] Revenue Form 41A720ETH, "Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol", October 2011[2040];

14.[43.] Revenue Form 41A720EZC, "Schedule EZC, Enterprise Zone Tax Credit", October 2011[2040];

15.[44.] Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", October 2011[2040];

16.[45.] Revenue Form 41A720(I), "Instructions, 2011[2040] Kentucky Corporation Income Tax and LLET Return", October 2011[2040];

17.[46.] Revenue Form 41A720KCR, "Schedule KCR, Kentucky Consolidated Return Schedule", October 2011[2040];

18.[47.] Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule - Continuation Sheet", October 2011[2040];

19. Revenue Form 41A720KESA, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation)", October 2011;

20. Revenue Form 41A720KESA-SP, "Schedule KESA-SP, Tax Credit Computation Schedule (For a KESA Project of a Pass-Through Entity)", October 2011;

21. Revenue Form 41A720KESA-T, "Schedule KESA-T, Tracking Schedule for a KESA Project", October 2011;

22.[48.] Revenue Form 41A720LLET, "Schedule LLET, Limited Liability Entity Tax", October 2011[2040];

23.[49.] Revenue Form 41A720LLET-C, "Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet[(For a corporation or limited liability pass-through entity subject to the limited liability entity tax that is also a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006)]", October 2011[2040];

24.[20.] Revenue Form 41A720LLET(K), "Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass-through Entity with Economic Development Project(s))", October 2011[2040];

25.[24.] Revenue Form 41A720LLET(K)-C, "Schedule LLET(K)-C, Limited Liability Entity Tax - Continuation Sheet[(For a limited liability pass-through entity with economic development project(s) subject to the limited liability entity tax that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006)]", October 2011 [2040];

26.[22.] Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule", October 2011[2040];

27.[23.] Revenue Form 41A720NOL-CF, "Schedule NOL-CF, Kentucky NOL Carry forward Schedule", October 2011[2040];

28.[24.] Revenue Form 41A720-O, "Schedule O-720, Other Additions and Subtractions To/From Federal Taxable Income", November 2011[2040];

29.[25.] Revenue Form 41A720QR, "Schedule QR, Qualified Research Facility Tax Credit", October 2011[2040];

30.[26.] Revenue Form 41A720RC, "Schedule RC, Application for Income Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling Project", October 2011[2040];

31.[27.] Revenue Form 41A720RC-C, "Schedule RC-C, Schedule RC - Part I Continuation", October 2011[2040];

32.[28.] Revenue Form 41A720RC(I), "Instructions For Schedule RC", October 2011 [2040];

33.[29.] Revenue Form 41A720RC-R, "Schedule RC-R, Recycling or Composting Equipment Tax Credit Recapture", October 2011 [2040];

34.[30.] Revenue Form 41A720RR-E, "Schedule RR-E, Application and Credit Certificate of Income Tax/LLET Credit Railroad Expansion", October 2011[2040];

35.[34.] Revenue Form 41A720RR-I, "Schedule RR-I, Railroad Maintenance and Improvement Tax Credit", October 2011[2040];

36.[32.] Revenue Form 41A720S, "Form 720S, 2011[2040] Kentucky S Corporation Income Tax and LLET Return", 2011[2040];

37.[33.] Revenue Form 41A720S(I), "Instructions, 2011[2040] Kentucky S Corporation Income Tax and LLET Return", October 2011[2040];

38.[34.] Revenue Form 41A720S(K), "Form 720S(K), Kentucky Schedule K for S Corporations With Economic Development Project(s)", October 2011[2040];

39.[35.] Revenue Form 41A720S(K-1), "Schedule K-1 (Form 720S), 2011[2040] Shareholder's Share of Income, Credits, Deductions, Etc.", 2011[2040];

40.[36.] Revenue Form 41A720S-O, "Schedule O-PTE, Other Additions and Subtractions To/From Federal Ordinary Income", November 2011[2040];

41.[37.] Revenue Form 41A720SL, "Application for Six-Month Extension of Time to File Kentucky Corporation or Limited Liability Pass-Through Entity Return", June 2010;

42.[38.] Revenue Form 41A720TCS, "Schedule TCS, Tax Credit Summary Schedule", October 2011[2040];

43.[39.] Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit", October 2011[2040];

44.[40.] Revenue Form 41A720-S1, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", October 2011[2040];

45.[44.] Revenue Form 41A720-S2, "Form 720-AMENDED, Amended Kentucky Corporation Income Tax Return", October 2011[2040];

46.[42.] Revenue Form 41A720-S3, "Form 720-AMENDED (2007-2008), Amended Kentucky Corporation Income Tax and LLET Return", October 2011 [2040];

47.[43.] Revenue Form 41A720-S4, "Form 851-K, Kentucky Affiliations and Payment Schedule", October 2011[2040];

48.[44.] Revenue Form 41A720-S6, "Form 2220-K, Underpayment and Late Payment of Estimated Income Tax and LLET", October 2011[April 2011];

49.[45.] Revenue Form 41A720-S7, "Form 5695-K, Kentucky Energy Efficiency Products Tax Credit", October 2011[2040];

50.[46.] Revenue Form 41A720-S9, "Schedule 8903-K, Kentucky Domestic Production Activities Deduction", October 2011[2040];

51.[47.] Revenue Form 41A720-S11, "Form 8908-K, Kentucky ENERGY STAR (Homes and Manufactured Homes) Tax Credit", October 2011[2040];

52.[48.] Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (For a KREDA Project of a Corporation)", October 2011[2040];

53.[49.] Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", October 2011 [2040];

54. [50-] Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (For a KREDA Project of a Pass-Through Entity)", October 2011 [2040];

55. [54-] Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (For a KIDA Project of a Corporation)", October 2011 [2040];

56. [52-] Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project" October 2011[2040];

57.[53-] Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (For a KIDA Project of a Pass-Through Entity)", October 2011[2040];

58.[54-] Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (For a KIRA Project of a Corporation)", October 2011[2040];

59.[55-] Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", October 2011[2040];

60.[56-] Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (For a KIRA Project of a Pass-Through Entity)", October 2011[2040];

61. [57-] Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (For a KJDA Project of a Corporation)", October 2011 [2040];

62.[58-] Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", October 2011[2040];

63.[59-] Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (For a KJDA Project of a Pass-Through Entity)", October 2011[2040];

64.[60-] Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of a Corporation)", October 2011[2040];

65.[64-] Revenue Form 41A720-S36, "Schedule KRA-SP, Tax Computation Schedule (For a KRA Project of a Pass-Through Entity)", October 2011[2040];

66.[62-] Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule for a KRA Project", October 2011[2040];

67.[63-] Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of a Corporation)", October 2011[2040];

68.[64-] Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ Project of a Pass-Through Entity)", October 2011[2040];

69.[65-] Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", October 2011[2040];

66. Revenue Form 41A720-S43, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation)", October 2010;

67. Revenue Form 41A720-S44, "Schedule KESA-T, Tracking Schedule for a KESA Project", October 2010;

70. [68-] Revenue Form 41A720-S45, "Schedule KJRA, Tax Credit Computation Schedule (For a KJRA Project of a Corporation Corporations)", October 2011[2040];

71. [69-] Revenue Form 41A720-S46, "Schedule KJRA-T, Tracking Schedule for a KJRA Project", October 2011[2040];

72. Revenue Form 41A720-S47, "Schedule KJRA-SP, Tax Computation Schedule (For a KJRA Project of a Pass-Through Entity)", October 2011;

73.[70-] Revenue Form 41A720-S50, "Schedule IEIA, Tax Credit Computation Schedule (For an IEIA Project of a Corporation)", October 2011[2040];

74.[74-] Revenue Form 41A720-S51, "Schedule IEIA-T, Tracking Schedule for an IEIA Project", October 2011[2040];

75. Revenue Form 41A720-S52, "Schedule IEIA-SP, Tax Computation Schedule (For a IEIA Project of a Pass-Through Entity)", October 2011;

76.[72-] Revenue Form 41A720-S53, "Schedule KBI, Tax Credit Computation Schedule (For a KBI Project of a Corporation)", October 2011 [2040];

77.[73-] Revenue Form 41A720-S54, "Schedule KBI-SP, Tax Computation Schedule (For a KBI Project of a Pass-Through Entity)", October 2011 [2040];

78.[74-] Revenue Form 41A720-S55, "Schedule KBI-T, Tracking Schedule for a KBI Project", October 2011[2040];

79.[75-] Revenue Form 41A720-S80, "Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for

Kentucky New Markets Development Program Tax Credit", June 2010;

80. [76-] Revenue Form 41A720-S81, "Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification", June 2011[2040];

81.[77-] Revenue Form 41A720-S82, "Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture", June 2011[2040];

82.[78-] Revenue Form 41A725, "Form 725, 2011 [2040] Kentucky Single Member LLC Individually Owned LLET Return", 2011[2040];

83.[79-] Revenue Form 41A725CP, "Schedule CP, Form 725, 2011[2040] Kentucky Single Member LLC Individually Owned Composite Return Schedule", 2011[2040];

84.[80-] Revenue Form 41A725(I), "Instructions, 2011[2040] Kentucky Single Member LLC Individually Owned LLET Return", October 2011 [2040];

85.[84-] Revenue Form 41A750, "Form 750, Business Development Corporation Tax Return", September 2011[2040];

86.[82-] Revenue Form 41A765, "Form 765, 2011[2040] Kentucky Partnership Income and LLET Return", 2011[2040];

87.[83-] Revenue Form 41A765(I), "Instructions, 2011[2040] Kentucky Partnership Income and LLET Return", October 2011[2040];

88.[84-] Revenue Form 41A765(K), "Form 765(K), Kentucky Schedule K For Partnerships With Economic Development Project(s)", October 2011[2040];

89.[85-] Revenue Form 41A765(K-1), "Schedule K-1 (Form 765), 2011[2040] Partner's Share of Income, Credits, Deductions, Etc.", 2011[2040]; and

90.[86-] Revenue Form 41A800, "Corporation and Pass-through Entity Nexus Questionnaire", December 2011[2009]; and
(b) Individual income and withholding taxes - referenced material:

1. Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", November 2011[2040];

2. Revenue Form 40A100, "Application for Refund of Income Taxes", October 2011[2040];

3. Revenue Form 40A102, "2011[2040] Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", November 2011[2040];

4. Revenue Form 40A103, "Application for New Home Tax Credit", June 2010;

5. Revenue Form 40A200, "Form PTE-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income", October 2011[2040];

6. Revenue Form 40A201, "Form 740NP-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income [Transmittal] Report and Composite Income Tax Return", October 2011 [2040];

7. Revenue Form 40A201ES, "Form 740NP-WH-ES, Instructions – 2012 Pass-Through Entity Nonresident Distributive Share Withholding Report and Composite Income Tax Return Voucher", October 2011;

8. Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", October 2011[2040];

9.[8-] Revenue Form 42A003, "Withholding Kentucky Income Tax Instructions for Employers", August 2011[April 2040];

10.[9-] Revenue Form 42A003(T), "2012[2041] Withholding Tax Tables Computer Formula", October 2011[2040];

11.[40-] Revenue Form 42A740, "Form 740, 2011[2040] Kentucky Individual Income Tax Return, Full-Year Residents Only", 2011[2040];

12.[44-] Revenue Form 42A740-A, "Schedule A, Form 740, 2011 [2040] Kentucky Itemized Deductions", 2011[2040];

13.[42-] Revenue Form 42A740ES, "Form 740-ES, 2012[2041] Individual Income Tax Kentucky Estimated Tax Voucher", June 2011[July 2040];

14.[43-] Revenue Form 42A740-EZ, "Form 740-EZ, 2011[2040] Kentucky Individual Income Tax Return for Single Persons with No Dependents", 2011[2040];

15.[44-] Revenue Form 42A740(I), "2011[2040] Kentucky Individual Income Tax Instructions for Forms 740 and 740-EZ", October 2011[2040];

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16.[45-] Revenue Form 42A740-J, "Schedule J, Kentucky Farm Income Averaging", October 2011[2040];

17.[46-] Revenue Form 42A740-KNOL, "Schedule KNOL, 2011[2040] Kentucky Net Operating Loss Schedule", 2011[2040];

18.[47-] Revenue Form 42A740-M, "Schedule M, 2011[2040] Kentucky Federal Adjusted Gross Income Modifications", 2011[2040];

19.[48-] Revenue Form 42A740-NP, "Form 740-NP, 2011[2040] Kentucky Individual Income Tax Return, Nonresident or Part-Year Resident", 2011[2040];

20.[49-] Revenue Form 42A740-NP-A, "Schedule A, Form 740-NP, 2011[2040] Kentucky Schedule A Itemized Deductions", 2011[2040];

21.[20-] Revenue Form 42A740-NP-ME, "Schedule ME, Form 740-NP, 2011[2040] Moving Expense and Reimbursement", 2011[2040];

22.[24-] Revenue Form 42A740-NP(I), "Instructions for 2011[2040] Kentucky Form 740-NP, Nonresident or Part-Year Resident Income Tax Return", October 2011[2040];

23.[22-] Revenue Form 42A740-NP-R, "Form 740-NP-R, 2011[2040] Kentucky Income Tax Return Nonresident - Reciprocal State", 2011[2040];

24.[23-] Revenue Form 42A740-NP(P), "2011[2040] Kentucky Income Tax Return Nonresident or Part-Year Resident", October 2011[2040];

25.[24-] Revenue Form 42A740(PKT), "2011[2040] Kentucky Individual Income Tax Forms", October 2011[2040];

26.[25-] Revenue Form 42A740-P, "Schedule P, 2011[2040] Kentucky Pension Income Exclusion", 2011[2040];

27.[26-] Revenue Form 42A740-UTC, "Schedule UTC, Form 740, Unemployment Tax Credit", October 2011[2040];

28.[27-] Revenue Form 42A740-X, "Form 740-X, Amended Kentucky Individual Income Tax Return", November 2011[2040];

29.[28-] Revenue Form 42A740-XP, "Form 740-XP, Amended Kentucky Individual Income Tax Return, 2004 and Prior Years", November 2008;

30.[29-] Revenue Form 42A740-S1, "Form 2210-K, 2011[2040] Underpayment of Estimated Tax by Individuals", October[April] 2011;

31.[30-] Revenue Form 42A740-S4, "201[2044] Instructions for Filing Estimated Tax Vouchers", October 2011[2040];

32.[31-] Revenue Form 42A740-S18, "Form 8582-K, 2011[2040] Kentucky Passive Activity Loss Limitations", 2011[2040];

33.[32-] Revenue Form 42A740-S21, "Form 4972-K, 2011[2040] Kentucky Tax on Lump-Sum Distributions", 2011[2040];

34.[33-] Revenue Form 42A740-S22, "Form 8879-K[8453-K], 2011 [2040] Kentucky Individual Income Tax Declaration for Electronic Filing", 2011[2040];

35.[34-] Revenue Form 42A740-S23, "Form 740-V, 2011[2040] Kentucky Electronic Payment Voucher", 2011[2040];

36.[35-] Revenue Form 42A740-S24, "Form 8863-K, 2011[2040] Kentucky Education Tuition Tax Credit", 2011 [2040];

37. Revenue Form 42A740-S25, "Form 8948-K, "Preparer Explanation For Not Filing Electronically", October 2011;

38.[36-] Revenue Form 42A741, "Form 741, 2011[2040] Kentucky Fiduciary Income Tax Return", 2011[2040];

39.[37-] Revenue Form 42A741-D, "Schedule D, Form 741, 2011[2040] Kentucky Capital Gains and Losses", 2011[2040];

40.[38-] Revenue Form 42A741(I), "Instructions - Form 741, Kentucky Fiduciary Income Tax Return", October 2011[2040];

41.[39-] Revenue Form 42A741(K-1), "Schedule K-1, Form 741, 2011 [2040] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc.", 2011 [2040];

42.[40-] Revenue Form 42A765-GP, "Form 765-GP, 2011[2040] Kentucky General Partnership Income Return", 2011[2040];

43.[41-] Revenue Form 42A765-GP(I), "Instructions, 2011[2040] Kentucky General Partnership Income Return", October 2011[2040];

44.[42-] Revenue Form 765-GP(K-1), "Schedule K-1, Form 765-GP, 2011[2040] Partner's Share of Income, Credits, Deductions, etc.", 2011[2040];

45.[43-] Revenue Form 42A765-GP(K), "Form 765-GP(K), Kentucky Schedule K for General Partnerships with Economic Development Project(s)", October 2011[2040];

46.[44-] Revenue Form 42A801, "Form K-1, Kentucky Employer's Income Tax Withheld Worksheet", March 2007;

47.[45-] Revenue Form 42A801(D), "Form K-1, Amended Employer's Return of Income Tax Withheld", April 2008;

48.[46-] Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", March 2007;

49.[47-] "Form W-2, 2011[2040] Wage and Tax Statement", 2011[2040];

50.[48-] Revenue Form 42A803, "Form K-3, Kentucky Employer's Income Tax Withheld Worksheet", March 2007;

51.[49-] Revenue Form 42A803(D), "Form K-3, Amended Employer's Return of Income Tax Withheld", April 2008;

52.[50-] Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", March 2007;

53.[51-] Revenue Form 42A804, "Form K-4, Kentucky Department of Revenue Employee's Withholding Exemption Certificate", November 2010;

54.[52-] Revenue Form 42A804-A, "Form K-4A, Kentucky Department of Revenue Withholding Exemptions for Excess Itemized Deductions", April 2008;

55.[53-] Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", March 2011;

56.[54-] Revenue Form 42A804-M, "Form K-4M, Nonresident Military Spouse Withholding Tax Exemption Certificate", November 2010;

57.[55-] Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", October 2011[November 2040];

58.[56-] Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", August 2006;

59.[57-] Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky Department of Revenue Web Site", March 2006;

60.[58-] Revenue Form 42A809, "Certificate of Nonresidence", March 2007;

61.[59-] Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax", April 1989;

62.[60-] Revenue Form 42A811, "KREDA Annual Report", December 2007;

63.[61-] Revenue Form 42A812, "KIDA Annual Report", December 2007;

64.[62-] Revenue Form 42A813, "KJDA Annual Report", December 2007;

65.[63-] Revenue Form 42A814, "KIRA Annual Report", December 2007;

66.[64-] Revenue Form 42A815, "Withholding Tax Refund Application", August 2006;

67.[65-] Revenue Form 42A816, "KEOZ Annual Report", December 2007;

68.[66-] Revenue Form 42A817, "KJRA Annual Report", October 2010;

69.[67-] Revenue Form 42A818, "KBI Annual Report", October 2010; and

70.[68-] Revenue Form 42D003, "2011[2040] Kentucky Wage and Tax Statements (W-2/K-2) Order Form", July 2011[2040].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 9, 2011

FILED WITH LRC: December 9, 2011 at noon

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the forms to be used when reporting or estimating corporation tax, reporting or estimating limited liability entity tax, reporting or estimating individual tax, or withholding individual income tax for tax years beginning in 2011.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide taxpayers necessary tax forms for reporting and paying their corporation, limited liability entity, individual, and withholding taxes for tax years beginning in 2011.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating forms by reference.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes forms to be used by taxpayers to report and pay corporation taxes, limited liability entity taxes, individual income taxes, and withholding taxes to the Commonwealth of Kentucky pursuant to KRS Chapter 141.

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

(a) How the amendment will change this existing administrative regulation: This amendment contains tax forms to be used for tax years beginning in 2011.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update tax forms to the current tax laws in effect for tax years beginning in 2011.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the necessary tax forms to file and pay income taxes, limited liability entity taxes, and individual withholding taxes for tax years beginning in 2011.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individual, pass-through entity and corporate tax filers are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individual, pass-through entity, and corporate tax filers will use the forms contained in this administrative regulation to report, pay, and withhold taxes due pursuant to KRS Chapter 141 for tax years beginning in 2011.

(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 filing tax returns contained in this administrative regulation with the Commonwealth of Kentucky should be comparable to filing tax returns with surrounding states.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The forms contained in this administrative regulation should simplify and expedite the reporting and paying of taxes required by KRS Chapter 141.

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

(a) Initially: The cost of printing and designing the forms.

(b) On a continuing basis: Forms are updated each year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds will be provided by the Department of Revenue.

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

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding will be required to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the forms included in this administrative regulation apply to all taxpayers taxed pursuant to KRS Chapter 141.

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? Finance and Administration Cabinet, Department of Revenue.

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not increase revenues or expenses for the Commonwealth, but will expedite the collection of taxes provided by KRS Chapter 141.

(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? A very small increase in expenditures will occur in the administrative regulation process.

(d) How much will it cost to administer this program for subsequent years? No costs 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:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, December 6, 2011)

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, ~~[164.041,] 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, **non-public**~~[nonpublic]~~ school" means a Kentucky non-public school that has been granted certification~~[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 **completion of:**

(a)1. The Kentucky minimum high school graduation requirements; or

2. Other approved course of study established in 704 KAR 3:305; and

(b)1. Two (2)~~[3-393, and two]~~ units of a single world language; or

2. Demonstration of a world language proficiency.

(8) "Student eligible to pursue a GED®" means a student who has met the federal ability to benefit guidelines **established in 34 C.F.R. 668.141 to 668.156 pursuant to 20 U.S.C. 1091(d).**

(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 pro-

gram~~[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 this subsection~~~~[s] [(4)]~~~~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)(a)(3), (1)(b), (2)~~[(a)3]~~ or (2)(b) of this section if the university has a written policy defining the~~~~[extenuating] circumstances that authorize~~~~[require] the testing to be delayed.~~

~~(b)~~[(f)]~~ A university~~ admitting~~[admits]~~ a student under para-

graph (a) of this subsection[,] ~~the student~~ shall satisfy the provisions of subsection ~~(1)(a)(3), (1)(b), (2) [(a)3]~~ or (2)(b) of this section during the first semester of enrollment.

(4) Except as provided in subsection (5) or (6) of this section, 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:

(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 established in subsection (1)(a)2. of this section[set forth in Section 2(1)(a)2.] shall not apply to:

(a) An adult learner[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 to a university shall be exempt from the requirement of meeting the pre-college curriculum as set forth in subsection (1)(a)2. of this section[(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 that[who] admits a student in an associate or baccalaureate degree program[and] who does not meet the system-wide [readiness] standards of readiness for English, mathematics, or[and] reading shall use a placement exam to place the[a] student in the proper course. If the[a] student scores below the system-wide standard of readiness in English, mathematics, or[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 (2) semesters following a student's initial enrollment; or

(b) Appropriate entry-level college course within two (2) semesters following a student's initial enrollment, if the course is a supplemental course or program[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 Indicators document; or

4. Successfully completed a developmental or supplemental English course at a public postsecondary education institution if[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; or

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 higher [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 paragraphs (a) through (e) of this subsection[sub-section (11) (a) through (e)] shall be guaranteed placement in credit-bearing course work.

(12) An adult learner[student] who has been admitted without taking the ACT Assessment or the SAT shall[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) Grades[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 who seeks admission to a community and technical college degree program established by the Kentucky Community and Technical College System may be admitted 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) A non-resident[An] applicant who has earned a high school general equivalency diploma (GED®) or an applicant 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) of this section 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.

(5) [(6)] KCTCS, in admitting a student to a degree program who does not meet the system-wide [readiness] standards of readiness for English, mathematics, or[and] reading, shall use a placement exam to place the[a] student in the proper course. If the[a] student scores below the system-wide standard of readiness in English, mathematics, or[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 (2) semesters following a student's initial enrollment; or

(b) Appropriate entry-level college course within two (2) semesters following a student's initial enrollment, if the course is a supplemental course or program[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].

(6) [(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 Indicators document; or

4. Successfully completed a developmental or supplemental English course at a state-supported postsecondary education institution if[where] the course meets the system-wide learning out-

comes 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; or

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;

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 higher[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 paragraph (a) through (d) of this subsection[sub-section (7) (a) through (d)] shall be guaranteed placement in credit-bearing course work.

(7) [(8)] An adult learner[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.

(8) [(9)] An institution shall be responsible for determining the remediation required including the number of developmental courses required.

(9) [(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.

(10) [(11)] KCTCS may exempt students enrolled in selected occupational based certificate or[and] diploma programs from an

assessment and placement in English, mathematics, or[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.

(11)(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) Grades[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 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 1:310; 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 edu-

cation, 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.[(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;

(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 ACCUPLACER 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 ~~5[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; **and**

(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.]

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PAUL E. PATTON, Chair

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FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Sales and Excise Taxes (As Amended at ARRS, December 6, 2011)

103 KAR 3:020. Sales and telecommunications forms manual.

RELATES TO: KRS 61.870-61.884, 131.010-131.130, 131.150-131.240, 134.580, 136.600-136.660, 139.010-139.795, 144.132, 144.137, 154.20-206, 160.613-160.617, 224.01-310, 247.920

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of Sales and Use Taxes and Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

Section 1. Sales and Use Tax - Required Forms.

(1) Revenue Form 51A101(a), Sales and Use Tax Permit, shall be conspicuously displayed by the sales and use tax permit holder at the location for which the permit was issued.

(2) Revenue Form 51A101(b), Sales and Use Tax Permit Update, shall be issued by the Department of Revenue to update the Sales and Use Tax Permit with business name and address change information.

(3) Revenue Form 51A101(c)(1), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit, shall be issued to Model 1 Streamlined Sales and Use Tax filers registered in Kentucky and shall be conspicuously displayed by the SST permit holder at the location for which the permit was issued.

(4) Revenue Form 51A101(c)(2), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit, shall be issued to Model 2 Streamlined Sales and Use Tax filers registered in Kentucky and shall be conspicuously displayed by the SST permit holder at the location for which the permit was issued.

(5) Revenue Form 51A101(c)(4), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit, shall be issued to Model 4 Streamlined Sales and Use Tax filers registered in Kentucky and shall be conspicuously displayed by the SST permit holder at the location for which the permit was issued.

(6) Revenue Form 51A101(d), Sales and Use Tax Permit Update (SST), shall be issued by the Department of Revenue to update the Kentucky Streamlined Sales and Use Tax (SST) Filing Permit with business name and address change information.

(7) Revenue Form 51A102, Kentucky Sales and Use Tax Worksheet, shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(8) Revenue Form 51A102E, Kentucky Sales and Use Tax Worksheet - Electronic Funds Transfer, shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder who remits payment via electronic funds transfer to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(9) Revenue Form 51A103, Kentucky Accelerated Sales and Use Tax Worksheet, shall be completed by a Kentucky sales and use tax permit holder who has been designated as an accelerated filer to report total receipts, itemized deductions, amount subject to

use tax, and total amount of sales and use tax due.

(10) Revenue Form 51A103E, Kentucky Accelerated Sales and Use Tax Worksheet - Electronic Funds Transfer, shall be submitted on a monthly basis by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due on an accelerated basis and remitted via electronic funds transfer.

(11) Revenue Form 51A105, Resale Certificate, shall be presented to a seller by a Kentucky sales and use tax permit holder to claim that the tangible personal property or digital property purchased from the seller will be:

(a) Resold in the regular course of business;

(b) Leased or rented; or

(c) Used as raw material, industrial supply or industrial tool.

(12) Revenue Form 51A109, Application for Energy Direct Pay Authorization (Sales and Use Tax and Utility Gross Receipts License Tax), shall be filed with the Department of Revenue by a manufacturer, processor, miner or refiner to apply for an energy direct pay authorization.

(13) Revenue Form 51A110, Direct Pay Authorization, shall be presented to a Kentucky sales and use tax permit holder by a company authorized to report and pay directly to the Department of Revenue the sales or use tax on all purchases of tangible personal property, or digital property excluding energy and energy-producing fuels.

(14) Revenue Form 51A111, Certificate of Exemption Machinery for New and Expanded Industry, shall be presented to a Kentucky sales and use tax permit holder by a manufacturer or production processor to claim exemption from sales and use tax.

(15) Revenue Form 51A112, Application for Direct Pay Authorization, shall be submitted by a registered sales and use tax permit holder wishing to obtain a direct pay authorization.

(16) Revenue Form 51A113, Kentucky Consumer's Use Tax Worksheet, shall be completed by a registered consumer's use tax permit holder and submitted to the Department of Revenue on a regular basis to report the amount of purchases of tangible personal property or digital property subject to Kentucky use tax.

(17) Revenue Form 51A113(O), Consumer's Use Tax Return, shall be completed by a person storing, using, or otherwise consuming tangible personal property or digital property in Kentucky who is not registered for a consumer's use tax permit number.

(18) Revenue Form 51A115, Order for Selected Sales and Use Tax Publications, shall be presented to the Department of Revenue by anyone who wishes to order selected sales and use tax forms and regulations.

(19) Revenue Form 51A116, Use Tax Compliance Inquiry Worksheet, shall be completed by a purchaser of Watercraft, Aircraft, or other tangible or digital property to document if the purchase of the property is subject to the Kentucky Use Tax.

(20) Revenue Form 51A125, Application for Purchase Exemption Sales and Use Tax, shall be presented to the Department of Revenue by a resident 501C(3) charitable, educational, or religious institution; historical sites; and units of federal, state or local governments to apply for a sales and use tax exemption on purchases of tangible personal property, digital property, or certain services to be utilized in the exempt entity's function.

(21) Revenue Form 51A126, Purchase Exemption Certificate, shall be presented to a retailer by a resident charitable, educational or religious institution or Kentucky historical site to claim exemption from sales and use tax on purchases of tangible personal property, digital property, or services.

(22) Revenue Form 51A127, Out-of-State Purchase Exemption Certificate, shall be presented to a retailer by an out-of-state agency or institution that is qualified for exemption in their state of residence.

(23) Revenue Form 51A128, Solid Waste Recycling Machinery Exemption Certificate, shall be presented to a retailer by a business or organization that claims exemption from sales and use tax on the purchase, lease or rental of machinery or equipment to be primarily used for recycling purposes to collect, source separate, compress, bale, shred or otherwise handle waste material.

(24) Revenue Form 51A129, Kentucky Sales and Use Tax Energy Exemption Annual Return, shall be submitted to the Department of Revenue by an energy direct pay holder to reconcile

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the actual amount of sales and use tax due on purchases of energy and energy-producing fuels to the total amount of sales and use tax paid based upon previous estimates of tax due.

(25) Revenue Form 51A130, Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carriers, shall be completed by a qualified certificated air carrier on a monthly basis to claim an aviation fuel tax credit against the company's sales and use tax liability for the month.

(26) Revenue Form 51A131, Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule, shall be completed by aviation fuel dealers selling aviation fuel in order to determine the sales and use tax collected and remitted on the sale of aviation fuel, including jet fuel.

(27) Revenue Form 51A132, Kentucky Sales and Use Tax Equine Breeders Supplementary Schedule, shall be completed by an equine breeder to report taxable receipts from equine breeding fees.

(28) Revenue Form 51A135, Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule, shall be completed by motor vehicle dealers who collect Kentucky sales tax on the sale of motor vehicles to residents of states who subject Kentucky residents to sales upon the purchase of motor vehicles in their states.

(29) Revenue Form 51A143, Purchase Exemption Certificate - Watercraft Industry, shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of tangible personal property that will be used for the direct operation of watercraft in the activity of transporting property or in conveying persons for hire.

(30) Revenue Form 51A149, Certificate of Exemption for Pollution Control Facilities, shall be presented to a retailer by a holder of a pollution control tax exemption certificate or jointly by a contractor and the holder of a pollution control tax exemption certificate to claim exemption from sales and use tax on the purchase of materials and equipment that will become part of a certified pollution control facility.

(31) Revenue Form 51A150, Aircraft Exemption Certificate, shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of aircraft, repair and replacement parts for the aircraft, and supplies that will be used for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire.

(32) Revenue Form 51A154, Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers, shall be completed in triplicate by the seller and buyer when the sale of the tangible personal property occurs and the seller makes delivery of the tangible personal property out of state, and also completes the affidavit portion of the form within two (2) days of the time of delivery to claim that the property was purchased exempt from sales tax and delivered immediately out of state not to return to Kentucky for use.

(33) Revenue Form 51A157, Certificate of Exemption - Water Used in Raising Equine, shall be presented to a retailer by a person regularly engaged in raising equine as a business to claim exemption for the purchase of water used to raise equine.

(34) Revenue Form 51A158, Farm Exemption Certificate, shall be presented to a retailer by a person regularly engaged in the occupation of tilling and cultivating the soil for the production of crops, raising and feeding livestock or poultry; or raising and feeding llamas, alpacas, raites, buffalo, aquatic organisms, or cervids to claim exemption from sales and use tax on the purchase of certain tangible personal property.

(35) Revenue Form 51A159, On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment, shall be presented to a retailer by a farmer or jointly by a farmer and a contractor to claim exemption from sales and use tax on the purchase of materials, machinery and equipment which will be incorporated into the construction, repair, or renovation of on-farm facilities exempt under the provisions of KRS 139.480.

(36) Revenue Form 51A160, Application for Truck Part Direct Pay Authorization, shall be filed with the Department of Revenue by the owner of a motor vehicle, including a towed unit, qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(a) to apply for the truck part direct pay authorization.

(37) Revenue Form 51A161, Truck Part Direct Pay Authorization, shall be issued by the Department of Revenue to authorize motor carriers to report and pay directly to the department the sales and use tax on all purchases of repair and replacement parts for motor vehicles and to authorize retailers to sell motor vehicle repair and replacement parts directly to the authorized motor carrier without receipt of sales and use tax.

(38) Revenue Form 51A163, Application for Charter Bus Part Direct Pay Authorization, shall be filed with the Department of Revenue by the owner of a charter bus qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(b) to apply for a charter bus direct pay authorization.

(39) Revenue Form 51A164, Charter Bus Direct Pay Authorization, shall be issued by the Department of Revenue to authorize charter bus carriers to report and pay directly to the Department the sales and use tax on all purchases of repair and replacement parts for charter buses, and to authorize retailers to sell charter bus repair and replacement parts directly to the charter bus carriers without receipt of sales and use tax.

(40) Revenue Form 51A200, Application for Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program, shall be used by qualified businesses to apply for a refund of sales and use tax paid on purchases of materials used in an approved project.

(41) Revenue Form 51A205, Kentucky Sales and Use Tax Instructions, shall be used by Kentucky sales and use tax permit holders as a guide in filing their sales and use tax returns and maintaining permit account information.

(42) Revenue Form 51A209, Sales and Use Tax Refund Application, shall be completed by a Kentucky sales and use tax permit holder and submitted to the Department of Revenue within four (4) years from the date the tax was paid to apply for a refund of sales and use tax previously paid by the permit holder.

(43) Revenue Form 51A216, Application for Pollution Control Tax Exemption Certificate, shall be completed by a business, governmental unit or institution to apply for a sales and use tax exemption on purchases of tangible personal property used to control or abate pollution.

(44) Revenue Form 51A222, Certificate of Exemption for Alcohol Production Facilities, shall be presented to a retailer by a holder of an alcohol production tax exemption certificate or jointly by a contractor and the holder of an alcohol production tax exemption certificate to claim exemption from sales and use tax on materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(45) Revenue Form 51A223, Application for Alcohol Production Facility Tax Exemption Certificate, shall be completed by a business seeking exemption from sales and use tax on the purchase of materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(46) Revenue Form 51A226, Pollution Control Tax Exemption Certificate, shall be issued by the Department of Revenue to a business who has qualified for certain sales and use tax, corporation income, corporation license, and property tax benefits.

(47) Revenue Form 51A227, Certificate of Resale (Schools), shall be issued to a retailer by an exempt nonprofit elementary or secondary school or the organizations they sponsor or that are affiliated with them to claim an exemption from sales and use tax on the purchase of tangible personal property or digital property that will be resold if the proceeds from the resale of the property is used solely for the benefit of the elementary or secondary schools or their students.

(48) Revenue Form 51A228, Application for Fluidized Bed Combustion Technology Tax Exemption Certificate, shall be completed by a business, governmental unit or organization and submitted to the Department of Revenue to apply for a sales and use tax exemption on the purchase of equipment and materials used in fluidized bed combustion technology.

(49) Revenue Form 51A229, Fluidized Bed Combustion Technology Tax Exemption Certificate, shall be issued by the Department of Revenue to a business, governmental unit or organization to advise that they qualify for corporation license tax, property tax, and sales and use tax benefits.

(50) Revenue Form 51A241, Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Pro-

duction Companies, shall be completed by a motion picture production company and submitted to the Department of Revenue to register for a sales and use tax refund.

(51) Revenue Form 51A242, Application for Sales and Use Tax Refund for Motion Picture Production Company, shall be completed by a registered motion picture production company and submitted to the Department of Revenue within sixty (60) days after completion of the filming or production of the motion picture in Kentucky to request a refund of the Kentucky sales and use tax paid on purchases of tangible personal property or digital property made in connection with filming and producing motion pictures in Kentucky.

(52) Revenue Form 51A250, Application for Transient Merchant Permit, shall be completed by a transient merchant and filed with the clerk in the county in which the business is to be conducted, or if an urban county government, with the officer of the government who has responsibility for the issuance of business permits and licenses to obtain a permit before conducting any business in Kentucky.

(53) Revenue Form 51A260, Streamlined Sales and Use Tax Agreement-Certificate of Exemption, shall be presented to a seller by a purchaser to claim that tangible personal property, digital property, or certain services purchased from the seller qualifies for exemption.

(54) Revenue Form 51A270, Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle, shall be issued by motor vehicle dealers to a non-resident purchaser of a motor vehicle on which the Kentucky sales tax has been paid.

(55) Revenue Form 51A280, Out-Of-State Purchase-Use Tax Affidavit, shall be submitted to the county clerk by a taxpayer purchasing tangible personal property from out-of-state for title or first-time registration.

(56) Revenue Form 51A290, Information Sharing and Assignment Agreement for Designated Refund Claims, shall be submitted by an approved company or agency and its vendors and contractors who agree to share documentation with the Department of Revenue for refund claim under the Kentucky Enterprise Initiative Act, Signature Project, or Alternative Fuel, Gasification or Renewable Energy Facility.

(57) Revenue Form 51A291, Application for Kentucky Signature Project Sales and Use Tax Refund, shall be completed by an approved company or agency in the construction of an approved Signature Project submitted to the Department of Revenue annually during the (12) years the project grant agreement is in effect.

(58) Revenue Form 51A292, Expenditure Report for Signature Project Refunds, shall be submitted by a refund applicant to document expenditures and taxes paid on property and materials used in the construction of an approved Signature Project.

(59) Revenue Form 51A300, Application for Preapproval for Energy Efficiency Machinery or Equipment, shall be submitted by a person engaged in manufacturing for preapproval for purchase of new or replacement machinery or equipment that reduces the consumption of energy or energy producing fuels by at least fifteen (15) percent.

(60) Revenue Form 51A301, Application for Kentucky Alternative Fuel, Gasification, and Renewable Energy Facility Sales and Use Tax Refund, shall be submitted by a refund applicant to request refund of sales and use tax paid on purchases of building and construction materials purchased and used in the construction of an approved Alternative Fuel, Gasification, or Renewable Facility.

(61) Revenue Form 51A302, Expenditure Report for Alternative Fuel, Gasification, & Renewable Energy Facility Refunds, shall be submitted by a refund applicant to document expenditures and taxes paid on property and materials used in the construction of an approved Alternative Fuel, Gasification, or Renewable Energy Facility.

(62) Revenue Form 51A350, Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive, shall be submitted by an approved company or agency and its vendors and contractors who agree to share documentation with the Department of Revenue for refund claims on construction of an approved Alternative Fuel, Gasification, or Renewable Energy Facility.

(63) Revenue Form 51A351, Application for Energy Efficiency

Machinery or Equipment Sales and Use Tax Incentive, shall be submitted by a refund applicant to request refund of sales and use tax paid on purchases of approved energy-efficiency machinery or equipment used at a manufacturing plant.

(64) Revenue Form 51A400, Governmental Public Facility Sales Tax Rebate Registration, shall be completed by the public facility to determine eligibility for the sales tax rebate under KRS 139.533.

(65) Revenue Form 51A401, Governmental Public Facility Application for Sales Tax Rebate, shall be completed by the Public Facility to request a sales tax rebate. It includes a list of vendors and tax amounts claimed in the rebate request as well as banking information if an electronic fund transfer is requested by the Public Facility.

(66) Revenue Form 51A402, Vendor Assignment Agreement for Sales at a Qualifying Public Facility, shall be properly executed for any seller, other than the qualifying governmental entity whose receipts are included in the rebate request.

(67) Revenue Form 51F008, Federal Government Exemption from Kentucky Sales and Use Tax, shall be issued by the Department of Revenue to a federal government unit which in turn is presented to a retailer by the federal government unit to claim exemption from sales and use tax on purchases of property to be used in the exempt governmental function.

(68) Revenue Form 51F009, Purchase Exemption Notification, shall be issued by the Department of Revenue to a resident non-profit charitable, educational or religious institution to advise the entity of the assigned purchase exemption number and additional information concerning the exemption from sales and use tax.

(69) Revenue Form 51F010, Energy Direct Pay Authorization, shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for the sales and use tax and that they are required to report and pay directly to the Department of Revenue the sales and use tax on that portion of the cost price which is subject to tax pursuant to KRS 139.480(3).

(70) Revenue Form 51F010(a), Utility Gross Receipts License Tax (UGRLT) Exemption Authorization, shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for the utility gross receipts license tax and that they are required to report and pay directly to the Department of Revenue the utility gross receipts license tax on that portion of the purchase price which is subject to tax.

(71) Revenue Form 51F010(b), Energy Direct Pay - Utility Gross Receipts License Tax Exemption Authorization, shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for either the sales and use tax or the utility gross receipts license tax and that they are required to report and pay directly to the Department of Revenue the sales and use tax and the utility gross receipts license tax on that portion of the purchase price which is subject to tax.

Section 2. Telecommunications Provider Tax - Required Forms. (1) Revenue Form 75A001, Telecommunications Tax Receipts Certification Form, shall be used by city and county taxing jurisdictions to certify tax receipts for prior fiscal year if applicable.

(2) Revenue Form 75A002, Telecommunications Provider Tax Return, shall be used by telecommunications providers to report gross revenues subject to the excise tax and gross revenues tax, and by consumers to report retail purchases of multi-channel video programming services to report the tax due.

(3) Revenue Form 75A002 (I), Instructions for Telecommunications Provider Tax Return, shall be used by telecommunications providers as a guide in filing their telecommunications provider tax return.

(4) Revenue Form 75A005, Telecommunications Tax Complaint Form", shall be submitted to the Department of Revenue by local taxing authorities who express disagreement with the distribution of telecommunications tax to their jurisdiction.

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(5) Revenue Form 75A900, Telecommunications Tax Application, shall be used by telecommunications providers to register with the Department of Revenue.

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

(a) Sales and use tax - referenced material:

1. Revenue Form 51A101(a), "Sales and Use Tax Permit", August 2011~~[August 2008]~~;
2. Revenue Form 51A101(b), "Sales and Use Tax Permit Update", August 2011~~[August 2008]~~;
3. Revenue Form 51A101(c)(1), "Kentucky Streamlined Sales and Use Tax (SST) Filing Permit", August 2008;
4. Revenue Form 51A101(c)(2), "Kentucky Streamlined Sales and Use Tax (SST) Filing Permit", August 2008;
5. Revenue Form 51A101(c)(4), "Kentucky Streamlined Sales and Use Tax (SST) Filing Permit", August 2008;
6. Revenue Form 51A101(d), "Sales and Use Tax Permit Update (SST)", August 2011~~[August 2008]~~;
7. Revenue Form 51A102, "Kentucky Sales and Use Tax Worksheet", January 2010;
8. Revenue Form 51A102E, "Kentucky Sales and Use Tax Worksheet - Electronic Funds Transfer", January 2010;
9. Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Worksheet", January 2010;
10. Revenue Form 51A103E, "Kentucky Accelerated Sales and Use Tax Worksheet - Electronic Funds Transfer", January 2010;
11. Revenue Form 51A105, "Resale Certificate", December 2009;
12. Revenue Form 51A109, "Application for Energy Direct Pay Authorization (Sales and Use Tax and Utility Gross Receipts License Tax)", February 2011~~[September 2006]~~;
13. Revenue Form 51A110, "Direct Pay Authorization", April 2011~~[June 2010]~~;
14. Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", August 2011~~[December 2008]~~;
15. Revenue Form 51A112, "Application for Direct Pay Authorization", December 2009;
16. Revenue Form 51A113, "Kentucky Consumer's Use Tax Worksheet", January 2010;
17. Revenue Form 51A113(O), "Consumer's Use Tax Return", December 2009;
18. Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", April 2011~~[April 2008]~~;
19. Revenue Form 51A116, "Use Tax Compliance Inquiry Worksheet", March 2008;
20. Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", December 2009;
21. Revenue Form 51A126, "Purchase Exemption Certificate", December 2009;
22. Revenue Form 51A127, "Out-of-State Purchase Exemption Certificate", December 2009;
23. Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate", March 2005;
24. Revenue Form 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", February 2011~~[December 2008]~~;
25. Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carriers", August 2005;
26. Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", August 2008;
27. Revenue Form 51A132, "Kentucky Sales and Use Tax Equine Breeders Supplementary Schedule", June 2005;
28. Revenue Form 51A135, "Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule", August 2006;
29. Revenue Form 51A143, "Purchase Exemption Certificate - Aircraft Industry", March 2005;
30. Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", January 2007;
31. Revenue Form 51A150, "Aircraft Exemption Certificate", January 2005;

32. Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", January 2005;

33. Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", July 2005;

34. Revenue Form 51A158, "Farm Exemption Certificate", July 2008;

35. Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", July 2008;

36. Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", March 2005;

37. Revenue Form 51A161, "Truck Part Direct Pay Authorization", December 2006;

38. Revenue Form 51A163, "Application for Charter Bus Part Direct Pay Authorization", June 2005;

39. Revenue Form 51A164, "Charter Bus Direct Pay Authorization", August 2006;

40. Revenue Form 51A200, "Application for Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program", March 2008;

41. Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", July 2008;

42. Revenue Form 51A209, "Sales and Use Tax Refund Application", May 2007;

43. Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", March 2005;

44. Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", August 2011~~[January 2007]~~;

45. Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", July 1980;

46. Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", March 2005;

47. Revenue Form 51A227, "Certificate of Resale (Schools)", May 2007;

48. Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", May 2007;

49. Revenue Form 51A229, "Fluidized Bed Combustion Technology Tax Exemption Certificate", August 2011~~[January 2008]~~;

50. Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", May 2007;

51. Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", May 2007;

52. Revenue Form 51A250, "Application for Transient Merchant Permit", April, 2005;

53. Revenue Form 51A260, "Streamlined Sales and Use Tax Agreement - Certificate of Exemption", February 2010;

54. Revenue Form 51A270, "Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle", August 2006;

55. Revenue Form 51A280, "Out-Of-State Purchase-Use Tax Affidavit", July 2009;

56. Revenue Form 51A290, "Information Sharing and Assignment Agreement for Designated Refund Claims", October 2007;

57. Revenue Form 51A291, "Application for Kentucky Signature Project Sales and Use Tax Refund", April~~[February 2011]~~~~[October 2007]~~;

58. Revenue Form 51A292, "Expenditure Report for Signature Project Refunds", October 2007;

59. Revenue Form 51A300, "Application for Preapproval for Energy Efficiency Machinery or Equipment", June 2008;

60. Revenue Form 51A301, "Application for Kentucky Alternative Fuel, Gasification, and Renewable Energy Facility Sales and Use Tax Refund", April 2011~~[December 2008]~~;

61. Revenue Form 51A302, "Expenditure Report for Alternative Fuel, Gasification, & Renewable Energy Facility Refunds", December 2008;

62. Revenue Form 51A350, "Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive", June 2008;

63. Revenue Form 51A351, "Application for Energy Efficiency Machinery or Equipment Sales and Use Tax Incentive", April 2011~~[June 2008]~~;

64. Revenue Form 51A400, "Governmental Public Facility Sales Tax Rebate Registration", June 2010;

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65. Revenue Form 51A401, "Governmental Public Facility Application for Sales Tax Rebate", June 2010;

66. Revenue Form 51A402, "Vendor Assignment Agreement for Sales at a Qualifying Public Facility", June 2010;

67. Revenue Form 51F008, "Federal Government Exemption from Kentucky Sales and Use Tax", January 2008;

68. Revenue Form 51F009, "Purchase Exemption Notification", January 2008;

69. Revenue Form 51F010, "Energy Direct Pay Authorization", January 2008;

70. Revenue Form 51F010(a), "Utility Gross Receipts License Tax (UGRLT) Exemption Authorization", January 2008; and

71. Revenue Form 51F010(b), "Energy Direct Pay - Utility Gross Receipts License Tax Exemption Authorization", January 2008;

(b) Telecommunications provider tax - referenced material:

1. Revenue Form 75A001, "Telecommunications Tax Receipts Certification Form", December 2005;

2. Revenue Form 75A002, "Telecommunications Provider Tax Return", March 2006;

3. Revenue Form 75A002(I), "Instructions for Telecommunications Provider Tax Return", July 2006;

4. Revenue Form 75A005, "Telecommunications Tax Complaint Form", April 2011[October 2006]; and

5. Revenue Form 75A900, "Telecommunications Tax Application", December 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: October 12, 2011

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

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(As Amended at ARRS, December 6, 2011)**

103 KAR 8:010. [Nonresident] Watercraft Allocation

RELATES TO: KRS 136.1801, 136.1802[KRS 136.181, 136.182]

STATUTORY AUTHORITY: [KRS Chapter 13A][:] KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes requirements for[addresses issues relating to] apportioning the value of a taxpayer's watercraft to Kentucky[requires information concerning mileage operated by non-resident watercraft for allocating mileage operated in Kentucky to total mileage.]

Section 1. Definitions. (1) "Corporation" is defined by KRS 136.1801(1).

(2) "Department" is defined by KRS 136.1801(3).

(3) "Watercraft" is defined by KRS 136.1801(2)[has the same meaning as in KRS 136.1801(1)].

(2) "Watercraft" has the same meaning as in KRS 136.1801(2).

(3) "Department" shall mean Department of Revenue.

Section 2.[4.] Apportionment. If the apportionment factor set forth in KRS 136.1802(4) does not fairly represent the extent of the corporation's watercraft activity in Kentucky, the corporation may petition for, or the Department may require, any other method to fairly represent an equitable apportionment of the corporation's

watercraft to Kentucky. [Any nonresident owner or operator of watercraft, whose route or system is partly within this state and partly within another state or states, shall report to the Revenue Cabinet by March 1 of each year mileage operated in Kentucky and mileage operated out-of-state of each boat, tug, barge, and other watercraft for the immediate preceding calendar year. For purposes of reporting mileage operated, total mileage on the Ohio River and one-half (1/2) the mileage on the Mississippi River shall be considered as mileage within the state.]

Section 3. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on December 6, 2011.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: May 10, 2011

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

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

**GENERAL GOVERNMENT CABINET
Board of Pharmacy
(As Amended at ARRS, December 6, 2011)**

201 KAR 2:170. Computerized recordkeeping.

RELATES TO: KRS 217.215, 217.216, 315.191[Chapters 217, 315]

STATUTORY AUTHORITY: KRS 217.215(2), 315.191(1), (a), (1)(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.215(2) provides for the board to establish administrative regulations relating to the storage and retrieval of prescriptions records, including computerized recordkeeping. This administrative regulation provides standards[will assure uniform compliance] for those desiring to use computerized recordkeeping.

Section 1. The following information shall be entered into the system[An automated data processing system[center] may be used for the storage and retrieval of prescription information subject to the following conditions]: [(4) Written notification is provided to the Kentucky Board of Pharmacy that an automated data processing center is being utilized to maintain prescription records. Written notification must also be provided to the board that use of an automated data processing system is being discontinued.]

(1)(2) All information pertinent to a prescription shall be entered into the system, including, but not limited to, each of the following:

(a) The prescription number;

(b) The patient's name and address;

(c) The prescriber's name and address;

(d) The prescriber's Federal Drug Enforcement Administration number, if appropriate;

(e) Refill authorization;

(f) Any prescriber's instructions or patient's preference permitted by law or administrative regulation;

(g) The name, strength, dosage form, and quantity of the drug dispensed originally and upon each refill; and

(h) The date of dispensing of the prescription and the identifying designation of the dispensing pharmacist for the original filling and each refill.

(2)(3) The entries shall be made into the system at the time the prescription is first filled and at the time of each refill, except that the format of the record may be organized so that the data [information] already entered may appear for the prescription or refill without reentering that[such] data [information]. Records that are received or sent electronically may be kept electronically. The dispensing pharmacist shall be[is] responsible for the completeness and accuracy of the entries. [The original prescription order and a record of each refill shall be preserved by the pharmacy for a period of five (5) years and shall be subject by authorized agents. No original prescription order shall be obstructed in any manner.]

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(3) The original prescription and a record of each refill, if received written or oral, shall be preserved as a hard copy for a period of three (3) years and thereafter be preserved as a hard copy or electronically for no less than an additional two (2) years. The original prescription and a record of each refill, if received by facsimile, shall be preserved as a hard copy, the original electronic image, or electronically for a period of three (3) years and thereafter be preserved as a hard copy, the original electronic image, or electronically for no less than an additional two (2) years. The original and electronic prescription shall be subject to inspection by authorized agents. ~~An[No]~~ original prescription shall **not** be obstructed in any manner.

(4) The original prescription and a record of each refill, if received as an e-prescription, shall be preserved electronically for a period of no less than five (5) years. The electronic prescription shall be subject to inspection by authorized agents. ~~An[No]~~ original prescription **shall not** may be obstructed in any manner.

(5)(4) The required information shall be entered into the system for all prescriptions filled at the pharmacy. ~~[(5) The system shall provide, within the pharmacy, retrieval of all required original and refill prescription information by display screen or hard copy printout.]~~

(6) The system shall provide adequate safeguards against improper manipulation or alteration of the data ~~[records]~~.

(7) The system shall have the capability of producing a hard-copy printout of all original and refilled prescription data as required in Section 1 of this administrative regulation. A hard-copy printout of the required data shall be made available to an authorized agent within forty-eight (48) hours of the receipt of a written request.

(8) The system shall maintain a record of each day's prescription data as follows:~~[:]~~

(a) This record shall be verified, dated, and signed by the pharmacist(s) who filled **those** ~~[such]~~ prescription orders either:

1. Electronically;
2. Manually; or
3. In a log.

(b) This record shall be maintained for no less than five (5) years; and

(c) This record shall be readily retrievable and shall be subject to inspection by authorized agents ~~[provide a hard-copy printout or log-book of each day's prescription data. That printout or log-book shall be verified, dated, and signed by the pharmacist(s) who filled such prescription orders. This document shall be maintained for a period of five (5) years. Permission to maintain an alternative system to produce this record may be granted by the board].~~

(9) An auxiliary recordkeeping system shall be established for the documentation of refills if the automated data processing system ~~is[is]~~~~[is]~~~~[in]~~ inoperative for any reason. The auxiliary system shall insure that all refills are authorized by the original prescription order and that the maximum number of refills is not exceeded. If the automated data processing system is restored to operation, the information regarding prescriptions filled and refilled during the inoperative period shall be entered into the automated data processing system within seventy-two (72) hours.

(10) Controlled substance data shall~~[date]~~ ~~[contained on a hard copy printout must be separated, asterisked, or in some other manner visually]~~ **be** identifiable apart from other items appearing in the record ~~[on the printout]~~.

(11) The pharmacist **shall be** ~~[is]~~ responsible to assure continuity in the maintenance of records throughout any transition in record systems utilized.

Section 2. A computer malfunction or data processing services provider's negligence **shall not be** ~~[is]~~ **not** a defense against charges of improper recordkeeping.

Section 3. This administrative regulation is not applicable to the recordkeeping for drugs prescribed for and administered to patients confined as inpatients in an acute care facility. ~~[Section 4. Violation of any provision of this administrative regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.121.]~~

CONTACT PERSON: Michael Bureson, Executive Director,

Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, December 6, 2011)**

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

RELATES TO: KRS 324A.152(4)(b), (7), 324A.154(1)
STATUTORY AUTHORITY: KRS 324A.152(8), 324A.154(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.154(1) requires the board to establish by administrative regulation the fees for registration of appraisal management companies. This administrative regulation establishes the fees for registration of appraisal management companies and renewal of the registration.

Section 1. Fee schedule. (1) The initial application fee shall be **\$2,000**~~[\$3,500]~~.

(2) An annual renewal fee shall be **\$2,000**~~[\$3,500]~~.

(3) A reinstatement fee shall be **\$2,000**~~[\$3,500]~~ in addition to the penalty provided for in KRS 324A.152(7).

(4) Any dishonored or returned check shall incur the cost of collection plus twenty-five (25) dollars. ~~[(5) An Appraisal Subcommittee annual fee of twenty-five (25) dollars each year for each Kentucky-licensed and certified appraiser listed on the company register.]~~

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: September 22, 2011

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

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

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, December 6, 2011)**

201 KAR 30:320. Surety bond.

RELATES TO: KRS 324A.152(4)(c), 324A.154
STATUTORY AUTHORITY: KRS 324A.152(8), 324A.154(2)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.154(2) requires the board to establish by administrative regulation the terms required for a surety bond to be provided by an appraisal management company. This administrative regulation establishes the terms of the surety bond for registration of an appraisal management company.

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

(2) A registrant shall maintain a valid surety bond, as specified in KRS 324A.154, in the amount of **\$25,000**~~[\$500,000]~~.

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

(b) The bond **shall be**~~[is]~~ subject to claims:

1. By the board for failure to pay any amount required **by KRS 324A.150 through 324A.164 and 201 KAR 30:310 through 201 KAR 30:375; and**

2.~~[pursuant to the statutes and rules governing appraisal management companies and]~~ By any person who is damaged by the failure of the registrant to provide appraisal management services~~[.]~~ in accordance with KRS **324A.150 through 324A.164 and 201 KAR 30:310 through 201 KAR 30:375**~~[Chapter 324A and 201 KAR Chapter 30].~~

(4) The surety bond shall be maintained for at least one (1)

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year after an Appraisal Management Company's registration is terminated, revoked, or otherwise loses its authority to operate.

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

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

Section 2. Incorporation by Reference. (1) **"AMC Surety Bond Form", 12/11, [6/11 edition], is incorporated by reference.**

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

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: July 15, 2011

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

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

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, December 6, 2011)**

201 KAR 30:330. Application for registration.

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

STATUTORY AUTHORITY: KRS 324A.152(8)

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

Section 1. (1) A person required to be registered under KRS 324A.152 shall apply by **submitting the following to the board:**

(a) A completed Application for Appraisal Management Company Registration;

(b) Attachments A through H as listed in the Application for Appraisal Management Company Registration;

(c) Proof of valid and sufficient surety bond as required by 201 KAR 30:320; and

(d) All fees required by 201 KAR 30:310. [AMC Registration KREAB Form to the board along with the certifications required by KRS 324A.152(2)(e) and (f).]

(2) A registration application shall include the following:

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

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

(c) All required fees.;

(2) If (3) — When information required or requested by the board, through application or otherwise, becomes inaccurate the registrant shall file with the board an amendment correcting that information within **ten (10) [40]** business days.

Section 2. Incorporation by Reference. (1) **"Application for Appraisal Management Company Registration", 12/11, is incorporated by reference.** [AMC Registration KREAB Form APP 6/11", is incorporated by reference.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Ken-

tucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: July 15, 2011

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

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

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, December 6, 2011)**

201 KAR 30:360. Operation of an appraisal management company.

RELATES TO: KRS 324A.150 - 324A.164

STATUTORY AUTHORITY: KRS 324A.152(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS **324A.152(8)[324A.154(2)]** requires the board to establish by administrative regulation **standards[rules]** governing the operation of an appraisal management company. This administrative regulation establishes requirements for operating an appraisal management company.

Section 1. Performance Obligation. (1) A registrant shall disclose to its client the actual fees paid to an appraiser for appraisal services, separately from any other fees or charges for appraisal management services and, upon written request, shall make that information available to the Board.

(2) A registrant shall disclose to each appraiser that it engages for appraisal services verification of its State Registration.

(3) A registrant shall not attempt to directly or indirectly coerce an appraiser to accept an assignment if the appraiser indicates that **the appraiser [he/she]** lacks competency or sufficient experience to complete the assignment, and the registrant shall not penalize the appraiser by reducing the number of assignments made to that appraiser, refusing to pay fees owed, **or in any other manner[or otherwise]**.

(4) **[A registrant shall not provide an appraiser with or request that an appraiser reach an anticipated, estimated, encouraged or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transaction may be provided.]**

(5) A registrant shall not withhold or threaten to withhold future business or assignments from an appraiser because of the appraiser's failure to concede to improper or illegal requests, demands, or coercion. This prohibition shall include any express or implicit promise of future business, assignments, promotions, or increased compensation for an appraiser in exchange for the appraiser's agreement to concede to improper or illegal requests, demands, or coercion.

(5)[(6)] A registrant shall not require an appraiser to **indemnify an appraisal management company or hold an appraisal management company harmless for any liability, damage, losses, or claims arising out of the services provided by the appraisal management company. This prohibition shall not preclude indemnification agreements for services performed by the appraiser.** [sign an indemnification agreement] [that would require the appraiser to defend and hold harmless the registrant or any of its agents or employees for any liability, damage, losses, or claims arising out of the services performed by the registrant or its agents, employees, or independent contractors].;

(6)[(7)] A registrant shall not use an appraiser directly selected or referred by any member of a loan production staff of a client.

(7)[(8)] A registrant shall not request that a broker price opinion be used as the primary basis for developing and reporting an appraisal for the purpose of loan origination of a residential mortgage loan secured by any one (1) to four (4) unit residential property.

(9) A registrant shall not participate in any other act or practice that impairs or attempts to impair an appraiser's independence,

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objectivity, or impartiality.]

(8)(40) A registrant may not remove an appraiser from its appraiser panel without prior written notice to the appraiser **as required by KRS 324A.158(2)(d)**. An appraiser may file a complaint with the Kentucky Real Estate Appraisers Board to review the decision of the registrant for removal from its appraiser panel for reasons other than those allowed by KRS **324A.158(2)(d)**[324A.158(2)(d)].

(9)(44) A registrant shall require that if an appraisal report prepared by a Kentucky licensed or certified real property appraiser is reviewed by a state licensed or certified real property appraiser, the review appraiser shall also be certified by the Kentucky Real Estate Appraisers Board.

(10)(42) A registrant shall not prohibit communication between a Kentucky licensed or certified real property appraiser and any person from whom the appraiser believes the information is relevant in the performance of an appraisal assignment.

(11)(43) A registrant shall not require a Kentucky licensed or certified [residential] real property appraiser that is an independent contractor under Kentucky law to sign a noncompete agreement [that violates Kentucky law]. [(14) A registrant may not permit an employee, agent, or third party to engage in any activity, which the registrant is prohibited from engaging in directly.]

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: September 22, 2011

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

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

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, December 6, 2011)

301 KAR 2:142. Spring wild turkey hunting.

RELATES TO: KRS 150.175(7), (8), (15), (17), (18) [150.175(7)(8)(15)(17)(18)], 150.305, 150.360, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.390(1) authorizes the department to establish restrictions on hunting wild turkey. This administrative regulation establishes season dates, shooting hours, and other requirements for spring turkey hunting.

Section 1. Definitions. (1) "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.

(2) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

Section 2. Youth Turkey Season. There shall be a statewide youth-only turkey hunting season for two (2) consecutive days beginning on the first Saturday in April.

Section 3. Statewide Turkey Season. There shall be a statewide turkey hunting season for twenty-three (23) consecutive days beginning on the Saturday closest to April 15.

Section 4. Turkey Hunting Requirements. (1) A person shall not take more than:

(a) One (1) male turkey per day;

(b) One (1) turkey with a visible beard per day;

(c) Two (2) male turkeys per season; or

(d) Two (2) turkeys with visible beards per season.

(2) A person shall not take a turkey using any device except

the following equipment as authorized by 301 KAR 2:140, Section 5:

(a) A firearm;

(b) Archery equipment; or

(c) A crossbow.

(3) A person shall only hunt turkeys from one half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(4) A person who is assisting or calling a turkey for a legal hunter shall not be required to possess a hunting license or turkey permit.

Section 5. Wildlife Management Area Requirements. (1) Unless specified in this section, spring season dates and the requirements of 301 KAR 2:140 shall apply to Wildlife Management Areas.

(2) Barren River WMA. On the Peninsula Unit, including Narrows, Goose Island, and Grass Island, a person shall not use a breech-loading firearm to take a turkey.

(3) Higginson-Henry WMA. A person shall not use a firearm to take a turkey.

(4) Livingston County WMA. Statewide spring turkey season is open to youth only.

(5) Pioneer Weapons WMA. A person shall not use the following to take a turkey:

(a) A breech-loading firearm; or

(b) A scope or optical enhancement.

(6) Robinson Forest WMA. A person shall not hunt turkeys on the main block of the WMA.

(7) West Kentucky WMA. The area shall be open for the youth-only turkey season pursuant to Section 2 of this administrative regulation.

Section 6. Special Area Requirements. (1) Unless specified in this section, all the requirements of this administrative regulation shall apply.

(2) A person shall comply with all federal requirements when hunting on the following federal areas:

(a) Bluegrass Army Depot;

(b) Fort Campbell;

(c) Fort Knox;

(d) Land Between the Lakes; and

(e) Reelfoot National Wildlife Refuge.

(3) A spring turkey season, not to exceed twenty-three (23) days, shall be allowed between the last Saturday in March and the second Sunday in May on the following areas:

(a) Bluegrass Army Depot;

(b) Fort Campbell;

(c) Fort Knox;

(d) Land Between the Lakes;

(e) Reelfoot National Wildlife Refuge; and

(f) Wendell H. Ford Regional Training Center.

(4) A turkey taken on the following areas shall be considered a bonus bird:

(a) Bluegrass Army Depot;

(b) Fort Campbell; and

(c) Fort Knox.

(5) A person shall not take more than one (1) turkey on the following areas:

(a) Land Between the Lakes; and

(b) Reelfoot National Wildlife Refuge.

(6) Otter Creek Outdoor Recreation Area. All statewide season requirements shall apply, except that shooting hours shall be from one-half (1/2) hour before sunrise to noon each day.

[RELATES TO: KRS 150.175(1)(r), 150.305, 150.360, 150.390, 150.990(11)]

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes season dates, shooting hours and other requirements for spring turkey hunting.

Section 4. Definition. "The youth turkey season" means a season that is open to a person who has not reached his 16th birthday

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by the day of the hunt.

Section 2. A person may take a wild turkey:

- (1) For twenty-three (23) consecutive days beginning on the Saturday closest to April 15;
- (2) Using firearms or archery equipment as specified in Section 5 of 301 KAR 2:140; and
- (3) From one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

Section 3. Youth Turkey Season. There shall be a two (2) day statewide youth turkey hunting weekend beginning the first Saturday in April.

Section 4. A person shall not take more than:

- (1) One (1) male turkey or turkey with a visible beard per day; or
- (2) Two (2) male turkeys or turkeys with visible beards during the spring season.

Section 5. (1) Unless otherwise specified in this section, spring season dates and the requirements of 301 KAR 2:140 shall apply to Wildlife Management Areas.

(2) A person shall not hunt a wild turkey during the spring on the areas listed in this section except on the dates specified in this administrative regulation.

(3) A turkey listed as a bonus bird shall not count against statewide limits.

(4) Barren River Wildlife Management Area. On the peninsula unit, including Narrows, Goose and Grass Islands, a person shall not:

- (a) Hunt turkey with a breech-loading firearm; or
- (b) Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine.

(5) Fort Campbell Wildlife Management Area.

(a) Season. The third Saturday in March through the second Sunday in May.

(b) A turkey taken on Fort Campbell shall be a bonus bird.

(c) A person shall:

1. Obtain a post combination hunting-fishing permit before hunting; and
2. Attach a Fort Campbell game check card to the turkey before leaving the post.

(6) Fort Knox Wildlife Management Area.

(a) Seasons. The last Saturday in March through the second Sunday in May.

(b) A person shall:

1. Hunt in assigned areas; and
 2. Not take more than one (1) turkey during the spring season.
- (c) A turkey taken on Fort Knox shall be a bonus bird.

(7) Higginson-Henry Wildlife Management Area. During the spring season a person shall not use or possess a firearm while turkey hunting.

(8) Land Between the Lakes.

(a) Seasons.

1. Quota hunts of no more than six (6) days beginning on or after the last Saturday in March.
2. Up to sixteen (16) days between the first Saturday in April and the second Saturday in May.

(b) A person shall:

1. Check in and out, as required by the USDA Forest Service;
2. Hunt in assigned areas;
3. Check turkeys at a Land Between the Lakes check station before leaving Land Between the Lakes, as required by the USDA Forest Service;
4. Affix a Land Between the Lakes game check card as required by the USDA Forest Service; and
5. Not take more than one (1) turkey in the spring.

(c) Shooting hours shall be from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(9) Livingston County Wildlife Management Area. Open for the Youth Turkey Season. Statewide Spring Turkey Season open to youth only.

(10) Pioneer Weapons Wildlife Management Area. During the

spring season a person shall not use a breech-loading shotgun.

(11) Reelfoot National Wildlife Refuge.

(a) Season. Quota hunt, three (3) consecutive days in April.

(b) A person shall:

1. Not take more than one (1) turkey; and
2. Obtain written permission from the area manager before hunting.

(12) The main block of Robinson Forest shall be closed to turkey hunting.

(13) West Kentucky Wildlife Management Area shall be open during the youth turkey season.

Section 6. A person may assist or call turkeys for another person who is legally hunting. This assistant:

(1) May possess a hunting license or turkey permit, but does not have to possess a hunting license if he is assisting a licensed hunter; and

(2) Shall not carry a firearm, archery equipment or crossbow if he has taken the bag limit for that season.]

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, email fwpubliccomments@ky.gov.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Reclamation and Enforcement (As Amended at ARRS, December 6, 2011)

405 KAR 5:085. Enforcement.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300, **350.990**

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.028, 350.029, 350.240, 350.300[, 350.990]

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 [in pertinent part,] requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation establishes [sets forth] provisions governing the issuance of the various notices and orders to be issued by authorized representatives of the cabinet. ~~[This][The] administrative regulation establishes]directs][that there be issued a notice of noncompliance and order for remedial measures if there is a violation. This][The] administrative regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of an imminent danger to the health or safety of the public or significant, imminent environmental harm to land, air, or water resources. This][The] administrative regulation establishes][sets forth] the general form of the notices and orders and authority to vacate, modify, or terminate the orders or notices.]~~

Section 1. General. (1) The secretary of the cabinet may designate [from time to time or for a definite period designate, by written order or by other means appropriate under the circumstances,] authorized representatives to perform duties pursuant to the administrative regulations contained in 405 KAR Chapter 5.

(2) Unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the Commissioner of the Department for Natural Resources shall be [are deemed] the authorized representatives of the cabinet for the purposes of this administrative regulation.

Section 2. Inspections. (1) General. In accordance with the provisions of 405 KAR Chapter 5 [this chapter], the cabinet shall conduct or cause to be conducted [such] inspections, studies, investigations, or other determinations [as it deems reasonable and necessary] to obtain information and evidence to [which will] ensure that mineral operations shall be [are] conducted in accordance with the provisions of all applicable statutes and administrative regulations, and all terms and conditions of the permit.

(2) Right of entry and access. Authorized employees of the cabinet shall have unrestricted right of entry to all parts of the mineral operation for any purpose ~~[associated with their proper duties]~~ pursuant to 405 KAR Chapter 5 ~~[this chapter]~~, including ~~[but not limited to]~~ making inspections, and delivering documents or information of any kind to persons associated with the mineral operation.

(3) Timing and frequency of inspections.

(a) The cabinet shall conduct periodic inspections of all mineral operations.

(b) Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night or on weekends or holidays ~~if [when the cabinet deems these inspections] necessary to properly monitor compliance [with all applicable laws and administrative regulations].~~

(c) The cabinet shall not have ~~an~~ obligation to give prior notice that an inspection will be conducted or to obtain a warrant.

(4) Citizens request for inspections.

(a) Any citizen may request that the cabinet conduct an inspection by furnishing to the cabinet ~~[.]~~ a signed, written statement, or an oral report followed by a signed, written statement;

1. Giving the cabinet reason to believe that a condition or practice exists which is in violation of KRS Chapter 350, 405 KAR Chapter 5, or permit conditions; and

2. Listing a telephone number and address where the person can be contacted. ~~[giving the cabinet reason to believe that a violation, condition, or practice in violation of KRS Chapter 350, administrative regulations promulgated thereto, or permit conditions exists, and setting forth a telephone number and address at which the person can be contacted.]~~

(b) The identity of any person supplying information to the cabinet relating to a possible violation or imminent danger or harm shall remain confidential with the cabinet if requested by that person, unless disclosure is required by law.

(c) Within a reasonable time, the cabinet shall send to the person the following:

1. If ~~an~~ inspection was not conducted, an explanation of the reason or reasons why ~~[no inspection was conducted]~~; or

2. If an inspection was conducted, a description of the enforcement action taken, if any, or an explanation of why ~~[no]~~ enforcement action was not taken.

Section 3. Notice of Noncompliance and Order for Remedial Measures. (1) ~~All~~ Any authorized representative of the cabinet shall issue a notice of noncompliance and order for remedial measures if, on the basis of an inspection, he finds a violation of KRS Chapter 350, 405 KAR Chapter 5, a ~~any~~ permit condition, or another ~~any other~~ applicable requirement.

(2) A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized employee who issued it. The notice shall contain the following information:

(a) The nature of the violation ~~[violations]~~;

(b) The remedial measures required, if any, which may include accomplishment of interim steps, if appropriate;

(c) A reasonable time table for remedial action, if any, which may include a time table for accomplishment of interim steps, if appropriate; and

(d) An adequate description of the portion of the mineral operation to which the notice applies.

(3) An authorized employee may modify an order for remedial measures for good cause, **including correction of errors, changes in responsible parties, changes to remedial measures, and changes in abatement dates** ~~[causes]~~.

(4) Extensions and modifications of notices for remedial action. An authorized employee may extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued.

(a) 1. The total time for remedial action under the notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice except upon a showing by the mineral permittee that it is not feasible to abate the violation within ninety

(90) calendar days due to one (1) or more of the circumstances established ~~[set forth]~~ in paragraph (b) of this subsection.

2. An abatement period exceeding ninety (90) days pursuant to this subsection shall not be granted for a situation ~~[situations]~~ in which the mineral permittee's failure to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the mineral permittee in completing the remedial action required.

(b) The following circumstances may qualify mineral operations for an abatement period of more than ninety (90) days:

1. The mineral permittee of the ongoing mineral operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but the permit or approval, for reasons not within the control of the mineral permittee, has not been and will not be issued prior to ninety (90) days after the valid permit or approval expires or is required;

2. There is a valid judicial order precluding abatement within ninety (90) days to which the mineral permittee has diligently pursued all rights of appeal and to which he has no other effective legal remedy;

3. The mineral permittee cannot abate within ninety (90) days due to a labor strike; ~~[or]~~

4. Weather conditions exist that would clearly cause more environmental harm than abatement measures would prevent; or

5. The action required would violate safety standards established by KRS Chapter 350, 405 KAR Chapter 5, or under the "Mine Safety and Health Act," 30 U.S.C. 801 through 965 or 30 C.F.R. Sections 1.1 through 104.5. ~~[Require action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.]~~ ~~[Weather conditions preclude abatement within ninety (90) days; due to weather conditions abatement within ninety (90) days would clearly cause more environmental harm than it would prevent; or abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.]~~

(c) If an abatement period in excess of ninety (90) days is approved by the cabinet, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public and the environment.

(d) 1. If any of the conditions in paragraph (b) of this subsection exist, the mineral permittee may request the authorized representative of the cabinet to grant an abatement period exceeding ninety (90) days.

2. The authorized representative of the cabinet shall not grant ~~[such]~~ an abatement period without the approval of the Director of the Division of Mine Reclamation and Enforcement ~~[Field Services]~~ or his designee, and the ~~[abatement]~~ period granted shall not exceed the shortest possible time necessary to abate the violation. The mineral permittee shall have the burden of establishing by clear and convincing proof that he is entitled to an extension under the provisions of this subsection.

3. In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative of the cabinet may consider relevant written or oral information from the mineral permittee and other sources.

4. The authorized representative of the cabinet shall promptly and fully document in the applicable file ~~the~~ his recommendation for granting or denying the request and the reasons ~~[therefor]~~.

5. The authorized representative's immediate supervisor shall review this document before approving or disapproving the extended abatement period and shall promptly and fully document the reasons for his approval or disapproval in the applicable file.

(e) A determination made pursuant to ~~[under]~~ paragraph (d) of this subsection shall be in writing and shall be subject to administrative and judicial review pursuant to 405 KAR 5:095.

(f) ~~An extension granted pursuant to this subsection shall not~~ No extension granted under this subsection may exceed ninety (90) days in length. For a situation ~~[situations]~~ in which the condition or circumstance that prevented abatement within ninety (90) days exists at the expiration of the extension, the mineral permittee may request a further extension in accordance with the procedures of this subsection.

(5) Based upon the written recommendation of authorized representative of the cabinet who issued the notice or noncompliance

ance and order for remedial measures, the director of the Division of Mine Reclamation and Enforcement [~~Field Services~~] may vacate a notice of noncompliance and order for remedial measures determined to be issued in error.

Section 4. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the person to whom a notice of noncompliance and order for remedial measures has been issued fails to comply with the terms of the notice within the time for remedial action established in the notice or as subsequently extended, an authorized representative of the cabinet shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he finds, on the basis of an inspection, a [any] condition or practice; a [any] violation of KRS Chapter 350; a [any] violation of 405 KAR Chapter 5; or a [any] violation of a term or condition of the applicable permit ~~that~~ [which]:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he finds, on the basis of an inspection, that mineral operations are being conducted by a person without a valid mineral operations permit for the activities in accordance with this chapter.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The order shall establish [set forth] with [reasonable] specificity:

1. The nature of the violation;

2. A reasonable description of the portions of the mineral operations to which it applies;

3. The remedial measures, if any, necessary to abate the violation in the most expeditious manner possible; and

4. The time established for abatement, if appropriate, including the time for complying with any interim steps.

(b) ~~When~~ [At the same time that] the authorized representative of the cabinet issues an order for cessation and immediate compliance pursuant to subsection (1)(b) or (c) of this section, ~~he shall also issue~~ a notice of noncompliance and order for remedial measures shall also be issued.

(3) Effect.

(a) 1. The order for cessation and immediate compliance shall require the cessation of all mineral operations or the portions or operations thereof relevant to the condition, practice, or violation covered by the order.

2. The order shall require the person to whom it is issued to take [any] affirmative steps ~~[that] [which] [the authorized representative of the cabinet deems]~~ necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the condition, practice, or violation has been abated; until the order is vacated, modified, or terminated in writing pursuant to subsection (4) of this section; or until it is vacated, modified, or terminated by a hearing officer.

(c) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of an [any] order unless the order states that the reclamation operations and other activities shall cease.

(4) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet may, by written notice, modify or terminate an order for cessation and immediate compliance issued under this section for good cause and may extend the time for abatement if the failure to abate within the time previously established [set] was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his authorized representative shall terminate an order for cessation and immediate compliance, by written notice to the person to whom the order was issued, if it is deter-

mined [when] ~~he determines~~ that all conditions, practices, and violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations or to impose [any] other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet who issued the order for cessation and immediate compliance, the Director of the Division of Mine Reclamation and Enforcement [~~director of the division of field services~~] may vacate an order for cessation and immediate compliance determined to have been issued in error.

(5) Within sixty (60) days after issuing an order for cessation and immediate compliance, the cabinet shall notify in writing a person who has been identified as owning or controlling the mineral permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Section 5. Notice of Inspection of Noncompliance. (1) Issuance. If an authorized representative of the cabinet issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, the authorized representative [he] shall reinspect the area [areas] affected by the mineral operations on or soon after the date established [given] in the notice or order for completion of remedial measures. When this re-inspection occurs [At the time of] [this] [reinspection], the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. (a) The notice of inspection of noncompliance shall establish if [set forth whether]:

1. ~~[(a)]~~ The remedial measures have been completed, and the notice or order is therefore terminated;

2. ~~[(b)]~~ The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

3. ~~[(c)]~~ The remedial measures have not been completed.

(b) Following ~~[such]~~ a determination that the remedial measures have not been completed, the cabinet shall:

1. For situations in which the inspection was a reinspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a reinspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated, initiate:

a. An administrative hearing for suspension or revocation of the permit or approval;

b. An administrative hearing for bond forfeiture; or

c. Administrative hearings for other appropriate relief, in accordance with KRS 350.990 or KRS 350.028. ~~[an administrative hearing for suspension or revocation of the permit or approval, initiate an administrative hearing for bond forfeiture, or initiate administrative hearings for other appropriate relief.]~~

Section 6. Service of Notices and Orders. (1) A [Any] notice of noncompliance and order for remedial measures, an [any] order for cessation and immediate compliance, and a [any] notice of inspection of noncompliance shall be served on the person to whom it was issued or the person's designated agent promptly after issuance.

(2) (a) Each notice or order shall be served ~~[.]~~ to the person to whom the notice or order has been issued or to his designated agent for service, by:

1. Hand;

2. Electronic mail with electronically generated receipt;

3. Certified mail, return receipt requested; or

4. Registered mail [hand, by certified mail (return receipt requested), or by registered mail to the person to whom the notice or order has been issued or to his designated agent for service.]

(b) The notice or order shall also be served ~~[by hand]~~ to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the mineral operations referred to in the notice or order. If the individual cannot ~~[no such individual can]~~ be located at the site, a copy of the notice or order may be tendered to an [any] individual at the site who

appears to be an employee or agent of the person to whom the notice or order has been issued.

(c) Service, whether by electronic mail, hand, or standard mail [~~hand or by mail~~], shall be complete upon tender of the notice or order and shall not be ~~deemed~~ incomplete because of refusal to accept.

(d) For mineral operations, service by mail shall be addressed to the designated agent for service; to the electronic or permanent address of the mineral permittee as identified on the permit or in the application; or, if an address is unavailable [~~no address is identified~~] for the mineral permittee in the application, to another [~~such other~~] address as is known to the cabinet. If a person cannot be found [~~no person is~~] present at the site of the mineral operations, services by mail shall by itself be sufficient notice.

(3) Designation by a [~~any~~] person of an agent for service of notices and orders issued pursuant to this administrative regulation and notices of hearing issued pursuant to 405 KAR 5:095 [405 KAR 5:085], shall be made a part of the applicable permit application. The person shall continue as agent for service of process until written revision of the permit is approved that [~~which~~] designates another person as the agent.

(4) The cabinet may furnish copies of notices and orders to any person having an interest which is or may be adversely affected by the mineral operations and any person having an interest in the permit.

Section 7. Penalties. The cabinet may assess penalties pursuant to KRS 350.990.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 6, 2011

FILED WITH LRC: October 10, 2011 at 10 a.m.

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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(As Amended at ARRS, December 6, 2011)

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

RELATES TO: KRS 224.10-410, 224.10-470, 350.010(2), 350.032, 350.060, 350.085, 350.130, 350.240, 350.300, 350.305, 350.990 [~~224.10-410~~]

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.028, 350.029, 350.0301, 350.050, [~~350.0304~~] 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 [~~in pertinent part~~] requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. **KRS 350.0301 requires the cabinet to promulgate administrative regulations establishing formal and informal hearing procedures and administrative conferences.** This administrative regulation establishes [~~sets forth~~] provisions governing requests for administrative hearings, initiation of administrative hearings by the cabinet, informal settlement conferences, procedures for the conduct of administrative hearings, service, and administrative hearings for orders to abate and alleviate.

Section 1. Conduct of Administrative Hearings. (1)(a)1. Requests for an administrative hearing by persons other than the cabinet. A [~~Any~~] person aggrieved by an order or determination of the cabinet may request in writing that an administrative hearing be conducted by the cabinet, pursuant to KRS 350.0301. The request shall be filed with the Office of Administrative Hearings in Frankfort and [~~The request for an administrative hearing~~] shall include a short and plain statement identifying the basis of the request and the order or determination being contested.

2. The request for an administrative hearing shall plainly identify the notice or order being contested if the request involves:

a. A notice of noncompliance;
b. An order for cessation and immediate compliance; or
c. A proposed penalty assessment[~~If the request for an administrative hearing involves a notice of noncompliance, order for cessation and immediate compliance or proposed penalty assessment, the request shall plainly identify the notice or order being contested. The request shall not operate as a stay of any order or notice~~].

3. The right to demand an administrative hearing shall be limited to a period of thirty (30) days, in accordance with KRS 350.0301(1)[~~after the requester has had actual notice of the action, or could reasonably have had the notice~~].

(b) Burden of proof.1. The cabinet shall have the burden of establishing a prima facie case as to the propriety of:

a. Notices of noncompliance and orders for remedial measures;

b. Orders for cessation and immediate compliance; or
c. The modification, vacation, or termination as established in this section [~~In review of notices of noncompliance and orders for remedial measures or orders for cessation and immediate compliance or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice, order, or modification, vacation, or termination thereof~~].

2. The ultimate burden of persuasion shall rest with the petitioner. In all other cases in which [~~where~~] the administrative hearing is requested by persons other than the cabinet, the petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

2. The ultimate burden of persuasion shall rest with the petitioner. In all other cases in which [~~where~~] the administrative hearing is requested by persons other than the cabinet, the petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

(2) Initiation of an administrative hearing by the cabinet.
(a) The cabinet may initiate an administrative hearing and may seek suspension or revocation of the permit and forfeiture of the bond if:

1. It has reason to believe that a violation of KRS Chapter 350, 405 KAR Chapter 5, or a permit condition has occurred or is occurring; or

2. A mineral permittee has failed to;
a. Pay a civil penalty assessed in a final order of the cabinet;

b. Undertake remedial measures mandated by a final order of the cabinet; or

c. Abate violations it was determined to have committed by final order of the cabinet;

[~~pay a civil penalty assessed in a final order of the cabinet or to undertake remedial measures mandated by a final order of the cabinet or to abate violations it was determined to have committed by a final order of the cabinet; or~~]

3. The cabinet has reason to believe that additional remedies should be sought or that an order should be entered against a [~~any~~] person to protect the environment or the health and safety of the public; or [~~or~~]

4. The criteria of 405 KAR 5:082 [~~405 KAR 5:080~~] apply.

(b) Burden of proof. If the cabinet initiates an administrative hearing, the cabinet shall have the ultimate burden of persuasion. The responding party shall have the burden of persuasion to establish an affirmative defense.

(3) At an [~~any~~] administrative hearing held pursuant to subsection (1) or (2) of this section, the cabinet may seek any combination of the following:

(a) Permit suspension or revocation;
(b) Bond forfeiture;
(c) Civil penalties;
(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future mineral operations; or

(e) Any other relief to which it may be entitled by KRS Chapters 224 and 350.

(4) If the cabinet revokes or suspends the permit, then mining operations on the permit area shall immediately cease, and the mineral permittee shall:

(a) Complete [~~If the permit is revoked, complete~~] reclamation within the time specified in the order, if the permit is revoked; or

(b) Complete [~~If the permit is suspended, complete~~] all affirmative obligations to abate all conditions, practices, and violations as

specified in the order, if ~~or~~ the permit is suspended.

(5) Informal settlement conferences. As an alternative to the administrative hearings provided at subsection (1) of this section, a permittee or other person issued a notice of noncompliance, order for cessation and immediate compliance, or proposed penalty assessment may request an informal conference with the Director, Division of Mine Reclamation and Enforcement, ~~[director, Division of Field Services,]~~ by submitting a written request ~~[for an informal conference to the office of the director].~~

(a) The time for requesting an informal conference shall be limited to a period of thirty (30) days following issuance of the notice of noncompliance, order for cessation and immediate compliance or proposed penalty assessment.

(b) A request for informal conference shall not toll the time for requesting an administrative hearing pursuant to subsection (1) of this section.

(6) Administrative summons.

(a) Upon request pursuant to subsection (1) of this section, or upon initiation by the cabinet pursuant to subsection (2) of this section, the cabinet shall schedule an administrative hearing ~~[before the cabinet]~~ to be held not less than twenty-one (21) days after the notice of demand for an administrative hearing, unless the person complained against waives, in writing, the twenty-one (21) day period.

(b) The administrative summons, including a notice of administrative hearing, shall be served in accordance with Section 2 of this administrative regulation and shall include the following:

1. A statement of the time, place, and nature of the administrative hearing;

2. A statement of the legal authority for the administrative hearing;

3. Reference to the statutes and administrative regulations involved; and

4. A short statement of the reason for granting of the administrative hearing.

~~(c) For all administrative hearings initiated pursuant to subsection (2) of this section, notice shall also be mailed to intervenors and shall be posted at the department's appropriate regional office. [a statement of the time, place, and nature of the administrative hearing; a statement of the legal authority for the administrative hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for granting of the administrative hearing. For all administrative hearings initiated pursuant to subsection (2) of this section, notice shall also be mailed to any intervenors, and shall be posted at the department's appropriate regional office.]~~

(7) Prior to an administrative hearing as provided in ~~[under]~~ this administrative regulation, and upon seven (7) days' written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification of the issues, consolidation of actions, admission of facts and documents ~~to [which will]~~ avoid unnecessary proof, limitation ~~[limit]~~ ~~[limitation]~~ of the number of witnesses, and other matters ~~that [as will]~~ aid in the disposition of the matter. Final disposition of the matter may be made at the conference by stipulation, settlement, agreed order, summary disposition, or default for nonappearance. The parties may hold additional conferences as necessary ~~[may be proper]~~ to resolve an ~~[any]~~ issue in dispute.

(8)(a) Any party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas.

(b) An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing in accordance with reasonable administrative practice.

(c) Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 and [400 KAR] 1:040 shall apply to cases before the cabinet, consistent with KRS Chapters 224 and 350.

(d) The hearing officer shall permit a ~~[any]~~ party to represent himself, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel shall

be grounds for the Hearing Officer to issue a default order recommending that the Secretary grant or deny relief as appropriate. ~~[without good cause, shall be grounds for default.]~~

~~(e) Failure to appear shall be grounds for the Hearing Officer to issue a default order recommending that the Secretary grant or deny relief as appropriate. [without good cause or failure to comply with a] [any] [prehearing or interlocutory order of the hearing officer shall be grounds for default.]~~

(9) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(a) If necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except if precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs.

(b) Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record.

(c) Subject to these requirements, if an administrative hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts.

(d) Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge.

(e) Parties shall be notified either before or during the administrative hearing, or by reference in preliminary reports or otherwise, of the material noticed, including a ~~[any]~~ staff memoranda or data, and the parties ~~[they]~~ shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(10)(a) Each administrative hearing shall be recorded, and a transcript made available on the motion of a ~~[any]~~ party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay copying costs ~~[the cost thereof]~~.

(b) The record of the administrative hearing shall be open to public inspection and copies thereof shall be made available to a person upon payment of the actual cost of reproducing the original except as provided in KRS Chapter 224. The record shall consist of:

1. All pleadings, motions, and rulings;

2. Documentary and physical evidence received or considered;

3. A statement of matters officially noticed;

4. Questions and offers of proof, objections, and rulings thereon;

5. Proposed findings and recommended orders; and

6. Legal briefs. ~~[The record of the administrative hearing, consisting of: all pleadings, motions, and rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon; proposed findings and recommended orders; and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS Chapter 224.]~~

(c) If certified by the cabinet as a true and correct copy of the testimony, the transcript shall constitute the official transcript of the evidence.

(11)(a) After the administrative hearing, the hearing officer shall issue a determination based on the preponderance of evidence appearing in the record as a whole. The determination shall establish if [in] ~~[set forth whether, in fact,]~~ the violation did occur. If the violation occurred, the determination shall specify a recommended penalty and recommended remedial or compliance actions to be taken by the mineral permittee or the person conducting the mineral operation.

(b) In addition to the requirements of paragraph (a) of this subsection:

1. The hearing officer may recommend suspension or revoca-

tion of the permit or forfeiture of the bond if the mineral permittee has violated any provision of KRS Chapter 350; 405 KAR Chapter 5; a permit condition; or a final order, including failure to pay a civil penalty assessed in a final order of the cabinet;

2. The hearing officer may recommend, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future mineral operations;

3. The hearing officer may recommend that a person [or persons] be required to abate, repair, alleviate, or prevent violations of KRS Chapter 350; 405 KAR Chapter 5; or a permit condition, if the violations are found to exist on the basis of a preponderance of the evidence; and

4. For permit determinations, the hearing officer may recommend that a permit was issued in violation of applicable statutory and regulatory criteria, and may recommend suspension or revocation of the permit and may further recommend remedial or compliance actions to be taken by the mineral permittee.

(12) The hearing officer shall recommend the amount of a civil penalty pursuant to KRS 350.990(1) and (2) and the recommendation shall be based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of a [any] computation offered by a [any] party, and shall state with specificity [particularity] the reason, supported by the record of the administrative hearing, for the penalty assessed in the final written report.

(13)(a) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and a recommended order to the secretary. The report and recommended order shall contain the appropriate findings of fact and conclusions of law.

(b) If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension.

(c) The hearing officer shall mail, postage prepaid, a copy of the report and recommended order to all parties. The parties may file, within fourteen (14) days of receipt of the hearing officer's report and recommended order, exceptions to the report and recommended order. There shall not be [no] other or further submissions.

(14) The secretary shall consider the report and recommended order and any exceptions filed and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the cabinet's final order, or issue the secretary's own[a] [his or her own] final order.

(15) The cabinet shall mail the final decision of the cabinet to the parties. If an [any] extension of time is granted by the secretary for a hearing officer to complete the report, the cabinet shall notify all parties upon [at the time of] the granting of the extension.

(16) The secretary shall not grant an extension of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) extensions shall be granted.

(17) A final order of the cabinet shall be based on substantial [substantial] evidence appearing in the record as a whole and shall establish [set forth] the decision of the cabinet and the facts and law upon which the decision is based.

(18) There shall not be [no] ex parte communications between the parties or representatives of the parties and the hearing officer.

(19) Any person aggrieved by a final order of the cabinet may seek judicial review as established [set forth] in KRS 224.10-470 (pertaining to abate and alleviate orders), 350.0305(2) and 350.032(2).

(20) This administrative regulation shall not[Nothing in this administrative regulation] [herein] [shall] prevent the cabinet from taking appropriate action in circuit court.

Section 2. Service. (1) Except as provided in subsections (3) and (4) of this section, any proposed penalty assessment, notice of administrative hearing, or other document required to be served in accordance with this section shall be served by one (1) of the following methods:

(a) The cabinet shall send copies of documents to the person to be served or instructed to be served by the initiating party, by

certified mail or electronic mail pursuant to KRS 350.130.

1. ~~The cabinet shall enter this occurrence into the record. [The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received.]~~

2. ~~If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.~~

3. ~~Service by certified mail is complete upon delivery of the envelope or as provided by subsection (2) of this section. The return receipt shall be proof of the time, place, and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by the authorized representative shall constitute service on the addressee. [or]~~

(b) ~~The cabinet may cause the document, with necessary copies, to be transferred for service to a [any] person authorized by the secretary or by a [any] statute to deliver them, or to a [any] person authorized to deliver service for the purpose of an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service.~~

(2)(a) ~~Service is effective upon acceptance of the document by a [any] mineral permittee at the permit address, upon refusal to accept the document by a [any] person at the permit address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, inability to deliver, or failure to claim the document.~~

(b) Service of documents by electronic mail shall be effective pursuant to KRS 350.130(7).

(3) Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) In addition to the provisions of subsections [subsection] (1) through (3) of this section, the provisions of 400 KAR 1:030, shall apply to service resulting from or attendant to administrative hearings established in [under] this administrative regulation.

Section 3. Temporary Relief. (1)(a) Pending completion of the investigation and administrative hearings provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a notice or order issued pursuant to KRS Chapter 350 or the administrative regulations or a determination by the cabinet to issue a permit or release a bond.

(b) A petition for temporary relief shall be made in writing and filed with the Office of Administrative Hearing with notice to the Office of Legal Services. The petition shall contain the following: [A petition for temporary relief shall be in writing, shall be filed with the Office of Administrative Hearings, with notice to the Department of Law, and shall contain the following:]

1. A detailed statement establishing the [setting forth] reasons [why] temporary relief should be granted;

2. A showing that there is a substantial likelihood that the petitioner will prevail on the merits upon a final determination of the proceeding;

3. A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources;

4. If the petition relates to an order for cessation and immediate compliance, a statement of whether the requirement for a decision on the petition within five (5) working days is waived; and

5. A statement of the specific relief requested.

(2) A hearing officer may grant temporary relief after making a written finding that the relief is warranted, and shall state the reasons for the finding. The hearing officer shall grant or deny relief expeditiously. ~~If [expeditiously; however, if] the petition relates to~~

an order for cessation and immediate compliance, relief shall be granted or denied within five (5) working days of receipt by the office of the petition. A hearing officer may grant temporary relief from notices and orders issued pursuant to 405 KAR Chapter 5 or a determination by the cabinet to issue a permit or release a bond, upon conditions as are deemed appropriate, only upon a finding that: [- Temporary relief may be granted upon a finding that:] [- upon conditions as are deemed appropriate, only upon a finding that:]

(a) The parties were given an opportunity to be heard in a location acceptable to both the cabinet and the petitioner;

(b) The petitioner has shown that there is a substantial likelihood that the findings on the merits in an administrative hearing conducted before the cabinet will be favorable to the petitioner;

(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources; and

(d) The relief sought is not the issuance of a permit if a permit has been denied, in whole or in part, by the cabinet, nor the release of a bond if a bond release request has been denied.

Section 4. Orders to Abate and Alleviate. (1) If the secretary issues an order to abate and alleviate pursuant to KRS 224.10-410 the cabinet shall provide the permittee or person to whom the order was issued an opportunity to be heard not more than ten (10) days following issuance of the order, unless waived in writing by the permittee or person.

(2) The order to abate and alleviate shall be filed with the Office of Administrative Hearings, which shall issue an administrative summons pursuant to Section 1(6) of this administrative regulation. Neither the scheduling nor holding of an administrative hearing pursuant to this section shall operate to terminate or stay the order, nor operate to relieve the permittee or person or persons [person(s)] named in the order from performing the affirmative obligations imposed in the order to abate and alleviate, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 6, 2011

FILED WITH LRC: October 10, 2011 at 10 a.m.

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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(As Amended at ARRS, December 6, 2011)

405 KAR 7:091. General practice provisions.

RELATES TO: KRS 224.10-410, 350.028, 350.0301, 350.0305, 350.032, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 446.030, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS [Chapter 13A], 350.020, 350.028, 350.0301, 350.0305, 350.255, 350.465, 350.610[-30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255]

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 [in pertinent part] requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation establishes [sets forth] hearing, notice, and other procedural and due process provisions for the permanent regulatory program. [This administrative regulation and 405 KAR 7:092 contain the substance of 405 KAR 7:090 which has been repealed.]

Section 1. Applicability. (1) This administrative regulation shall govern the conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350, including those pending when this administrative regulation

becomes effective.

(2) It shall also provide for public participation, pertaining to the review of determinations on:

(a) Permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of a permit;

(b) Notices of noncompliance and orders for remedial measures;

(c) Orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4);

(d) Performance bond amount, duration, release, and forfeiture;

(e) Orders to abate or alleviate, issued pursuant to KRS 224.10-410, to surface coal mining and reclamation operations; and

(f) All other matters, including participation in administrative hearings by a person adversely affected by a determination of the cabinet which:

1. Are appropriate for adjudication and determination by the cabinet; or

2. Arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as established in KRS Chapter 350 and 405 KAR Chapters 7 through 24. [This administrative regulation shall govern the conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350, including those pending at the time this administrative regulation becomes effective, and provide for public participation, pertaining to the review of determinations on permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of a [any] [permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4); determinations on performance bond amount, duration, release, and forfeiture; administrative hearings on orders to abate or alleviate issued pursuant to KRS 224.10-410 to surface coal mining and reclamation operations; and all other matters including participation in administrative hearings by a [any] person adversely affected by a determination of the cabinet which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet or arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as establishes [set forth] in KRS Chapter 350 and 405 KAR Chapters 7 through 24.]

Section 2. [Construction. This administrative regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this administrative regulation.

Section 3. [General Provisions for Conducting Administrative Hearings. (1)(a) Hearings generally. All administrative hearings shall be de novo as to all issues of fact and law, provided that those findings previously adjudicated by a final order of the secretary shall be binding against a [any] party to the administrative hearing leading to the final order. A party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. An independent hearing officer shall preside at the administrative hearing, [shall] keep order, and [shall] conduct the administrative hearing in accordance with reasonable administrative practice and Section 2 of this administrative regulation. Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 and [400 KAR] 1:040 shall apply to cases before the cabinet, consistent with KRS Chapter 350 and 405 KAR Chapters 7 through 24. The hearing officer shall permit a [any] party to represent himself, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel, without good cause that is

not the result of a lack of diligence on the part of the corporate party or its counsel, shall be grounds for default.

(b)1. Evidence. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. ~~If [When]~~ necessary to ascertain facts not reasonably susceptible to proof under rules of evidence, evidence not admissible thereunder may be admitted, except if ~~[where]~~ designated as confidential by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. A hearing officer ~~[Hearing officers]~~ shall give effect to the rules of privilege recognized by law.

2. Objections may be made and shall be noted in the record.

3. Subject to these requirements, ~~if [when]~~ a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original.

4. A party may conduct cross-examinations required for a full and true disclosure of the facts.

5. Notice may be taken by the hearing officer of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the administrative hearing, or by reference in reports or otherwise, of the material noticed, including any staff memoranda or data, and the parties shall have ~~[they shall be afforded]~~ an opportunity to contest the material so noticed.

6. The cabinet's experience, technical competence, and specialized knowledge may be utilized by the hearing officer in the evaluation of the evidence.

(2) Hearing officer's duties. The hearing officer shall in his discretion:

(a) Administer oaths and affirmations;

(b) Issue subpoenas in accordance with Section 9 of this administrative regulation;

(c) Issue appropriate orders relating to discovery in accordance with 400 KAR 1:040;

(d) Rule on procedural requests or similar matters;

(e) Hold prehearing conferences for settlement or simplification of the issues;

(f) Regulate the course of the administrative hearing;

(g) Rule on offers of proof and receive relevant evidence;

(h) Take any other action authorized by administrative regulation, KRS Chapter 350 and 405 KAR Chapters 7 through 24 ~~[7-24]~~; and

(i) Make or recommend decisions or reports in accordance with KRS Chapter 350 and 405 KAR Chapters 7 through 24 ~~[the administrative regulations]~~.

(3) Prehearing conference. A hearing officer may order a prehearing conference:

(a) To simplify and clarify issues;

(b) To receive stipulations and admissions;

(c) To explore the possibility of agreement disposing of any or all of the issues in dispute; and

(d) For any other purposes as may be appropriate, including but not limited to summary disposition of the case.

(4) Summary disposition. ~~After~~At any time after a proceeding has begun, a party may move for a summary disposition of the whole or part of a case, in which event the following procedure shall apply:

(a) The moving party shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon:

1. Depositions;

2. Answers to interrogatories;

3. Admissions; or

4. Documents produced upon request to verify allegations.~~[depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.]~~

(b) A hearing officer may grant a motion and render a report and recommended order to the secretary under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows that:

1. There is no disputed issue as to any material fact; and

2. The moving party is entitled to a summary disposition as a matter of law.

(c) If a motion for a summary disposition is not granted for the entire case or for all the relief requested and an evidentiary hearing on some or all of the issues is necessary, the hearing officer shall, ~~[if practicable, and]~~ upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. The hearing officer~~[He]~~ shall issue an interim report specifying the facts that appear without substantial controversy and direct further proceedings as deemed appropriate.

(5) Hearing officer's report.

(a) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and recommended order to the secretary, except that the administrative hearing officer shall, within twenty (20) days of the close of the hearing record, make a report and recommended order in administrative hearings on permit determinations in accordance with ~~[under]~~ 405 KAR 7:092, Section 8.

(b) The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and shall contain appropriate findings of fact and conclusions of law.

(c) If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. If granted by the secretary, all parties shall be notified upon ~~[at the time of]~~ the granting of the extension.

(d) The hearing officer's report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record. The parties may file exceptions and responses to the exceptions as provided under KRS 350.0301(2). There shall be no other or further submissions.

(6) ~~[(b)]~~ The hearing officer shall recommend the amount of a civil penalty based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of a ~~[any]~~ computation offered by a ~~[any]~~ party, and shall consider the same factors set forth in 405 KAR 7:092, Section 3(2) for consideration in setting proposed penalty assessments. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty recommended in his report.

(7) [(6)] Secretary's order.

(a) The secretary shall consider the report and recommended order, and~~[any]~~ exceptions filed, and a ~~[any]~~ responses to exceptions, and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as a final order, or issue his own final order.

(b) The final order of the secretary shall be mailed postage prepaid to parties and their attorneys of record.

(c) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall establish ~~[set forth]~~ the decision of the secretary and the facts and law upon which the decision is based.

Section 3~~[4]~~. Standards of Conduct. (1) Ex parte communications.

(a) Prohibition. Except to the extent required for the disposition of ex parte matters as authorized by law, there shall not be communication concerning the merits of a proceeding between office personnel and:

1. A party to the proceeding;

2. A person interested in the proceeding; or

3. A representative of a party or interested person.

(b) If communication is made then it shall be made in the presence of all other parties or their representatives if oral, or, if written, furnished to all other parties.~~[there shall be no communication concerning the merits of a proceeding between a party to the proceeding or a person interested in the proceeding or a representative of a party or interested person and office personnel involved or who may reasonably be expected to become involved in the decision making process of an administrative hearing or conference, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties.]~~

(c) Communications concerning case status or advice concern-

ing compliance with procedural requirements ~~shall not be~~ [are not] prohibited unless the area of inquiry is in fact an area of controversy in the administrative hearing or conference.

(d) Oral communications made in violation of this administrative regulation shall be reduced to writing in a memorandum by the person receiving the communication and shall be included in the record.

(e) Written communications made in violation of this administrative regulation shall be included in the record. Copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

(2) [(b)] Sanctions. The hearing officer, who has responsibility for the matter in which a prohibited communication has been knowingly made, may impose appropriate sanctions on the offending person or persons, which may include requiring an offending party to show cause why his claim, motion, or interest should not be dismissed, denied, or otherwise adversely affected; and invoking the [such] sanctions against other offending persons as appropriate.

(3) [(2)] Disqualification. The hearing officer shall withdraw from a case if he deems himself disqualified pursuant to [under] the recognized canons of judicial ethics. If prior to a decision of the hearing officer an affidavit of personal bias or disqualification with substantiating facts is filed, and the hearing officer concerned does not withdraw, the secretary shall determine the matter of disqualification.

Section 4[5]. Service. (1) A proposed penalty assessment, notice of assessment conference, notice of administrative hearing, or other documents required to be served, including administrative summonses, shall be served either as established in [under] 400 KAR 1:030 or pursuant to [by] one (1) of the following methods:

(a) ~~The cabinet may send copies of documents to the person to be served or instructed to be served by the initiating party, by certified mail or by electronic mail pursuant to KRS 350.130. The cabinet shall enter this occurrence into the record; [] [The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received.] If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.~~

(b) ~~The cabinet shall file the return receipt, electronically generated receipt, or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (2) of this section. The return receipt, return envelope, or electronically generated receipt shall be proof of the time, place, and manner of service; []~~

(c) To the extent the United States postal regulations allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by an [such] authorized representative shall constitute service on the addressee; [or]

(d) [(b)] The cabinet may cause the document, with necessary copies, to be transferred for service to a person authorized by the secretary or by a statute to deliver them, or to a person authorized to serve an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(e) [(d)] Service may be made upon a person issued a permit by the cabinet, upon a person specified as an operator in the permit application, or upon a person who has submitted an exploration notice or application pursuant to 405 KAR 8:020 by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permittee or the operator specified in the permit application (at the address specified on the face of the permit, at the permanent address for the permittee or operator specified in the permit application, or at a [any] new address that has been specified in writing by the permittee or operator), or in the case of coal exploration, by

placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the person authorized to conduct the coal exploration and addressed to said person's permanent address as noted in the exploration notice or application.

(2) Service shall be effective upon:

(a)1. Acceptance of the document by a person eighteen (18) years of age or older;

2. Refusal to accept the document by a person at the permanent address;

3. The United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) or (c) of this section; or

4. Upon failure to claim the document prior to its return to the cabinet by the United States Postal Service; or

(b) Delivery of the document to the recipient's inbox by electronic mail as electronically communicated to the cabinet by an electronic registered receipt; upon acceptance of the document by any person eighteen (18) years of age or older at the permanent address, upon refusal to accept the document by any person at the permanent address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) or (c) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document.]

(3) Methods[An] [Any] [other method] of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to [any of] the methods of service specified in this section.

(4) A copy of each document filed in a proceeding pending before the office shall [must] be served by the filing party on all other parties in the case. ~~If [in all cases in which] [where] a party is represented by an attorney, the [such] attorney shall [will] be recognized as fully controlling the case. Service of a [any] document relating to the proceeding shall be made upon the attorney in addition to [an] [any] other service specifically required by law or by order of the cabinet.~~

(5) Service shall be made upon the cabinet by serving the Office of General Counsel [commissioner of the Department of Law] and shall be effective upon receipt by the Office of General Counsel [the Department of Law].

Section 5[6]. Administrative Summons and Public Notice of Hearing. (1) Upon receipt of an initiating document, the office shall promptly serve in accordance with Section 4[5] of this administrative regulation, a copy of the document upon all parties designated to be served along with an administrative summons notifying the responding party that an initiating document has been filed against him and unless a written defense is timely served, action adverse to his interests may be taken. ~~At [if appropriate and at] the direction of the hearing officer, the administrative summons may also designate that a prehearing conference or administrative hearing shall be held along with the date, time, and place of the prehearing conference or administrative hearing. An administrative summons shall also include a statement of the legal authority for the hearing and reference to the statutes and administrative regulations involved.~~

(2) For all administrative hearings initiated pursuant to 405 KAR 7:092, Section 4[5], notice of the scheduled hearing shall be:

(a) Mailed to interveners;

(b) Posted at the department's appropriate regional office; and

(c) Published in a newspaper of general circulation in the area of the surface coal mining and reclamation operations or coal exploration operations, if practicable. [also be mailed to any interveners, shall be posted at the department's appropriate regional office and, if practicable, shall be published in a newspaper of general circulation in the area of the surface coal mining and reclamation operations or coal exploration operations.]

Section 6[7]. Filing and Retention of Documents. (1) Filing of documents. A document is considered filed in the office when the document is received and stamped by the office.

(2)(a) Retention of documents. All documents, books, records,

papers, etc., received in evidence in a hearing or submitted for the record in a proceeding before the cabinet ~~shall [will]~~ be retained with the official record of the proceedings. The withdrawal of original documents may be permitted while the case is pending upon terms and conditions as may be directed by the hearing officer.

(b) When an order of the secretary ~~becomes [has become]~~ final, the hearing officer ~~[in his discretion]~~ may, upon request and after notice to the other parties, authorize the withdrawal of original exhibits or any part by the authorized party.

(c) The substitution of true copies of exhibits or any part may be required by the hearing officer ~~[in his discretion]~~ as a condition of granting permission for withdrawal.

(3) Record address. A person who files a document for the record in connection with an administrative hearing shall state his mailing address, email address if one is available, facsimile number if one is available, and telephone number at the initial filing in the matter. If a person has a change of mailing address, email address, facsimile number, or telephone number then the new information shall be promptly served to the office with the file number relating to all matters in which he has made a filing. [A person who files a document for the record in connection with an administrative hearing before the office shall at the time of initial filing in the matter state his mailing address and telephone number. Thereafter, he shall promptly inform the office of a change in mailing address or telephone number, giving the file number relating to all matters in which he has made a filing.] The ~~successor [successors]~~ of the person ~~[,] who filed the document[;]~~ shall likewise promptly inform the office of their interest in the ~~matter [matters]~~ and state their ~~address and telephone number [addresses and telephone numbers]~~. A person who [if a person] fails to furnish a record address and telephone number as required, shall [he will] not be entitled to notice in connection with the proceedings.

(4) Transcripts. All administrative hearings ~~shall [will]~~ be recorded verbatim and transcripts ~~[thereof]~~ shall be made ~~if [when]~~ requested by interested parties. Costs of transcripts shall be borne by the requesting parties. Fees for transcripts prepared from recordings by office employees ~~shall [will]~~ be at rates ~~that [which]~~ cover the cost of manpower, machine use, and materials. If the reporting is done pursuant to a contract between the reporter and the cabinet, costs of transcripts ~~shall [will]~~ be at rates established by the contract.

Section ~~7[8]~~. Time. (1) Computation of time for the initiation of an administrative proceeding or the subsequent filing of a document shall be in accordance with KRS 446.030 and 400 KAR 1:030, Section 3 [, Section 4].

(2) The time for filing or serving a [any] document may be extended by a hearing officer except for the time for filing a petition for an administrative hearing under 405 KAR 7:092 or if an extension is contrary to law or administrative regulation.

(3) A request for an extension of time shall be filed within the time allowed for filing or serving the document.

Section ~~8[9]~~. Subpoenas. The office shall issue subpoenas requiring the attendance of witnesses or production of books, papers, documents, or tangible things designated therein, or both, at administrative hearings to be held before or at the taking of depositions to be held before other officers. Subpoenas shall be issued on a form approved by the office. A subpoena may be served by a person who is not less than eighteen (18) years of age. The original subpoena bearing a certificate of service shall be filed with the office or the subpoena may be served by certified mail, return receipt requested. The return receipt if signed by the addressee or his authorized agent shall constitute proof of service of the subpoena.

Section ~~9[10]~~. Location of Administrative Hearings and Penalty Assessment Conferences. (1) A penalty assessment conference shall be held in the department's regional office for the mine site, unless a closer location is approved by the conference officer.

(2) Administrative hearings shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the petition or other initiating document or answer upon the filing with the office of [at

the time] the petition or other initiating document or answer ~~[is filed with the office]~~. The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.

Section ~~10[11]~~. Intervention and Consolidation. (1) ~~[Who may file:]~~ A person may petition in writing for leave to intervene at any stage of a proceeding under 405 KAR 7:092. A petitioner shall establish [set forth] a statement indicating [setting forth] the interest of the petitioner and, if required, a showing of why the interest is or may be adversely affected.

(2) Criteria to intervene.

(a) The hearing officer shall grant intervention if the petitioner:

1. Had a statutory right to initiate the proceeding in which he wishes to intervene; or

2. Has an interest that [which] is or may be adversely affected by the outcome of the proceeding.

(b) If the criteria established [set forth] in paragraph (a) of this subsection does not apply, the hearing officer shall consider the following in determining ~~if [whether]~~ intervention is appropriate:

1. The nature of the issues;

2. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

3. The ability of the petitioner to present relevant evidence and argument; and

4. The effect of intervention on the cabinet's implementation of its statutory mandate.

(3) Effect of ruling. A person granted leave to intervene in a proceeding may participate in the proceeding as a full party or ~~[, if desired,]~~ in a limited capacity. If an intervenor wishes to participate in a limited capacity, the hearing officer shall determine the extent and terms of the participation, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. ~~[the extent and the terms of the participation shall be at the discretion of the hearing officer.]~~

(4) Consolidation. ~~[[When]~~ proceedings involving the same parties or a common question of law or fact are pending before the cabinet, the proceedings ~~shall be [are]~~ subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section ~~11[12]~~. Judicial Review, Effect, and Subsequent Proceedings. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 350.0305 as applicable.

(2) Effect of final order pending judicial review. The commencement of proceedings for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remands from courts. ~~[[Whenever]~~ a matter is remanded from a [any] court for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the appropriate hearing officer, a report recommending procedures to be followed in order to comply with the court's order. The hearing officer shall [will] review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by a [any] court.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 6, 2011

FILED WITH LRC: October 10, 2011 at 10 a.m.

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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(As Amended at ARRS, December 6, 2011)

405 KAR 12:020. Enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990, 30 C.F.R. Parts 730-733, 735, 840.13-.14, 840.16, 843, 30 U.S.C. 1253, 1255, 1271

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.020, 350.028, 350.050, 350.130, 350.465[; 30 C.F.R. Parts 730-733, 735, 840.13-.14, 840.16, 843, 30 U.S.C. 1253, 1255, 1271]

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to control the injurious effects of surface coal mining and reclamation operations. This administrative regulation establishes the conditions for issuance and general form of various kinds of notices and orders to be issued by the cabinet, procedures for an informal hearing, and suspension and revocation requirements. [KRS Chapter 350] [in pertinent part] [directs the cabinet to] [rigidly] [enforce administrative regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This administrative regulation ~~establishes~~ [sets forth] [various kinds of notices and orders to be issued by authorized representatives of the cabinet. The administrative regulation ~~directs~~ [establishes] [directs] [that there ~~shall~~ be issued a notice of noncompliance and order for remedial measures. The administrative regulation ~~requires~~ [establishes] [requires] [that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of imminent harm. The administrative regulation ~~establishes~~ [sets forth] [the general form of the notices and orders and authority to vacate, modify, or terminate the orders or notices. This administrative regulation ~~sets forth~~ procedures for an informal hearing. The administrative regulation ~~establishes~~ [sets forth] [requirements if a permit is suspended or revoked and procedures for a determination of a pattern of violations.] [This administrative regulation contains a portion of 405 KAR 7:090 which has been repealed.]

Section 1. General. (1) The secretary of the cabinet may [from time to time or for a definite period] designate[, by written order or by other means appropriate under the circumstances,] authorized representatives to perform duties pursuant to the administrative regulations contained in 405 KAR Chapters 7 through 24.

(2) Subject to 405 KAR Chapters 7 through 24 or unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the commissioner of the department shall be [are deemed the] authorized representatives of the cabinet for the purposes of Sections 2, 3, and 4 of this administrative regulation.

Section 2. Notice of Noncompliance and Order for Remedial Measures. (1) Issuance. An authorized representative of the cabinet shall issue a notice of noncompliance and order for remedial measures if, on the basis of inspection, he finds a violation of:

(a) KRS Chapter 350;

(b) 405 KAR Chapters 7 through 24;

(c) A term or condition of a permit;

(d) A term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval); or

(e) Any other applicable requirement.[a violation of KRS Chapter 350; 405 KAR Chapters 7 through 24; any term or condition of a permit; any term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval); or any other applicable requirement.]

(2) Form and content. A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The notice shall establish [sets forth] with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, if any, which may include accomplishment of interim steps if appropriate;

(c) A reasonable time for remedial action, if any, which may include time for accomplishment of interim steps if appropriate; and

(d) A reasonable description of the portions of the surface coal mining and reclamation operations or coal exploration and reclamation operations to which the notice applies.

(3) Service. Service of a notice of noncompliance and order for remedial measures shall be in the manner established [sets forth] in Section 5 of this administrative regulation.

(4) Extension. An authorized representative of the cabinet may, by written notice, extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued.

(a)1. The total time for remedial action under the notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice except upon a showing by the permittee or the person conducting the coal exploration and reclamation operations that it is not feasible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances established [establishes] [sets forth] in paragraph (b) of this subsection.

2. An abatement period exceeding ninety (90) days pursuant to this subsection shall not be granted for situations in which the permittee's failure or the failure of the person conducting the coal exploration and reclamation operations to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the permittee or the person conducting the coal exploration and reclamation operations in completing the remedial action required.

(b) The following circumstances may qualify surface coal mining and reclamation operations or coal exploration and reclamation operations for an abatement period of more than ninety (90) days:

1. The permittee of the ongoing surface coal mining and reclamation operations or the person conducting the coal exploration and reclamation operations has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but the permit or approval, for reasons not within the control of the permittee or the person conducting the coal exploration and reclamation operations, has not been and will not be issued prior to ninety (90) days after the valid permit or approval expires or is required;

2. There is a valid judicial order precluding abatement within ninety (90) days to which the permittee or the person conducting the coal exploration and reclamation operations has diligently pursued all rights of appeal and to which he has no other effective legal remedy;

3. The permittee or the person conducting the coal exploration and reclamation operations cannot abate within ninety (90) days due to a labor strike; or

4. If [Where] climatic conditions preclude abatement within ninety (90) days, or if [where], due to climatic conditions, abatement within ninety (90) days clearly:

a. Would cause more environmental harm than it would prevent; or

b. Requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act, 30 U.S.C. 801 through 965.[Weather conditions that would clearly cause more environmental harm than abatement measures would prevent; or

5. Require action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.][Weather conditions preclude abatement within ninety (90) days; due to weather conditions abatement within ninety (90) days would clearly cause more environmental harm than it would prevent; or abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.]

(c) If an abatement period in excess of ninety (90) days is approved by the cabinet, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public and the environment.

(d)1. If any of the conditions in paragraph (b) of this subsection

exist, the permittee or the person conducting the coal exploration and reclamation operations may request the authorized representative of the cabinet to grant an abatement period exceeding ninety (90) days.

2. The authorized representative of the cabinet shall not grant ~~[such]~~ an abatement period without the approval of the Director of the Division of Mine Reclamation and Enforcement ~~[Division of Field Services]~~ or his designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation.

3. The permittee or the person conducting the coal exploration and reclamation operations shall have the burden of establishing by clear and convincing proof that he is entitled to an extension under the provisions of this subsection. In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative of the cabinet may consider relevant written or oral information from the permittee, the person conducting the coal exploration and reclamation operations, and other sources. The authorized representative of the cabinet shall promptly and fully document in the applicable file his recommendation and reasons for granting or denying the request ~~[and the reasons therefor]~~.

4. The authorized representative's immediate supervisor shall review this document before approving or disapproving the extended abatement period and shall promptly and fully document the reasons for his approval or disapproval in the applicable file.

(e) A determination made pursuant to ~~[under]~~ paragraph (d) of this subsection shall be in writing and shall be subject to administrative and judicial review pursuant to 405 KAR 7:092.

(f) An extension granted pursuant to this subsection shall not ~~[No extension granted pursuant to]~~ ~~[under]~~ ~~[this subsection may]~~ exceed ninety (90) days in length. In situations in which the condition or circumstance that prevented abatement within ninety (90) days exists at the expiration of the extension, the permittee or the person conducting the coal exploration and reclamation operations may request a further extension in accordance with the procedures of this subsection.

(5) Modification. An authorized representative of the cabinet may, by written notice, modify an order for remedial measures for good cause, including correction of errors, changes in responsible parties, changes to remedial measures, and changes in abatement dates.

(6) Termination. An authorized representative of the cabinet shall, by issuance of a notice of inspection of noncompliance, provide written notice to the person to whom a notice of noncompliance and order for remedial measures has been issued that the notice is terminated when the authorized representative of the cabinet determines that all violations listed therein have been corrected. The termination shall not affect the right of the cabinet to assess civil penalties for those violations pursuant to 405 KAR 7:092 or to impose other applicable sanctions as authorized by law.

(7) Vacation. Based upon the written recommendation of the regional administrator and the authorized representative of the cabinet who issued the notice of noncompliance and order for remedial measures, the Director of the Division of Mine Reclamation and Enforcement ~~[Field Services]~~ may vacate a notice of noncompliance and order for remedial measures determined to have been issued in error.

Section 3. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the person to whom a notice of noncompliance and order for remedial measures has been issued fails to comply with the terms of the notice within the time for remedial action established in the notice or as subsequently extended, an authorized representative of the cabinet shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he finds, on the basis of an inspection, a ~~[any]~~ condition or practice; a ~~[any]~~ violation of KRS Chapter 350; a ~~[any]~~ violation of 405 KAR Chapters 7 through 24; or a ~~[any]~~ violation of a term or condition of the applicable permit or exploration approval that ~~[which]~~:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) An authorized representative of the cabinet shall immediately issue an order for a cessation and immediate compliance if he finds, on the basis of an inspection, that surface coal mining and reclamation operations are being conducted by a person without a valid surface coal mining and reclamation operations permit for the activities or that coal exploration and reclamation operations are being conducted without proper notice of intention to explore or approval for the operations, as applicable, in accordance with 405 KAR 8:020.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The order shall set forth ~~[establish]~~ ~~[set forth]~~ with reasonable specificity:

1. The nature of the violation;

2. A reasonable description of the portions of the operations in which it applies;

3. The remedial measures, if any, necessary to abate the violation in the most expeditious manner possible; and

4. The time established for abatement, if appropriate, including the time for complying with ~~[any]~~ interim steps.

(b) At the same time that the authorized representative of the cabinet issues an order for cessation and immediate compliance pursuant to subsection (1)(b) or (c) of this section, he shall also issue a notice of noncompliance and order for remedial measures.

(3) Service. Service of an order for cessation and immediate compliance shall be in the manner established ~~[set forth]~~ in Section 5 of this administrative regulation.

(4) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of:

1. All surface coal mining and reclamation operations;

2. All coal exploration and reclamation operations; or

3. The portions or operations ~~[thereof]~~ relevant to the condition, practice, or violation covered by the order. ~~[all surface coal mining and reclamation operations, all coal exploration and reclamation operations, or the portions or operations thereof relevant to the condition, practice, or violation covered by the order.]~~

(b) The order shall require the person to whom it is issued to take [any] affirmative steps ~~[which the authorized representative of the cabinet deems]~~ necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(c) ~~[(b)]~~ The order shall remain in effect until the condition, practice, or violation has been abated; until the order is vacated, modified, or terminated in writing pursuant to subsection (5) of this section; until it is vacated, modified, or terminated by a hearing officer pursuant to 405 KAR 7:092; or until the order expires pursuant to Section 6 of this administrative regulation.

(d) ~~[(e)]~~ Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of an ~~[any]~~ order unless the order states that the reclamation operations and other activities shall cease.

(5) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet may, by written notice, modify or terminate an order for cessation and immediate compliance issued under this section for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his authorized representative shall terminate an order for cessation and immediate compliance, by written notice to the person to whom the order was issued, when he determines that all conditions, practices, and violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations under 405 KAR 7:092 or to impose ~~[any]~~ other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet who

issued the order for cessation and immediate compliance, the Director of the Division Mine Reclamation and Enforcement [of Field Services] may vacate an order for cessation and immediate compliance determined to have been issued in error.

(6) Within sixty (60) days after issuing an order for cessation and immediate compliance, the cabinet shall notify in writing a person who has been identified under 405 KAR 8:010, Section 18(5) and either 405 KAR 8:030, Section 2(3) and (4) or [405 KAR] 8:040, Section 2(3) and (4) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Section 4. Notice of Inspection and Noncompliance. (1) Issuance. If an authorized representative of the cabinet issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, he shall reinspect the areas affected by the surface coal mining and reclamation operations or the coal exploration and reclamation operations on or soon after the date given in the notice or order for completion of remedial measures. When reinspection occurs[At the time of reinspection], the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall establish if [set forth whether]:

(a) The remedial measures have been completed[,] and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause, pursuant to Sections 2(4) and 2(5) of this administrative regulation; or

(c) The remedial measures have not been completed. Following this [such a] determination, the cabinet shall:

1. For the situations in which the inspection was a reinspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a reinspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated, initiate an administrative hearing for suspension or revocation of the permit or approval, initiate an administrative hearing for bond forfeiture, or initiate administrative hearings for other appropriate relief.

(3) Service. Service of a notice of inspection for noncompliance shall be in the manner established [set forth] in Section 5 of this administrative regulation.

Section 5. Service of Notices and Orders. (1) A notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, or notice of inspection of noncompliance shall be promptly served on the person to whom it is issued or the person's designated agent.

(2)(a) Each notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, and notice of inspection of noncompliance shall be served by:

1. Hand;

2. Certified mail (return receipt requested);

3. Registered mail; or

4. Electronic mail[hand, by certified mail (return receipt requested), or by registered mail to the person to whom the notice or order has been issued or to his designated agent for service.]

(b) The notice or order shall also be served by hand to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the surface coal mining and reclamation operations or coal exploration and reclamation operations referred to in the notice or order.

(c) If this individual cannot[no such individual can] be located at the site, a copy of the notice or order may be tendered to an individual at the site who appears to be an employee or agent of the person to whom the notice or order has been issued.

(3) Service, whether by hand, electronic mail or by mail, shall be complete upon tender of the notice or order and shall not be [deemed] incomplete because of refusal to accept.

(a) For surface coal mining and reclamation operations, service by electronic mail or mail shall be addressed to the designated agent for service; to the permanent or electronic address of the

permittee as identified on the permit or in the application; or, if no address is identified for the permittee in the application, to an [any] other address as is known to the cabinet.

(b) For coal exploration and reclamation operations, service by electronic mail or mail shall be addressed to the designated agent for service; to the permanent or electronic address of the person conducting the coal exploration and reclamation operations as identified in the notice of intention to explore or in the application for coal exploration and reclamation approval submitted pursuant to 405 KAR 8:020; or, if no address is identified for the person conducting the coal exploration and reclamation operations in the notice or the application submitted pursuant to 405 KAR 8:020, to an [any] other address as is known to the cabinet.

(c) If no person is present at the site of the surface coal mining and reclamation operations or the coal exploration and reclamation operations, service by electronic mail or mail shall by itself be sufficient notice.

(4) [(3)] Designation by a person of an agent for service of notices and orders issued pursuant to this administrative regulation and notices of hearing issued pursuant to 405 KAR 7:092 shall be made a part of the applicable permit application, notice of intention to explore, or application for coal exploration and reclamation approval. The person shall continue as agent for service of process until written revision of the permit, a notice of intention to explore, or coal exploration and reclamation approval is made that [which] designates another person as agent.

(5) [(4)] The cabinet may furnish copies of notices and orders to a person having an interest that [which] is or may be adversely affected by the coal exploration and reclamation operations or by the surface coal mining and reclamation operations and a person having an interest in the permit or exploration area.

Section 6. Expiration. (1)(a) Except as provided in subsection (2) of this section, if a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance requires cessation of coal removal expressly or by implication:

1. The notice or order shall expire thirty (30) days after it is served unless an informal hearing is held at or near the mine site or the exploration site within that time.

2. Notices or orders shall not expire if:

a. The condition, practice, or violation in question has been abated; or

b. The person to whom the notice or order has been issued has waived the informal hearing or has agreed to its postponement.[Except as provided in subsection (2) of this section, if a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance requires cessation of coal removal expressly or by implication, the notice or order shall expire thirty (30) days after it is served unless an informal hearing is held at or near the mine site or the exploration site within that time except that notices or orders shall not expire if the condition, practice, or violation in question has been abated or if the person to whom the notice or order has been issued has waived the informal hearing or has agreed to its postponement.]

(b) Expiration of the notice or order shall not affect the rights of the cabinet to assess penalties and to impose sanctions, in accordance with KRS 350.028, 350.050, 350.053, 350.085, 350.130, 350.465, and 350.990,[appropriate penalties and to impose applicable sanctions] with respect to the time period during which the notice or order was in effect for the violations for which the notice or order was issued. The granting or waiver of an informal public hearing shall not affect the right of a person to an administrative hearing.

(2)(a) The informal public hearing shall [will] be [deemed] waived if the person to whom the notice or order was issued is informed by written notice served in the manner provided in paragraph (b) of this subsection that he shall [will] be deemed to have waived an informal public hearing unless the hearing is requested within thirty (30) days after service of the notice, and an informal public hearing is not requested within that time.

(b) The written notice referred to in paragraph (a) of this subsection shall be delivered by an authorized representative or sent by certified mail, return receipt requested, no later than five (5)

days after the notice or order is served.

(c) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if the request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(3)(a) The cabinet shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to the person to whom the notice or order was issued, and the [a] person who filed a report that [which] led to the issuance of the notice or order.

(b) The cabinet shall also post notice of the informal public hearing at the department's regional office for the mine site and, if practicable, publish it in a newspaper of general circulation in the area of the mine.

(4) Requirements for administrative hearings shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the cabinet who shall [may] accept oral or written arguments and other relevant information from a [any] person attending.

(5) Within five (5) days after the close of the informal public hearing, the cabinet shall affirm, modify, or vacate in writing the notice or order. The decision shall be sent to the person to whom the notice or order was issued, and a [any] person who filed a report that [which] led to the issuance of the notice or order.

(6) The person conducting the informal public hearing for the cabinet shall determine if the mine site shall be viewed during the informal public hearing. In making this determination the only consideration shall be if [whether] viewing the mine site will assist the person conducting the informal public hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

Section 7. Suspension and Revocation of Permits and Exploration Approvals. (1) The cabinet may initiate:

(a) Administrative hearings for suspension or revocation of permits, coal exploration, and reclamation approvals;

(b) Administrative hearings for bond forfeitures; and

(c) Administrative hearings or judicial proceedings for other appropriate relief. [administrative hearings for suspension or revocation of permits and coal exploration and reclamation approvals, may initiate administrative hearings for bond forfeitures, and may initiate administrative hearings or judicial proceedings for other appropriate relief.]

(2) If the cabinet revokes or suspends the permit or exploration approval, surface coal mining operations on the permit area or disturbances on the exploration area shall immediately cease, and the permittee or person conducting coal exploration operations shall:

(a) Complete reclamation within the time specified in the order, if the permit or exploration approval is revoked; or

(b) Complete all affirmative obligations to abate all conditions, practices, and violations as specified in the order, if the permit or exploration approval is suspended. [If the permit or exploration approval is revoked, complete reclamation within the time specified in the order; or

(b) If the permit or exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices, and violations as specified in the order.]

Section 8. Pattern of Violations. (1) If the cabinet determines that a pattern of violations of the requirements of KRS Chapter 350, the administrative regulations, or a permit condition imposed under KRS Chapter 350 or administrative regulations exists or has existed and that the violations are caused by the unwarranted failure of the permittee or were willful violations, the cabinet shall issue an order to the permittee to show cause why the permit should not be suspended or revoked.

(2) The cabinet may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area within any twelve (12) month period, after considering the circumstances, including:

(a) The number of violations, cited on more than one (1) occasion, of the same or related requirements of KRS Chapter 350; 405

KAR Chapters 7 through 24; or permit conditions;

(b) The number of violations, cited on more than one (1) occasion, of different requirements of KRS Chapter 350; 405 KAR Chapters 7 through 24; or permit conditions; and

(c) The extent to which the violations were isolated departures from lawful conduct.

(3) The cabinet shall promptly review the history of violations of a permittee who has been cited for violations of the same or related requirements of KRS Chapter 350; 405 KAR Chapters 7 through 24 or permit conditions during three (3) or more inspections of the permit area within any twelve (12) month period. If after the review the cabinet determines that a pattern of violations exists or has existed, the cabinet shall issue a show cause order pursuant to this section and 405 KAR 7:092, Section 10.

(4) In determining the number of violations within any twelve (12) month period, the cabinet shall only consider violations cited as a result of inspections carried out on or after May 3, 1978.

(5) If a permittee fails to abate a violation cited in a notice of noncompliance or cessation order within the abatement period established [set] in the notice of order or as subsequently extended, then the cabinet shall review the permittee's history of violations to determine if [whether] a pattern of violations exists or has existed pursuant to this section and shall initiate a show cause order as provided in this section and 405 KAR 7:092, Section 10.

Section 9. Inability to Comply. (1) A[No] notice or order issued pursuant to Title 405 of the Kentucky[the] administrative regulations shall not[of 405 KAR may] be vacated because of inability to comply.

(2) Inability to comply shall[may] not be considered in determining if [whether] a pattern of violations exists.

(3) Rapid compliance, good faith, diligence, and inability to comply may be considered in mitigation of proposed penalty assessments in accordance with [under] 405 KAR 7:092.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 6, 2011

FILED WITH LRC: October 10, 2011 at 10 a.m.

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JUSTICE AND PUBLIC SAFETY CABINET

Parole Board

(As Amended at ARRS, December 6, 2011)

501 KAR 1:080. Parole Board policies and procedures[procedure].

RELATES TO: KRS 439.310 – 439.440, [and] 532.040 - 532.060, 532.400[.]

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", December 6, 2011[September 15, 2011] [February 14, 2011], are incorporated by reference. Kentucky Parole Board Policies and Procedures include:

KYPB 10-00 Parole Board Hearing Process (Amended 12/6/2011[9/15/2011] [2/14/2011])

KYPB 10-01 Parole Release Hearings (Amended 12/6/2011[9/15/2011] [2/14/2011])

KYPB 11-00 Conditions of Parole (Amended 12/6/2011[9/15/2011] [2/14/2011])

KYPB 12-00 Final Discharge of Parole and[.] Payment of Restitution (Amended 12/6/2011[9/15/2011] [2/14/2011])

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- KYPB 13-00 Revocation of Parole: Issuance of Warrants and Determinations (Amended 12/6/2011[9/15/2011] [2/14/2011])
- KYPB 13-01 Revocation of Parole: Preliminary Hearings (Amended 12/6/2011[9/15/2011] [2/14/2011])
- KYPB 13-02 Revocation of Parole: Final Revocation Hearings and Dispositions (Amended 12/6/2011[9/15/2011] [2/14/2011])
- KYPB 13-03 Revocation: Youthful Offenders (Amended 2/14/2011)
- KYPB **13-04** Revocation of Parole: Good Cause Hearings (Amended 12/6/2011)
- 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 (Amended 12/6/2011 [Added 9/15/2011])
- KYPB 21-00 Conditions of Mandatory Reentry Supervision (Amended 12/6/2011 [Added 9/15/2011])
- KYPB 22-00 Final Discharge from~~of~~ Mandatory Reentry Supervision (Amended 12/6/2011 [Added 9/15/2011])
- KYPB 23-00 Revocation of Mandatory Reentry Supervision: Issuance of Warrants (Amended 12/6/2011 [Added 9/15/2011])
- KYPB 23-01 Revocation of Mandatory Reentry Supervision: Preliminary Hearings (Amended 12/6/2011 [Added 9/15/2011])
- KYPB 23-02 Revocation of Mandatory Reentry Supervision: Final Hearings (Amended 12/6/2011 [Added 9/15/2011])
- KYPB **30-00**~~[33-00]~~ Revocation of Postincarceration Supervision: Issuance of Warrants (Amended 12/6/2011 [Added 9/15/2011])
- KYPB 30-01 Revocation of Postincarceration Supervision: Preliminary Hearings (Amended 12/6/2011 [Added 9/15/2011])
- KYPB 30-02 Revocation of Postincarceration Supervision: Final Hearings (Amended 12/6/2011 [Added 9/15/2011])

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VERMAN WINBURN, Chairman

APPROVED BY AGENCY: September 15, 2011

FILED WITH LRC: September 15, 2011 at noon

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

JUSTICE AND PUBLIC SAFETY CABINET Department of Kentucky State Police (As Amended at ARRS, December 6, 2011)

502 KAR 11:020. Applicant photograph requirements for license to carry concealed deadly weapon.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080, [47.080; 237.110(8)(b)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(8)(b) requires the Department of Kentucky State Police to establish the requirements for the photograph to be submitted by an applicant for a license to carry a concealed deadly weapon. This administrative regulation establishes the requirements for the photograph.

Section 1. The photograph of the applicant required by KRS 237.110(8)(b) shall not be an image produced by a copier or copy

equipment and shall:

(1)(a) Be an original color photograph or a color photographic copy developed from the negative of an original photograph and:

1.[(a)] Be no less than three and one-half (3 1/2) inches by four (4) inches; and

2.[(b)] Not exceed four (4) inches by six (6) inches;

(b)(3) Be a color photograph from a digital camera, rated for seven (7) megapixels or greater, printed on photograph quality paper; or

(c) [(4)] Be an original color passport style photograph that is:

1.[(a)] 2 x 2 inches in size; and

2.[(b)] Between 1 inch and 1 3/8 inches from the bottom of the chin to the top of the head;[-]

(2) [(5)] Display the full front of the head and the facial features of the applicant; and

(3) [(6)] Not be a photograph of the applicant wearing:

(a) Sunglasses;

(b) A hat; or

(c) Attire that obscures a facial feature, hair, or hairline. [(1) Be no less than three and one-half (3 1/2) inches by four (4) inches;

(2) Not exceed four (4) inches by five (5) inches;

(3) Be an original photograph or a photographic copy developed from the negative of an original photograph;

(4) Not be an image produced by a digital camera, computer or a copier, or other copy equipment or copy machine;

(5) Display the full front of the head and the facial features of the applicant; and

(6) Not be a photograph of the applicant wearing:

(a) Sunglasses;

(b) A hat; or

(c) Attire that obscures a feature of the applicant's face.]

Section 2. The department shall:

(1) Consider an application incomplete if an applicant submits a photograph that it determines does not comply with the requirements of Section 1 of this administrative regulation; and

(2) Notify the sheriff who transmitted the application form and the applicant pursuant to the provisions of 502 KAR 11:040.

RODNEY BREWER, Commissioner

APPROVED BY AGENCY: October 11, 2011

FILED WITH LRC: October 13, 2011 at 3 p.m.

CONTACT PERSON: Emily M. Perkins, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 4060, phone (502) 782-178, fax (502) 573-1636.

TRANSPORTATION CABINET Office of the Secretary Office of Audits

(As Amended at ARRS, December 6, 2011)

600 KAR 6:080. Financial records and audit or other engagement of firms.

RELATES TO: KRS 45A.800-45A.835, 23 C.F.R. 172, [26 C.F.R. 1.467;] 48 C.F.R. 30, 31, Chapter 99, [Subchapter B,] 23 U.S.C. 112(b)(2)

STATUTORY AUTHORITY: KRS 45A.807(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering or engineering-related services pursuant to KRS 45A.800 to 45A.835. The U.S. Department of Transportation requires all engineering or engineering-related projects that [which] it funds to be subject to the cost principles or accounting standards established in 48 C.F.R. 30, 31, and Chapter 99 [and 31]. This administrative regulation establishes the [audit] methodology to be used by a cabinet auditor for an engineering or engineering-related service agreement entered into by the cabinet pursuant to KRS 45A.800 to 45A.835; establishes the requirements for keeping financial records; and requires all firms contracting with or prequalified by the cabinet to comply with the federal regulations.

Section 1. Definitions.~~[Definition.]~~ (1) "Common control" means a situation in which a related party has direct or indirect control over the management, operating, or financial policies of the related entity, ~~and~~~~[- Control]~~ may exist by ownership, contract, or other methods even if a related party owns less than fifty (50) percent of the related entity.

(2) "Other engagement" means an examination, review, or agreed-upon procedures engagement or a compilation conducted in accordance with Government Auditing Standards available at the Government Accountability Office, www.gao.gov, or the standards issued by the American Institute of Certified Public Accountants, www.aicpa.org, including:

~~(a) [4-] Statements on Auditing Standards;~~

~~(b) [2-] Statements on Standards for Attestation Engagements;~~

~~or~~
~~(c) [3-] Statements on Standards for Accounting and Review Services.~~

Section 2. [Section 4-] Financial Records of Firms. (1) A firm that has~~[-] [which has]~~

~~[(a)] requested prequalification, [- has]~~

~~[(b)] been prequalified, [- is under contract,] or~~

~~[(c)] [Has] been selected to provide professional engineering or related services to the Transportation Cabinet shall maintain and allow the cabinet access to all books, records, and accounts related to the scope of the audit [-~~

~~(a) All financial or other information necessary to determine or verify the firm's direct wage rates, indirect cost rates, overhead, and direct project charges;~~

~~(b) All other information necessary to verify the firm's application for prequalification or renewal of prequalification; and~~

~~(c) Payroll].~~

(2)(a) A firm shall maintain ~~[all]~~ financial records including payroll time records for all employees, including the firm's principals, in accordance with 48 C.F.R. Parts ~~30, 31, and Chapter 99.~~

(b) The financial records of a firm shall be retained and made available to the Transportation Cabinet ~~for three (3) years after the end of the firm's fiscal year [until after the next audit performed by the Transportation Cabinet or for five (5) years, whichever occurs first].~~

(c) For a post audit or other engagement, a firm that has worked on a cabinet project shall retain the financial records pertaining to the project for three (3) years following the date of the final payment from the cabinet.

(3) If a firm is notified by the Transportation Cabinet of a pending audit ~~or other engagement~~, the firm shall send the information requested by the auditor by mail or electronic mail. ~~[auditor may request that some portions of the needed information be mailed to him or her in advance of the audit date. For the audit, the firm shall provide the following information to the auditor when he or she arrives:~~

~~(a) Chart of accounts;~~

~~(b) The latest fiscal or calendar year financial statement of the firm. If one is available which was compiled, reviewed, or audited by an independent CPA, it shall also be made available to the auditor;~~

~~(c) Income tax returns for the audit year;~~

~~(d) Statement of company policies to include personnel policies, personal leave time, vacation time, sick leave, overtime, pay raise, travel, subsistence reimbursement, bonuses, employment, retirement plans, and other administrative policies;~~

~~(e) For the audit period, a breakdown of the total project fees from all contracts by indirect and direct cost, including a detailed listing of the direct costs;~~

~~(f) General ledger;~~

~~(g) Cash disbursements and accounts payable journals;~~

~~(h) All leases, including a lease on office space, buildings, machinery, copiers, equipment, and motor vehicles;~~

~~(i) Schedule of current personnel by classification;~~

~~(j) Most current payroll register;~~

~~(k) All federal, state, and local payroll tax forms;~~

~~(l) Billing statements;~~

~~(m) List of bonuses to individual employees and the date paid;~~

~~(n) The pension or retirement plan of the firm and the contribu-~~

~~tions made on behalf of each employee;~~

~~(e) List of officers and principals of the company which includes their salaries and other compensations paid during the audit year and the amount of time they work direct;~~

~~(p) All contracts which were active during the audit year; and~~

~~(q) Minutes from the directors or stockholders meetings.~~

(4)(a) Except for income tax returns ~~or[and]~~ minutes from the director or stockholder meetings ~~[the items set forth in subsection (3)(c) and (q) of this section]~~, the firm shall allow the auditor to make a copy of books, records, and accounts related to the firm's operations if necessary for the audit or other engagement ~~[the items set forth in subsection (3) of this section].~~

~~(b) With permission from the consultant, the auditor may:~~

~~1. Copy income tax returns or[and] minutes from the director or stockholder meetings; or~~

~~2. Review the income tax returns or[and] minutes from the director or stockholder meetings without removing them from the firm's premises [review the items set forth in subsection (3)(c) and (q) of this section but shall not remove them from the premises of the firm]. [(5) A direct cost shall be determined by the provisions of 48 C.F.R. 31.202 and not by whether it is reimbursable.~~

Section 2. Limitations on Direct Costs. To compute the average hourly pay rate for a salaried job classification at a firm, the number of available annual working hours per year shall be 2080.]

Section 3. Recommended or Approved Indirect Cost Rate [Audits]. (1) If the cabinet has not audited the firm in the previous twelve (12) months, the last available recommended or approved indirect cost rate ~~[audit]~~ shall ~~[may]~~ be used for determination of the fee specified in the contract with the understanding that a contract modification ~~shall[may]~~ ~~[shall]~~ be processed if an audit or other engagement by the cabinet reveals substantial differences in overhead rates, wage rates, or direct project expenses. ~~[(2)(a) If the firm has an audit which covers the time period that the Transportation Cabinet's audit will cover and which was prepared by the Defense Contract Audit Agency, an independent certified public accountant, or other audit accepted by a federal, state, or local governmental agency, the firm shall provide the audit report to the Transportation Cabinet prior to the scheduled audit.~~

~~(b) The Transportation Cabinet shall review an audit submitted pursuant to the provisions of paragraph (a) of this subsection. If necessary for an adequate review, the firm shall provide a copy of the audit work papers in addition to the audit report.~~

~~(c) The Transportation Cabinet shall approve the audit for use, disapprove the audit for use, or approve the audit for use based on limitations imposed by the Transportation Cabinet pursuant to 600 KAR 6:070.~~

~~(d) The negotiation unit shall use the overhead rates, wage rates, and direct project expenses from an audit submitted pursuant to paragraph (a) of this subsection in negotiating a fee:~~

~~1. Subject to:~~

~~a. The review performed pursuant to paragraph (b) of this subsection; and~~

~~b. An adjustment made based on a limitation imposed by the cabinet pursuant to 600 KAR 6:070; and~~

~~2. With the understanding that a contract modification shall be processed if:~~

~~a. An audit by the cabinet reveals substantial differences in overhead rates, wage rates, or direct project expenses; and~~

~~b. An overhead submission packet is received in a timely manner to allow the cabinet sufficient time to perform or verify the overhead audit.]~~

(2) Annually [(3) Quarterly], the External Audit Branch of the Transportation Cabinet shall perform a risk assessment and determine the number of audits or other engagements to be performed on~~[select for audit or other engagement a sample of]~~ ~~[a minimum of thirty (30) percent of the number of]~~ lump sum contracts for which the final pay estimates have been submitted and paid ~~[that have been completed during the previous three (3) months].~~

Section 4. Standards and Regulations [Audit Standards]. (1) The cabinet shall conduct an audit or other engagement pursuant

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to the following: [the following accounting and auditing standards shall be abided by in an audit conducted by the cabinet]:

- (a) [~~"]Government Auditing Standards["]~~;
- (b) ~~48 C.F.R. Part 31~~;
- (c) ~~48 C.F.R. Part 30~~;
- (d) ~~48 C.F.R. Chapter 99~~; or
- (e) ~~Uniform Audit and Accounting Guide["Codification of Statements on Auditing Standards (Including Statements on Standards for Attestation Engagements)"]~~;
- (c) ~~Financial Accounting Standards Board Accounting Standards Codification as of October 31, 2009" Original Pronouncements, Accounting Standards as of June 1, 2005, Volume I, Volume II, and Volume III~~];
- (d) ~~48 C.F.R. Part 31, Contract Cost Principles and Procedures~~;
- (e) ~~48 C.F.R. Part 30, Cost Accounting Standards Administration, as it relates to 48 C.F.R. Part 31~~;
- (f) ~~48 C.F.R. Chapter 99, Subchapter B, Procurement Practices and Cost Accounting Standards~~; and
- (g) ~~26 C.F.R. Part 1.167, Depreciation, if a firm does not have an acceptable depreciation schedule in effect~~].

(2) ~~Common control~~ [The term "common control" or "related parties" as used in Number 57 of the "Original Pronouncements, Accounting Standards as of June 1, 2005, Volume I, Volume II, and Volume III"] shall be determined to exist if, in the relationship between a consultant firm and another company that [which] is involved in real property renting, leasing arrangements, or joint ventures:

- (a) A principal or person with management responsibilities or significant influence in the consultant firm:
 - 1. Owns twenty (20) percent or more of the other company;
 - 2. Is also a principal or person with management responsibilities or significant influence in the other company;
 - 3. Has a family member whom he or she might control or influence because of the family relationship and who is a principal or has management responsibilities or significant influence in the other company; ~~or~~ [e]
 - 4. Has a family member who might control or influence him or her because of the family relationship and who is a principal in, or has management responsibilities or significant influence in, the other company; or

~~(b) [5.]~~ [(b)] The interrelationship that exists between business entities makes it appear that the same persons control or have significant influence in those businesses.

Section 5. Audit Findings. (1)(a) Prior to the issuance of a final audit report, the auditor [~~from the Transportation Cabinet~~] shall present preliminary findings to the firm. [(b) If the auditor's preliminary findings include an adjustment to the overhead rate submitted by the firm, the auditor's work papers shall be included with the preliminary findings upon request by the firm.]

(b) [(e)] A comment from the firm in response to the auditor's preliminary findings shall be submitted in writing within fifteen (15) calendar days of the firm's receipt of the preliminary findings.

(c) [(d)] The firm's comments shall be taken into consideration in the issuance of the final report.

(2)(a) A firm shall have thirty (30) calendar days from the date the final report is received by the firm to request a review of the final report.

(b) The request for a review shall be in writing and clearly state all of the concerns with the final report and the reasons for the concerns.

(c) If the concerns and the reasons for the concerns are not clearly stated, the request for review shall be returned.

(d) 1. The firm may submit a supplement to the request for review.

2. The supplement shall be submitted in writing within the thirty (30) calendar days established in paragraph (a) of this subsection.

(3) The External Audit Review Committee shall evaluate the request for review and the final report.

(4) The External Audit Review Committee shall consist of the following:

- (a) Executive Director of the Office of Budget and Fiscal Management, Chair;
- (b) Deputy State Highway Engineer for Project Development;

and

(c) Executive Director of the Office of Legal Services.

(5) A committee member may appoint a proxy to serve on this committee.

(6) [If desired,] The External Audit Review Committee may request the firm or the auditor to answer questions in person, by electronic communication, or in writing.

(7)(a) The firm shall have thirty (30) calendar days from its receipt [by the firm] of the committee's decision to appeal the decision to the Secretary of the Transportation Cabinet.

(b) An administrative hearing to hear the appeal shall be held pursuant to the provisions of KRS Chapter 13B. [Section 6. Governing Federal Regulations. The following federal regulations shall govern the financial records and audits of firms:

- (1) ~~48 C.F.R. Part 31, "Contract Cost Principles and Procedures"~~;
- (2) ~~48 C.F.R. Part 30, "Cost Accounting Standards Administration"~~;
- (3) ~~48 C.F.R. Chapter 99, Subchapter B, "Procurement Practices and Cost Accounting Standards"~~; and
- (4) ~~26 C.F.R. Part 1.167, "Depreciation"~~]

Section 6. [Section 7.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Government Auditing Standards", Comptroller General of the United States, July, 2007; and

(b) "Uniform Audit and Accounting Guide", American Association of State Highway and Transportation Officials (AASHTO), 2010. [(a) "Government Auditing Standards", 2003 Revision by the Comptroller General of the United States;]

(2) [(b)] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Professional Services, External Audit Branch, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m.[P-M].

(3) This material may also be obtained at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328. [(b) "Codification of Statements on Auditing Standards (Including Statements on Standards for Attestation Engagements)", copyright 2006 by the American Institute of Certified Public Accountants, Inc.; and

(c) ~~"Original Pronouncements, Accounting Standards as of June 1, 2005, Volume I, Volume II, and Volume III", published by the Financial Accounting Standards Board.~~

(2) This material may be:

(a) inspected, copied, or obtained, subject to applicable copyright law, at the Division of Audits, External Audit Branch, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Obtained by contacting:

1. For a copy of "Government Auditing Standards", 2003 Revision, the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328;

2. For a copy of "Codification of Statements on Auditing Standards (Including Statements on Standards for Attestation Engagements)", the American Institute of Certified Public Accountants, Inc., Harborside Financial Center, 201 Plaza Three, Jersey City, New Jersey 07311-3811; or

3. For a copy of "Original Pronouncements, Accounting Standards as of June 1, 2005, Volume I, Volume II, and Volume III", the Financial Accounting Standards Board, 401 Merritt 7, P.O. Box 5146, Norwalk, Connecticut 06856-5146].

MIKE HANCOCK, Secretary

APPROVED BY AGENCY: September 28, 2011

FILED WITH LRC: October 4, 2011 at 10 a.m.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

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TRANSPORTATION CABINET
Department Of Highways
(As Amended at ARRS, December 6, 2011)

603 KAR 5:050. Uniform traffic control devices.

RELATES TO: KRS 189.337, 23 C.F.R. 655.601-655.603

STATUTORY AUTHORITY: KRS 189.337(2), 23 C.F.R. 655.601-655.603[Part 655 Subpart F]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.337(2) requires the Transportation Cabinet, Department of Highways, to promulgate and adopt a manual of standards and specifications for a uniform system of traffic control devices. The Federal Highway Administration in[through its regulation] 23 C.F.R. 655.603[Part 655] recognizes the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) as the national standard for all traffic control devices installed on any street, highway, bicycle trail, or private road open to public travel [requires that the traffic control devices on all public highways or streets be in substantial conformance with the "Manual on Uniform Traffic Control Devices"]. This administrative regulation establishes that[incorporates] the MUTCD shall be the uniform system of traffic control devices in Kentucky[by reference] [defines the system by incorporating by reference the "Manual on Uniform Traffic Control Devices" and the amendments adopted to the manual].

Section 1. Definition. [(1)] "Private road open to public travel" means a private toll road or road, including any adjacent sidewalk that generally runs parallel to the road, within a shopping center, airport, sports arena, or other similar business or recreation facility that:

(a) Is privately owned, but on which the public is allowed to travel without access restrictions; and

(b) Does not include a road within private gated property, except for a gated toll road, in which access is restricted at all times, a parking area, driving aisle within a parking area, or a private grade crossing[is defined by the MUTCD, Section 1A.13, Number 159].

Section 2. Traffic Control Devices. [Section 1. Traffic Control Devices on All Public Highways. The standards and specifications set forth in] (1) The MUTCD published by the Federal Highway Administration[Administration's publication "Manual on Uniform Traffic Control Devices for Streets and Highways"] shall be the standard for [apply to] all traffic control devices[, including signs and roadway markings,] installed on any street, highway, bicycle trail, or private road open to public travel [publicly used highway, road, street, avenue, alley, boulevard, bridge, viaduct, or trestle, and the approaches to them, and off-street parking facilities] in Kentucky.

(2) The MUTCD shall:

(a) Provide the[provides] standards, guidance, and options for the design and application of traffic control devices; and

(b)[, but shall] Naot be considered a substitute for engineering judgment.[Section 2. Federal Amendments to the Manual. The Manual on Uniform Traffic Control Devices and all amendments and supplements shall be maintained both at the cabinet Web site, www.transportation.ky.gov, and in hard copy at the Transportation Cabinet.]

Section 3. Incorporation by Reference. (1) "[The] Manual on Uniform Traffic Control Devices for Streets and Highways", Federal Highway Administration, December, 2009, [2003 Edition, including Revision No. 1 dated November 2004,] is incorporated by reference.

(2) [(a)] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, Division of Traffic Operations, 200 Mero Street, Third Floor, in Frankfort, Kentucky 40622 Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at the cabinet's Web site at[:] www.transportation.ky.gov.

STEVE WADDLE, State Highway Engineer
For MIKE HANCOCK, Secretary

APPROVED BY AGENCY: October 11, 2011
FILED WITH LRC: October 12, 2011 at 1 p.m.
CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel,
Transportation Cabinet, Office of Legal Services, 200 Mero Street,
Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

TRANSPORTATION CABINET
Office of Transportation Delivery
(As Amended at ARRS, December 6, 2011)

603 KAR 7:080. Human service transportation delivery.

RELATES TO: KRS 96A.010-96A.370, 157.280, 163.470, 202B.010, 216.2925, 216.2927[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 and[. This administrative regulation also establishes] the procedures required to provide efficient, safe, and coordinated transportation delivery to clients of the human service transportation delivery program. [49 U.S.C. Chapter 53 authorizes the formation and funding of human service transportation deliveries to transportation providers. KRS 96A.095 allows the Transportation Cabinet to accept funding to promote and develop mass transportation services in Kentucky. For the purpose of providing efficient, effective, safe, and coordinated transportation delivery to clients of the program groupings the Empower Kentucky Transportation Delivery work group recommended that a single agency be responsible for the transportation component of the programs. The function of this administrative regulation is to implement the procedures required to administer this program. Since many of the transportation providers are required by federal law or regulation to comply with safety and accountability procedures and the Transportation Cabinet is authorized in KRS 281.600 to establish safety criteria for a commercial transportation provider, all of the transportation providers, except a volunteer transportation provider, which receive funding under the provisions of this administrative regulation shall be required to comply with the same safety and accountability requirements].

Section 1. Definitions. (1) "Ambulance stretcher transportation" means an ambulance service used for transporting sick or injured people who are also bedridden.

(2) [(1)] "Broker" is defined by [in] KRS 281.014(8).

(3) [(2)] "Certificate type 07 and certificate type 08" means a classification type assigned to a recipient that meets the definition established in either KRS 281.873(1)(e) or 281.873(1)(f)[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.

(7) "Escort" means an individual attendant whose presence is required to assist a recipient during transport.

(8) [(5)] "Human service transportation delivery" is defined by [in] KRS 281.014(6).

(9) "Medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(10)(6) ["Level of eligibility" is defined by] [in] [KRS 281.873(1)(g).

(10) [(7)] ["Mass transportation" is defined by] [in] [KRS 96A.040.

(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.

(11)(43) [(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].

(12)(14) [(9)] "Provider" means an individual with appropriate operating authority performing transportation operations for human service transportation delivery.

(13)(15) [(10)] "Recipient" means a person who [that] is receiving benefits under one (1) of the service programs listed in Sections 3, 5, or 6[Section 3] of this administrative regulation and who complies with [meets] the criteria of the participating program.

(14) "Safety sensitive person" means a person who has direct involvement in a recipient's trip, including:

(a) Scheduling;

(b) Dispatching;

(c) Driving; or

(d) Maintaining the vehicle fleet.

(15)(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.

(16)(18) [(12)] "Subcontractor" is defined by [in] KRS 281.014(9).

(17)(19) [(13)] "TANF" means the[an acronym for] Temporary Assistance for Needy Families Program administered by the Cabinet for Health and Family Services [Cabinet for Families and Children].

(18)(20)(a) [(14)] "Urgent care" means[:

(a) an unscheduled episodic situation;

(b) 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; and

(b) That[.] [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].

(19)(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. (1) 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. The regions shall be as follows:

(a) Region 1, which shall include the following counties:

1. Ballard;

2. Calloway;

3. Carlisle;

4. Fulton;

5. Graves;

6. Hickman;

7. Marshall; and

8. McCracken;

(b) Region 2, which shall include the following counties:

1. Caldwell;

2. Christian;

3. Crittenden;

4. Hopkins;

5. Livingston;

6. Lyon;

7. Muhlenberg;

8. Todd; and

9. Trigg;

(c) Region 3, which shall include the following counties:

1. Daviess;

2. Hancock;

3. Henderson;

4. McLean;

5. Ohio;

6. Union; and

7. Webster;

(d) Region 4, which shall include the following counties:

1. Breckinridge;

2. Grayson;

3. Hardin;

4. Larue;

5. Marion;

6. Meade; and

7. Nelson;

(e) Region 5, which shall include the following counties:

1. Adair;

2. Allen;

3. Barren;

4. Butler;

5. Edmonson;

6. Green;

7. Hart;

8. Logan;

9. Metcalfe;

10. Simpson;

11. Taylor; and

12. Warren;

(f) Region 6, which shall include the following counties:

1. Bullitt;

2. Henry;

3. Jefferson;

4. Oldham;

5. Shelby;

6. Spencer; and

7. Trimble;

(g) Region 8, which shall include the following counties:

1. Anderson;

2. Boyle;

3. Casey;

4. Franklin;

5. Garrard;

6. Jessamine;

7. Lincoln;

8. Mercer;

9. Scott;

10. Washington; and

11. Woodford;

(h) Region 9, which shall include the following counties:

1. Boone;

2. Campbell;

3. Carroll;

4. Gallatin;

5. Grant;

6. Kenton;

7. Owen; and

8. Pendleton;

(i) Region 10, which shall include Fayette County;

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(i) Region 11, which shall include the following counties:

- 1. Bourbon;**
- 2. Clark;**
- 3. Estill;**
- 4. Harrison;**
- 5. Madison;**
- 6. Montgomery;**
- 7. Nicholas; and**
- 8. Powell;**

(k) Region 12, which shall include the following counties:

- 1. Bell;**
- 2. Clinton;**
- 3. Cumberland;**
- 4. Knox;**
- 5. Laurel;**
- 6. McCreary;**
- 7. Monroe;**
- 8. Pulaski;**
- 9. Rockcastle;**
- 10. Russell;**
- 11. Wayne; and**
- 12. Whitley;**

(l) Region 13, which shall include the following counties:

- 1. Breathitt;**
- 2. Clay;**
- 3. Harlan;**
- 4. Jackson;**
- 5. Knott;**
- 6. Lee;**
- 7. Leslie;**
- 8. Letcher;**
- 9. Owsley;**
- 10. Perry; and**
- 11. Wolfe;**

(m) Region 14, which shall include the following counties:

- 1. Floyd;**
- 2. Johnson;**
- 3. Magoffin;**
- 4. Martin; and**
- 5. Pike;**

(n) Region 15, which shall include the following counties:

- 1. Bath;**
- 2. Boyd;**
- 3. Carter;**
- 4. Elliott;**
- 5. Greenup;**
- 6. Lawrence;**
- 7. Menifee;**
- 8. Morgan; and**
- 9. Rowan; and**

(o) Region 16, which shall include the following counties:

- 1. Bracken;**
- 2. Fleming;**
- 3. Lewis;**
- 4. Mason; and**
- 5. Robertson.**

(2) If a company is awarded more than one (1) region, and those regions geographically touch, the regions shall be administratively combined and identified as one single region for operating and monitoring purposes. [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;

July 1, 2001:

1. Bullitt;
2. Oldham;
3. Shelby; and
4. Spencer.

(7) Region 7. The following counties shall be in Region 7 until

July 1, 2001:

- (a) Bullitt;
- (b) Henry;
- (c) Oldham;
- (d) Shelby;
- (e) Spencer; and
- (f) Trimble.

(8) Region 8:

- (a) Anderson;
- (b) Boyle;
- (c) Casey;
- (d) Franklin;
- (e) Garrard;
- (f) Jessamine;
- (g) Lincoln;
- (h) Mercer;
- (i) Scott;
- (j) Washington; and
- (k) Woodford.

(9) Region 9:

- (a) Boone;
- (b) Campbell;
- (c) Carroll;
- (d) Gallatin;
- (e) Grant;
- (f) Kenton;
- (g) Owen; and
- (h) Pendleton.

(i) The following counties shall be added to Region 9 effective

July 1, 2001:

1. Henry; and
2. Trimble.
- (10) Region 10: Fayette.
- (11) Region 11:
 - (a) Bourbon;
 - (b) Clark;
 - (c) Estill;
 - (d) Harrison;
 - (e) Madison;
 - (f) Montgomery;
 - (g) Nicholas; and
 - (h) Powell.
- (12) Region 12:
 - (a) Bell;
 - (b) Clinton;
 - (c) Cumberland;
 - (d) Knox;
 - (e) Laurel;
 - (f) McCreary;
 - (g) Monroe;
 - (h) Pulaski;
 - (i) Rockcastle;
 - (j) Russell;
 - (k) Wayne; and
 - (l) Whitley.
- (13) Region 13:
 - (a) Breathitt;
 - (b) Clay;
 - (c) Harlan;
 - (d) Jackson;
 - (e) Knott;
 - (f) Lee;
 - (g) Leslie;
 - (h) Letcher;
 - (i) Owsley;
 - (j) Perry; and
 - (k) Wolfe.
- (14) Region 14:
 - (a) Floyd;
 - (b) Johnson;
 - (c) Magoffin;
 - (d) Martin; and
 - (e) Pike.
- (15) Region 15:
 - (a) Bath;
 - (b) Boyd;
 - (c) Carter;
 - (d) Elliott;
 - (e) Greenup;
 - (f) Lawrence;
 - (g) Menifee;
 - (h) Morgan; and
 - (i) Rowan.
- (16) Region 16:
 - (a) Bracken;
 - (b) Fleming;
 - (c) Lewis;
 - (d) Mason; and
 - (e) Robertson.

Section 3. Service Programs. [(4)] Excluding nonemergency ambulance stretcher transportation, nonemergency medical transportation **provided to a Medicaid recipient**[,] as established in [pursuant to] KRS 205.6312, KRS 205.6314, [Chapter 205] [, 907 KAR 1:060,] and 907 KAR 3:066[,] shall be provided as **established in this section**. [follows:]

(1)[(a)] A broker shall transport a [any] Medicaid-eligible recipient, **excluding a qualified Medicare beneficiary (QMB) or a Phase 3 KCHIP recipient**[qualified Medicare beneficiaries "QMB" and Phase 3 KCHIP recipients], with a county code residence in the broker's delivery area.

(2)[(b)] The broker shall be responsible for transportation arrangements **if the recipient**: [when]

~~(a)[1. The recipient]~~ Is coded in the broker's delivery area[.]; but has moved or is living in another human service transportation delivery area[.];

~~(b) Has a county code of~~[2. The recipient is county coded] 121;

~~(c)[3. The recipient]~~ Is physically residing in the broker's region; or

~~(d)[4. The recipient]~~ Is a **state** guardianship case.

~~(3)[(e)] [(b)]~~ Services outside a [the] recipient's medical service area [county or contiguous county] shall **require** [have] a referral from [by] the recipient's:

~~(a)[1.]~~ Licensed physician;

~~(b)[2.]~~ Physician's assistant;

~~(c)[3.]~~ Advanced **practice** registered nurse [practitioner]; or

~~(d)[4.]~~ Qualified mental health professional as **defined**[established] in KRS 202A.011(12)[medical provider before transport].

~~(4)[(d)]~~ If a referral pursuant to [paragraph (c) of this] subsection **(3) of this section** cannot be obtained, services may be authorized by the contracting agency.

~~(5)[(e)]~~ A referral shall be:

~~(a)~~ To the closest appropriate medical service provider for the required service[.];

~~(b)[(f) A referral shall be]~~ Valid for six (6) months; **and**[.];

~~(c)[(g) A referral shall be]~~ Made by using the Office of Transportation Delivery form entitled Kentucky Non-Emergency Medical Transportation Program Medicaid Referral Form.

(6) A recipient in the Medicaid Lock In program shall obtain a referral from the recipient's assigned lock-in medical provider prior to being transported to any other medical provider within or outside the medical service area.[(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 **if required by**[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 nonemergency medical transportation services unless:

(a) The recipient or a licensed driver in the recipient's home submits a licensed physician's statement to the Transportation Cabinet that he or she is medically unable to operate a motor vehicle;

(b) **The**[A] recipient submits the statement of an automobile mechanic to the Transportation Cabinet certifying that the vehicle is mechanically inoperable;

(c) **The**[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) **The**[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) A statement by an automobile mechanic submitted to the Transportation Cabinet by a recipient shall be valid for thirty (30) days.

~~(b)[(5)]~~ A recipient may submit up to three (3) mechanic's statements per vehicle during a one (1) year time period for each

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vehicle owned by the recipient.

(5)(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.

(6)(7) A school statement submitted by a recipient to the Transportation Cabinet shall be valid only during a current school semester.

(7)(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) The nonemergency medical transportation program;
- (b) The Kentucky WORKS program;

(c) Vocational rehabilitation as established in [pursuant to] KRS Chapter 151B or 157;

(d)(b) Vocational rehabilitation for the blind as established in [pursuant to] KRS Chapter 151B or 163;

(e)(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; or [and]

(f)(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 Department for Medicaid Services [state government agencies responsible for implementing the programs set forth in this section] shall provide to the Transportation Cabinet:

(a) A listing of [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 eligibility [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; and
- (c) [Cabinet for Families and Children;

Cabinet for Workforce Development; and] (d) Transportation Cabinet [; and

(d) Other future program partners as established in Presidential Executive Order 13330].

(2) The Cabinet [Cabinet's] for Health and Family Services, Families and Children, and the Transportation Cabinet shall each have two (2) voting members and the Education Cabinet [Workforce Development] shall have one (1) voting member.

(3) CTAC duties and responsibilities shall include:

(a) Providing information and assistance to the Transportation Cabinet [cabinet];

(b) Reviewing and recommending policies and operating procedures to the Transportation Cabinet; and

(c) Serving on broker evaluation committees [as established in] [; if designated, in accordance with] [KRS Chapter 45A].

Section 8. [Section 5.] Transportation Broker Selection Process.

(1) A request for proposal (RFP) and the process of awarding a brokerage contract for each region shall comply with KRS Chapter 45A. The RFP evaluation process for broker selection shall [; at a minimum,] address areas that include the following:

- (a) Overall quality in transportation delivery;
- (b) [4.] Information regarding administration including:

1. [a.] Human resources, including staffing and employee categories by classification, number, and experience;

2. [b.] Insurance and risk management, types and levels of insurance coverage and emergency process, and training offered to reduce business risk;

3. [c.] Billing and accounting practice and procedures; and

4. [d.] Financial capability; and [;]

(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 as established in KRS 281.875(2).

(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) [4.] Local community based governmental offices;

(b) [2.] Training, educational, or medical centers; and

(c) [3.] Coordination with] Other transportation providers.

(3)(4) [(d)] An applicant shall [operational characteristics which include]:

(a) [4.] Maintain an office in the awarded regional area [where the bidding takes place] [Locations of operations];

(b) [2.] Have [sufficient] infrastructure and other resources including:

1. Telephone and dispatching capability;

2. Scheduling software; and

3. A building to serve as a place of business;

(c) [3.] [Have sufficient capability to] Safely, securely, and confidentially store and maintain 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 Trans-

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portation 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[reports]** 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 15th[fifteenth] day** of each month[.] if the broker has submitted the required reports, **and if the Medicaid eligible count is received from the Department for[ef] Medicaid Services allowing adequate processing time through the Commonwealth's processing system.**

(c) A **broker[Brokers]** shall [promptly] reimburse **a subcontractor or[subcontractors and] a Medicaid private auto **provider[providers]** 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[providers]** 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 **an allegation[allegations] of criminal wrongdoing relating to the human service transportation program or Medicaid or an allegation off[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 for[ef] 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 **in writing:**

(a) **Within twenty-four (24) business hours of the complaint; or**

(b) **Immediately if a complaint is marked urgent.**

Section 11.[Section 7.] Orientation Program. (1) A [All] **broker[brokers]** shall provide an orientation program for [te] each subcontractor **or[and] potential subcontractor as established in KRS 281.875(1)(i).** [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[meetings]** between a [the] broker and subcontractor shall be held before **transportation services are provided [the subcontractor provides transportation services].**

(b) A subsequent **meeting[meetings]** 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[subcontractor's], or independent contractor's vehicle liability insurance, and proof of Kentucky workers'[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[contracts]** shall[.] at a minimum[.] include:

(a)[4-] **Payment administration as established [required] in KRS 281.875(1)(f);**

(b)[2-] A copy of the hours of **operation[operations]** 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 HIPAA confidentiality agreement statements for subcontractor or volunteer employees; and**

(h)[(f)] **A current list of all safety sensitive persons within the**

subcontractor's company.

(7) [(3)] A **broker or subcontractor**~~[Brokers and subcontractors]~~ 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;

(g) ~~Have had~~ a pre employment drug test; and

(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~~[providers]~~ 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 in the next billing cycle, 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 or~~[Subcontractors and]~~ a private auto provider~~[providers]~~ 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~~[violations]~~ or traffic accident ~~that occurs in route or while transporting a human service transportation passenger~~ [accidents 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 nonemergency 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~~[Vehicles]~~ and its ~~[all]~~ components shall comply with, or exceed, the manufacturer's~~[manufacturers]~~ ~~[,]~~ state, and federal ~~[,]~~ safety and mechanical operating and maintenance standards for the particular vehicle~~[vehicles]~~ and model~~[models]~~ used.

(3) A vehicle~~[Vehicles]~~ 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 ~~[(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]; and~~

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~~[vehicles]~~ 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~~[vehicles]~~ 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~~[vehicles]~~ shall have a functioning speedometer and odometer ~~[,]~~

(i) ~~[(e)]~~ A ~~[All]~~ vehicle~~[vehicles]~~ shall have ~~[a]~~ functioning interior lights within the passenger compartment ~~[,]~~

(j) ~~[(f)]~~ A ~~[All]~~ vehicle~~[vehicles]~~ shall have adequate sidewall padding and ceiling covering ~~[,]~~

(k) ~~[(g)]~~ A ~~[All]~~ vehicle~~[vehicles]~~ shall be smooth riding ~~[,]~~

(l) ~~[(h)]~~ A ~~[All]~~ vehicle~~[vehicles]~~ shall have two (2) exterior rear view mirrors, one (1) on each side of the vehicle ~~[,]~~

(m) ~~[(i)]~~ A ~~[All]~~ vehicle~~[vehicles]~~ shall be equipped with an interior mirror that:

1. Is used to monitor the passenger compartment; and

2. [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, or 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~~[vehicles]~~ shall have the transportation provider's name, vehicle number, and the program coordinator's customer service phone number prominently displayed within its~~[the]~~ interior ~~[of each vehicle].~~ This information shall also be available in written form on each vehicle for distribution to a rider~~[riders]~~ on request ~~[,]~~

(q) ~~[(n)]~~ A ~~[All]~~ vehicle~~[vehicles]~~ shall have the following signs posted in the ~~[all]~~ vehicle interior~~[interiors]~~, 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~~[vehicles]~~ shall be equipped with a functional fire extinguisher and shall display a current inspection tag or sticker ~~[,]~~

(s) ~~[(p)]~~ A ~~[All]~~ vehicle~~[vehicles]~~ with a floor threshold of greater than twelve (12) inches shall include a retractable step ~~[,]~~ or a step stool ~~[as approved by the cabinet]~~ to aid in passenger boarding. A step stool shall:

1. [The step stool shall] Be used to minimize ground-to-first-

step height; [- shall]

2. Have four (4) legs with antiskid tips; [-]

3. Be made of sturdy metal with nonskid tread; [- with]

4. Have a height of eight and one-fourth (8 1/4) inches, a width of fifteen (15) inches, and a depth of fourteen (14) inches; and [or an equally suitable replacement]; [-]

5. Not be milk crate or similar substitute. [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]; [-]

(i) [(q)] A [All] vehicle[vehicles] shall have on board three (3) portable triangular reflectors mounted on stands; [-]

(u) [(r)] A [All] vehicle[vehicles] 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[vehicles] 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) 1. A vehicle shall have the transportation provider's company signage posted on the exterior of the vehicle identifying the company's legal name.

2. [(v)] Signage shall be displayed on the driver and passenger side doors in two (2) inch block letters.

(6) [(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. Is 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 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 track 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 [offered] 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[services].

(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 at any time[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 established in subsection (2)(b) of this section, and[-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 a special circumstance[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, if applicable
- ~~[Address of pickup and delivery];~~
- (c) Recipient's pickup and delivery address;
- (d) ~~[(e)]~~ Date of appointment;
- (e) ~~[(d)]~~ Time of appointment;
- (f) ~~[(e)]~~ Program identification;
- (g) ~~[(f)]~~ Telephone number; ~~[and]~~
- (h) ~~[(g)]~~ 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 seventy-two (72)[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 practice registered nurse ~~[practitioner];~~ or
- (d) Qualified mental health professional as defined in KRS 202A.011.

(8) The verification required by[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; or

(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 verification is not submitted by the medical provider~~[written verification cannot be submitted]~~, the broker may initiate a telephone call to the licensed medical provider requesting oral verification that the recipient is required to [must] be seen at the appointed time.

(10) ~~[(2)]~~ If the licensed medical provider initiates the call, the broker shall [may] return the call if there is a question concerning the call's legitimacy [to verify legitimacy of the call].

Section 15. ~~[Section 14-]~~ Eligibility. (1)(a) With the Transportation Cabinet and Cabinet for Health and Family Service's assistance [Cabinet's 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[recipients] who does [de] not require a ~~[escorts or]~~ special-equipped vehicle[vehicles]~~[-]~~ 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) ~~[(e)]~~ 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[Escorts] shall not be charged a fare.

(g) A transportation provider or a provider's employee shall not serve as a guardian's designee[designated guardian] for a child twelve (12) years or under.

Section 16. ~~[Section 12-]~~ Standards for Recipients [Passengers]. (1)(a) A trip for a recipient ~~[Passengers]~~ may be coordinated with public transit [the general public population for transportation services].

(b) ~~[(2)(a)]~~ A recipient ~~[Passengers]~~ shall give all pertinent information needed to the broker~~[-]~~ including a request for an escort required, or information regarding special needs.

(2) ~~[(b)]~~ If the recipient is under the TANF Program, the recipient shall convey to the broker the number of children to be transported.

(3) Transportation to childcare shall not be provided under nonemergency medical transportation ~~[unless the child is an eligible recipient and in need of covered medical service].~~

(4) A recipient[Recipients] shall not be under the influence of alcohol or illegal drugs.

(5) A recipient[Recipients] shall be ready at least [within] fifteen (15) minutes before scheduled pickup.

(6) Except for medical necessity, a recipient[recipients] shall abide by signs in the vehicle and observe safety rules including seat belt requirements [-including no food or drink].

~~[(7) Recipients shall abide by the nonsmoking requirement and observe safety rules.]~~

(8) ~~Recipients shall abide by applicable safety seat belt administrative regulations.]~~

(7) ~~[(9)]~~ A recipient[Recipients] shall not hold a child in his or her [children in] lap[laps] during transport.

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(8) [(10)] A recipient[Recipients] shall call seventy-two (72) hours in advance for the transport unless it is an urgent care situation[or verified by a licensed medical provider request in accordance with Section 10(7) of this administrative regulation].

(9)(a) A recipient [(11)] [Recipients] shall cancel a [the] trip as soon as possible, but no less than twenty-four (24) hours in advance. An emergency cancellation in which a twenty-four (24) hour notice is not possible shall be accepted by the broker or Cabinet upon review and determination of the cancellation reason.

(b) A recipient who fails to show for a scheduled transportation service shall receive a letter from the Transportation Cabinet informing the recipient of the recipient's[their] responsibility in scheduling and cancelling trips.

(10) A recipient [(12)] [Recipients] that engages[engage] in abusive, violent, seriously disruptive, or illegal conduct or contact shall [may] lose his or her [their] transportation privileges. [Privileges may be removed] with approval from the cabinet [and applicable state agency].

(11) [(13)] If a recipient poses an immediate danger to the driver or other passengers, the driver shall call for emergency assistance.

(12) A recipient [(14)] [Recipients] may [shall have the right to] call a broker or the cabinet's toll free complaint phone line[lines] to lodge a complaint.

(13) [(15)] Failure to abide by subsections (3) through (11) [(13)] of this section shall be cause for trip denial as established in KRS 281.872[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 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 [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. The manual shall:

(a) Be developed by the broker to outline the basic operations procedure for that region;

(b) Include the procedure for reservations and dispatch, requirements for eligibility and intake, a call center, out of region services, coordination, and recipient classification levels; and

(c) Be reviewed by the cabinet each year during the broker's assessment while on-site. If there are changes made to the plan in the annual on-site assessment, the broker shall notify the Cabinet.

(3)[(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.

(4)[(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 broker [(e) The] [brokers] shall [also] be available for periodic conference calls with the cabinet to discuss issues, policy, and procedures.

(5)[(4)](a) A driver[Drivers] 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[employees] for a [of] transportation provider[providers] shall be required to pass a preemployment drug test.

(c) A provider [All] [providers] shall develop a drug and alcohol policy. [(d) Brokers shall submit monthly testing activities.]

(6)[(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 pursuant to each broker's contract with the Finance and Administration Cabinet[utilizing the same field formats statewide].

(7)[(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

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to each broker pursuant to each broker's contract with the Finance and Administration Cabinet.

(8)[(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, subcontractor payments [subpayments], maintenance, and fuel.

(9)[(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].

(10)[(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. **The program integrity plan format shall identify ways each broker shall handle allegations of fraud, waste, and abuse of the program's resources.**

(11)[(40)](a) Each broker shall develop and maintain a quality assurance plan. The plan shall address the following:

1. The scheduling and delivery of transportation services;
2. The broker's methodology for the identification and correction of problems relating to the scheduling and delivery of transportation services; and
3. Subcontractor payment efficiency.

(b) The Transportation Cabinet shall [may] require the broker to compile and provide to the cabinet data[additional reports] that [which] further tracks[track] the broker's performance including:

1. Those items in Section 25(3)[24(3)] of this administrative regulation; and
2. Drug and alcohol reports.

(12)[(41)](a) Each broker shall have a disaster recovery plan that shall include the broker's plan to ensure continuous operations and services for recipients if there is an emergency.

(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. **The inclement weather transportation policy shall detail the broker's plans in response to inclement weather, including directions for drivers, notifications to recipients and the media, and a back-up plan to continue providing transportation.**

(d) **If needed**[(c)] [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.

(13)[(42)] A broker shall submit [a] monthly vehicle inventory data[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 noncompliance;

(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 decision[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 Medicaid 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 **an eligible subcontractor or the broker for the area, if the broker also provides transportation services within the delivery area, as established by KRS 281.874**[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:

[a][4-] Coordination;

[b][2-] Cost efficiencies; or [and]

[c][3-] If the first two (2) criteria are not met, rotating[,] [the broker shall rotate] certificate type 07 and certificate type 08 trips among providers, including the broker.

(4)[(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.

(5)[(4)] [(5)] The Transportation Cabinet shall resolve any disputes regarding choice of transportation provider.

Section 24. Cabinet Responsibilities. [Section 17- **Cabinet responsibilities.** (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 eligible 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 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 or subcontractor ~~[and subcontractors]~~ shall maintain [all] records for five (5) years.

(2) Employees of a [All] broker or ~~[and]~~ subcontractor ~~[employees and employees of the subcontractors]~~ shall sign confidentiality statements regarding access to, or ~~[and]~~ disclosure of, confidential information or records.

(3) Collection and retention of records to be maintained by each broker or ~~[and]~~ subcontractor pertaining to human service transportation delivery shall ~~[at a minimum,]~~ include:

- (a) Encounter data;
- (b) Complaint tracking;
- (c) Monthly summary reports;
- (d) Trip invoices;
- (e) Phone reports;
- (f) Subcontractor requests;
- (g) Audits;
- (h) Line-item budgets; ~~[and]~~
- (i) Monthly pay document submittals; and
- (j) Vehicle inventory reports.

(4) Collection and retention of encounter data on each trip shall be made by the broker~~[,]~~ if the broker provides transportation services, and by each subcontractor.

(5) Failure of a broker to timely record and report all data and broker trips as established in KRS 281.875 ~~[required by the cabinet]~~ shall be grounds for the Commonwealth ~~[cabinet]~~ to terminate the broker's contract.

(6) ~~[Each transportation broker/provider and subcontractor subject to the provisions of 601 KAR 1:005 shall comply with the provisions of that administrative regulation.]~~

A [(7) Each] transportation broker or ~~[/provider and]~~ subcontractor exempted in ~~[not subject to the provisions of]~~ 601 KAR 1:005 shall comply with the provisions of 49 C.F.R. Part 655 ~~[the following federal regulations:~~

- (a) ~~49 C.F.R. 653, "Prevention of Prohibited Drug Use in Transit Operations", effective October 1, 1999; and~~
- (b) ~~49 C.F.R. 654, "Prevention of Alcohol Misuse in Transit Operations", effective October 1, 1999.]~~

(7)(a) [(8)(a)] A [Each] transportation broker, or ~~[/]~~ provider, or ~~[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 a motor vehicle 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) The following items are incorporated by reference:

(a) "Medical Transportation Classification Form", June 2011; and

(b) "Kentucky Non-Emergency Medical Transportation Program Medicaid Medical Referral Form", June 2011 ~~"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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(As Amended at EAARS, December 12, 2011)

703 KAR 5:200. Next-Generation Learners.

RELATES TO: KRS 158.6451, 158.6453, 158.6455, 158.860

STATUTORY AUTHORITY: KRS 158.6453; KRS 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability. This administrative regulation establishes the assessment and accountability requirements for students.

Section 1. Definitions. (1) "Achievement" means student performance described with the student performance levels of novice, apprentice, proficient and distinguished on state-required content area tests.

(2) "College readiness" means the percentage of middle school students meeting ACT established benchmarks on the EXPLORE test in reading, English or mathematics.

(3) "College and career readiness" means a readiness percentage calculated by dividing the number of high school graduates who have successfully met an indicator of readiness for college or career with the total number of graduates.

(4) "Full Academic Year" means 100 or more instructional days of enrollment within the school year.

(5) "Gap" means the percentage of students in the non-duplicated student gap group scoring proficient or distinguished on state-required content area tests.

(6) "Growth" means the percentage of students that show typical yearly growth in reading or mathematics using the student growth percentile.

(7) "Next-generation instructional programs and supports" means a component of the state-wide accountability system

for Kentucky public schools and districts based on reviews of instructional programs.

(8) “Next-generation learners” means a component of the state-wide accountability system for Kentucky public schools and districts based on student data.

(9) “Next-generation professionals” means a component of the state-wide accountability system for Kentucky public schools and districts based on teacher and administrator data.

(10) “Next-generation schools and districts” means a component of the state-wide accountability system that reports performance data for schools and districts.

(11) “Student growth percentile” means each student’s rate of change compared to other students with a similar test score history.

(12) “Typical yearly growth” means a student growth percentile at 40 or above.

Section 2. (1) Except as provided in subsections (2) or (3) of this section, Kentucky’s accountability system to classify schools and districts shall consist of the following components:

(a) Next-generation learners, as established in this administrative regulation; and

(b) Next-generation instructional programs and support, as established in 703 KAR 5:230.

(2) Following the effective date of an administrative regulation promulgated by the Kentucky Board of Education to establish the requirements for next-generation schools and districts, Kentucky’s accountability system to classify schools and districts shall consist of:

(a) The two (2) components included in subsection (1) of this section; and

(b) The next generation schools and districts component.

(3) Following the effective date of an administrative regulation promulgated by the Kentucky Board of Education to establish the requirements for next-generation professionals, Kentucky’s accountability system to classify schools and districts shall consist of:

(a) The two (2) components included in subsection (1) of this section;

(b) The next-generation schools and district component, if the administrative regulation referenced in subsection (2) has become effective; and

(c) The next-generation-professionals component.

Section 3. [Kentucky’s Accountability System. (1) Kentucky’s accountability system to classify schools and districts shall consist of four components:

(a) Next-Generation Learners;

(b) Next-Generation Instructional Programs and Support;

(c) Next-Generation Professionals; and

(d) Next-Generation Schools/Districts.

Section 2.] Next-Generation Learners. (1) Data shall be reported[The Next-Generation Learners component of Kentucky’s accountability system shall report data] for schools and districts in the following categories:

(a) Achievement;

(b) Gap;

(c) Individual student growth;

(d) Readiness for college or career; and

(e) Graduation rate.

(2) Data from individual student performance on state assessments administered as required in KRS 158.6451 and KRS 158.6453 shall be included in the next-generation learners component. This data shall include students with disabilities who participate in the alternate assessment program.

(3) Data in reporting categories shall be attributed to grade level spans for schools and districts as **established in this subsection.[follows:]**

(a) Elementary schools shall receive **data[a total number of points]** from achievement, gap, and individual student growth.[:]

(b) Middle schools shall receive **data[a total number of points]**

from achievement, gap, individual student growth, and readiness for college.[:]

(c) High schools shall receive **data[a total number of points]** from achievement, gap, individual student growth, readiness for college or career, and graduation rate.

Section 4.[3.] Calculations for Reporting Categories. (1) Achievement shall be reported in next-generation learners as established in this subsection.[follows:]

(a) In elementary,[and] middle, and high schools, for each content area of reading, mathematics, science, social studies, and writing one (1) point for each percent of students scoring proficient or distinguished shall be awarded. One-half (.5) point shall be awarded for each percent of students scoring apprentice. Points shall not be awarded for novice students.

(b) A bonus for distinguished performance shall be calculated **as required by this paragraph.**

1. The bonus formula shall consider both the percent of students scoring at distinguished and at novice so that a bonus for distinguished student performance shall not overcompensate for novice student performance.

2. Each percent of students scoring distinguished **shall receive[receives]** an additional one-half (.5) point and each percent of students scoring novice **shall receive[receives]** a negative one-half (.5)[(-.5)] point.

3. The value generated for novice shall be combined with the value generated for distinguished.

4. Except as provided in subparagraph 6. of this subsection, for schools and districts with a higher distinguished value, the difference between the two (2) values shall be added to the achievement calculation as a bonus for distinguished.

5. For schools and districts with a higher novice value, points shall not be added to the achievement calculation.

6. The distinguished bonus shall not allow the content area value for a school or district to exceed 100 percent. [(c) In high schools, each state-required End of Course test shall earn one (1) point for each percent of students scoring at or above the passing benchmark set by the technical specifications of each test. One-half point (.5) is awarded for each percent of students scoring within a range below the benchmark. Points shall not be awarded for students falling below the minimal range.]

(c) The following chart shall be used to calculate the points in accordance with paragraphs (a) and (b) of this subsection:

Proficiency Levels	Points Awarded for Each Percent of Students
Novice	0
Apprentice	.5
Proficient	1
Distinguished	1
Bonus for Distinguished (offset by Novice)	.5 for each percentage of distinguished) MINUS .5 for each percentage of novice)

(d)1. In accordance with KRS 158.860(7) and KRS 158.6453(5)(e), a district or school council may determine that high school end-of-course examination results be used for a percentage of a student’s final grade in the course.

2. Beginning in the 2011-2012 academic year, end-of-course examinations shall be administered in reading, mathematics, science, and social studies, in accordance with the vendors secured through the state procurement process.

3. [(d)] [High school end-of course test results may be used for a percentage of a student’s final grade in the course.] If the district or school council’s policies do not include end-of-course examination[end-of-course] grades in the grading policy or if the end-of-course examination[end-of-course] grade percentage is less than twenty (20) percent, the district shall submit an annual report to the Commissioner of Education that provides justification for not using end-of-course examinations[end-of-course exams] for at least twenty (20) percent of a student’s final grade in the course.

4. Beginning with the 2012-2013 academic year, the report shall be submitted to the Commissioner **of Education** on or before December 31.

(2) Gap shall be reported in next-generation learners as **established in this subsection**.~~[follows:]~~

(a) A single gap group called the non-duplicated gap group shall be created. This group shall consist of an aggregate, non-duplicated count of students in ~~[traditionally lower performing groups. The Non-duplicated Gap Group shall include students in]~~ the following demographic categories:

~~1. [(1)]~~ African American;

~~2. [(2)]~~ Hispanic;

~~3. [(3)]~~ American Indian ~~or~~ Native American;

~~4. [(4)]~~ Limited English proficiency;

~~5. [(5)]~~ Students in poverty based on qualification for **free or reduced price lunch**~~[Free/Reduced Lunch]~~; and

~~6. [(6)]~~ Students with disabilities that have an Individualized Education **Program**~~[Plan]~~ (IEP).

(b) ~~1.~~ For each tested content area, students scoring proficient or higher in the non-duplicated gap group shall be summed.

~~2.~~ The sum shall yield a single gap number of students proficient or higher with:

~~a.~~ No student counting more than one **(1)** time; and

~~b.~~ All students in the included groups ~~[shall be]~~ counted once.

3. The individual content area gap percentages shall be averaged for an overall gap percentage.

(c) The non-duplicated gap group shall have a minimum of ~~ten (10)~~ **40** students per content area in the school or district in order to report gap data.

(d) A maximum total of 500 points shall be awarded for gap. The points shall be distributed equally among the content areas tested.

(3) Individual student growth shall be reported in next-generation learners as **established in this subsection**.~~[follows:]~~

(a) Individual student growth shall be computed based on a student growth percentile model.

(b) At elementary and middle schools, calculations shall include scores from students with data from reading assessments across two **(2)** years and mathematics assessments across two **(2)** years.

(c) At high school, calculations shall include scores from students with data from college readiness reading and mathematics assessments across two **(2)** years.

(d) ~~1.~~ One (1) point shall be awarded for each **percent of students**~~[student]~~ that shows typical or high growth in reading and one (1) point shall be awarded for each **percent of students**~~[student]~~ that shows typical or high growth in mathematics.

~~2.~~ Typical yearly growth shall be at **or above the fortieth (40th)**~~[least the 40th] student growth percentile [or higher]~~.

~~3.~~ Points shall not be awarded for students showing lower than typical growth.

(e) For elementary, middle, and high schools, total points shall be 100 for each content area of reading and mathematics for a total of 200.

(4) ~~College-and-career-readiness~~~~[Readiness for College or Career]~~ shall be reported in next-generation learners as **established in this subsection**.~~[follows:]~~

(a) A readiness percentage for each high school shall be calculated by dividing the number of high school graduates that have successfully met **at least one (1)**~~[one]~~ indicator of readiness, **as listed in paragraph (b) of this subsection**, by the total number of graduates. An individual student shall only be attributed to the calculation one **(1)** time.

(b) The indicators of readiness shall include **the percent of** students meeting:

~~1. [(1)]~~ The Kentucky Council on Postsecondary Education's **System-wide**~~[Systemwide]~~ Benchmarks on the ACT in Reading, English and Mathematics **established in "College Readiness Indicators", incorporated by reference in 13 KAR 2:020;** ~~[or]~~

~~2. [(2)]~~ The Kentucky Council on Postsecondary Education's College Placement Test Benchmarks **established in "College Readiness Indicators", incorporated by reference in 13 KAR 2:020;** or

~~3. [(3)]~~ The career measures as **recognized**~~[defined]~~ by the

Kentucky Board of Education.

~~(c)1. An individual student [meeting both Benchmarks on the ACT or College Placement Test and Career Measures] shall earn a bonus of one-half (.5) point in the calculation of the readiness percentage if the student met:~~

~~a. Either the:~~

~~(i) System-wide Benchmarks on the ACT in Reading, English and Mathematics as established in 13 KAR 2:020; or~~

~~(ii) College Placement Test Benchmarks as established in 13 KAR 2:020; and~~

~~b. The career measures as recognized by the Kentucky Board of Education.~~

~~2. The bonus shall not allow the calculation of the readiness percentage for a school or district to exceed 100 percent.~~

~~(d)[(e)] For middle schools, a [college] readiness for college percentage shall be calculated by determining the percentage of students who meet the ACT EXPLORE benchmarks for reading, English, and mathematics as established by ACT, Inc. based on the data from the national administrations of the ACT EXPLORE.~~

~~(e)[(d)] For middle schools, the percent of students in each tested area of reading, English, and mathematics meeting the benchmark score shall be averaged. This value shall be reported as the middle school college readiness percentage.~~

(5) Graduation rate shall be reported in next-generation learners as **established in this subsection**.~~[follows:]~~

(a) **In accordance with the requirements in "Briefing Packet: Graduation Rate Data 2010 State Trends",** the graduation rate shall be computed using the:

~~1.~~ Averaged freshman graduation rate for the years of 2011-2012 and 2012-2013; **or**

~~2.~~ The cohort graduation rate ~~[shall be computed]~~ beginning with the 2013-2014 year.

(b) The graduation rate for each school and district shall be reported publicly by the Department **of Education** in the next-generation learners component. Graduation rate data shall be lagged one **(1)** year for reporting.

(6) The total points for next-generation learners shall be awarded as follows:

(a) The total number of points earned in each category of achievement, gap, individual student growth, readiness for college or career, and graduation rate shall be weighted in the following manner:

Grade Range	Achievement	Gap	Growth	Readiness for College or Career	Graduation Rate	Total
Elementary	30	30	40	n/a	n/a	100
Middle	28	28	28	16	n/a	100
High	20	20	20	20	20	100

(b) The total number of points in next-generation learners shall classify schools and districts into one **(1) of three (3)**~~[of four]~~ classifications:

~~1. [(1)]~~ Distinguished;

~~2. [(2)]~~ Proficient; **and**

~~3. [(3)]~~ Needs improvement~~[- and~~

~~4. [(4)]~~ **[Persistently Low Achieving — the lowest performing schools as defined by KRS 160.346].**

(c) Within each of the **three (3)**~~[four]~~ classifications, public reports by the Department shall indicate the direction in which school and district performance is moving compared to the prior year report.

(d) In accordance with KRS 158.6455, the Kentucky Board of Education shall amend this administrative regulation or promulgate a new administrative regulation to determine the placement of schools and districts into one (1) of three (3) classifications and the establishment of goals using a standard-setting process utilizing results from the first operational administration of new assessments in 2011-2012. The process shall:

1. Be advised by the National Technical Advisory Panel on Assessment and Accountability; School Curriculum, Assess-

ment and Accountability Council; and the Office of Education Accountability;

2. Use accepted technical procedures and involve Kentucky school and district administrators and teachers; and

3. Be reviewed by the Kentucky Board of Education. Following its review, the Kentucky Board of Education shall approve the final cut scores and goals that determine placement in one (1) of the three (3) classifications by administrative regulation.

(e)(c) The placement of schools and districts into one of four classifications and the establishment of goals shall use a standard-setting process utilizing results from the first operational administration of new assessments in 2011-2012. The process shall be advised by the National Technical Advisory Panel on Assessment and Accountability, School Curriculum, Assessment and Accountability Council, and the Office of Education Accountability. The process shall use accepted technical procedures and involve Kentucky school and district administrators and teachers. The Kentucky Board of Education shall review the process and approve the final cut scores and goals that determine placement in one of the four classifications.

(d)] If data cannot be calculated for any category of next-generation learners, the weights shall be redistributed using an equal proportion to categories that shall be reported for the school or district.

(7)(a) Students enrolled for a full academic year[, which shall be 100 instructional days,] shall be included in the calculations for achievement, gap, individual student growth, and readiness for college or career for a school and district.

(b) Graduation rate calculations shall include both students enrolled and students earning diplomas.

Section 5. Incorporation by Reference. (1) "Briefing Packet: Graduation Rate Data 2010 State Trends", August 2, 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson

APPROVED BY AGENCY: August 15, 2011

FILED WITH LRC: August 15, 2011 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321, email kevin.brown@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at EAARS, December 12, 2011)

703 KAR 5:230. Next Generation Instructional Programs and Support.

RELATES TO: KRS 158.6451, **158.6453, 158.6455**

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor and ensures accountability. This administrative regulation establishes the program review requirements for district and school accountability.

Section 1. **Definitions.** (1) "Demonstrator" means a statement that illustrates what is happening in a school.

(2) "Field tested" means that districts use the program review tools in their schools for the purpose of establishing reliability and validity.

(3) "Next-generation instructional program and support" means the component of the accountability model that contains program reviews in arts and humanities, practical living skills and career studies, writing, K-3, and world language.

(4) "Standards" means the four (4) program review standards of curriculum and instruction, formative and summative assessment, professional development and support services, and administrative leadership support and monitoring.

Section 2. Next-Generation Instructional Programs and Support. Data from program reviews administered as required in KRS 158.6451 and 158.6453 shall be included in the next-generation instructional programs and support component.

Section **3.[2:]** Field Testing and Public Reporting of Raw Scores. (1) Program reviews shall be field tested for the purpose of establishing validity and reliability and the results publically reported before inclusion in the accountability model.

(2) Beginning in the 2011-2012 academic year, field testing and public reporting shall be conducted in the following program review areas:

(a) Arts and humanities;
(b) Practical living skills and career studies[Living/Career Studies]; and
(c) Writing.

(3) In the 2012-2013 academic year, field testing and public reporting shall be conducted in the area of kindergarten through 3rd grade program evaluation.

(4) In the 2014-2015 academic year, field testing and public reporting shall be conducted in the area of world language.[Beginning in the 2012-2013 academic year, field testing and public reporting shall be conducted in the following areas:

(a) Kindergarten through 3rd Grade Program Evaluation, and
(b) World Language.]

Section **4.[3:]** Accountability. (1) After program reviews have been field tested to determine reliability and validity, program review scores shall be included in the accountability model.

(a) Beginning in the 2012-2013 academic year [and thereafter], the following program reviews shall be included in accountability:

1.[a:] Arts and humanities;[:]
2.[b:] Practical living skills and career studies;[Living/Career Studies,] and
3.[c:] Writing.

(b) Beginning in the 2013-2014 academic year [and thereafter], the following program reviews shall be included in accountability:

1.[a:] Kindergarten through 3rd grade program evaluation;[:] and

2. The areas identified in paragraph (a) of this subsection.
(c) Beginning in the 2015-2016 academic year, the following program reviews shall be included in accountability:

1. World language; and
2. The areas identified in paragraph (b) of this subsection.[b: World Language].

(2) Performance on program reviews shall be reported in next generation instructional programs and support as follows:

(a) Elementary, middle and high schools shall receive points at the demonstrator level within each of the four (4) standards of the program review;

(b) Each elementary, middle, and high school's [demonstrator] points earned for each demonstrator shall be added together to achieve a total number of points for each standard;

(c) Each elementary, middle, and high school's points earned for each standard resulting from adding all points earned across demonstrators[standard-points] shall be added together to achieve an overall raw score for each program review; and

(d) A school's points shall be multiplied by the appropriate weight to determine program classification, in accordance with Section 5(1) of this administrative regulation.

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for each program review shall be weighted in the following manner:

Section 5.[3.] Weights. (1) The total number of points earned

Beginning with the 2012-2013 academic year:~~[in 2012-13]~~

Grade Range	Arts/ Humanities	Practical Living	Writing	Year 1 Total
Elementary	33.3	33.3	33.3	100
Middle	33.3	33.3	33.3	100
High	33.3	33.3	33.3	100

Beginning with the 2013-2014 academic year:

Grade Range	Arts/ Humanities	Practical Living	Writing	K-3	Year 2 and beyond Total
Elementary	25	25	25	25	100
Middle	33 1/3	33 1/3	33 1/3	NA	100
High	33 1/3	33 1/3	33 1/3	NA	100

Beginning with the 2015-2016 academic year:~~[in 2013-14]~~

Grade Range	Arts/ Humanities	Practical Living	Writing	K-3	World Language	Year 2 and beyond Total
Elementary	20	20	20	20	20	100
Middle	25	25	25	NA	25	100
High	25	25	25	NA	25	100

(2) If data cannot be calculated for any program review [or additional program reviews are added], the weights shall be redistributed proportionally.

Section 6.[4.] Classification of Schools. (1) The appropriate weights, in accordance with Section 5(1) of this administrative regulation, shall be applied to the school's raw score calculated to determine the school's classification in the instructional programs and support component of the accountability model as established in accordance with 703 KAR 5:200, Section 2(2)~~[within 703 KAR 5:220].~~

(2) In accordance with KRS 158.6455, the Kentucky Board of Education shall amend this administrative regulation or promulgate a new administrative regulation to determine the placement of schools and districts into one (1) of three (3) classifications and the establishment of goals using a standard-setting process utilizing results from the first operational administration of new assessments in 2011-2012. The process shall:

(a) Be advised by the National Technical Advisory Panel on Assessment and Accountability; School Curriculum, Assessment and Accountability Council; and the Office of Education Accountability;

(b) Use accepted technical procedures and involve Kentucky school and district administrators and teachers; and

(c) Be reviewed by the Kentucky Board of Education. Following its review, the Kentucky Board of Education shall approve the final cut scores and goals that determine placement in one (1) of the three (3) classifications by administrative regulation.

(3) The final cut scores established for next-generation instructional programs and support shall classify schools and districts into one (1) of three (3) classifications:

(a) Distinguished;

(b) Proficient; and

(c) Needs improvement.~~[Cut Scores established for Next~~

~~Generation Instructional Programs and Support shall classify schools and districts into one of three classifications:~~

~~(a) Distinguished;~~

~~(b) Proficient; and~~

~~(c) Needs Improvement.~~

~~(3) The placement of schools and districts into one of three classifications shall be based on the establishment of cut scores through a standard-setting process utilizing results from the first operational administration of program reviews. The process shall be advised by the National Technical Advisory Panel on Assessment and Accountability, School Curriculum Assessment and Accountability Council and the Office of Education Accountability. The~~

~~process shall use accepted technical procedures and involve Kentucky school and district administrators and teachers. The Kentucky Board of Education shall review the process and approve the final cut scores that determine placement in one of the three classifications.~~

~~Section 5. Audit Process. District program reviews shall be audited using a process and timeline determined by the Kentucky Department of Education. The audit process and timeline shall annually be provided to the district. This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).]~~

TERRY HOLLIDAY, Ph.D., Commissioner of Education

DAVID KAREM, Chairperson

APPROVED BY AGENCY: August 15, 2011

FILED WITH LRC: August 15, 2011 at noon

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PUBLIC PROTECTION CABINET

Department of Insurance

Financial Standards and Examination Division
(As Amended at ARRS, December 6, 2011)

806 KAR 3:190. Risk-based capital for insurers.

RELATES TO: KRS 304.3-120, 304.3-140, 304.3-240, 304.5-020, 304.5-030, 304.5-040, 304.5-050, 304.5-060, 304.5-070, 304.5-080, 304.5-110, 304.6, 304.7, 304.24-350, 304.33, 304.49-010

STATUTORY AUTHORITY: KRS 304.2-110, 304.3-125
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 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 by KRS 304.1-010. KRS 304.3-125 authorizes the commissioner to promulgate ~~[provides that the Commissioner]~~ ~~[Executive Director]~~ ~~[of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. KRS 304.3-125 provides that the commissioner may]~~ ~~[is granted the authority to]~~ ~~[adopt]~~ administrative regulations addressing requirements for additional capital and surplus based on the kind,

type, volume and nature of insurance business transacted up to the standards prescribed by that are promulgated and adopted by the National Association of Insurance Commissioners [Executive Directors and a requirement of certification for the office. The NAIC requires that the office have this administrative regulation for accreditation]. This administrative regulation establishes established risk-based capital requirements for all insurers authorized to transact insurance business in Kentucky. [The risk-based capital requirements will assist the office in determining financial strength.]

Section 1. Definitions. (1) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner [executive director] in accordance with Section 2(6)[2(7)] of this administrative regulation.

(2) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions.

(3) "Company action level RBC" means the product of two (2.0) and its authorized control level RBC.

(4)[(2)] "Corrective order" means an order issued by the commissioner [executive director] specifying corrective actions which the commissioner [executive director] has determined are required.

(5)[(3)] "Domestic insurer" is defined by [in] [The definition of "domestic insurer" shall be governed by] KRS 304.1-070(1).

(6)[(4)] "Foreign insurer" is defined by [in] [The definition of "foreign insurer" shall be governed by] KRS 304.1-070(2).

(7) "Insurer" is defined by KRS 304.1-040. [means any of the entities listed in KRS 304.33-020(1) through (6) and an industrial insured captive insurer as defined in KRS 304.49-010(8).] [NAIC] means the National Association of Insurance Commissioners.]

(8)[(6)] "Life and health insurer" means any insurer [insurance company] licensed to write insurance as defined in KRS 304.5-020, 304.5-030, and 304.5-040 or a licensed property and casualty insurer writing only accident and health insurance.

(9) "Mandatory control level RBC" means the product of seven-tenths (.70) and the authorized control level RBC.

(10)[(7)] "NAIC" is defined by KRS 304.7-012(59). [means the National Association of Insurance Commissioners.]

(11)[(8)] "Property and casualty insurer" means any insurer [insurance company] [licensed to write insurance as defined in KRS 304.5-050, 304.5-060, 304.5-070, 304.5-080, and 304.5-110 but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(9)[(8)] "Negative trend" means, with respect to a life or health insurer, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the RBC instructions.

(12) "Property and casualty insurer" means any insurer licensed to write insurance as defined in KRS 304.5-050, 304.5-060, 304.5-070, 304.5-080, and 304.5-110, except for monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.

(13)[(40)][(9)] "RBC" means risk-based capital.

(14)[(41)][(40)] "RBC instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC.

(15)[(42)][(44)] "RBC Level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC, [where:

(a) "Company action level RBC" means[,] the product of two (2.0) and its authorized control level RBC;

(b) "Regulatory action level RBC" means the product of one and five-tenths (1.5) and its authorized control level RBC;

(c) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(d) "Mandatory control level RBC" means the product of seven-tenths (.70) and the authorized control level RBC.]

(16)[(43)][(42)] "RBC plan" means a comprehensive financial plan containing the elements specified in Section 4[3](2) of this administrative regulation.

(17)[(44)][(13)] "RBC report" means the report required in Section 3[2] of this administrative regulation.

(18) "Regulatory action level RBC" means the product of

one and five-tenths (1.5) and its authorized control level RBC.

(19)[(45)][(44)] "Revised RBC plan" means an RBC plan that has been rejected by the commissioner [executive director] and then revised by the insured.

(20)[(46)][(45)] "Total adjusted capital" means the sum of:

(a) An insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under KRS 304.3-240; and

(b) Any other items as specified in the RBC instructions.

Section 2. **The provisions of this administrative regulation shall apply to the following insurers:**

(1) All domestic insurers, whether or not they purport to do business in this state;

(2) All insurers who are doing or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future;

(3) All insurers who purport to do an insurance business in this state;

(4) All insurers who have insureds resident in this state;

(5) All other persons organized or in the process of organizing with the intent to do an insurance business in this state;

(6) A fraternal benefit society as defined in Subtitle 29; and

(7) An industrial insured captive insurer as defined by KRS 304.49-010(8).

Section 3. RBC Reports. (1) On or prior to March 1, every domestic insurer shall prepare and submit to the commissioner [executive director] an RBC report for the calendar year just ended.

(2) The RBC report shall be filed in a form and contain information as is required by the RBC instructions.

(3) In addition, every domestic insurer shall file its RBC report with:

(a) The NAIC in accordance with the RBC instructions; and

(b) The insurance commissioner [executive director] in any state in which the insurer is authorized to do business, if the insurance commissioner [executive director] has notified the insurer of its request in writing, in which case the insurer shall file its RBC report **no later than** [not later than the later of]:

1. Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

2. The filing date.

(4) Requirements for life and health insurers:

(a) A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions.

(b) The formula shall take into account and may adjust for the covariance between the following which are determined in each case by applying the factors in the manner set forth in the RBC instructions:

1. The risk with respect to the insurer's assets;

2. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

3. The interest rate risk with respect to the insurer's business; and

4. All other business risks and other relevant risks as are set forth in the RBC instructions. [;]

(5) Requirements for property and casualty insurers:

(a) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions.

(b) The formula shall take into account and may adjust for the covariance between the following which shall be determined in each case by applying the factors in the manner set forth in the RBC instructions:

1. Asset risk;

2. Credit risk;

3. Underwriting risk; and

4. All other business risk and other relevant risks as are set forth in the RBC instructions. [;]

(6) [Insurers shall seek to maintain capital above the RBC levels required by this administrative regulation. An excess of capital over the amount produced by the risk-based capital requirements contained in this administrative regulation and the formulas, schedules and instructions referenced in this administrative regula-

tion is desirable in the business of insurance. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this administrative regulation.

(7) If a domestic insurer files an RBC report which in the judgment of the commissioner~~[executive director]~~ is inaccurate, then the commissioner~~[executive director]~~ shall:

- (a) Adjust the RBC report to correct the inaccuracy;
- (b) Notify the insurer of the adjustment;
- (c) Inform the insurer in writing of the reason for the adjustment; and
- (d) Once the RBC report is adjusted, refer to the report as the adjusted RBC report.

Section 4~~[3]~~. Company Action Level Event. (1) A company action level event shall be~~is~~ any of the following events:

(a) The filing of an RBC report by an insurer which indicates that:

1. The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

2. If a life or health insurer, the insurer has:

a. Total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and two and five-tenths (2.5); and

b. A negative trend;

(b) The notification by the commissioner~~[executive director]~~ to the insurer of an adjusted RBC report that indicates an event in paragraph (a) of this subsection, if~~provided~~ the insurer does not challenge the adjusted RBC report under Section 8~~[7]~~ of this administrative regulation; or

(c) If, pursuant to Section 8~~[7]~~ of this administrative regulation, an insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the commissioner~~[executive director]~~ to the insurer that the commissioner~~[executive director]~~ has, after a hearing, rejected the insurer's challenge.

(2) If~~in the event of~~ a company action level event occurs, the insurer shall prepare and submit to the commissioner~~[executive director]~~ an RBC plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Propose corrective actions which the insurer intends to take in order to eliminate the company action level event;

(c) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions including:

1. Projections of statutory operating income, net income, capital, or surplus; and

2. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component; and

(d) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of the insurer's business and problems associated with the insurer's business, including the following:

1. Assets;
2. Anticipated business growth and associated surplus strain;
3. Extraordinary Exposure to risk;
4. Mix of business;
5. Use of reinsurance; and
6. Other important factors.

(3) The RBC plan shall be submitted:

(a) Within forty-five (45) days of the company action level event; or

(b) If the insurer challenges an adjusted RBC report pursuant to Section 8~~[7]~~ of this administrative regulation, within forty-five (45) days after notification to the insurer that the commissioner~~[executive director]~~ has, after a hearing, rejected the insurer's challenge.

(4) Within sixty (60) days after the submission by an insurer of an RBC plan to the commissioner~~[executive director]~~, the commissioner~~[executive director]~~ shall notify the insurer whether the RBC plan shall be implemented or is, in the judgment of the executive director, unsatisfactory.

(5) If the commissioner~~[executive director]~~ determines that the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, in the judgment of the executive director.

(6) Upon notification from the commissioner~~[executive director]~~, the insurer shall prepare a revised RBC plan which may incorporate by reference any revisions proposed by the commissioner~~[executive director]~~, and shall submit the revised RBC plan to the commissioner~~[executive director]~~:

(a) Within forty-five (45) days after the notification from the commissioner ~~[executive director]~~; or

(b) If the insurer challenges the notification from the commissioner~~[executive director]~~ under Section 8~~[7]~~ of this administrative regulation, within forty-five (45) days after a notification to the insurer that the commissioner~~[executive director]~~ has, after a hearing, rejected the insurer's challenge.

(7) If there is ~~in the event of~~ a notification by the commissioner~~[executive director]~~ to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner~~[executive director]~~ may at the executive director's discretion, subject to the insurer's right to a hearing under Section 8~~[7]~~ of this administrative regulation, specify in the notification that the notification constitutes a regulatory action level event.

(8) Every domestic insurer that files an RBC plan or revised RBC plan with the commissioner~~[executive director]~~ shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner~~[executive director]~~ in any state in which the insurer is authorized to do business if:

(a) The state has an RBC provision substantially similar to Section 9~~[8]~~(1) of this administrative regulation; and

(b) The insurance commissioner~~[executive director]~~ of that state has notified the insurer of its request for the filing in writing.

(9) If the insurer is required by subsection (8) of this section to file an RBC plan or revised RBC plan with another state, then it shall be filed in that state by the latter of the following time periods:

(a) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(b) The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section.

Section 5~~[4]~~. Regulatory Action Level Event. (1) A regulatory action level event shall be~~is~~ any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The notification by the commissioner~~[executive director]~~ to an insurer of an adjusted RBC report that indicates a regulatory action level event, if ~~provided~~ the insurer does not challenge the adjusted RBC report under Section 8~~[7]~~ of this administrative regulation;

(c) If, pursuant to Section 8~~[7]~~ of this administrative regulation, the insurer challenges an adjusted RBC report that indicates a regulatory action level event, the notification by the commissioner~~[executive director]~~ to the insurer that the commissioner~~[executive director]~~ has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for that failure [which is satisfactory to the executive director] and has cured the failure within ten (10) days after the filing date;

(e) The failure of the insurer to submit an RBC plan to the commissioner ~~[executive director]~~ within the time period set forth in Section 4~~[3]~~(3) of this administrative regulation;

(f) Notification by the commissioner ~~[executive director]~~ to the insurer that:

1. The RBC plan or revised RBC plan submitted by the insurer is, in the judgment of the executive director, unsatisfactory; and

2. The notification constitutes a regulatory action level event with respect to the insurer, ~~if [provided that] the insurer has not challenged the determination under Section 8[7] of this administrative regulation;~~

(g) If, pursuant to Section 8[7] of this administrative regulation, the insurer challenges a determination by the ~~commissioner[executive director]~~ under ~~subsection (1)(f) of this section[paragraph (f) of this subsection]~~, the notification by the ~~commissioner[executive director]~~ to the insurer that the ~~commissioner[executive director]~~ has, after a hearing, rejected ~~the[such]~~ challenge;

(h) ~~If [Provided that] the insurer has not challenged the determination under Section 8[7] of this administrative regulation, notification by the commissioner[executive director] to the insurer that:~~

1. The insurer has failed to adhere to its RBC plan or revised RBC plan; and

2. The insurer's failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan; ~~or [-]~~

(i) If, pursuant to Section 8[7] of this administrative regulation, the insurer challenges a determination by the ~~commissioner[executive director]~~ under paragraph (h) of this subsection, the notification by the ~~commissioner[executive director]~~ to the insurer that the ~~commissioner[executive director]~~ has, after a hearing, rejected the challenge.

(2) ~~If [In the event of] a regulatory action level event occurs, the commissioner[executive director] shall:~~

(a) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform an examination or analysis~~[as the executive director deems necessary]~~ of the assets, liabilities, and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue a corrective order specifying corrective actions as the ~~commissioner[executive director]~~ shall determine are required.

(3) In determining corrective actions, the ~~commissioner[executive director]~~ may take into account relevant factors based upon the ~~commissioner's[executive director's]~~ examination or analysis of the assets, liabilities, and operations of the insurer, which shall include ~~[but not be limited to]~~, the results of any sensitivity tests undertaken pursuant to the RBC instructions.

(4) The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five (45) days after the occurrence of the regulatory action level event;

(b) If the insurer challenges the adjusted RBC report pursuant to Section 8[7] of this administrative regulation and the challenge is not frivolous~~[in the judgment of the executive director]~~, within forty-five (45) days after the notification to the insurer that the ~~commissioner[executive director]~~ has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised RBC plan pursuant to Section 8[7] of this administrative regulation and the challenge is not frivolous~~[in the judgment of the executive director]~~, within forty-five (45) days after the notification to the insurer that the ~~commissioner[executive director]~~ has, after a hearing, rejected the insurer's challenge.

(5) The ~~commissioner[executive director]~~ may retain actuaries and investment experts and other consultants as may be necessary ~~[in the judgment of the executive director]~~ to:

(a) Review the insurer's RBC plan or revised RBC plan;

(b) Examine or analyze the assets, liabilities, and operations of the insurer; and

(c) Formulate the corrective order with respect to the insurer.

(6) The fees, costs, and expenses relating to consultants shall be borne by the affected insurer, ~~[or other party as directed by the commissioner[executive director]].~~

Section 6[5]. Authorized Control Level Event. (1) An authorized control level event ~~shall be [is]~~ any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the ~~commissioner[executive director]~~ to the insurer of an adjusted RBC report that indicates an authorized control level event, ~~if [provided] the insurer does not challenge the adjusted RBC report under Section 8[7] of this administrative regulation;~~

(c) If, pursuant to Section 8[7] of this administrative regulation, the insurer challenges an adjusted RBC report that indicates an authorized control level event, notification by the ~~commissioner[executive director]~~ to the insurer that the ~~commissioner[executive director]~~ has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to respond~~[in a manner satisfactory to the executive director]~~ to a corrective order, ~~if [provided that] the insurer has not challenged the corrective order under Section 8[7] of this administrative regulation; or~~

(e) If the insurer has challenged a corrective order under Section 8[7] of this administrative regulation and the ~~commissioner[executive director]~~ has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond~~[in a manner satisfactory to the executive director]~~ to the corrective order subsequent to rejection of modification by the ~~commissioner[executive director]~~.

(2) ~~If [In the event of] an authorized control level event occurs with respect to an insurer, the commissioner[executive director] shall:~~

(a) Take actions as are required under Section 5[4] of this administrative regulation regarding an insurer to which a regulatory action level event has occurred; or

(b) Take actions as are necessary to cause the insurer to be placed under regulatory control pursuant to KRS Chapter 304, Subtitle 33 if the ~~commissioner determines[executive director deems]~~ it to be in the best interest of the policyholders, creditors of the insurer, and public.

(3) The authorized control level event shall be ~~[deemed]~~ sufficient grounds for the ~~commissioner[executive director]~~ to take action under KRS Chapter 304, Subtitle 33. ~~If [In the event] the commissioner[executive director] takes actions under this section pursuant to an adjusted RBC report, the insurer shall be entitled to the[such] protections [as are] afforded to insurers under the provisions of the section pertaining to summary proceedings.~~

Section 7[6]. Mandatory Control Level Event. (1) A mandatory control level event ~~shall be [is]~~ any of the following events:

(a) The filing of an RBC report which indicates that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) Notification by the ~~commissioner[executive director]~~ to the insurer of an adjusted RBC report that indicates a mandatory control level event, ~~if [provided] the insurer does not challenge the adjusted RBC report under Section 8[7] of this administrative regulation; or~~

(c) If, pursuant to Section 8[7] of this administrative regulation, the insurer challenges an adjusted RBC report that indicates a mandatory control level event, notification by the ~~commissioner[executive director]~~ to the insurer that the ~~commissioner[executive director]~~ has, after a hearing, rejected the insurer's challenge.

(2) ~~If [In the event of] a mandatory control level event occurs for a life insurer:~~

(a) The ~~commissioner[executive director]~~ shall take actions as are necessary ~~[to place the insurer under regulatory control]~~ pursuant to KRS Chapter 304, Subtitle 33.

(b) If the ~~commissioner[executive director]~~ takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to the protections of KRS Chapter 304, Subtitle 33 pertaining to summary proceedings.

(c) The ~~commissioner[executive director]~~ may forego action for up to ninety (90) days after the mandatory control level event if the ~~commissioner[executive director]~~ finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

(3) ~~If [In the event of] a mandatory control level event occurs for a property and casualty insurer:~~

(a) The ~~commissioner[executive director]~~ shall take actions as

are necessary[~~to place the insurer under regulatory control~~] pursuant to KRS Chapter 304, Subtitle 33.

(b) ~~If [In the case of]~~ an insurer[~~which~~] is writing no business and[~~which~~] is running-off its existing business, the commissioner[~~executive director~~] may allow the insurer to continue its run-off under the supervision of the commissioner[~~executive director~~].

(c) ~~The [In either event, the]~~ mandatory control level event shall be [deemed] sufficient grounds for the commissioner[~~executive director~~] to take action under KRS Chapter 304, Subtitle 33.

(d) If the commissioner[~~executive director~~] takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to the protections of KRS Chapter 304, Subtitle 33 pertaining to summary proceedings.

(e) The commissioner[~~executive director~~] may forego action for up to ninety (90) days after the mandatory control level event if the commissioner[~~executive director~~] finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

Section **8[7]**. Hearings. (1) Upon any of the following notifications, the insurer shall have the right to a confidential[~~office~~] hearing at which the insurer may challenge any determination or action by the commissioner[~~executive director~~]:

(a) Notification to an insurer by the commissioner[~~executive director~~] of an adjusted RBC report; ~~or~~

(b) Notification to an insurer by the commissioner[~~executive director~~] that:

1. The insurer's RBC plan or revised RBC plan is unsatisfactory; and

2. The notification constitutes a regulatory action level event with respect to the insurer; ~~or~~

(c) Notification to any insurer by the commissioner[~~executive director~~] of the following:

1. The insurer has failed to adhere to its RBC plan or revised RBC plan; and

2. This failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

(d) Notification to an insurer by the commissioner[~~executive director~~] of a corrective order.

(2) The insurer shall notify the commissioner[~~executive director~~] of its request for a hearing within five (5) days after the notification by the commissioner[~~executive director~~] under subsection (1) of this section.

(3) Upon receipt of the insurer's request for a hearing, the commissioner[~~executive director~~] shall set a date for the hearing, which shall be no less than ten (10) nor more than thirty (30) days after the date of the insurer's request.

Section **9[8]**. Confidentiality; Prohibition on Announcements, Prohibition on Use in Ratemaking. (1) The following records shall ~~be~~[are] confidentially disclosed pursuant to the requirements of this administrative regulation and shall ~~be~~[constitute] proprietary information that, if disclosed, would create an unfair competitive advantage to competitors and shall be kept confidential by the commissioner[~~executive director~~]:

(a) RBC reports;

(b) RBC plans;

(c) Results or report of an examination or analysis of an insurer performed pursuant to an RBC plan; and

(d) Corrective order.

(2) Comparison of insurer's total adjusted capital to any RBC levels shall be a regulatory tool and shall not be used to rank insurers.

(3) An insurer, agent, broker, or other person engaged in the insurance business shall not disseminate orally or in any manner or cause to be disseminated directly or indirectly to the public an assertion, representation, or statement with regard to RBC levels of any insurer or any component of the calculation. ~~[The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not intended as a~~

~~means to rank insurers generally.]~~

(4) If a false statement with regard to a comparison of an insurer's total adjusted capital to its RBC levels or an inappropriate comparison is made, and the falsity is substantially proved, an insurer may issue a statement to rebut the false statement.

(5) RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans:

(a) Shall be used solely by the commissioner[~~executive director~~] in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers;

(b) Shall not be used in rate making or as evidence in rate proceedings; and

(c) Shall not be used by the commissioner[~~executive director~~] to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

Section **10[9]**. Exemption. The commissioner[~~executive director~~] may exempt from the application of this administrative regulation any domestic property and casualty insurer which:

(1) Writes direct business only in this state;

(2) Writes direct annual premiums of \$2,000,000 or less; and

(3) Assumes no reinsurance in excess of five (5) percent of direct premium written.

Section **11[40]**. Foreign Insurers. (1) Any foreign insurer shall, upon the written request of the commissioner[~~executive director~~], submit to the commissioner[~~executive director~~] an RBC report for the calendar year just ended.

(2) The RBC report of a foreign insurer shall be filed as follows:

(a) On the date an RBC report would be required to be filed by a domestic insurer under this administrative regulation; or

(b) Fifteen (15) days after the request is received by the foreign insurer.

(3) Any foreign insurer shall, at the written request of the commissioner[~~executive director~~], promptly submit to the commissioner[~~executive director~~] a copy of any RBC plan that is filed with the insurance commissioner[~~executive director~~] of any other state.

(4) The commissioner[~~executive director~~] may require a foreign insurer to file an RBC plan if:

(a) A company action level event, regulatory action level event, or authorized control level event exists as determined by:

1. RBC law applicable in the insurer's state of domicile; or

2. This administrative regulation; and

(b) If the insurance commissioner[~~executive director~~] of the insurer's state of domicile fails to require the foreign insurer to file an RBC.

(5) ~~If [In the event that]~~ the commissioner[~~executive director~~] requires the foreign insurer to file an RBC plan pursuant to subsection (4) of this section, the failure of the foreign insurer to file an RBC Plan with the commissioner[~~executive director~~] shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.

(6) ~~If [In the event of]~~ a mandatory control level event with respect to any foreign insurer occurs, and[;] if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer:

(a) The commissioner[~~executive director~~] may make application to the Franklin Circuit Court permitted under KRS Chapter 304, Subtitle 33 with respect to the liquidation of property of foreign insurers found in this state; and

(b) The occurrence of the mandatory control level event shall be considered adequate grounds for the application.

Section **12[44]**. Notices. (1) All notices by the commissioner[~~executive director~~] to an insurer which may result in regulatory action pursuant to this administrative regulation shall be effective upon dispatch if transmitted by registered or certified mail; or

(2) If notices are transmitted other than by regular or certified mail, they~~[In the case of any other transmission]~~ shall be effective upon the insurer's receipt of the notice.

Section **13[42]**. Incorporation by Reference. (1) The following

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material is incorporated by reference:

(a) "Risk-Based Capital Forecasting & Instructions, Life" (2010)[1996 NAIC Life Risk-Based Capital Report including Overview and Instructions for Companies (December 31, 1996)]; [and]

(b) "Risk-Based Capital Forecasting & Instructions, Property/Casualty" (2010); and

(c) "Risk-Based Capital Forecasting & Instructions, Fraternal" (2010).[1996 NAIC Property and Casualty Risk-Based Capital Report including Overview and Instructions for Companies (December 31, 1996).]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department[Office] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner

For ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 13, 2011

FILED WITH LRC: October 13, 2011 at 4 p.m.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (As Amended at IJC on Local Government, November 30, 2011)

815 KAR 4:010. Annual inspection of [passenger] elevators, chairlifts, and platform lifts.

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

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

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

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

(a) "Safety Code for Elevators and Escalators", ASME A17.1-2004 sections 5.10, 8.7, 8.10, and 8.11 in their entirety with the exception of rules 2.2.4.3, 2.19.2, 2.19.3.2(A)(3), 2.26.2.33, 2.27.3.2.6, 2.27.3.3.7, 3.17.3, 3.26.10, 6.1.3.3.9, and 8.6.5.8 for existing elevators and escalators, or the edition of A17.1 Safety Code in its entirety that the elevator was originally permitted under;

(b) "Inspectors' Manual for Hydraulic Elevators", ASME A17.2-1997;

(c) "Inspectors' Manual for Escalators and Moving Walks", ASME A17.2.3-1998;

(d) "Safety Code for Existing Elevators and Escalators", ASME A17.3-2002;

(e) "Guide for Emergency Personnel", ASME A17.4-1999;

(f) "Elevator and Escalator Electrical Equipment", ASME A17.5-1996;

(g) "Safety Standard for Conveyors and Related Equipment", ASME B20.1-1996; and

(h) "Safety Standard for Platform Lifts and Stairway Chairlifts", ASME A18.1-2003 in its entirety with the exception of rules 5.7.1 and 10.1.2.1;

(i) "Automated People Mover Standards-Part 1", AN-

SI/ASCE/T&D1-21-05;

(j) "Automated People Mover Standards-Part 2", ASE 21-98; and

(k) "Automated People Mover Standards-Part 3", ASCE 21-00.]

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

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

Section 2. Inspection Fees. (1) The annual inspection fee[fees] for the issuance of a certificate of operation shall be as follows: [established in this subsection.]

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

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

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

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

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

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

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

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

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

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

Section 3. Certificate of Approval. Upon demonstration during final inspection of compliance with applicable codes and standards for the elevator, chairlift, or platform lift, a certificate of approval shall be issued by the department. [Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Safety Code for Elevators and Escalators", ASME A17.1-2004 Sections 5.10, 8.7, 8.10, and 8.11;

(b) Inspector's Manual for Hydraulic Elevators, ASME A17.2-1997;

(c) "Inspectors' Manual for Escalators and Moving Walks", ASME A17.2.3-1998;

(d) "Safety Code for Existing Elevators and Escalators", ASME A17.3-2002;

(e) "Guide for Emergency Personnel", ASME A17.4-1999;

(f) "Elevator and Escalator Electrical Equipment", ASME A17.5-1996;

(g) "Safety Standard for Conveyors and Related Equipment",

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ASME B20.1-1996; and

(h) "Safety Standard for Platform Lifts and Stairway Chairlifts", ASME A18.1-2003.

(i) "Automated People Mover Standards-Part 1", ANSI/ASCE/T&D1-21-05, 2006;

(j) "Automated People Mover Standards-Part 2", ASE 21-98, 1999; and

(k) "Automated People Mover Standards-Part 3", ASCE 21-00, 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

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

JERRY T. LUNSFORD, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 8, 2011

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

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502)573-0365 Ext. 144, fax (502)573-1057.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (As Amended at IJC on Local Government, November 30, 2011)

815 KAR 4:025. Permit and inspection fees for new and altered elevators, chairlifts, and platform lifts [fees for new and altered elevators].

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

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

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

Section 1. Definitions. (1) "Alteration" means a [any] change that:

(a) Is made to an elevator, elevator equipment, elevator device, chairlift, or platform lift[or elevator devices]; and

(b) Does not include[-] maintenance, repair, or replacement of parts in kind[does not constitute "alteration"]. [-; however, maintenance, repair or replacement of parts in kind shall not be included in this definition.]

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

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

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

of an inspector, and inspection fees shall be required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The inspection fee for a newly installed or altered chairlift or platform lift shall be eighty-five (85) dollars for the first two (2) inspection and eighty-five (85) dollars per each additional inspection required prior to approval of the installation or alteration.

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

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

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

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

(a) "Elevator Construction and Installation Permit Application".

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Form EV-1, July 2011; and

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings, and Construction; 101 Sea Hero Road, Suite 100; Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY T. LUNSFORD, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: July 8, 2011

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

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365 ext. 144, fax (502) 573-1057.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amended After Comments)

301 KAR 2:082. Transportation and holding of exotic wildlife.

RELATES TO: KRS 150.010, 150.015, 150.305, 150.320, 150.330, 150.990

STATUTORY AUTHORITY: KRS 65.877, [KRS:] 150.025, 150.180, 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.180 requires a person transporting live wildlife into Kentucky to obtain a permit from the department. KRS 150.280 authorizes the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. This administrative regulation establishes the procedure for obtaining a transportation permit for exotic wildlife, prohibits the importation and possession of exotic species with the potential to damage native ecosystems, and places restrictions on importing, transporting, and holding species that are potentially dangerous to human health and safety. [EO-2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts, and Heritage Cabinet.]

Section 1. Definitions. (1) "Exotic wildlife" means terrestrial wildlife species which have never naturally existed in the wild in Kentucky including introduced species that have become naturalized [starling (*Sturnus vulgaris*), English or house sparrow (*Passer domesticus*), and Eurasian collared dove (*Streptopelia decaocto*).]

(2) ["Circus" means a traveling public entertainment show consisting of acrobats, clowns, and trained animals.

(3) "Permit" means an individual or annual transportation permit issued by the department.

Section 2. Exemptions. Transportation permits and captive wildlife permits shall not be required for the importation or possession of exotic wildlife and federally threatened or endangered species listed in this administrative regulation by facilities that are accredited by the American Zoo and Aquarium Association.

Section 3. Prohibited Species. (1) Except as specified in Section 2 of this administrative regulation and subsection (3) of this section, a person shall not import or transport through Kentucky or possess in Kentucky the following:

- (a) Baya weaver (*Ploceus philippinus*);
- (b) Blackbirds (Genus *Agelaius*), except native species;
- (c) Cape sparrow (*Passer melanurus*);
- (d) Cowbirds (Genus *Molothrus*), except native species;
- (e) Cuckoo (Family *Cuculidae*), except native species;
- (f) Dioch or red-billed quelea (*Quelea quelea*);
- (g) European blackbird (*Turdus merula*);
- (h) Fieldfare (*Turdus pilaris*);
- (i) Flying fox or fruit bat (Genus *Pteropus*);
- (j) Gambian giant pouched rat (*Cricetomys gambianus*);
- (k) Giant, marine, or cane toad (*Bufo marinus*);
- (l) Hawaiian rice bird or spotted munia (*Lonchura punctulata*);
- (m) Jack rabbit (Genus *Lepus*);
- (n) Java sparrow (*Padda oryzivora*);
- (o) Madagascar weaver (*Foudia madagascariensis*);
- (p) Mistle thrush (*Turdus viscivorus*);
- (q) Monk or Quaker parakeet (*Myiopsitta monachus*);
- (r) Multimammate rat (Subgenus *Mastomys*);
- (s) Mute swan (*Cygnus olor*);
- (t) Nutria (*Myocastor coypus*);
- (u) Prairie dog (*Cynomys* spp.);
- (v) Raccoon dog (*Nyctereutes procyonoides*);
- (w) San Juan rabbit (*Oryctolagus cuniculus*);
- (x) Sky lark (*Alauda arvensis*);

(y) Song thrush (*Turdus philomelos*);
(z) Starlings (Family *Sturnidae*) including pink starlings or rosy pastors (*Sturnus roseus*), except for Indian Hill mynahs (*Gracula religiosa*);

(aa) Suricate or slender-tailed meerkat (Genus *Suricata*);
(bb) Tongueless or African clawed frog (*Xenopus laevis*);
(cc) Weaver finches (Genus *Passer*), except *Passer domesticus*;

(dd) White eyes (Genus *Zosterops*);
(ee) Wild European rabbit (also called the San Juan Rabbit) not distinguishable morphologically from native wild rabbits;

(ff) Yellowhammer (*Emberiza citrinella*);
(gg) A member of the following families:
1. Suidae (pigs or hogs), except for domestic swine;
2. Viverridae (civits, genets, lingsangs, mongooses and fossas);

3. Tayassuidae (peccaries and javelinas).
(2) Prohibited inherently-dangerous wildlife. Except as specified in Section 2 of this administrative regulation and subsections (3), (5), and (6) of this section, a person shall not import or possess in Kentucky the following:

(a) Adders or vipers (Family *Viperidae* and *Crotalidae*) (except native species);

(b) Alligators or caimans (Family *Alligatoridae*);
(c) African buffalo (*Syncerus caffer*);
(d) Bears (Family *Ursidae*);
(e) Cheetah (*Acinonyx jubatus*);
(f) Clouded leopard (*Neofelis nebulosa*);
(g) Cobras mambas or coral snakes (Family *Elapidae*);
(h) Crocodiles (Family *Crocodylidae*);
(i) Elephants (Family *Elephantidae*);
(j) Gavials (Family *Gavialidae*);
(k) Gila monsters or beaded lizards (Family *Helodermatidae*);
(l) Hippopotamus (*Hippopotamus amphibius*);
(m) Honey badger or ratel (*Mellivora capensis*);
(n) Hyenas (Family *Hyaenidae*), all species except aardwolves (*Proteles cristatus*);

(o) Lions, jaguars, leopards or tigers (Genus *Panthera*);
(p) Old world badger (*Meles meles*);
(q) Primates nonhuman (Order *Primates*);
(r) Rhinoceroses (Family *Rhinocerotidae*);
(s) Sea snakes (Family *Hydrophoridae*);
(t) Snow leopard (*Uncia uncia*);
(u) Venomous rear-fanged species (Family *Colubridae*) except hognose snakes (Genus *Heterodon*);
(v) Wolverine (*Gulo gulo*); or
(w) Hybrids of all species contained in this list.

(3) Upon written request, the commissioner may authorize the importation or possession of the species listed in this section by:

(a) A zoo or facility that is designated as the official zoo of a municipality;
(b) A government agency;
(c) A college or university;
(d) A licensed or accredited educational or research institution;
(e) A lawfully operated circus; or
(f) An exhibitor sponsored or contracted by a lawfully operated state or county fair; ~~or~~

~~(g) A person or organization requesting exemption for a service animal, as defined by the Americans with Disabilities Act].~~

(4) Wildlife possessed or imported into Kentucky per subsections (3) or (5) of this section shall be maintained within an enclosure sufficient [suffiecient] to prevent:

(a) Escape; and
(b) Direct contact with the public, except local governments may allow direct contact between the public and Asian elephants (*Elephas maximus*) if:

1. An established local ordinance exists that allows that contact; and

2. That ordinance provides regulatory standards in the areas of:

a. The safety record of the animal or animals;

b. Proper public safeguards;

c. Experience of handlers;

d. Protective barriers; and

e. Third party liability insurance coverage from death or injury in an amount equal to or greater than \$500,000.[an established local ordinance exists that allows such contact.] public; and

(c) Bodily injury to the public.]

(5) A person may apply for a transportation permit to temporarily transport or possess a prohibited animal listed in this section if the animal is within the state for less than ninety-six (96) hours. Transportation permits shall not be issued for consecutive ninety-six (96) hour periods.

(6) Possession of an inherently-dangerous animal prior to the effective date of the amendment to this administrative regulation.

(a) A person who legally possessed in Kentucky an inherently-dangerous animal as defined in subsection (2) of this section prior to July 13, 2005 may continue to possess the animal and shall maintain:

1. Veterinary records;
2. Acquisition papers for the animal; or
3. Any other evidence that establishes that the person possessed the animal in Kentucky prior to July 13, 2005.

(b) A legally-possessed inherently-dangerous animal shall not be bred or replaced without an exemption as established in Sections 2 and 3(3) of this administrative regulation.

(7) If any inherently-dangerous animal escapes, either intentionally or unintentionally, the owner of the animal shall immediately contact local emergency services and the department at 800-252-3578 to report the escape or release.

Section 4. Exotic Wildlife. Unless listed in Section 3(1) of this administrative regulation, or otherwise protected by state or federal law, exotic wildlife shall not:

- (1) Be classified as protected wildlife; and
- (2) Require a permit from the department for possession.

Section 5. Transportation Permits and Certificate of Veterinary Inspection. (1) Prior to entry into Kentucky, an annual or individual transportation permit as established in 301 KAR 2:081 shall be obtained for all shipments of wildlife. A person shall be responsible for applying for a transportation permit before the person:

- (a) Receives a shipment of wildlife;
- (b) Imports wildlife for their own use or possession; or
- (c) Transports wildlife into and through the state to a destination outside Kentucky;

(2) A copy of a valid transportation permit shall accompany all shipments of wildlife into Kentucky.

(a) An individual transportation permit shall be valid for one (1) shipment of wildlife and shall also permit possession of the wildlife for the designated time period.

(b) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue and shall also permit possession of the wildlife for the designated time period.

(c) An annual transportation permit holder shall:

1. Notify the department in writing of any changes or additions subsequent to the original application so that an amended permit may be issued prior to subsequent wildlife importation; and

2. Notify the wildlife division by telephone at 502-564-3400 or 800-858-1549 Monday through Friday between 8 a.m. and 4:30 p.m. at least forty-eight (48) hours prior to each shipment of wildlife of with:

- a. The date of expected shipment;
- b. The source of the shipment;
- c. The species being shipped;
- d. The number of individuals of each species; and
- e. The period of time when the wildlife will be inside the state of Kentucky.

(3) All shipments of wildlife, except for fish, amphibians, and reptiles, shall be accompanied by a certificate of veterinary inspection stating that the wildlife is free from symptoms of disease. A federal quarantine certificate may be substituted for the certificate

of veterinary inspection.

Section 6. The following animals shall not require permits from the department for importation:

- (1) Alpaca (*Vicugna pacos*);
- (2) American bison (*Bison bison*);
- (3) Breeds and varieties of goats derived from the wild goat or bezoar (*Capra aegagrus*);
- (4) Camels (*Camelus bactrianus* and *Camelus dromedarius*);
- (5) Chinchillas (*Chinchilla laniger*);
- (6) Cockatoos (family *Cacatuidae*);
- (7) Domesticated races of ducks and geese (family *Anatidae*) distinguishable morphologically from wild ducks or geese;
- (8) Domesticated races of the European rabbit (*Oryctolagus cuniculus*) distinguishable morphologically from wild rabbits;
- (9) Domesticated races of mink (*Mustela vison*), if:
 - (a) Adults are heavier than 1.15 kilograms; or
 - (b) The fur color can be distinguished from wild mink;
- (10) Domestic swine, except free-roaming or feral wild boars or wild swine;
- (11) Domesticated races of rats (*Rattus norvegicus* or *Rattus rattus*) or mice (*Mus musculus*);
- (12) Domesticated races of turkeys (*Meleagris gallopavo*) recognized by the American Poultry Association and the U.S. Department of Agriculture; but shall not include captive held or bred wild turkeys;
- (13) Domestic yak (*Bos grunniens*);
- (14) Gerbils (*Meriones unguiculatus*);
- (15) Guinea fowl (*Numida meleagris*);
- (16) Guinea pigs (*Cavia porcellus*);
- (17) Hamsters (*Mesocricetus* spp.);
- (18) Indian Hill mynahs (*Gracula religiosa*);
- (19) Llama (*Lama glama*);
- (20) Parrots, lovebirds, cockatiels, budgerigar, parakeets (except monk parakeet (*M. monachus*), macaws (family *Psittacidae*);
- (21) Peafowl (*Pavo cristatus*);
- (22) Pigeons (*Columba domestica* or *Columba livia*) or domesticated races of pigeons;
- (23) Ratites, as defined by KRS 247.870; and
- (24) Toucans (family *Rhamphastidae*).

Section 7. Applying for Permits. (1) An application for a permit shall be made on the appropriate form.

(2) The applicant shall indicate the source of supply of the wildlife.

(3) After the permit is issued, the permit holder shall retain a bill of sale or other written proof to show that the wildlife was obtained from a legal source.

(4) A permit holder shall show this written proof to a conservation officer upon request.

(5) An applicant shall possess an approved permit before transporting exotic wildlife into Kentucky.

(6) A permit application may be denied if the permit holder has been convicted of a violation of:

- (a) Any provision in this administrative regulation; or
- (b) Another federal or state wildlife law regarding the holding or transportation of exotic wildlife.

(7) Failure to provide accurate, truthful and complete information on the application form shall result in:

- (a) Immediate withdrawal or revocation of the permit; and
 - (b) Confiscation of the wildlife imported under the permit.
- (8) An applicant shall be responsible for knowing and following local ordinances and rules regarding the wildlife to be held in a locality.

Section 8. Endangered Species. A permit may be issued for the transportation or possession of federally endangered or threatened species if:

- (1) It is not listed in Section 3 of this administrative regulation; and
- (2) Proof of lawful possession and acquisition is provided.

Section 9. Inspections and Permit Revocation. (1) A person holding exotic wildlife shall allow a conservation officer to inspect

the holding facilities at any reasonable time.

(2) Captive wildlife may be confiscated and the permit revoked if the permit holder violates any provision of this administrative regulation.

Section 10. Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.

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

(a) "Annual Transportation Permit Application, June 2008 edition"; and

(b) "Individual Transportation Permit Application, June 2008 edition."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY KINMAN, Deputy Commissioner,

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 8, 2011

FILED WITH LRC: December 15, 2011 at 10 a.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, email fwpubliccomments@ky.gov.

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 requirements on the possession and transportation of exotic wildlife.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control the indiscriminate possession and commercialization of wildlife, protect the public and native wildlife from wildlife-borne diseases, to prevent the introduction of wildlife that might be detrimental to native fauna and flora, and to reasonably accommodate public safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.180 requires any person transporting live wildlife into Kentucky to obtain a permit from the department. KRS 150.280 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish the procedures for propagation and holding of protected wildlife. KRS 65.877 authorizes local governments to regulate the holding of inherently dangerous wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will fulfill the purposes of KRS 150.025, 150.180, and 150.280 by defining the permits and procedures that are required for transportation and holding of exotic wildlife. This regulation also assists KRS 65.877 by further defining the holding of inherently dangerous wildlife.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow lawful exhibitors of Asian elephants an exception that allows direct contact between this species and the public only in localities that have an established local ordinance allowing such contact. In particular, this amendment will allow elephant rides by circus or state and county fair attendees if there is an established local government ordinance allowing such activity within certain required criteria. This amendment also removes the exemption that authorizes persons to possess inherently dangerous wildlife service animals, in accordance with revisions to the American with Disabilities Act that defines service animals to only be dogs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide an exception

for local governments who want to allow elephant rides at organized events such as circuses and state and county fairs, while reasonably accommodating public safety and welfare.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who transport or possess species listed as prohibited exotic wildlife will be affected by this amendment. All individuals who transport or possess Asian elephants may be affected by this amendment. There were approximately 131 transportation permits issued to individuals during 2010; 15 permits included Asian elephants.

(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: Individuals who import Asian elephants and intend to allow the public to have direct contact with the animals during special events shall be responsible for following local ordinances and rules regarding the wildlife to be held in a locality. If a valid local government ordinance does not exist that allows direct contact between the public and Asian elephants, then direct contact shall not be allowed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to individuals who transport or possess exotic wildlife.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Lawful exhibitors of Asian elephants will benefit from this amendment by being able to offer activities such as elephant rides.

(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 cost to the Kentucky Department of Fish and Wildlife Resources to administer.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals who transport or possess exotic wildlife are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement and county and city commissions which establish ordinances allowing direct contact between the public and Asian elephants will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.180 requires a

person transporting live wildlife into Kentucky to obtain a permit from the department. KRS 150.280 authorizes the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. KRS 65.877 authorizes local governments to regulate the holding of inherently dangerous wildlife.

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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Administration and Financial Management
(Amended After Comments)

907 KAR 1:018. Reimbursement for drugs.

RELATES TO: KRS 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.6316(4), 217.015, 311.550, 311.560, 42 C.F.R. 440.120, 447.331, 447.332, 447.333, 42 U.S.C. 256b, 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(2), 205.6316(4), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8, 2005 Ky. Acts ch. 99]

NECESSITY, FUNCTION, AND CONFORMITY: [2005 Ky. Acts ch. 99 reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. KRS 205.561(2) and 205.6316(4) require the department to promulgate an administrative regulation to establish a dispensing fee for prescriptions. This administrative regulation establishes the Medicaid program reimbursement policies for drugs dispensed to Medicaid recipients who are not enrolled with a managed care organization[method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program and the dispensing fees].

Section 1. Definitions. (1) "A-rated generic product" means a product that the FDA has found to be bioequivalent.

(2) ["Average wholesale price" or "AWP" means the average wholesale price published in a nationally recognized comprehensive drug data file for which the department has contracted.

(3) "Department" means the Department for Medicaid Services or its designated agent.

(3)[(4)] "Direct price" means the estimated acquisition cost for which a retailer can purchase a drug product directly from the

manufacturer as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

(4)[(5)] "Dispensing fee" means a professional fee paid to reimburse a pharmacy for costs associated with the dispensing of a prescribed drug.

(5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Federal upper limit" or "FUL" means the maximum federal financial participation available toward reimbursement for a given drug dispensed to a Medicaid recipient.

(7)[(6)] "Food and Drug Administration" or "FDA" means the Food and Drug Administration of the United States Department of Health and Human Services.

(8) "State maximum allowable cost" means the maximum amount established by the department that the department shall reimburse for a drug.

(9)[(7)] "Weighted majority of volume purchase" means a calculation used in determining a state maximum allowable cost or MAC that is based on market share.

(10)[(8)] "Wholesale acquisition cost" or "WAC" means the estimated acquisition cost for the wholesaler as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

Section 2. Reimbursement. (1) Drug copayment requirements and provisions shall be as established in 907 KAR 1:604.

(2) The department:

(a) May establish a state maximum allowable[maximum allowable] cost for a drug:

1. If two (2) or more A-rated therapeutically-equivalent, multi-source, noninnovator drugs with a significant cost difference exist for the given drug; and

2. By reviewing the pricing sources WAC[AWP, WAC,] and direct price for the drug as identified in a nationally-recognized comprehensive drug data file for which the department has contracted and utilizing the weighted majority of volume purchased. [For example, if for a given drug there are two (2) therapeutically-equivalent drugs with one (1) priced at five (5) dollars per pill and possessing thirty (30) percent of the market share and the other priced at one (1) dollar per pill and possessing seventy (70) percent of the market share, the department shall factor in the market share in determining the state MAC price rather than simply averaging the two (2) prices]; and

(b) Shall maintain a current listing of drugs and their corresponding state maximum allowable[maximum allowable] costs via a link from the department web site located at the following address:

<http://www.chfs.ky.gov/dms>.

(3) An appeal of a state maximum allowable[maximum allowable] cost price for a drug shall be as follows:

(a)[4-] The provider shall email or fax a completed Kentucky Medicaid MAC Price Research Request Form (which is available at the department's website which is <http://www.chfs.ky.gov/dms>) to Magellan Medicaid Administration in accordance with the instructions on the form. ["MAC Price Inquiries and Research Request Form" (which is available at the department and at the Web site address:

<http://kentucky.fhsc.com/providers/documents.asp>, by clicking on "MAC Price Inquires and Research Request Form or via the specific Web site address:

<http://kentuckyfhsc.com/Downloads/providers/KYRxMACResearchRequestForm.pdf>) to First Health Services Corporation. The email address is rebate@fhsc.com and the fax number is 804-217-7911; or

2. The provider shall contact the First Health Services Corporation technical call center at 1-800-432-7005 and provide information regarding the appeal including the national drug code for the drug in question;]

(b) An appeal of a state maximum allowable[maximum allowable] cost price for a drug shall be investigated and resolved within three (3) business days;

(c) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the

state maximum allowable[~~maximum allowable~~] cost price;

(d) The state maximum allowable[~~maximum allowable~~] cost price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the state maximum allowable[~~maximum allowable~~] cost price prescription in question, if:

1. It is determined that no manufacturer exists in the price range referenced in paragraph (c) of this subsection; or

2. The provider is able to document that despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider; and

(e) When the change in state maximum allowable[~~maximum allowable~~] cost price for a price that is adjusted becomes effective, the provider shall be informed that the claim may be rebilled for the price adjustment.

(4) Reimbursement to a pharmacy participating in the Medicaid Program for a drug listed in the Kentucky Medicaid Outpatient Drug List established in 907 KAR 1:019 and provided to an eligible recipient shall be determined in accordance with the requirements established in this subsection.

(a) An appropriate rebate agreement shall be signed by the drug manufacturer or the drug shall be provided based on a prior authorized exemption from the rebate requirement in accordance with 907 KAR 1:019.

(b) Drug costs shall be determined in the Pharmacy Program using drug pricing and coding information obtained from a nationally-recognized comprehensive drug data file for which the department has contracted with pricing based on the actual package size utilized.

(c) Reimbursement for a drug shall be the lesser of:

1. The federal upper limit, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;

2. The state maximum allowable[~~maximum allowable~~] cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;

3. The estimated acquisition cost (EAC) which shall:

a. For a generic drug, equal the WAC plus 3.2 [AWP minus ~~fourteen (14)~~] percent, plus a dispensing fee and, if applicable, a unit dose addition; and

b. For a brand name drug, equal the WAC plus two (2) [AWP minus ~~fifteen (15)~~] percent, plus a dispensing fee and, if applicable, a unit dose addition;

4. The usual and customary billed charge.

(d) Reimbursement for the dispensing of an emergency supply of a drug shall be:

1. Made only outside normal business hours of the department's Drug Prior Authorization office and as permitted in accordance with 907 KAR 1:019, Section 4; and

2. The lesser of:

a. The federal upper limit, if one (1) exists, plus the dispensing fee for the prescription and, if applicable, a unit dose addition;

b. The state maximum allowable[~~maximum allowable~~] cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;

c. The estimated acquisition cost (EAC), which shall:

(i) For a generic drug, equal the WAC plus 3.2 [AWP minus ~~fourteen (14)~~] percent, plus a dispensing fee and, if applicable, a unit dose addition; and

(ii) For a brand name drug, equal the WAC plus two (2) [AWP minus ~~fifteen (15)~~] percent, plus a dispensing fee and, if applicable, a unit dose addition;

d. The usual and customary billed charge.

(e) If the dispensing of an emergency supply results in partial filling of the quantity or amount prescribed, reimbursement for the partial filling of the remainder of the prescription shall utilize the methodology specified in paragraph (c) of this subsection, except that only one (1) dispensing fee shall be allowed for the combined partial fill and subsequent completion fill.

(f) Reimbursement shall be denied if:

1. The recipient is ineligible on the date of service;

2. The drug is excluded from coverage in accordance with 907 KAR 1:019, Section 3; or

3. Prior authorization is required by the department and the request for prior authorization has not been submitted[~~granted~~] prior to dispensing of the drug[~~has been denied or has not been~~

requested].

(g) For a nursing facility resident meeting Medicaid nursing facility level of care criteria in accordance with 907 KAR 1:022, there shall not be more than one (1) dispensing fee allowed per provider per recipient per drug within a rolling twenty-four (24) day period unless:

1. The drug is a Schedule II, III, or IV controlled substance or a legend intravenous drug, in which case up to three (3) additional dispensing fees shall be allowed;

2. The drug is a nonsolid dosage form, in which case one (1) additional dispensing fee shall be allowed;

3. the prescribed dosage has been changed, in which case one (1) additional dispensing fee shall be allowed; or

4. The department determines that it is in the best interest of the recipient to allow the additional dispensing fee.

(h) For a nursing facility resident meeting Medicaid nursing facility level of care criteria and if appropriate and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.

(i) 1. A maintenance drug shall be dispensed in accordance with 907 KAR 1:019.

2. The department shall not reimburse for a refill of a maintenance drug prior to the end of the dispensing period established in 907 KAR 1:019[~~to an outpatient service recipient, except for an individual receiving supports for community living services, up to a ninety-two (92) day supply with only one (1) initial dispensing fee and one (1) refill dispensing fee allowed within the ninety-two (92) day time period unless the department determines that it is in the best interest of the recipient to allow any additional dispensations or dispensing fees; and~~

3.~~2.~~ For an outpatient service recipient receiving services via the Supports for Community Living Program, there shall not be more than:

a. One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in clause c of this subparagraph;

b. Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or

c.(i) Two (2) dispensing fees allowed per drug within a calendar month for a drug that is a nonsolid dosage form; or

(ii) Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care.

(j) For a personal care recipient, there shall not be more than:

1. One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;

2. Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or

3.a. Two (2) dispensing fees allowed per drug within a calendar month for a drug that is a nonsolid dosage form; or

b. Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care.

(k) Reimbursement shall not be made for more than one (1) prescription to the same recipient on the same day for a drug with the same:

1. National Drug Code (NDC); or

2. Generic name, strength, and dosage form.

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

(6) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(7) If a payment is made for a drug for which there is no authorization as required in accordance with 907 KAR 1:019, the provider shall reimburse the department the amount of the pay-

ment.

(8)(a) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

(b) In accordance with 42 C.F.R. 447.45, a claim shall be submitted to the department within twelve (12) months of the date of service.

(c)1. The department shall not reimburse for a claim submitted to the department after twelve (12) months from the date of service unless the claim is for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid.

2. The department shall reimburse for a claim for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid for up to 365 days from the date that the department issued a letter to the individual informing the individual of Medicaid eligibility.

3. The department shall not reimburse for a claim referenced in subparagraph 2. of this paragraph after 365 days have lapsed since the department issued the notice of retroactive eligibility.

(9) [A claim in which retroactive eligibility is established shall be submitted up to twelve (12) months from the issue date noted on the Medicaid recipient's medical assistance identification card. If the date of service is greater than twelve (12) months old, the claim shall be submitted as a paper claim with a copy of the retroactive medical assistance identification card attached.]

(10) Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to a third party payer[Medicare] if the provider has knowledge that the third party payer[Medicare] may be liable for payment.

(11)(a) If a provider is aware that a Medicaid recipient has additional insurance or if a recipient's~~(11)(a) If the~~ medical assistance identification card indicates that the Medicaid recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

(b) A provider who is aware that a recipient has other insurance, but no insurance is indicated on the medical assistance identification card, shall notify the department's fiscal agent of the third-party liability.

(12) Adherence to the requirements established in this section shall be monitored through an on-site audit, postpayment review of the claim, a computer audit or an edit of the claim.

(13)(a) A pharmacy of a covered entity as defined in 42 U.S.C. 256b which purchases drugs through the United States Public Health Service Discount Program in accordance with 42 U.S.C. 256b shall bill the department the pharmacy's actual 340B acquisition cost for all drugs~~[a drug]~~; and

(b) The department shall reimburse the pharmacy's actual 340B acquisition cost for the drug plus a dispensing fee in accordance with Section 3 of this administrative regulation.

(14) If a covered entity as defined in 42 U.S.C. 256b notifies the United States Office of Pharmacy Affairs that its pharmacy is not included under 42 U.S.C. 256b:

(a) The pharmacy shall submit its usual and customary amount for a drug; and

(b) The department shall reimburse for a drug in accordance with this section plus a dispensing fee in accordance with Section 3 of this administrative regulation.

Section 3. Dispensing Fees. (1) To determine a dispensing fee, the department shall comply with KRS 205.561.

(2) Except as provided in subsection (3) of this section and in accordance with KRS 205.561, the dispensing fee, unless excluded by Section 2(4)(d) of this administrative regulation, shall be:

(a) Five (5) dollars per prescription for a generic drug reimbursed through the Outpatient Drug Program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022; and

(b) Four (4) dollars and fifty (50) cents per prescription for a brand name drug reimbursed through the outpatient drug program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care criteria

requirements established in 907 KAR 1:022.

(3)(a) For a recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022, a unit dose addition to the usual reimbursement shall be made for a drug dispensed through the Pharmacy Outpatient Drug Program in the amount of two (2) cents per unit dose for a nonunit dose drug repackaged in unit dose form by the pharmacist.

(b) The unit dose addition shall be paid, as appropriate, even though the usual dispensing fee of five (5) dollars for a generic drug or four (4) dollars and fifty (50) cents for a brand name drug is not paid due to monthly limits on dispensing fees or in accordance with Section 2(4)(d) of this administrative regulation.

Section 4. Reimbursement to Dispensing Physicians. A participating dispensing physician who practices in a county where a pharmacy is not located shall be reimbursed for the cost of the drug, with the cost computed:

(1) As the lesser of:

(a) The maximum-allowable cost or estimated acquisition cost established in Section 2(4) of this administrative regulation;

(b) The physician's usual and customary amount; or

(c) The federal upper limit; or

(2) In accordance with 907 KAR 3:010 for a free immunization through the Vaccines for Children Program.

Section 5. Incorporation by Reference. (1) The "Kentucky Medicaid MAC Price~~[MAC Price Inquiries and] Research Request Form~~", June 18, 2010~~[December 2004]~~ edition, is incorporated by reference.

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

NEVILLE WISE, Acting Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 14, 2011

FILED WITH LRC: December 15, 2011 at 9 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cindy Gray (502) 564-9444 or Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program reimbursement policies for drugs dispensed to Medicaid recipients who are not enrolled with a managed care organization.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program reimbursement policies for drugs dispensed to Medicaid recipients who are not enrolled with a managed care organization.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid program reimbursement policies for drugs dispensed to Medicaid recipients who are not enrolled with a managed care organization.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Medicaid program reimbursement policies for drugs dispensed to Medicaid recipients who are not enrolled with a managed care organization.

(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 eliminates average wholesale price (AWP) as a drug pricing component and replaces it with wholesale acquisition cost (WAC.) Wholesale acquisition cost is the list price on drugs for wholesalers and others prior to any rebates or dis-

counts on the drugs. The amendment after comments establishes that the Department for Medicaid Services (DMS) won't reimburse for a prescription if a request for prior authorization was not submitted prior to the dispensing of the drug. The prior amendment established that DMS would not reimburse if prior authorization had not been granted prior to the dispensing of the drug. Additionally, the amendment after comments establishes that a claim associated with an individual who was retroactively determined to be eligible for Medicaid must be submitted within 365 days of DMS notifying the individual of Medicaid eligibility in order for DMS to reimburse for the claim. DMS will not reimburse for a claim submitted after 365 days from the retroactive eligibility notification.

(b) The necessity of the amendment to this administrative regulation: The amendment regarding average wholesale price (AWP) is necessary as AWP will no longer be published by First Databank, Inc. after September 26, 2011. The unavailability of AWP stems in part from the resolution of a civil court case - *New England Carpenters Health Benefits Fund, et al. v. First Databank, Inc.* - in which First Databank, Inc., was found to have incorrectly stated the AWP of drugs compared to the actual market price for drugs. First Databank Inc., publishes pharmaceutical industry market information including drug pricing surveys of a drug wholesaler to determine benchmarks for what drug wholesalers charges drug retailers. Insurers and Medicaid programs use First Databank Inc.'s pricing information in order to establish reimbursement to pharmacies or other providers. The amendment after comments which relaxes the prior authorization requirement by granting approval from the moment that a pharmacist requested prior authorization is necessary given that sometimes prior authorization may take twenty-four (24) hours and pharmacists should not be penalized for the delay. The amendment after comments regarding claims is necessary to comply with a federal requirement and to motivate pharmacists to not wait more than a year to submit a claim for reimbursement.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by replacing a drug pricing component that will no longer be published with one that will continue to be published. The drug pricing component is utilized to established Medicaid outpatient pharmacy program reimbursement. The amendment after comments which relaxes the prior authorization requirement by granting approval from the moment that a pharmacist requested prior authorization conforms to the content of authorizing statutes by not penalizing pharmacists for a delay in receiving prior authorization. The amendment after comments which requires a claim for a retroactively eligible individual to be submitted to DMS within 365 days of the individual's notification of becoming eligible conforms to the content of the authorizing statutes by ensuring claims are submitted per a federal requirement and by motivating providers to not wait more than a year to submit a claim.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by replacing a drug pricing component that will no longer be published with one that will continue to be published. The drug pricing component is utilized to established Medicaid outpatient pharmacy program reimbursement. The amendment after comments which relaxes the prior authorization requirement by granting approval from the moment that a pharmacist requested prior authorization will assist in the effective administration of the authorizing statutes by not penalizing pharmacists for a delay in receiving prior authorization. The amendment after comments which requires a claim for a retroactively eligible individual to be submitted to DMS within 365 days of the individual's notification of becoming eligible will assist in the effective administration of the authorizing statutes by ensuring claims are submitted per a federal requirement and by motivating providers to not wait more than a year to submit a claim.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Pharmacies who dispense drugs to Medicaid recipients who are not enrolled with a managed care organization will be affected by this administrative regulation. Currently, there are over 1,100 pharmacies in Kentucky participating in the Medicaid 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: Pharmacies will not have to take any action regarding the original amendment. As a result of the amendment after comments, pharmacies will have to submit a claim for drugs dispensed to an individual who became retroactively eligible for Medicaid within 365 days of the individual being notified of retroactive eligibility. DMS will not reimburse for a claim submitted after 365 days from the notification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Pharmacies will be reimbursed for dispensing drugs.

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

(a) Initially: DMS estimates that changing the drug pricing component will be budget neutral.

(b) Ongoing: DMS estimates that changing the drug pricing component will be budget neutral.

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

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

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

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is applied in the sense that the dispensing fee for generic drugs is higher than the dispensing fee for brand name drugs in order to promote the dispensing of generic drugs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30), 42 C.F.R. 447.204, and 42 U.S.C. 1396r-8.

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

3. Minimum or uniform standards contained in the federal mandate. Medicaid reimbursement rates must be consistent with efficiency, economy, and quality of care and sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the same geographic area. Medicaid reimbursement for many covered outpatient drugs is subject to federal upper limits. A formula for calculating limits is established in federal law. Drug manufacturers must have an agreement to pay rebates to the state Medicaid program as a condition of receiving reimbursement. The rebate formula is also established in federal law. Both drug manufacturers and state Medicaid programs are required to report drug utilization and drug prices paid to the Centers for Medicare and Medicaid Services.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does

not impose stricter, additional or different requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed, a managed care model is not federally mandated for Medicaid programs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation and 42 C.F.R. 447.204 authorize the action taken by this administrative regulation.

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

(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? DMS estimates that changing the drug pricing component will be budget neutral.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that changing the drug pricing component will be budget neutral.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, DECEMBER 15, 2011

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Amendment)**

103 KAR 3:040. Income Tax Forms Manual.

RELATES TO: KRS 131.041, 131.051, 131.061, 131.071, 131.081, 131.110, 131.130, 131.155, 131.170, 131.180, 131.190, 131.250, 131.340, 131.500, 131.510(1), (2)(a), 131.540, 141.010, 141.0101, 141.011, 141.016, 141.020, 141.0202, 141.030, 141.040, 141.0401, 141.0405, 141.041, 141.042, 141.044, 141.062, 141.065, 141.066, 141.067, 141.068, 141.069, 141.070, 141.071, 141.120, 141.121, 141.160, 141.170, 141.180, 141.200, 141.205, 141.206, 141.207, 141.208, 141.300, 141.310, 141.325, 141.330, 141.335, 141.347, 141.370, 141.381, 141.382, 141.383, 141.384, 141.385, 141.386, 141.390, 141.395, 141.400, 141.401, 141.402, 141.403, 141.405, 141.407, 141.412, 141.415, 141.418, 141.420, 141.421, 141.423, 141.424, 141.4242, 141.4244, 141.428, 141.430, 141.434, 141.436, 141.437, 141.438, 141.985, 141.990, 151B.127, 154.12-2086, 154.20-050, 154.22-060, 154.23-035, 154.24-110, 154.25-030, 154.26-090, 154.28-090, 154.32-010, 154.34-080, 154.45-090, 154.48-025, 155.170

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of income taxes by the Department of Revenue.

Section 1. Corporation Income Taxes. (1) Revenue Form 41A720, "Form 720, 2011[2010] Kentucky Corporation Income Tax and LLET Return", shall be used by a C corporation to determine its corporation income tax due in accordance with KRS 141.040 and its limited liability entity tax due in accordance with KRS 141.0401 for tax years beginning in 2011[2010].

(2) Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass-through entities taxable both within and without Kentucky)", shall be used by a corporation or a pass-through entity taxable both within and without Kentucky to apportion and allocate its net income to Kentucky in accordance with KRS 141.120 or 141.206.

(3) Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet~~(For a corporation or pass-through entity taxable both within and without Kentucky that is also a partner or member of a limited liability pass-through entity or general partnership)]~~", shall be used by a corporation or a pass-through entity taxable both within and without Kentucky that is also a partner or member of a pass-through entity to determine the sales, property and payroll amounts to be entered on Revenue Form 41A720A.

(4) Revenue Form 41A720A-N, "Schedule A-N, Apportionment Factor Schedule", shall be used by a corporation filing a mandatory nexus consolidated return to show the Kentucky and total sales, property, and payroll of the corporation and each subsidiary included in the apportionment factor.

(5) Revenue Form 41A720BIO, "Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Biodiesel", shall be used by a taxpayer who is a biodiesel producer, biodiesel blender, or renewable diesel producer to report the biodiesel gallons produced or used by the blender and request approval from the Kentucky Department of Revenue of the tax credit amount allowed by KRS 141.423.

(6)[(5)] Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", shall be used by a corporation to compute the tax credit allowed by KRS 141.041 for coal used or substituted for other fuels in an eligible heating facility as described by KRS 141.041(1).

(7)[(6)] Revenue Form 41A720-CCI, "Schedule CCI, Applica-

tion and Credit Certificate of Clean Coal Incentive Tax Credit", shall be used by a taxpayer to request approval from the Department of Revenue of the tax credit amount allowed by KRS 141.428 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(8)[(7)] Revenue Form 41A720CELL, "Schedule CELL, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol", shall be used by a taxpayer who is a producer of cellulosic ethanol to report the number of cellulosic ethanol gallons and request approval from the Department of Revenue of the tax credit amount allowed by KRS 141.4244.

(9)[(8)] Revenue Form 41A720-CI, "Schedule CI, Application for Coal Incentive Tax Credit", shall be used by a taxpayer to request approval for the amount of tax credit allowed by KRS 141.0405 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(10)[(9)] Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule", shall be used by a C corporation filing a consolidated return to show its federal pro forma consolidated return.

(11)[(40)] Revenue Form 41A720CR-C, "Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet", shall be used by a C corporation filing a consolidated return as a continuation of Revenue Form 41A720CR.

(12)[(44)] Revenue Form 41A720ES, "Form 720-ES Kentucky, 2012 [2011] Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher", shall be used by a corporation or a limited liability pass-through entity to submit payments of estimated corporation income or limited liability entity tax as required by KRS 141.044.

(13)[(42)] Revenue Form 41A720ETH, "Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol", shall be used by a taxpayer who is a producer of ethanol to report ethanol gallons produced and request approval from the Kentucky Department of Revenue of the tax credit amount allowed by KRS 141.4242.

(14)[(43)] Revenue Form 41A720EZC, "Schedule EZC, Enterprise Zone Tax Credit", shall be used by a qualified taxpayer to determine the tax credit allowed by KRS 154.45-090.

(15)[(44)] Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", shall be used by an individual, corporation, fiduciary, or pass-through entity to determine the deduction allowed by KRS 141.0202.

(16)[(45)] Revenue Form 41A720(I), "Instructions, 2011[2010] Kentucky Corporation Income Tax and LLET Return", shall be used by a corporation to file its 2011[2010] Kentucky Corporation Income Tax and LLET Return and related schedules.

(17)[(46)] Revenue Form 41A720KCR, "Schedule KCR, Kentucky Consolidated Return Schedule", shall be used by a C corporation filing a nexus consolidated return showing the income or loss of each entity included in the nexus consolidated tax return.

(18)[(47)] Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule - Continuation Sheet", shall be used by a C corporation filing a nexus consolidated return as a continuation of Revenue Form 41A720KCR.

(19) Revenue Form 41A720KESA, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation)", shall be used by a corporation which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.430.

(20) Revenue Form 41A720KESA-SP, "Schedule KESA-SP, Tax Credit Computation Schedule (For a KESA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.430.

(21) Revenue Form 41A720KESA-T, "Schedule KESA-T, Tracking Schedule for a KESA Project", shall be used by a compa-

ny which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to maintain a record of the approved costs and tax credits for the duration of the agreement.

(22)[(48)] Revenue Form 41A720LLET, "Schedule LLET, Limited Liability Entity Tax", shall be used by a corporation or a limited liability pass-through entity to determine the limited liability entity tax in accordance with KRS 141.0401.

(23)[(49)] Revenue Form 41A720LLET-C, "Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet[~~(For a corporation or limited liability pass-through entity subject to the limited liability entity tax that is also a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006)~~]", shall be used by a corporation or a limited liability pass-through entity that is a partner in a general partnership organized or formed as a general partnership after January 1, 2006, or a ~~corporation or limited liability pass-through entity that is a member or partner~~ partner or member in a ~~[another]~~ limited liability pass-through entity to determine its Kentucky gross receipts and Kentucky gross profits and its total gross receipts and total gross profits from all sources to be entered on Revenue Form 41A720LLET.

(24)[(20)] Revenue Form 41A720LLET(K), "Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass-through Entity with Economic Development Project(s))", shall be used by limited liability pass-through entities with economic development projects to determine the limited liability entity tax.

(25)[(24)] Revenue Form 41A720LLET(K)-C, "Schedule LLET(K)-C, Limited Liability Entity Tax - Continuation Sheet[~~(For a limited liability pass-through entity with economic development project(s) subject to the limited liability entity tax that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006)~~]", shall be used by a limited liability pass-through entity with an economic development project that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006, to determine its Kentucky gross receipts and Kentucky gross profits and its total gross receipts and total gross profits from all sources to be entered on Revenue Form 41A720LLET(K).

(26)[(22)] Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule", shall be used by a C corporation with a current year net operating loss or net operating loss carry-forward.

(27)[(23)] Revenue Form 41A720NOL-CF, "Schedule NOL-CF, Kentucky NOL Carry forward Schedule", shall be used by a corporation filing a nexus consolidated income tax return as provided by KRS 141.200, in addition to Revenue Form 41A720NOL, to show the Kentucky net operating loss (KNOL) carry forward balance for each new member of the affiliated group.

(28)[(24)] Revenue Form 41A720-O, "Schedule O-720, Other Additions and Subtractions To/From Federal Taxable Income", shall be used by a corporation filing Kentucky Form 720 to show other additions to and subtractions from federal taxable income on Revenue Form 41A720, Part III, Lines 9 and 16, respectively.

(29)[(25)] Revenue Form 41A720QR, "Schedule QR, Qualified Research Facility Tax Credit", shall be used by a corporation, individual, or pass-through entity to determine the credit against the income tax liability or LLET liability allowed by KRS 141.395.

(30)[(26)] Revenue Form 41A720RC, "Schedule RC, Application for Income Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling Project", shall be used by a taxpayer to request approval for the amount of credit allowed by KRS 141.390 for the purchase and installation of recycling or composting equipment or a major recycling project. This form shall also be used by an individual, corporation, fiduciary, or pass-through entity to substantiate and keep a record of the amount of approved credit claimed on their tax return.

(31)[(27)] Revenue Form 41A720RC-C, "Schedule RC-C, Schedule RC - Part I Continuation", shall be used by an individual, corporation, fiduciary, or pass-through entity, in addition to Revenue Form 41A720RC, to list additional equipment for which approval of the credit allowed by KRS 141.390 is being requested.

(32)[(28)] Revenue Form 41A720RC(I), "Instructions for Schedule RC", shall be used by taxpayers filing Revenue Form 41A720RC and Revenue Form 41A720RC-C requesting approval

of a tax credit for recycling equipment, composting equipment, or a major recycling project.

(33)[(29)] Revenue Form 41A720RC-R, "Schedule RC-R, Recycling or Composting Equipment Tax Credit Recapture", shall be used by a taxpayer disposing of recycling or composting equipment before the end of the recapture period to compute the tax credit recaptured to be reported on the applicable tax return.

(34)[(30)] Revenue Form 41A720RR-E, "Schedule RR-E, Application and Credit Certificate of Income Tax/LLET Credit Railroad Expansion", shall be used by a corporation or pass-through entity requesting approval of a railroad expansion tax credit allowed by KRS 141.386.

(35)[(34)] Revenue Form 41A720RR-I, "Schedule RR-I, Railroad Maintenance and Improvement Tax Credit", shall be used by a corporation, individual, or pass-through entity to determine the credit against the income tax liability or LLET liability allowed by KRS 141.385.

(36)[(32)] Revenue Form 41A720S, "Form 720S, 2011[2040] Kentucky S Corporation Income Tax and LLET Return", shall be used by an S corporation to determine the amount of tax due in accordance with KRS 141.040 and 141.0401 and to report the shareholders' share of income, loss, credits, deductions, etc. for tax years beginning in 2011 [2040].

(37)[(33)] Revenue Form 41A720S(I), "Instructions, 2011[2040] Kentucky S Corporation Income Tax and LLET Return", shall be used by an S corporation to file its 2011 [2040] Kentucky S Corporation Income Tax and LLET Return and related schedules.

(38)[(34)] Revenue Form 41A720S(K), "Form 720S(K), Kentucky Schedule K for S Corporations With Economic Development Project(s)", shall be used for tax years beginning in 2011 by S Corporations with economic development projects to determine the shareholders' shares of income, credit, deductions, etc., excluding the economic development projects.

(39)[(35)] Revenue Form 41A720S(K-1), "Schedule K-1 (Form 720S), 2011 [2040] Shareholder's Share of Income, Credits, Deductions, Etc.", shall be used by an S corporation to report to each of its shareholders the amount of income, credit, deduction, etc., that the shareholder shall report for Kentucky income tax purposes.

(40)[(36)] Revenue Form 41A720S-O, "Schedule O-PTE, Other Additions and Subtractions To/From Federal Ordinary Income", shall be used by a pass-through entity filing Revenue Form 41A720S, Form 41A765, or Form 42A765-GP to show other additions to and subtractions from federal ordinary income on Revenue Form 41A720S, 41A765, or 42A765-GP Part I, Lines 5 and 9, respectively.

(41)[(37)] Revenue Form 41A720SL, "Application for Six-Month Extension of Time to File Kentucky Corporation or Limited Liability Pass-Through Entity Return", shall be used by a corporation or a limited liability pass-through entity to request a six (6) month extension of time to file a tax return or an LLET return or to submit payment of unpaid tax.

(42)[(38)] Revenue Form 41A720TCS, "Schedule TCS, Tax Credit Summary Schedule", shall be used by a corporation or a limited liability pass-through entity to summarize tax credits claimed and shall be attached to the tax return.

(43)[(39)] Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit", shall be used by an entity claiming a tax credit provided by KRS 141.418.

(44)[(40)] Revenue Form 41A720-S1, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income and License Tax Return for tax periods beginning prior to January 1, 2005, as previously filed.

(45)[(44)] Revenue Form 41A720-S2, "Form 720-AMENDED, Amended Kentucky Corporation Income Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax Return for periods beginning on or after January 1, 2005 and before January 1, 2007, as previously filed.

(46)[(42)] Revenue Form 41A720-S3, "Form 720-AMENDED (2007-2008), Amended Kentucky Corporation Income Tax and LLET Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax and LLET Return for periods beginning on or after January 1, 2007 and before January 1, 2009, as previously filed.

~~(47)~~~~(43)~~ Revenue Form 41A720-S4, "Form 851-K, Kentucky Affiliations and Payment Schedule", shall be used by a corporation filing a consolidated Kentucky income tax return on Revenue Form 41A720 to identify the members of the affiliated group which are subject to the Kentucky corporation tax and to list the amount of tax paid.

~~(48)~~~~(44)~~ Revenue Form 41A720-S6, "Form 2220-K, Underpayment and Late Payment of Estimated Income Tax and LLET", shall be used by a corporation or limited liability pass-through entity required by KRS 141.042 and 141.044 to file a declaration of estimated tax, to compute the underpayment penalty as provided by KRS 131.180(3) and 141.990, and to compute the interest on any late payment or underpayment of an estimated tax installment as provided by KRS 131.183(2).

~~(49)~~~~(45)~~ Revenue Form 41A720-S7, "Form 5695-K, Kentucky Energy Efficiency Products Tax Credit", shall be used by a taxpayer to claim a tax credit for installation of energy efficiency products for residential and commercial property as provided by KRS 141.436.

~~(50)~~~~(46)~~ Revenue Form 41A720-S9, "Form 8903-K, Kentucky Domestic Production Activities Deduction", shall be used by a corporation to determine the Domestic Production Activities Deduction amount for Kentucky corporation income tax purposes and shall be attached to the corporation income tax return.

~~(51)~~~~(47)~~ Revenue Form 41A720-S11, "Form 8908-K, Kentucky ENERGY STAR (Homes and Manufactured Homes) Tax Credit", shall be used by a taxpayer to claim a tax credit for the construction of an ENERGY STAR home or the sale of an ENERGY STAR manufactured home as provided by KRS 141.437.

~~(52)~~~~(48)~~ Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (For a KREDA Project of a Corporation)", shall be used by a corporation which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.347.

~~(53)~~~~(49)~~ Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", shall be used by a company which has a Kentucky Rural Economic Development Act (KREDA) project to maintain a record of the debt service payments, wage assessment fees and tax credits for the duration of the project.

~~(54)~~~~(50)~~ Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (For a KREDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.347.

~~(55)~~~~(51)~~ Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (For a KIDA Project of a Corporation)", shall be used by a corporation which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.400.

~~(56)~~~~(52)~~ Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project", shall be used by a company which has a Kentucky Industrial Development Act (KIDA) project to maintain a record of the debt service payments and tax credits for the duration of the project.

~~(57)~~~~(53)~~ Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (For a KIDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.400.

~~(58)~~~~(54)~~ Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (For a KIRA Project of a Corporation)", shall be used by a corporation which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.403.

~~(59)~~~~(55)~~ Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", shall be used by a compa-

ny which has a Kentucky Industrial Revitalization Act (KIRA) project to maintain a record of the approved costs, wage assessment fees and tax credits for the duration of the project.

~~(60)~~~~(56)~~ Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (For a KIRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.403.

~~(61)~~~~(57)~~ Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (For a KJDA Project of a Corporation)", shall be used by a corporation which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.407.

~~(62)~~~~(58)~~ Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", shall be used by a company which has a Kentucky Jobs Development Act (KJDA) project to maintain a record of the approved costs, wage assessment fees, in-lieu-of credits and tax credits for the duration of the project.

~~(63)~~~~(59)~~ Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (For a KJDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.407.

~~(64)~~~~(60)~~ Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Reinvestment Act (KRA) project to compute the allowable KRA credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

~~(65)~~~~(61)~~ Revenue Form 41A720-S36, "Schedule KRA-SP, Tax Computation Schedule (For a KRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Reinvestment Act (KRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

~~(66)~~~~(62)~~ Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule For a KRA Project", shall be used by a company which has entered into a Kentucky Reinvestment Act (KRA) project to maintain a record of the balance of approved costs and tax credits for the duration of the agreement.

~~(67)~~~~(63)~~ Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Economic Opportunity Zone (KEOZ) Act project to compute the allowable KEOZ credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.401.

~~(68)~~~~(64)~~ Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into a Kentucky Economic Opportunity Zone (KEOZ) Act project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.401.

~~(69)~~~~(65)~~ Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", shall be used by a company which has entered into an agreement for a Kentucky Economic Opportunity Zone (KEOZ) Act project to maintain a record of the debt service payments, wage assessment fees, approved costs and tax credits for the duration of the agreement.~~(66) Revenue Form 41A720-S43, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Environmental Stewardship Act (KESA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.430.~~

~~(67) Revenue Form 41A720-S44, "Schedule KESA-T, Tracking Schedule for a KESA Project", shall be used by a company which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to maintain a record of the ap-~~

proved costs and tax credits for the duration of the agreement.]

(70)[(68)] Revenue Form 41A720-S45, "Schedule KJRA, Tax Credit Computation Schedule (For a KJRA Project of a Corporation)", shall be used by a company which has entered into a Kentucky Jobs Retention Act (KJRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.402.

(71)[(69)] Revenue Form 41A720-S46, "Schedule KJRA-T, Tracking Schedule For a KJRA Project", shall be used by a company which has entered into an agreement for a Kentucky Jobs Retention Act (KJRA) project to maintain a record of the debt service payments, wage assessment fees, approved costs, and tax credits for the duration of the agreement.

(72) Revenue Form 41A720-S47, "Schedule KJRA-SP, Tax Computation Schedule (For a KJRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into a Kentucky Jobs Retention Act (KJRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.402.

(73)[(70)] Revenue Form 41A720-S50, "Schedule IEIA, Tax Credit Computation Schedule (For an IEIA Project of a Corporation)", shall be used by a company which has entered into an Incentives for Energy Independence Act (IEIA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.421.

(74)[(71)] Revenue Form 41A720-S51, "Schedule IEIA-T, Tracking Schedule for an IEIA Project", shall be used by a company which has entered into an Incentives for Energy Independence Act (IEIA) project to maintain a record of the balance of approved costs, wage assessments, and tax credits for the duration of the agreement.

(75) Revenue Form 41A720-S52, "Schedule IEIA-SP, Tax Computation Schedule (For a IEIA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into an Incentives for Energy Independence Act (IEIA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.421.

(76)[(72)] Revenue Form 41A720-S53, "Schedule KBI, Tax Credit Computation Schedule (For a KBI Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Business Investment (KBI) project to compute the allowable KBI credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

(77)[(73)] Revenue Form 41A720-S54, "Schedule KBI-SP, Tax Computation Schedule (For a KBI Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into a Kentucky Business Investment (KBI) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

(78)[(74)] Revenue Form 41A720-S55, "Schedule KBI-T, Tracking Schedule for a KBI Project", shall be used by a company which has entered into an agreement for a Kentucky Business Investment (KBI) project to maintain a record of approved costs, wage assessments, and tax credits for the duration of the agreement.

(79)[(75)] Revenue Form 41A720-S80, "Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit", shall be used by a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment eligible for the tax credit provided by KRS 141.434.

(80)[(76)] Revenue Form 41A720-S81, "Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification", shall be used by a qualified community development entity to provide proof to the Kentucky Department of Revenue of the receipt of cash for a taxpayer's qualified equity investment.

(81)[(77)] Revenue Form 41A720-S82, "Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture", shall be used by the Kentucky Department of Revenue to notify a taxpayer of a recapture of the New Markets Development Program tax credit.

(82)[(78)] Revenue Form 41A725, "Form 725, 2011[2010] Kentucky Single Member LLC Individually Owned LLET Return", shall be used by a single member individually-owned LLC to file an LLET return in accordance with KRS 141.0401 for tax years beginning in 2011 [2010].

(83)[(79)] Revenue Form 41A725CP, "Schedule CP, Form 725, 2011[2010] Kentucky Single Member LLC Individually Owned Composite Return Schedule", shall be used by a single member individual with multiple LLC entities to file LLET returns in accordance with KRS 141.0401 for tax years beginning in 2011[2010].

(84)[(80)] Revenue Form 41A725(I), "Instructions, 2011[2010] Kentucky Single Member LLC Individually Owned LLET Return", shall be used by a single member LLC individually owned to file its 2011 [2010] Kentucky LLET return and related schedules.

(85)[(81)] Revenue Form 41A750, "Form 750, Business Development Corporation Tax Return", shall be used by a corporation organized under the provisions of KRS Chapter 155 to determine its excise tax due in accordance with KRS 155.170 for tax years beginning in 2011[2010].

(86)[(82)] Revenue Form 41A765, "Form 765, 2011[2010] Kentucky Partnership Income and LLET Return", shall be used by an entity taxed as a partnership and organized as a LLC, LLP or LP to file its Kentucky income and LLET return in accordance with KRS 141.0401 and 141.206 for tax years beginning in 2011[2010].

(87)[(83)] Revenue Form 41A765(I), "Instructions, 2011[2010] Kentucky Partnership Income and LLET Return", shall be used by an entity taxed as a partnership and organized as a LLC, LLP, or LP to file its 2011[2010] Kentucky income and LLET return and related schedules.

(88)[(84)] Revenue Form 41A765(K), "Form 765(K), Kentucky Schedule K For Partnerships With Economic Development Project(s)", shall be used for tax years beginning in 2011 by partnerships with economic development projects to determine the partners' share of income, credits, deductions, etc., excluding the economic development projects.

(89)[(85)] Revenue Form 41A765(K-1), "Schedule K-1 (Form 765), 2011[2010] Partner's Share of Income, Credits, Deductions, Etc.", shall be used by an entity taxed as a partnership and organized as a LLC, LLP, or LP to report to its partners the amount of income, credit, deduction, etc., that the partners shall report for Kentucky income tax purposes.

(90)[(86)] Revenue Form 41A800, "Corporation and Pass-through Entity Nexus Questionnaire", shall be used by a corporation or pass-through entity to determine if the entity has nexus with the Commonwealth of Kentucky.

Section 2. Individual Income and Withholding Taxes. (1) Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", shall be submitted to the Department of Revenue to request an installment agreement to pay tax due.

(2) Revenue Form 40A100, "Application for Refund of Income Taxes", shall be presented to the Department of Revenue to request a refund of income taxes paid.

(3) Revenue Form 40A102, "2011[2010] Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", shall be submitted to the Department of Revenue by individuals, partnerships, and fiduciaries prior to the date prescribed by law for filing a return to request a six (6) month extension to file the return or to remit payment of tax prior to the date the return is due.

(4) Revenue Form 40A103, "Application for New Home Tax Credit", shall be submitted to the Department of Revenue by individuals to request approval for the new home tax credit.

(5) Revenue Form 40A200, "Form PTE-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income", shall be used by a pass-through entity doing business in Kentucky to report Kentucky income tax withheld on each nonresident individual or corporate partner doing business in Kentucky only through its ownership interest in the pass-through entity.

(6) Revenue Form 40A201, "Form 740NP-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income [Transmittal] Report and Composite Income Tax Return", shall be used by a pass-through entity doing business in Kentucky to report and pay Kentucky income tax withheld on nonresident individual

and corporate partners.

(7) Revenue Form 40A201ES, "Form 740NP-WH-ES, Instructions – 2012 Pass-Through Entity Nonresident Distributive Share Withholding Report and Composite Income Tax Return Voucher", shall be used by every pass-through entity for the declaration and payment of estimated tax if required.

(8) Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", shall be used by a taxpayer or tax preparer to order individual income tax forms.

(9)[(8)] Revenue Form 42A003, "Withholding Kentucky Income Tax Instructions for Employers", shall provide instructions for employers and shall contain forms used for withholding and reporting Kentucky income tax withholding.

(10)[(9)] Revenue Form 42A003(T), "2012[2014] Withholding Tax Tables Computer Formula", shall be used by an employer for computing employees' Kentucky income tax withholding each pay period.

(11)[(10)] Revenue Form 42A740, "Form 740, 2011[2040] Kentucky Individual Income Tax Return, Full-Year Residents Only", shall be completed by a resident individual to report taxable income and income tax liability for taxable years beginning in 2011[2040], and shall be due within three and one-half (3 1/2) months after the close of the taxable year.

(12)[(11)] Revenue Form 42A740-A, "Schedule A, Form 740, 2011[2040] Kentucky Itemized Deductions", shall be completed by resident individuals and attached to Form 740 to support itemized deductions claimed for 2011[2040].

(13)[(12)] Revenue Form 42A740ES, "Form 740-ES, 2012[2014] Individual Income Tax Kentucky Estimated Tax Voucher", shall be submitted to the Department of Revenue by individuals with payment of quarterly estimated tax.

(14)[(13)] Revenue Form 42A740-EZ, "Form 740-EZ, 2011[2040] Kentucky Individual Income Tax Return for Single Persons with No Dependents", shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning in 2011 [2040], and shall be due within three and one-half (3 1/2) months after the close of the taxable year.

(15)[(14)] Revenue Form 42A740(I), "2011[2040] Kentucky Individual Income Tax Instructions for Forms 740 and 740-EZ", shall be used by resident individuals to file the 2011[2040] Kentucky Individual Tax Return and related schedules.

(16)[(15)] Revenue Form 42A740-J, "Schedule J, Kentucky Farm Income Averaging", shall be completed by individuals and attached to Form 740 to compute tax liability by averaging farm income for taxable years beginning after December 31, 1997.

(17)[(16)] Revenue Form 42A740-KNOL, "Schedule KNOL, 2011[2040] Kentucky Net Operating Loss Schedule", shall be used by individuals to compute and carry forward a net operating loss to subsequent years.

(18)[(17)] Revenue Form 42A740-M, "Schedule M, 2011[2040] Kentucky Federal Adjusted Gross Income Modifications", shall be completed by individuals and attached to Form 740 in support of additions to and subtractions from federal adjusted gross income.

(19)[(18)] Revenue Form 42A740-NP, "Form 740-NP, 2011[2040] Kentucky Individual Income Tax Return, Nonresident or Part-Year Resident", shall be completed by part-year or full-year nonresident individuals to report taxable income and income tax liability for taxable years beginning in 2011[2040], and shall be filed within three and one-half (3 1/2) months after the close of the taxable year.

(20)[(19)] Revenue Form 42A740-NP-A, "Schedule A, Form 740-NP, 2011[2040] Kentucky Schedule A Itemized Deductions", shall be completed and attached to Form 42A740-NP by part-year or full-year nonresidents to support the itemized deductions claimed for 2011[2040].

(21)[(20)] Revenue Form 42A740-NP-ME, "Schedule ME, Form 740-NP, 2011 [2040] Moving Expense and Reimbursement", shall be completed and attached to Form 42A740-NP by part-year or full-year nonresidents to support moving expenses and reimbursement by employers for moving expenses for 2011 [2040].

(22)[(21)] Revenue Form 42A740-NP(I), "Instructions for 2011[2040] Kentucky Form 740-NP, Nonresident or Part-Year Resident Income Tax Return", shall be used by nonresident or part-year resident individuals to file the 2011[2040] Kentucky Form

740-NP and related schedules.

(23)[(22)] Revenue Form 42A740-NP-R, "Form 740-NP-R, 2011[2040] Kentucky Income Tax Return Nonresident - Reciprocal State", shall be completed by resident individuals of reciprocal states to request a refund of Kentucky withholding for 2011[2040].

(24)[(23)] Revenue Form 42A740-NP(P), "2011[2040] Kentucky Income Tax Return, Nonresident or Part-Year Resident", shall be a packet containing forms and instructions and shall be mailed to nonresident and part-year resident individuals for use in filing a Kentucky individual tax return for 2011[2040].

(25)[(24)] Revenue Form 42A740(PKT), "2011[2040] Kentucky Individual Income Tax Forms", shall be a packet containing forms and instructions and shall be mailed to resident individuals for use in filing a Kentucky individual tax return for 2011[2040].

(26)[(25)] Revenue Form 42A740-P, "Schedule P, 2011[2040] Kentucky Pension Income Exclusion", shall be completed by individuals and attached to Form 740 to compute the amount of allowable pension exclusion for 2011[2040].

(27)[(26)] Revenue Form 42A740-UTC, "Schedule UTC, Form 740, Unemployment Tax Credit", shall be completed by individuals and attached to Form 740 or Form 740-NP to provide the Office of Employment and Training[Department for Employment Services] Certificate Numbers in support of credit claimed for hiring an unemployed person.

(28)[(27)] Revenue Form 42A740-X, "Form 740-X, Amended Kentucky Individual Income Tax Return", shall be completed by individuals and filed with the Department of Revenue to amend a previously filed tax return for 2005 or future years.

(29)[(28)] Revenue Form 42A740-XP, "Form 740-XP, Amended Kentucky Individual Income Tax Return, 2004 and Prior Years", shall be completed by individuals and filed with the Department of Revenue to amend a previously filed tax return for 2004 or prior years.

(30)[(29)] Revenue Form 42A740-S1, "Form 2210-K, 2011[2040] Underpayment of Estimated Tax by Individuals", shall be filed by individuals to request a waiver of estimated tax penalty or to compute and self assess an estimated tax penalty for a tax year beginning in 2011[2040].

(31)[(30)] Revenue Form 42A740-S4, "2012[2014] Instructions for Filing Estimated Tax Vouchers", shall be used to compute the amount of estimated tax due for 2012[2014].

(32)[(31)] Revenue Form 42A740-S18, "Form 8582-K, 2011[2040] Kentucky Passive Activity Loss Limitations", shall be completed by an individual taxpayer and attached to the individual tax return in support of an allowable passive loss deduction and carryover of a passive activity loss.

(33)[(32)] Revenue Form 42A740-S21, "Form 4972-K, 2011[2040] Kentucky Tax on Lump-Sum Distributions", shall be completed by an individual taxpayer to compute tax liability on a lump sum distribution and attached to the taxpayer's individual income tax return.

(34)[(33)] Revenue Form 42A740-S22, "Form 8879-K[8453-K], 2011[2040] Kentucky Individual Income Tax Declaration for Electronic Filing", shall be completed, signed by the individual taxpayer or taxpayers and maintained by the preparer or taxpayer in support of an electronically filed return.

(35)[(34)] Revenue Form 42A740-S23, "Form 740-V, 2011[2040] Kentucky Electronic Payment Voucher", shall be used by the individual taxpayer or taxpayers for the payment of additional tax due on an electronically filed return and submitted to the Department of Revenue.

(36)[(35)] Revenue Form 42A740-S24, "Form 8863-K, 2011[2040] Kentucky Education Tuition Tax Credit", shall be used by an individual taxpayer or taxpayers to claim a tuition tax credit on the taxpayer's individual Kentucky income tax return.

(37) Revenue Form 42A740-S25, "Form 8948-K, "Preparer Explanation For Not Filing Electronically", shall be used to indicate the reason the return is not being filed electronically.

(38)[(36)] Revenue Form 42A741, "Form 741, 2011[2040] Kentucky Fiduciary Income Tax Return", shall be used by a fiduciary of an estate or trust to report income and tax liability of an estate or trust and be filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year.

(39)[(37)] Revenue Form 42A741-D, "Schedule D, Form 741, 2011[2040] Kentucky Capital Gains and Losses", shall be completed and attached to Form 741 by a fiduciary to report income from capital gains and losses.

(40)[(38)] Revenue Form 42A741(I), "Instructions - Form 741, Kentucky Fiduciary Income Tax Return", shall be the instruction guide provided by the Department of Revenue for completing the 2011 [2040] Form 741.

(41)[(39)] Revenue Form 42A741(K-1), "Schedule K-1, Form 741, 2011[2040] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc.", shall be filed by the fiduciary with Form 741 to report each beneficiary's share of income, deductions, and credits.

(42)[(40)] Revenue Form 42A765-GP, "Form 765-GP, 2011[2040] Kentucky General Partnership Income Return", shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year by a general partnership to report income, deductions, and credits of a general partnership for 2011[2040].

(43)[(41)] Revenue Form 42A765-GP(I), "Instructions, 2011[2040] Kentucky General Partnership Income Return", shall be provided to assist the general partnership in completing a general partnership income return.

(44)[(42)] Revenue Form 765-GP(K-1), "Schedule K-1, Form 765-GP, 2011[2040] Partner's Share of Income, Credits, Deductions, etc.", shall be filed by the general partnership with Form 765-GP to report each general partner's share of income, deductions, and credits.

(45)[(43)] Revenue Form 42A765-GP(K), "Form 765-GP(K), Kentucky Schedule K for General Partnerships with Economic Development Project(s)", shall be used by a general partnership which has one (1) or more economic development projects to determine the total general partners' share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects.

(46)[(44)] Revenue Form 42A801, "Form K-1, Kentucky Employer's Income Tax Withheld Worksheet", shall be used by employers to report wages and taxes withheld for the filing period.

(47)[(45)] Revenue Form 42A801(D), "Form K-1, Amended Employer's Return of Income Tax Withheld", shall be used by employers to correct wages and taxes reported for the filing period.

(48)[(46)] Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", shall be used by employers who remit taxes withheld electronically to report wages and tax withheld for the filing period.

(49)[(47)] "Form W-2, 2011[2040] Wage and Tax Statement", shall be used by an employer to report each of its employees' wages and Kentucky tax withheld for the calendar year 2011[2040].

(50)[(48)] Revenue Form 42A803, "Form K-3, Kentucky Employer's Income Tax Withheld Worksheet", shall be used by employers to report wages and tax withheld for the filing period and annually reconcile wages and taxes reported.

(51)[(49)] Revenue Form 42A803(D), "Form K-3, Amended Employer's Return of Income Tax Withheld", shall be used by employers to amend wages and taxes reported for the filing period and the annual reconciled wages and taxes reported.

(52)[(50)] Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", shall be used by employers to report wages and tax withheld for the filing period and to annually reconcile wages and taxes reported.

(53)[(51)] Revenue Form 42A804, "Form K-4, Kentucky Department of Revenue Employee's Withholding Exemption Certificate", shall be used by an employee to inform the employer of the number of exemptions claimed in order to determine the amount of Kentucky tax to withhold from wages each pay period.

(54)[(52)] Revenue Form 42A804-A, "Form K-4A, Kentucky Department of Revenue Withholding Exemptions for Excess Itemized Deductions", shall be used by an employee to determine additional withholding exemptions.

(55)[(53)] Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", shall be used by employees to inform employers of special tax exempt status.

(56)[(54)] Revenue Form 42A804-M, "Form K-4M, Nonresident

Military Spouse Withholding Tax Exemption Certificate", shall be used by employees to inform employers of special tax exempt status as a nonresident military spouse.

(57)[(55)] Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", shall be used by employers annually to submit Form W-2 Wage and Tax Statements.

(58)[(56)] Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", shall be completed by nonresident employees working at Fort Campbell, Kentucky, to inform employers of special tax exempt status.

(59)[(57)] Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky Department of Revenue Web Site", shall be used by employers to request authorization to annually submit wage and tax statements via the Kentucky Department of Revenue Web site.

(60)[(58)] Revenue Form 42A809, "Certificate of Nonresidence", shall be used by employees to inform employers of special tax exempt status as a result of being a resident of a reciprocal state.

(61)[(59)] Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax", shall be used by individuals to submit a sworn statement concerning residency status.

(62)[(60)] Revenue Form 42A811, "KREDA Annual Report", shall be completed by employers to report KREDA employee wage assessment fee information to the Department of Revenue.

(63)[(61)] Revenue Form 42A812, "KIDA Annual Report", shall be completed by employers to report KIDA employee wage assessment fee information to the Department of Revenue.

(64)[(62)] Revenue Form 42A813, "KJDA Annual Report", shall be completed by employers to report KJDA employee wage assessment fee information to the Department of Revenue.

(65)[(63)] Revenue Form 42A814, "KIRA Annual Report", shall be completed by employers to report KIRA employee wage assessment fee information to the Department of Revenue.

(66)[(64)] Revenue Form 42A815, "Withholding Tax Refund Application", shall be completed by employers to request a refund of withholding tax paid.

(67)[(65)] Revenue Form 42A816, "KEOZ Annual Report", shall be completed by employers to report KEOZ employee wage assessment fee information to the Department of Revenue.

(68)[(66)] Revenue Form 42A817, "KJRA Annual Report", shall be completed by employers to report KJRA employee wage assessment fee information to the Department of Revenue.

(69)[(67)] Revenue Form 42A818, "KBI Annual Report", shall be completed by employers to report KBI employee wage assessment fee information to the Department of Revenue.

(70)[(68)] Revenue Form 42D003, "2011[2040] Kentucky Wage and Tax Statements (W-2/K-2) Order Form", shall be used by employers to order wage and tax statements.

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

- (a) Corporation income taxes - referenced material:
 1. Revenue Form 41A720, "Form 720, 2011[2040] Kentucky Corporation Income Tax and LLET Return", 2011[2040];
 2. Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass-through entities taxable both within and without Kentucky)", October 2011[2040];
 3. Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet[~~(For a corporation or pass-through entity taxable both within and without Kentucky that is also a partner or member of a limited liability pass-through entity or general partnership)~~]", October 2011[2040];
 4. Revenue Form 41A720A-N, "Schedule A-N, Apportionment Factor Schedule", October 2011.
 5. Revenue Form 41A720BIO, "Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Biodiesel", October 2011 [2040];
 - 6.[5-] Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", October 2011[2040];
 - 7.[6-] Revenue Form 41A720-CCI, "Schedule CCI, Application and Credit Certificate of Clean Coal Incentive Tax Credit", October 2011[2040];
 - 8.[7-] Revenue Form 41A720CELL, "Schedule CELL, Applica-

tion and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol", October 2011[2040];

9.[8.] Revenue Form 41A720-CI, "Schedule CI, Application for Coal Incentive Tax Credit", October 2011[2040];

10.[9.] Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule", October 2011[2040];

11.[40.] Revenue Form 41A720CR-C, "Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet", October 2011 [2040];

12.[44.] Revenue Form 41A720ES, "Form 720-ES Kentucky, 2012 [2044] Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher", June 2011 [2040];

13.[42.] Revenue Form 41A720ETH, "Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol", October 2011[2040];

14.[43.] Revenue Form 41A720EZC, "Schedule EZC, Enterprise Zone Tax Credit", October 2011[2040];

15.[44.] Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", October 2011[2040];

16.[45.] Revenue Form 41A720(I), "Instructions, 2011[2040] Kentucky Corporation Income Tax and LLET Return", October 2011[2040];

17.[46.] Revenue Form 41A720KCR, "Schedule KCR, Kentucky Consolidated Return Schedule", October 2011[2040];

18.[47.] Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule - Continuation Sheet", October 2011[2040];

19. Revenue Form 41A720KESA, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation)", October 2011;

20. Revenue Form 41A720KESA-SP, "Schedule KESA-SP, Tax Credit Computation Schedule (For a KESA Project of a Pass-Through Entity)", October 2011;

21. Revenue Form 41A720KESA-T, "Schedule KESA-T, Tracking Schedule for a KESA Project", October 2011;

22.[48.] Revenue Form 41A720LLET, "Schedule LLET, Limited Liability Entity Tax", October 2011[2040];

23.[49.] Revenue Form 41A720LLET-C, "Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet[(For a corporation or limited liability pass-through entity subject to the limited liability entity tax that is also a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006)]", October 2011[2040];

24.[20.] Revenue Form 41A720LLET(K), "Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass-through Entity with Economic Development Project(s))", October 2011[2040];

25.[24.] Revenue Form 41A720LLET(K)-C, "Schedule LLET(K)-C, Limited Liability Entity Tax - Continuation Sheet[(For a limited liability pass-through entity with economic development project(s) subject to the limited liability entity tax that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006)]", October 2011 [2040];

26.[22.] Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule", October 2011[2040];

27.[23.] Revenue Form 41A720NOL-CF, "Schedule NOL-CF, Kentucky NOL Carry forward Schedule", October 2011[2040];

28.[24.] Revenue Form 41A720-O, "Schedule O-720, Other Additions and Subtractions To/From Federal Taxable Income", November 2011[2040];

29.[25.] Revenue Form 41A720QR, "Schedule QR, Qualified Research Facility Tax Credit", October 2011[2040];

30.[26.] Revenue Form 41A720RC, "Schedule RC, Application for Income Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling Project", October 2011[2040];

31.[27.] Revenue Form 41A720RC-C, "Schedule RC-C, Schedule RC - Part I Continuation", October 2011[2040];

32.[28.] Revenue Form 41A720RC(I), "Instructions For Schedule RC", October 2011 [2040];

33. [29.] Revenue Form 41A720RC-R, "Schedule RC-R, Recycling or Composting Equipment Tax Credit Recapture", October 2011 [2040];

34.[30.] Revenue Form 41A720RR-E, "Schedule RR-E, Appli-

cation and Credit Certificate of Income Tax/LLET Credit Railroad Expansion", October 2011[2040];

35.[34.] Revenue Form 41A720RR-I, "Schedule RR-I, Railroad Maintenance and Improvement Tax Credit", October 2011[2040];

36.[32.] Revenue Form 41A720S, "Form 720S, 2011[2040] Kentucky S Corporation Income Tax and LLET Return", 2011[2040];

37.[33.] Revenue Form 41A720S(I), "Instructions, 2011[2040] Kentucky S Corporation Income Tax and LLET Return", October 2011[2040];

38.[34.] Revenue Form 41A720S(K), "Form 720S(K), Kentucky Schedule K for S Corporations With Economic Development Project(s)", October 2011[2040];

39.[35.] Revenue Form 41A720S(K-1), "Schedule K-1 (Form 720S), 2011[2040] Shareholder's Share of Income, Credits, Deductions, Etc.", 2011[2040];

40.[36.] Revenue Form 41A720S-O, "Schedule O-PTE, Other Additions and Subtractions To/From Federal Ordinary Income", November 2011[2040];

41.[37.] Revenue Form 41A720SL, "Application for Six-Month Extension of Time to File Kentucky Corporation or Limited Liability Pass-Through Entity Return", June 2010;

42.[38.] Revenue Form 41A720TCS, "Schedule TCS, Tax Credit Summary Schedule", October 2011[2040];

43.[39.] Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit", October 2011[2040];

44.[40.] Revenue Form 41A720-S1, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", October 2011[2040];

45.[44.] Revenue Form 41A720-S2, "Form 720-AMENDED, Amended Kentucky Corporation Income Tax Return", October 2011[2040];

46.[42.] Revenue Form 41A720-S3, "Form 720-AMENDED (2007-2008), Amended Kentucky Corporation Income Tax and LLET Return", October 2011 [2040];

47.[43.] Revenue Form 41A720-S4, "Form 851-K, Kentucky Affiliations and Payment Schedule", October 2011[2040];

48.[44.] Revenue Form 41A720-S6, "Form 2220-K, Underpayment and Late Payment of Estimated Income Tax and LLET", October 2011[April 2011];

49.[45.] Revenue Form 41A720-S7, "Form 5695-K, Kentucky Energy Efficiency Products Tax Credit", October 2011[2040];

50.[46.] Revenue Form 41A720-S9, "Schedule 8903-K, Kentucky Domestic Production Activities Deduction", October 2011[2040];

51.[47.] Revenue Form 41A720-S11, "Form 8908-K, Kentucky ENERGY STAR (Homes and Manufactured Homes) Tax Credit", October 2011[2040];

52.[48.] Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (For a KREDA Project of a Corporation)", October 2011[2040];

53.[49.] Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", October 2011 [2040];

54. [50.] Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (For a KREDA Project of a Pass-Through Entity)", October 2011 [2040];

55. [54.] Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (For a KIDA Project of a Corporation)", October 2011 [2040];

56. [52.] Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project" October 2011[2040];

57.[53.] Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (For a KIDA Project of a Pass-Through Entity)", October 2011[2040];

58.[54.] Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (For a KIRA Project of a Corporation)", October 2011[2040];

59.[55.] Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", October 2011[2040];

60.[56.] Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (For a KIRA Project of a Pass-Through Entity)", October 2011[2040];

61. [57.] Revenue Form 41A720-S27, "Schedule KJDA, Tax

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Credit Computation Schedule (For a KJDA Project of a Corporation)", October 2011 [2040];

62.[58-] Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", October 2011[2040];

63.[69-] Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (For a KJDA Project of a Pass-Through Entity)", October 2011[2040];

64.[60-] Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of a Corporation)", October 2011[2040];

65.[64-] Revenue Form 41A720-S36, "Schedule KRA-SP, Tax Computation Schedule (For a KRA Project of a Pass-Through Entity)", October 2011[2040];

66.[62-] Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule for a KRA Project", October 2011[2040];

67.[63-] Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of a Corporation)", October 2011[2040];

68.[64-] Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ Project of a Pass-Through Entity)", October 2011[2040];

69.[65-] Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", October 2011[2040];

66- Revenue Form 41A720-S43, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation)", October 2040;

67- Revenue Form 41A720-S44, "Schedule KESA-T, Tracking Schedule for a KESA Project", October 2040;]

70.[68-] Revenue Form 41A720-S45, "Schedule KJRA, Tax Credit Computation Schedule (For a KJRA Project of a Corporation Corporations)", October 2011[2040];

71.[69-] Revenue Form 41A720-S46, "Schedule KJRA-T, Tracking Schedule for a KJRA Project", October 2011[2040];

72- Revenue Form 41A720-S47, "Schedule KJRA-SP, Tax Computation Schedule (For a KJRA Project of a Pass-Through Entity)", October 2011;

73.[70-] Revenue Form 41A720-S50, "Schedule IEIA, Tax Credit Computation Schedule (For an IEIA Project of a Corporation)", October 2011[2040];

74.[74-] Revenue Form 41A720-S51, "Schedule IEIA-T, Tracking Schedule for an IEIA Project", October 2011[2040];

75- Revenue Form 41A720-S52, "Schedule IEIA-SP, Tax Computation Schedule (For a IEIA Project of a Pass-Through Entity)", October 2011;

76.[72-] Revenue Form 41A720-S53, "Schedule KBI, Tax Credit Computation Schedule (For a KBI Project of a Corporation)", October 2011 [2040];

77.[73-] Revenue Form 41A720-S54, "Schedule KBI-SP, Tax Computation Schedule (For a KBI Project of a Pass-Through Entity)", October 2011 [2040];

78.[74-] Revenue Form 41A720-S55, "Schedule KBI-T, Tracking Schedule for a KBI Project", October 2011[2040];

79.[75-] Revenue Form 41A720-S80, "Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit", June 2010;

80.[76-] Revenue Form 41A720-S81, "Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification", June 2011[2040];

81.[77-] Revenue Form 41A720-S82, "Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture", June 2011[2040];

82.[78-] Revenue Form 41A725, "Form 725, 2011 [2040] Kentucky Single Member LLC Individually Owned LLET Return", 2011[2040];

83.[79-] Revenue Form 41A725CP, "Schedule CP, Form 725, 2011[2040] Kentucky Single Member LLC Individually Owned Composite Return Schedule", 2011[2040];

84.[80-] Revenue Form 41A725(I), "Instructions, 2011[2040] Kentucky Single Member LLC Individually Owned LLET Return", October 2011 [2040];

85.[81-] Revenue Form 41A750, "Form 750, Business Development Corporation Tax Return", September 2011[2040];

86.[82-] Revenue Form 41A765, "Form 765, 2011[2040] Ken-

tucky Partnership Income and LLET Return", 2011[2040];

87.[83-] Revenue Form 41A765(I), "Instructions, 2011[2040] Kentucky Partnership Income and LLET Return", October 2011[2040];

88.[84-] Revenue Form 41A765(K), "Form 765(K), Kentucky Schedule K For Partnerships With Economic Development Project(s)", October 2011[2040];

89.[85-] Revenue Form 41A765(K-1), "Schedule K-1 (Form 765), 2011[2040] Partner's Share of Income, Credits, Deductions, Etc.", 2011[2040]; and

90.[86-] Revenue Form 41A800, "Corporation and Pass-through Entity Nexus Questionnaire", December 2011[2009]; and
(b) Individual income and withholding taxes - referenced material:

1. Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", November 2011[2040];

2. Revenue Form 40A100, "Application for Refund of Income Taxes", October 2011[2040];

3. Revenue Form 40A102, "2011[2040] Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", November 2011[2040];

4. Revenue Form 40A103, "Application for New Home Tax Credit", June 2010;

5. Revenue Form 40A200, "Form PTE-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income", October 2011[2040];

6. Revenue Form 40A201, "Form 740NP-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income [Transmittal] Report and Composite Income Tax Return", October 2011 [2040];

7. Revenue Form 40A201ES, "Form 740NP-WH-ES, Instructions – 2012 Pass-Through Entity Nonresident Distributive Share Withholding Report and Composite Income Tax Return Voucher", October 2011;

8. Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", October 2011[2040];

9.[8-] Revenue Form 42A003, "Withholding Kentucky Income Tax Instructions for Employers", August 2011[April 2040];

10.[9-] Revenue Form 42A003(T), "2012[2041] Withholding Tax Tables Computer Formula", October 2011[2040];

11.[40-] Revenue Form 42A740, "Form 740, 2011[2040] Kentucky Individual Income Tax Return, Full-Year Residents Only", 2011[2040];

12.[44-] Revenue Form 42A740-A, "Schedule A, Form 740, 2011 [2040] Kentucky Itemized Deductions", 2011[2040];

13.[42-] Revenue Form 42A740ES, "Form 740-ES, 2012[2041] Individual Income Tax Kentucky Estimated Tax Voucher", June 2011[July 2040];

14.[43-] Revenue Form 42A740-EZ, "Form 740-EZ, 2011[2040] Kentucky Individual Income Tax Return for Single Persons with No Dependents", 2011[2040];

15.[44-] Revenue Form 42A740(I), "2011[2040] Kentucky Individual Income Tax Instructions for Forms 740 and 740-EZ", October 2011[2040];

16.[45-] Revenue Form 42A740-J, "Schedule J, Kentucky Farm Income Averaging", October 2011[2040];

17.[46-] Revenue Form 42A740-KNOL, "Schedule KNOL, 2011[2040] Kentucky Net Operating Loss Schedule", 2011[2040];

18.[47-] Revenue Form 42A740-M, "Schedule M, 2011[2040] Kentucky Federal Adjusted Gross Income Modifications", 2011[2040];

19.[48-] Revenue Form 42A740-NP, "Form 740-NP, 2011[2040] Kentucky Individual Income Tax Return, Nonresident or Part-Year Resident", 2011[2040];

20.[49-] Revenue Form 42A740-NP-A, "Schedule A, Form 740-NP, 2011[2040] Kentucky Schedule A Itemized Deductions", 2011[2040];

21.[20-] Revenue Form 42A740-NP-ME, "Schedule ME, Form 740-NP, 2011[2040] Moving Expense and Reimbursement", 2011[2040];

22.[24-] Revenue Form 42A740-NP(I), "Instructions for 2011[2040] Kentucky Form 740-NP, Nonresident or Part-Year Resident Income Tax Return", October 2011[2040];

23.[22-] Revenue Form 42A740-NP-R, "Form 740-NP-R,

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2011[2040] Kentucky Income Tax Return Nonresident - Reciprocal State", 2011[2040];

24.[23-] Revenue Form 42A740-NP(P), "2011[2040] Kentucky Income Tax Return Nonresident or Part-Year Resident", October 2011[2040];

25.[24-] Revenue Form 42A740(PKT), "2011[2040] Kentucky Individual Income Tax Forms", October 2011[2040];

26.[25-] Revenue Form 42A740-P, "Schedule P, 2011[2040] Kentucky Pension Income Exclusion", 2011[2040];

27.[26-] Revenue Form 42A740-UTC, "Schedule UTC, Form 740, Unemployment Tax Credit", October 2011[2040];

28.[27-] Revenue Form 42A740-X, "Form 740-X, Amended Kentucky Individual Income Tax Return", November 2011[2040];

29.[28-] Revenue Form 42A740-XP, "Form 740-XP, Amended Kentucky Individual Income Tax Return, 2004 and Prior Years", November 2008;

30.[29-] Revenue Form 42A740-S1, "Form 2210-K, 2011[2040] Underpayment of Estimated Tax by Individuals", October[April] 2011;

31.[30-] Revenue Form 42A740-S4, "201[2044] Instructions for Filing Estimated Tax Vouchers", October 2011[2040];

32.[31-] Revenue Form 42A740-S18, "Form 8582-K, 2011[2040] Kentucky Passive Activity Loss Limitations", 2011[2040];

33.[32-] Revenue Form 42A740-S21, "Form 4972-K, 2011[2040] Kentucky Tax on Lump-Sum Distributions", 2011[2040];

34.[33-] Revenue Form 42A740-S22, "Form 8879-K[8453-K], 2011 [2040] Kentucky Individual Income Tax Declaration for Electronic Filing", 2011[2040];

35.[34-] Revenue Form 42A740-S23, "Form 740-V, 2011[2040] Kentucky Electronic Payment Voucher", 2011[2040];

36.[35-] Revenue Form 42A740-S24, "Form 8863-K, 2011[2040] Kentucky Education Tuition Tax Credit", 2011 [2040];

37. Revenue Form 42A740-S25, "Form 8948-K, "Preparer Explanation For Not Filing Electronically", October 2011;

38.[36-] Revenue Form 42A741, "Form 741, 2011[2040] Kentucky Fiduciary Income Tax Return", 2011[2040];

39.[37-] Revenue Form 42A741-D, "Schedule D, Form 741, 2011[2040] Kentucky Capital Gains and Losses", 2011[2040];

40.[38-] Revenue Form 42A741(I), "Instructions - Form 741, Kentucky Fiduciary Income Tax Return", October 2011[2040];

41.[39-] Revenue Form 42A741(K-1), "Schedule K-1, Form 741, 2011 [2040] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc.", 2011 [2040];

42.[40-] Revenue Form 42A765-GP, "Form 765-GP, 2011[2040] Kentucky General Partnership Income Return", 2011[2040];

43.[41-] Revenue Form 42A765-GP(I), "Instructions, 2011[2040] Kentucky General Partnership Income Return", October 2011[2040];

44.[42-] Revenue Form 765-GP(K-1), "Schedule K-1, Form 765-GP, 2011[2040] Partner's Share of Income, Credits, Deductions, etc.", 2011[2040];

45.[43-] Revenue Form 42A765-GP(K), "Form 765-GP(K), Kentucky Schedule K for General Partnerships with Economic Development Project(s)", October 2011[2040];

46.[44-] Revenue Form 42A801, "Form K-1, Kentucky Employer's Income Tax Withheld Worksheet", March 2007;

47.[45-] Revenue Form 42A801(D), "Form K-1, Amended Employer's Return of Income Tax Withheld", April 2008;

48.[46-] Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", March 2007;

49.[47-] "Form W-2, 2011[2040] Wage and Tax Statement", 2011[2040];

50.[48-] Revenue Form 42A803, "Form K-3, Kentucky Employer's Income Tax Withheld Worksheet", March 2007;

51.[49-] Revenue Form 42A803(D), "Form K-3, Amended Employer's Return of Income Tax Withheld", April 2008;

52.[50-] Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", March 2007;

53.[51-] Revenue Form 42A804, "Form K-4, Kentucky Depart-

ment of Revenue Employee's Withholding Exemption Certificate", November 2010;

54.[52-] Revenue Form 42A804-A, "Form K-4A, Kentucky Department of Revenue Withholding Exemptions for Excess Itemized Deductions", April 2008;

55.[53-] Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", March 2011;

56.[54-] Revenue Form 42A804-M, "Form K-4M, Nonresident Military Spouse Withholding Tax Exemption Certificate", November 2010;

57.[55-] Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", October 2011[November 2040];

58.[56-] Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", August 2006;

59.[57-] Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky Department of Revenue Web Site", March 2006;

60.[58-] Revenue Form 42A809, "Certificate of Nonresidence", March 2007;

61.[59-] Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax", April 1989;

62.[60-] Revenue Form 42A811, "KREDA Annual Report", December 2007;

63.[61-] Revenue Form 42A812, "KIDA Annual Report", December 2007;

64.[62-] Revenue Form 42A813, "KJDA Annual Report", December 2007;

65.[63-] Revenue Form 42A814, "KIRA Annual Report", December 2007;

66.[64-] Revenue Form 42A815, "Withholding Tax Refund Application", August 2006;

67.[65-] Revenue Form 42A816, "KEOZ Annual Report", December 2007;

68.[66-] Revenue Form 42A817, "KJRA Annual Report", October 2010;

69.[67-] Revenue Form 42A818, "KBI Annual Report", October 2010; and

70.[68-] Revenue Form 42D003, "2011[2040] Kentucky Wage and Tax Statements (W-2/K-2) Order Form", July 2011[2040].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 9, 2011

FILED WITH LRC: December 9, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on January 26, 2012, from 10:00 a.m. to 12:00 p.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-

tive regulation prescribes the forms to be used when reporting or estimating corporation tax, reporting or estimating limited liability entity tax, reporting or estimating individual tax, or withholding individual income tax for tax years beginning in 2011.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide taxpayers necessary tax forms for reporting and paying their corporation, limited liability entity, individual, and withholding taxes for tax years beginning in 2011.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating forms by reference.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes forms to be used by taxpayers to report and pay corporation taxes, limited liability entity taxes, individual income taxes, and withholding taxes to the Commonwealth of Kentucky pursuant to KRS Chapter 141.

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

(a) How the amendment will change this existing administrative regulation: This amendment contains tax forms to be used for tax years beginning in 2011.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update tax forms to the current tax laws in effect for tax years beginning in 2011.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the necessary tax forms to file and pay income taxes, limited liability entity taxes, and individual withholding taxes for tax years beginning in 2011.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individual, pass-through entity and corporate tax filers are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individual, pass-through entity, and corporate tax filers will use the forms contained in this administrative regulation to report, pay, and withhold taxes due pursuant to KRS Chapter 141 for tax years beginning in 2011.

(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 filing tax returns contained in this administrative regulation with the Commonwealth of Kentucky should be comparable to filing tax returns with surrounding states.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The forms contained in this administrative regulation should simplify and expedite the reporting and paying of taxes required by KRS Chapter 141.

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

(a) Initially: The cost of printing and designing the forms.

(b) On a continuing basis: Forms are updated each year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds will be provided by the Department of Revenue.

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

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

administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as the forms included in this administrative regulation apply to all taxpayers taxed pursuant to KRS Chapter 141.

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? Finance and Administration Cabinet, Department of Revenue.

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not increase revenues or expenses for the Commonwealth, but will expedite the collection of taxes provided by KRS Chapter 141.

(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? A very small increase in expenditures will occur in the administrative regulation process.

(d) How much will it cost to administer this program for subsequent years? No costs 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:

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 314.011(8), 314.042, 314.091, 314.161, 314.470

STATUTORY AUTHORITY: KRS 314.042(7), 314.131(1), 314.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, programs, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1) Complete an "Application for Licensure as an Advanced Practice Registered Nurse" as required by 201 KAR 20:370, Section 1(1);

(2) Provide a copy of a current active Registered Nurse license or validation of Registered Nurse licensure if the state of licensure does not issue licensure cards;

(3) Submit the fee required by 201 KAR 20:240, Section

1(2)(k); and

(4) Comply with the requirements established in KRS 314.042 and Sections 2 and 4 through 10 of this administrative regulation.

(5) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also provide:

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

(b) A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) A letter of explanation that addresses each conviction, if applicable.

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

Section 2. Postbasic Program of Study and Clinical Experience. (1) An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board. The program shall:

(a) Be an established, ongoing, and organized program offered on a routine basis to an enrollee;

(b) 1. Be accredited or approved for the education of nurses by a recognized accreditation or approval body; or

2. Be sponsored by a sponsoring organization, which shall hold the accreditation or approval for the education of nurses by a recognized accreditation or approval body;

(c) Have a program design which prepares an enrollee to function in a role consistent with the advanced practice registered nursing designation;

(d) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students;

(e) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students;

(f) Include didactic components that prepare the student to perform the additional acts delineated by the board pursuant to KRS 314.011(8) and include at least pharmacology, advanced physical assessment, advanced pathophysiology, and medical management of disease and differential diagnosis;

(g) Include a supervised clinical experience that includes application of all the didactic components; and

(h) Upon successful completion, award a diploma or certificate.

(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study after January 1, 2005, the applicant shall hold a master's degree, or doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board by sufficiently preparing a student for advanced practice registered nursing.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in specialty areas of clinical practice consistent with the population focus required by and defined by KRS 314.011;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) ~~American College of Nurse-Midwives;~~ (c) American Midwifery Certification Board;

(c) ~~(d)~~ National Board on Certification and Recertification ~~(Council on Certification/Recertification)~~ of Nurse Anesthetists;

(d) ~~(e)~~ Pediatric Nursing Certification Board;

(e) ~~(f)~~ National Certification Corporation;

(f) ~~(g)~~ American Academy of Nurse Practitioners; and

(g) ~~(h)~~ American Association of Critical-Care Nurses Certification Corporation.

(3) The following certification examinations for nurse practitioners (NP) and clinical nurse specialists (CNS) offered by the national certifying organizations identified in subsection 2 of this section shall be deemed to meet the definition of population focus of KRS 314.011(20):

(a) Acute Care NP;

(b) Adult NP;

(c) Adult Psychiatric and Mental Health NP;

(d) Family NP;

(e) Family Psychiatric and Mental Health NP;

(f) Gerontological NP;

(g) Neonatal NP;

(h) Pediatric NP;

(i) Pediatric/Primary Care NP;

(j) Pediatric/Acute Care NP;

(k) Women's Health NP;

(l) Adult Health CNS;

(m) Adult Psychiatric and Mental Health CNS;

(n) Child and Adolescent Psychiatric and Mental Health CNS;

(o) Gerontological CNS;

(p) Pediatric CNS;

(q) Adult Acute Care CNS;

(r) Pediatric Acute Care CNS; and

(s) Neonatal Acute Care CNS.

(4) The board recognizes the following national certifying organizations only for those individuals who received certification prior to the effective date of this administrative regulation and who have continually renewed their Kentucky advanced practice registered nurse license since that date: Oncology Nursing Certification Corporation.

Section 4. Practice Pending Licensure. (1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App."

Section 5. License Renewal. (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed "APRN License Renewal Application" form as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established

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in 201 KAR 20:240, Section 1(2)(l); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

(a) Submit a completed "Application for Licensure as an Advanced Practice Registered Nurse" form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(m); and

(c) Maintain current certification by a recognized national certifying organization.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also provide a:

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

(b) Report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) Certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) Letter of explanation that addresses each conviction, if applicable.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.

(b) The board shall conduct an audit to verify that an advanced practice registered nurse has met the requirements of subsection (1)(a) of this section.

(2)(a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained~~[the requirements of Sections 1 through 8 of this administrative regulation have been met]~~.

(b) An APRN whose certification or recertification lapses prior to the expiration of the APRN license and who does not provide evidence of current certification or recertification after a request by the board shall have the APRN license voided. This action shall not be considered to be a disciplinary action. The APRN may request a hearing on this action by submitting the request in writing. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section 6 of this administrative regulation.

(3) An advanced practice registered nurse who is decertified by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one

(1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of Sections 1 through 11 of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) A postbasic educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself out as a clinical specialist or is known as a clinical specialist shall be required to be licensed as an advanced practice registered nurse if his practice includes the performance of advanced practice registered nursing procedures.

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the specialty to which he has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures set in KRS 314.091.

CAROL KOMARA, President

APPROVED BY AGENCY: December 1, 2011.

FILED WITH LRC: December 9, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on January 24, 2012 at 1:00 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 17, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email: nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets scope and standards of practice for Advanced Practice Registered Nurses (APRN).

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

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

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates the current edition of several Standards of Practice.

(b) The necessity of the amendment to this administrative regulation: Several national organizations updated their Standards

of Practice.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is required to incorporate current standards of practice for APRNs.

(d) How the amendment will assist in the effective administration of the statutes: By incorporating the current edition of the appropriate APRN standards of practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRNs, approximately 3000.

(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:

APRNs will follow the current standards of practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost that would be required to comply with this amendment

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? (Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board Of Nursing (Amendment)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 314.011(7), 314.042, 314.193(2)

STATUTORY AUTHORITY: KRS 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication and includes both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)" means the written document pursuant to KRS 314.042(8).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)" means the written document pursuant to KRS 314.042(9).

Section 2. The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in the following scope and standards of practice statements for each specialty area:

(1) Scope and Standards of Psychiatric-Mental Health Nursing Practice;

(2) Nursing: Scope and Standards of Practice;

(3) Scope and Standards for Nurse Anesthesia Practice;

(4) Standards for Office-based Anesthesia Practice;

(5) Standards for the Practice of Midwifery;

(6) The Women's Health Nurse Practitioner: Guidelines for Practice and Education;

(7) Scope and Standards of Practice: Pediatric Nurse Practitioner;

(8) Standards of Practice for Nurse Practitioners;

(9) Scope of Practice for Nurse Practitioners;

(10) Standards of Clinical Practice and Scope of Practice for the Acute Care Nurse Practitioner;

(11) Neonatal Nursing: Scope and Standards of Practice;

(12) Scope of Practice and Standards of Professional Performance for the Acute and Critical Care Clinical Nurse Specialist; and

(13) Statement on the Scope and Standards of Advanced Practice Nursing in Oncology.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, and diagnostic tests which are consistent with the scope and standard of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(5).

Section 6. (1) A CAPA-NS shall include the name, address,

phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced practice registered nurse. An advanced practice registered nurse shall, upon request, furnish to the board or its staff, a copy of the CAPA-NS.

(2) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(9)(a), the APRN shall file with the board the "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)".

(3) For purposes of the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1).

Section 8. The board may make an unannounced monitoring visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by 201 KAR Chapter 20.

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

(a) "Scope and Standards of Psychiatric-Mental Health Nursing Practice", 2007 Edition, American Nurses' Association;

(b) "Nursing: Scope and Standards of Practice", 2010(2004) Edition, American Nurses' Association;

(c) "Standards for Office-based Anesthesia Practice", 2010(2005) Edition, American Association of Nurse Anesthetists;

(d) "Scope and Standards for Nurse Anesthesia Practice", 2010(2007) Edition, American Association of Nurse Anesthetists;

(e) "Standards for the Practice of Midwifery", 2009(2003) Edition, American College of Nurse-midwives;

(f) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2008 Edition, Association of Women's Health, Obstetric and Neonatal Nurses and National Association of Nurse Practitioners in Women's Health;

(g) "Pediatric Nursing: Scope and Standards of Practice", 2008 Edition, National Association of Pediatric Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2010(2007) Edition, American Academy of Nurse Practitioners;

(i) "Scope of Practice for Nurse Practitioners", 2010(2007) Edition, American Academy of Nurse Practitioners;

(j) "Scope and Standards of Practice for the Acute Care Nurse Practitioner", 2006 Edition, American Association of Critical Care Nurses;

(k) "Neonatal Nursing: Scope and Standards of Practice", 2004 Edition, American Nurses Association/National Association of Neonatal Nurses;

(l) ~~"Scope[of Practice] and Standards for[of Professional Performance for the] Acute and Critical Care Clinical Nurse Specialist Practice", 2010[2002] Edition, American Association of Critical-Care Nurses;~~

(m) "Statement on the Scope and Standards of Advanced Practice Nursing in Oncology", 2003 Edition, Oncology Nursing Society; and

(n) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)", 6/2010, Kentucky Board of Nursing.

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

CAROL KOMARA, President

APPROVED BY AGENCY: December 1, 2011.

FILED WITH LRC: December 9, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on Janu-

ary 24, 2012 at 1:00 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 17, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email: nathan.goldman@ky.go.v

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets scope and standards of practice for Advanced Practice Registered Nurses (APRN).

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

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

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates the current edition of several Standards of Practice.

(b) The necessity of the amendment to this administrative regulation: Several national organizations updated their Standards of Practice.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is required to incorporate current standards of practice for APRNs.

(d) How the amendment will assist in the effective administration of the statutes: By incorporating the current edition of the appropriate APRN standards of practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRNs, approximately 3000.

(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:

APRNs will follow the current standards of practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost that would be required to comply with this amendment

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agen-

cy funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Physical Therapy (Amendment)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 214.615(1), 327.050, 327.060, 327.070(2)(f), 327.080

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327, and 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant based on successful completion by the applicant of one (1) of the following processes:

- (1) Examination;
- (2) Endorsement; or
- (3) Reinstatement.

Section 2. Examination Candidate. (1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;

(b) Submit certification of completion by the educational administrator of that program;

(c) Have completed an educational course at least two (2) hours in length that has been approved by the Cabinet for Health and Family Services (CHFS) on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS;

(d) Have successfully completed the Jurisprudence Exam;

(e) Submit a complete[and-notarized] application for credentialing that includes a photo taken within one (1) year;

(f) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;

(g) If applicable, submit on an Applicant Special Accommodations Request Form, a request for a reasonable accommodation in testing due to a documented disability; and

(h) Register for the NPTE examination.

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(b) Complete the requirements of Section 2(1)(b) through (h) of this administrative regulation.

(3) After three (3) failed attempts in taking the examination, an applicant shall complete a board-approved remediation plan based on identified deficits as provided on the Federation of State Boards of Physical Therapy (FSBPT) Examination Performance Feedback report prior to registering for each subsequent examination.

(4) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and

(2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:

(1) Meet the qualifications of Section 2 or 3 of this administrative regulation; and

(2) Complete a Supervisory Agreement with one (1) or more physical therapists.

Section 5. Upon issuance of a temporary permit:

(1) The physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist who:

(a) Has been engaged in the practice of physical therapy in Kentucky for more than one year; and

(b) Has an unrestricted license;

(2) The supervising physical therapist:

(a) Shall be on-site at all times during the practice of the applicant with a temporary permit;

(b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit; and

(c) Shall review, approve, date and co-sign all physical therapy documentation by the applicant with a temporary permit within twenty-four (24) hours of when the service was provided.

(d) May designate a temporary supervising physical therapist who meets the qualifications of Section 5(1)(a) and (b) of this administrative regulation. The temporary supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in Section 5(2)(a)-(c) of this administrative regulation.

(e) Shall notify the Board immediately in the event the supervi-

sory relationship is terminated.

(3) The applicant with a temporary permit shall:

(a) Disclose his or her temporary credential status to all patients prior to initiating treatment

(b) Sign documentation with temporary permit number and designation as defined in 201 KAR 22:053, Section 5(5)(a) or (b).

(c) Notify the Board immediately in the event the supervisory relationship is terminated.

(4) The temporary permit shall expire the earlier of:

(a) Six (6) months from the date of issuance, or:

(b) Notice of exam results by the Board.

Section 6[4]. A physical therapist applicant who meets the qualifications for physical therapy licensure by examination may become a special candidate for physical therapist assistant certification by examination.

Section 7[5]. To be eligible for credentialing by endorsement, the applicant shall:

(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(2) Meet the requirements established in Section 2(1)(b) through (f) of this administrative regulation;

(3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75).

(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;

(4) Have an active credential in this profession in another jurisdiction; and

(5) Have verification of credentials showing the credential has never been revoked, suspended, on probation, or under disciplinary review in another jurisdiction.

Section 8[6]. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 9[7]. A credential issued by the board shall be in effect until March 31 of the next uneven-numbered year.

Section 10[8]. A foreign-educated physical therapist shall comply with ~~this administrative regulation and~~ the provisions of 201 KAR 22:070.

Section 11[9]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Credentialing", December 2011; ~~August 15, 2011; and~~

(b) "Supervisory Agreement", December 2011; and

(c) "Applicant Special Accommodations Request Form", February 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: December 13, 2011

FILED WITH LRC: December 15, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2012, at 3:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five 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 January 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and application procedures for physical therapists and physical therapist assistants.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the qualifications and procedures for applying for a credential to practice physical therapy in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the qualifications and procedures for applying for a credential to practice physical therapy in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The amendment makes provisions for temporary licensure while waiting to take National Physical Therapy Exam. It also revises the "Application."

(b) The necessity of the amendment to this administrative regulation: To protect the public, this amendment will regulate how temporary licenses are implemented.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards and procedures for licensing.

(d) How the amendment will assist in the effective administration of the statutes: This amendment also protects the public by regulating temporary license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 150 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physical therapy candidates will be able to work while registering and scheduling the national examination.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): To allow those physical therapy candidates to begin working in the field of physical therapy under supervision.

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

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.

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

increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Physical therapist and physical therapist assistant applicants.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 and KRS 327.050

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Board of Physical Therapy (Amendment)

201 KAR 22:070. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:

(1) Complies with the requirements of KRS 327.060(1)(b); and

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework Evaluation Tool" (CWT) copyrighted by Federation of State Boards of Physical Therapy (FSBPT). An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1. Completion of appropriate coursework at a regionally accredited academic institution;

2. Continuing education in a course approved by the board; or

3. Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(b) Shows proof of English Language Proficiency:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFL Internet-based test (TOEFL iBT): Writing, twenty-four (24), Speaking, twenty-six (26), Listening, eighteen (18), Reading, twenty-one (21); with an overall score of not less than eighty-nine (89); or

3. Verification that English is the native language of the country of origin;

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(d) Completes the HIV/AIDS education requirement as specified in KRS 327.050;

Completes the Jurisprudence Exam;

(f)(d) Obtains a passing score on the National Physical Therapy Examination (NPTE). Administrative Regulation 201 KAR 22:020, Section 2(3) and (4) are applicable to examination candidates[Successfully completes the examination and HIV/AIDS education requirements as specified in KRS 327.050]; and

(g)(e) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be for not less than 390 hours in a 3 month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall work only with on-site supervision until a minimum score of three and five-tenths (3.5) with no ones (1.0) or twos (2.0) on a four (4.0) point scale has been achieved utilizing the Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing. The clinical supervisor shall submit the evaluation to the board after three (3) months practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(e) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (d) of this administrative regulation; and

(b) Submitted an approved "Supervisory Agreement for Physical Therapists Educated in a Foreign Country".

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

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

(a) Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing, 9/2/04"; and

(b) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country, 10/12/00".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

VOLUME 38, NUMBER 7 – JANUARY 1, 2012

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: December 13, 2011

FILED WITH LRC: December 15, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2012, at 3:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five 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 January 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the licensing requirements for foreign educated physical therapists.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.060 and 327.040(1), and (11).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for foreign educated licensing requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for foreign educated licensing requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the eligibility for foreign educated licensing approval process.

(b) The necessity of the amendment to this administrative regulation: To clarify the requirements for foreign educated physical therapy candidates.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of a foreign educated physical therapy candidate to become licensed in the state of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 25 applicants a 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: The foreign educated physical therapist exam candidates will be required to have a remediation plan after three failed exam attempts, as well as a limit of six exam attempts. This will be the same as the candidates graduating from a CAPTE accredited school.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): They may incur costs in taking additional remediation courses.

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

entities identified in question (3): To be more successful in passing the exam.

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

(a) Initially: There will be no additional costs to the board.

(b) On a continuing basis: There will be no additional costs to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A Costs for implementing and enforcing this amendment will be funded by the applicant.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040(1), (11) and KRS 327.060

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? No new costs is 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:

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure for Marriage and Family Therapists (Amendment)

201 KAR 32:010. Definitions for 201 KAR Chapter 32.

RELATES TO: KRS 335.330

STATUTORY AUTHORITY: KRS 335.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.320(9) requires the board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399. This administrative regulation establishes definitions for 201 KAR Chapter 32.

Section 1. Definitions. (1) "Academic courses offered by an

accredited postsecondary institution" means:

(a) A marriage and family therapy course, designated by a marriage and family therapy course title or content, beyond the undergraduate level; or ~~(b) An academic course, relevant to marriage and family therapy, beyond the undergraduate level. General education courses, either electives or designated to meet degree requirements, shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.]~~

(2) "Approved" means recognized by the Kentucky Board of Licensure of Marriage and Family Therapists.

(3) "Approved supervisor" means an individual who:

(a) Holds a designation as an approved supervisor or supervisor in training granted by the American Association for Marriage and Family Therapy; or

(b) Is licensed as a marriage and family therapist in the Commonwealth of Kentucky with a minimum of five (5)~~four (4)~~ years of experience in the practice of marriage and family therapy, eighteen (18) months of which shall be as a therapist licensed in the Commonwealth of Kentucky.

(4) "Clinical supervision" means the direct, face-to-face interaction between the supervisor and supervisee which utilizes a partnership aimed at enhancing the professional development of supervisees in providing marriage and family therapy services.

(5) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(6) "Equivalent course of study" means a master's or doctoral degree from a regionally accredited institution in a mental health field closely related to marriage and family therapy which either contains, or has been supplemented by, the coursework in each of the basic core areas listed in 201 KAR 32:020, Section 2(2).

(7) "Program" means an organized learning experience planned and evaluated to meet behavioral objectives; programs may be presented in one (1) session or in a series.

(8) "Provider" means an organization approved by the Kentucky Board of Licensure for Marriage and Family Therapists for providing continuing education programs.

(9) "Raw data" means video recorded sessions, live observation, or co-therapy with a board approved supervisor.~~[audio tapes, direct observations, interactive videos, oral or written reports, video tapes, or other electronic media.]~~

(10) "Relevant" means having content applicable to the practice of marriage and family therapy as determined by the board.

(11) "Successful completion" means that the licensee has satisfactorily met the specific requirements of the program and the licensee has earned the continuing education hours.

(12) "Two (2) years experience in the practice of marriage and family therapy" means a minimum of two (2) years of the practice of marriage and family therapy consisting of 1,000 hours of direct, face-to-face contact with individuals, couples, and families in the practice of marriage and family therapy under the supervision of an approved supervisor.

TONY WATKINS, Board Chairman

APPROVED BY AGENCY: December 12, 2011

FILED WITH LRC: December 14, 2011 at noon.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 30, 2012 at 10:00 AM Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished 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 January 31, 2012. 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: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes and revises definitions for 201 KAR Chapter 32.

(b) The necessity of this administrative regulation: This regulation is necessary because it will provide clearer definitions that are consistent throughout the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations for the practice of marriage and family therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth clearer definitions that are consistent with language within the chapter.

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

(a) How the amendment will change this existing administrative regulation: The regulation will delete unnecessary portions of definitions and make other definitions consistent with those currently in effect.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the definitions used throughout the chapter.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by defining the terms used in the process of obtaining licensure as a marriage and family therapist.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will provide licensees with clearer definitions, helping them determine if they have met the requirements for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 495 individual marriage and family therapists and 140 marriage and family therapist associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: No action will need to be taken by the entities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All associates and licensees will be operating under the same definitions throughout the chapter.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the registration fees paid by 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: It will not be necessary to increase existing fees or funding to implement the regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to 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? The Kentucky Board of Licensed Marriage & Family Therapists is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320

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. Expenditures will not be effected by the regulation.

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure for Marriage and Family Therapists
(Amendment)

201 KAR 32:020. Equivalent course of study.

RELATES TO: KRS 335.330(1), (2)

STATUTORY AUTHORITY: KRS 335.320(9), 335.330(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330(1) provides that the board shall define a course of study equivalent to a master's degree in marriage and family therapy and promulgate the equivalency standard by administrative regulations. This administrative regulation establishes the criteria for the equivalent course of study.

Section 1. Definitions. (1) "Related field" means psychology, clinical psychology, community mental health, social work, professional counseling, or other degrees approved by the board based on relevancy.

Section 2. [4] An applicant for licensure as a marriage and family therapist shall:

(1) Comply with the requirements of KRS 335.330; and

(2) Submit an application on the Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate form, incorporated by reference in 201 KAR 32:025.

(3) An applicant completing a postgraduate degree program, masters degree program, or doctoral degree program accredited by the Commission on Accreditation of Marriage and Family Education who also has completed a masters or doctoral degree program in a related field, ~~such as psychology, clinical psychology, community mental health, social work, professional counseling, or other degrees approved by the board based on relevancy, prior to entering the applicant's board based on relevancy, prior to entering the applicant's current COAMFTE accredited program, in addition~~

~~to what is required by KRS 335.330(1);] may count clinical contact hours[experiential] and clinical supervision hours earned in a Commission on Accreditation of Marriage and Family Education postgraduate degree program, masters degree program, or doctoral degree program towards[meeting] the[experiential and] clinical supervision requirements for licensure.[pursuant to KRS 335.330(2);]~~

Section 3. [2.] The basic core areas that are necessary in order to qualify as an equivalent course of study, shall include the following:

(1) Marriage and family studies. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours, or 135 didactic contact hours). Courses in this area shall be theoretical in nature and have a major focus of system theory orientation, and may include:

- (a) Systems theory;
- (b) Family development;
- (c) Blended families;
- (d) Cultural issues in families;
- (e) Family subsystems;
- (f) Major models of family systems theory; or
- (g) Gender issues in families;

(2) Marriage and family therapy. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours, or 135 didactic contact hours). Courses in this area shall have a major focus on family systems theory and systemic therapeutic interventions. Courses shall relate to major theories of family systems change and therapeutic practices evolving from each theoretical model. Examples include:

- (a) Structural communications family therapy;
- (b) Strategic object relations family therapy;
- (c) Behavioral family therapy;
- (d) Intergenerational family therapy;
- (e) Solution oriented family therapy;
- (f) Narrative family therapy; and
- (g) Systemic sex therapy;

(3) Human development. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours, or 135 didactic contact hours). Courses in this area shall provide knowledge of individual human personality development in both normal and abnormal manifestations. Topic areas include, for example:

- (a) Human development;
- (b) Personality theory;
- (c) Human sexuality; and
- (d) Effects of gender and cultural issues on human development;

(4) Psychopathology and Diagnostic and Statistical Manual of Mental Disorders. This area shall include a one (1) course minimum (three (3) semester hours, four (4) quarter hours, or forty-five (45) didactic contact hours). Courses in this area shall include psychopathology, diagnosis through use of the Diagnostic and Statistical Manual of Mental Disorders, or applications of the Diagnostic and Statistical Manual of Mental Disorders to marriage and family therapy;

(5) Professional studies. This area shall include a minimum of one (1) course minimum (three (3) semester hours, four (4) quarter hours, or forty-five (45) didactic contact hours). Courses include, for example:

- (a) Professional ethics in marriage and family therapy;
- (b) Legal responsibilities of the therapist;
- (c) Professional socialization and the role of the professional organization;
- (d) Licensure or certification legislation; and
- (e) Independent practice issues;

(6) Research. This area shall include a minimum of one (1) course minimum (three (3) semester hours, four (4) quarter hours, or forty-five (45) didactic contact hours). Courses may include:

- (a) Statistics;
- (b) Research methods;
- (c) Quantitative methodology; or
- (d) Other courses designed to assist the student to understand and perform research; or

(7) Practicum or internship. The practicum or internship shall include a minimum of one (1) year or 300 hours of supervised direct client contact with individuals, couples, and families for family therapy.

(a) Applicants who did not complete a clinical practicum in graduate school may satisfy the practicum requirement with their first 300 post masters' client contact hours.

(b) These hours shall not be counted toward the two (2) years of required post master's experience or the 200 hours of clinical supervision.

Section 4.[3.] A course used to fulfill one (1) of the requirements established in Section 2 of this administrative regulation shall not be used to fulfill more than one (1) of the basic core area requirements.

Section 5.[4.] (1) Applicants who completed a qualifying graduate degree in a mental health field prior to 1985 may substitute conferences, workshops, seminars, or in-service training related to marriage and family therapy attended or presented as a substitute for college coursework required in Section 2 of this administrative regulation.

(2) Forty-five (45) contact hours of relevant content shall equal three (3) semester hours of credit.

(3) A list of equivalencies the applicant wishes to have considered shall be organized by core area as established in Section 2 of this administrative regulation.

(4) Appropriate documentation shall include:

- (a) Date;
- (b) Title;
- (c) Course description;
- (d) Sponsoring organization;
- (e) Presenter, including presenter's qualifications;
- (f) Number of contact hours attended or presented; and
- (g) Certificates of attendance.

Section 6.[5.] Other acceptable equivalencies shall be considered as follows:

(1) One (1) graduate level course taught on a subject relevant to marriage and family therapy after 1985 shall be considered equivalent to three (3) semester hours of credit.

(2) Publication on a subject relevant to marriage and family therapy dated after 1985 may be submitted as equivalencies as acceptable to the board. Credit shall be granted as follows:

(a)1. A chapter in a book is equivalent to three (3) semester hours of credit.

2. An applicant who authors or edits a book shall be given credit equivalent to six (6) semester hours of credit.

3. An applicant shall submit a copy of the title page, table of contents, and bibliography.

(b)1. Publication in a professional refereed journal shall be equivalent to three (3) semester hours of credit.

2. An applicant shall submit the journal table of contents and a copy of the article as it appeared in the journal including bibliography.~~[Section 6. Clinical membership in the American Association for Marriage and Family Therapy plus documentation of coursework in psychopathology and the Diagnostic and Statistical Manual of Mental Disorders shall be accepted as evidence that the applicant has met both the educational and experiential requirements for licensure as established in KRS 335.330(3) and (4)(a) and (b).]~~

TONY WATKINS, Board Chairman

APPROVED BY AGENCY: December 12, 2011

FILED WITH LRC: December 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 30, 2012 at 10:00 AM Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administra-

tive 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 January 31, 2012. 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: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth the courses of study that can be used to obtain licensure as a marriage and family therapist.

(b) The necessity of this administrative regulation: This regulation is necessary because it provides applicants with the courses of study that can be used to obtain licensure as a marriage and family therapist.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish the requirements for licensure as a marriage and family therapist.

(d) How this administrative regulation currently assists or will assist in the effective

administration of the statutes: This administrative regulation sets forth the education qualifications for licensure as a marriage and family therapist.

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

(a) How the amendment will change this existing administrative regulation: The amendment will provide a clearer reading of the qualifications for licensure and eliminate clinical membership in the American Association for Marriage and Family Therapists as a means to obtain licensure, requiring all applicants have the required educational background.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide a clearer reading of the qualifications for licensure and eliminates membership in the American Association for Marriage and Family Therapists as a means to obtain licensure.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by conspicuously defining "related field" and eliminates clinical membership in the American Association for Marriage and Family Therapy as a means to obtain licensure.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will provide applicants with a clearer understanding of which masters and doctoral degree programs are acceptable for licensure, helping them determine if they have met the requirements for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 495 individual marriage and family therapists, 140 marriage and family therapist associates and an unknown number of potential applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: No action will need to be taken by the entities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All applicants will be required to obtain the required education and membership in the American

Association for Marriage and Family Therapists will no longer satisfy any of the licensure requirements.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the registration fees paid by 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: It will not be necessary to increase existing fees or funding to implement the regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to 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? The Kentucky Board of Licensed Marriage & Family Therapists is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320

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. Expenditures will not be affected by the regulation.

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure for Marriage and Family Therapists (Amendment)

201 KAR 32:025. Marriage and family therapist associate.

RELATES TO: KRS 335.332

STATUTORY AUTHORITY: KRS 335.320(9), 335.332(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.332(3) requires the board to promulgate administrative regulations establishing the fees and other requirements for a marriage and family therapist associate permit. This administrative regulation establishes the requirements for marriage and family therapist

associates.

Section 1. Marriage and Family Therapist Associate Application and Renewal. (1)(a) A person desiring to be a marriage and family therapist associate shall apply for and submit to the board an Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate with a fee of fifty (50) dollars for the first year.

(b) The initial application shall include a copy of a supervisory contract with the designated supervisor for approval by the board.

(2)(a) An annual renewal fee of fifty (50) dollars for each subsequent year shall be submitted to the board.

(b) Contract renewal and extension shall be granted in accordance with Section 4 of this administrative regulation.

(3) An associate desiring to renew a permit shall file a completed Associate Permit Renewal Form and the completed supervision log to accompany the fee established in subsection (2) of this section.

(4) An associate who fails to renew his or her expiration date shall have thirty (30) days to pay the renewal fee of fifty (50) dollars plus a late fee of twenty (20) dollars for a total of seventy (70) dollars.

(a) The fee shall be postmarked on or before the end of the thirty (30) day grace period in accordance with the expiration date indicated on the renewal form.

(b) Failure to renew the permit in a timely manner as established in this subsection shall result in termination of the permit.

Section 2. Supervisory Contract. (1) Prior to beginning a course of supervision for the purpose of meeting licensure requirements, a marriage and family therapist associate shall contract with an approved supervisor in writing.

(2) The approved supervisor shall enter into a Plan of Supervision for Clinical Experience with a person who meets the criteria for becoming a marriage and family therapist associate.

(3) The approved supervisor shall be responsible for the marriage and family therapist associate's development and the welfare of the clients served by the marriage and family therapist associate in accordance with the code of ethics established in 201 KAR 32:050 and the provisions in 201 KAR 32:035.

(4) If a new supervisory contract is entered into with a different supervisor, approval shall be obtained from the board.

(5)(a) If a supervision contract is terminated, the approved supervisor shall, within thirty (30) days, notify the board in writing that he or she is no longer the supervisor [of record].

(b) The marriage and family therapist associate has thirty (30) days from the date of termination to submit the new supervisory contract to the board.

Section 3. Contract Information. The supervisory contract between the marriage and family therapist associate and the approved supervisor shall contain the following information:

(1) The name of the marriage and family therapist associate;

(2) The name and license number of the approved supervisor of record;

(3) The name and license number of other approved supervisors;

(4) The agency, institution, or organization where the experience will be received;

(5) A detailed description of the nature of the practice including the type of:

(a) Clients to be seen;

(b) Therapies and treatment modalities that shall be used including the prospective length of treatment; and

(c) Problems or conditions that shall be treated;

(6) The nature, duration, and frequency of the supervision, including the:

(a) Number of hours of supervision per week;

(b) Amount of group and individual supervision; and

(c) Methodology for transmission of case information;

(7) The conditions or procedures for termination of the supervision; and

(8) A statement that:

(a) The approved supervisor[of record] understands that he or

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she shall be accountable to the board for the care given to the marriage and family therapist associate's clients; and

(b) The approved supervisor[~~of record~~] and other supervisors meet the criteria established in 201 KAR Chapter 32.

Section 4. Contract Renewal and Extension. (1) Upon approval of the board, a supervisory contract shall be issued for a term of one (1) year. There shall not be a limit on the number of extensions that may be granted a marriage and family therapist associate.

(3) Upon associate permit renewal, the supervisory contract shall be reaffirmed by written correspondence from the supervisor of record or a new supervisor contract shall be supplied by the applicant.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Marriage and Family Therapist[~~or Marriage and Family Therapist~~] Associate", (10/2011)[2009]; and

(b) "Plan of Supervision for Clinical Experience", (10/2011)[2008];

(c) "Associate Permit Renewal Form", 2008[~~]; and~~

(d) "~~Marriage and Family Therapist Associate Supervision Log~~", 2008[~~].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TONY WATKINS, Board Chairman

APPROVED BY AGENCY: December 12, 2011

FILED WITH LRC: December 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 30, 2012 at 10:00 AM Eastern Time at the Office of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished 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 January 31, 2012. 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: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth the process for applying as a marriage and family therapist associate.

(b) The necessity of this administrative regulation: This regulation is necessary because it states the process of applying for as an associate which is a stage in obtaining licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations for the licensure of marriage and family therapists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedure the Board follows for approving applicants as an associate.

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the "supervisor of record" term and places the responsibility of proper supervision on each supervisor, not just the "supervisor of record" and will require all of the associate's supervisors to be listed and provide a plan of supervision.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that each supervisor is fully aware that s/he has the same duties in supervising the associate as all other supervisors the associate might have.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by clarifying the application procedure and information required in the application.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will provide applicants and supervisors with a clearer understanding of the role of the supervisor and that each supervisor the associate has is equally responsible for the associate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 495 individual marriage and family therapists and approximately 140 marriage and family therapist associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Marriage and family therapist associates will have to have each supervisor listed on the application and sign and submit the appropriate forms.

(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 the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All of an associate's supervisors will be held to the same standard and be equally responsible for ensuring the associate is obtaining quality supervision.

(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 cost.

(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 the registration fees paid by licensees and applicants. The examination services are paid for using these 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: It will not be necessary to increase existing fees or funding to implement the regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to 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? The Kentucky Board of Licensed Marriage & Family Therapists is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320

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. Expenditures will not be affected by the regulation.

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

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

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

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Marriage and Family
Therapists
(Amendment)**

201 KAR 32:035. Supervision of marriage and family therapist associates.

RELATES TO: KRS 335.320(6), 335.332

STATUTORY AUTHORITY: KRS 335.320(4), (5)

NECESSITY FUNCTION AND CONFORMITY: KRS 335.320(4) requires the board to license applicants who satisfy the experience and educational requirements and who have paid the fee. KRS 335.320(5) requires the board to review and approve supervision contracts between marriage and family therapy associates and their approved supervisors. This administrative regulation establishes the supervision requirements for marriage and family therapy associates and their board-approved supervisors.

Section 1. Definitions. (1) "Group supervision" means supervision of more than one (1), but less than seven (7), ~~two (2)~~ supervisees with the supervisor.

(2) "Qualified mental health professional" means a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker

(3) "Raw data" means video recorded, ~~video-taped~~ sessions, live observation, or co-therapy with a board-approved supervisor.

Section 2. Qualifications for Board-Approved Supervisors Status. (1) Effective January 1, 2011, a board-approved supervisor shall be: (a) An American Association of Marriage and Family Therapists (AAMFT) approved supervisor in good standing;

(b) An AAMFT supervisor in training, ~~candidate~~;

(c) A marriage and family therapist licensed in Kentucky and in good standing with a minimum of five (5) years of experience in the practice of marriage and family therapy; or

(d) A person licensed and in good standing with a minimum of five (5) years of experience as a marriage and family therapist in another state, and who meets the licensure requirements for Kentucky.

(2) To obtain initial board-approved supervisor status, an applicant who is not an AAMFT supervisor or supervisor in training in good standing shall provide proof of completion of six (6) hours of ~~licensure~~ board-approved continuing education courses in supervision.

(a) The course shall be taken within the two (2) years preceding the date of application to become a board-approved supervisor.

(b) This requirement shall be in addition to the fifteen (15) hours of continuing education required for licensure renewal, ~~by~~

201 KAR 32:060].

(c) The approved courses may be live or online and shall include:

1. Kentucky law governing the practice of marriage and family therapy, both administrative regulations and statutes;

2. Theories of supervision;

3. Ethical issues involved in supervision; and

4. Supervisor responsibilities such as logs, treatment, ~~planning and recording.~~ ~~[This requirement shall be included in the fifteen (15) hours of continuing education required by 201 KAR 32:060.]~~

(3) To maintain board-approved supervisor status, a non-AAMFT approved supervisor shall complete two (2) hours of continuing education in supervision every year. ~~[to maintain board-approved supervisor status.]~~ These two (2) hours ~~[This requirement]~~ shall be included in the fifteen (15) hours of continuing education required for licensure renewal, ~~by 201 KAR 32:060].~~

(a) The ~~approved~~ courses may be live or online and shall include:

1. Kentucky law governing the practice of marriage and family therapy, both administrative regulations and statutes;

2. Theories of supervision;

3. Ethical issues involved in supervision; and

4. Supervisor responsibilities such as logs, treatment, ~~planning and recording.~~

(4) To renew as a Board-approved supervisor, an AAMFT approved supervisor shall complete one (1) hour of continuing education every year in Kentucky law governing the practice of marriage and family therapy. ~~[to maintain board-approved supervisor status].~~ The course may be attended live or on-line. The one (1) hour ~~[This requirement]~~ shall be included in the fifteen (15) hours of continuing education required for licensure renewal, ~~by 201 KAR 32:060.]~~

Section 3. Clinical Supervision. (1) Clinical supervision shall:

(a) Be equally distributed throughout the qualifying period and shall average at least four (4) hours per month as specified in the supervision contract;

(b) Be clearly distinguishable from psychotherapy, didactic enrichment, or training activities;

(c) Focus on raw data from the supervisee's current clinical work, ~~and~~

(d) Be direct, face-to-face contact between the supervisor and supervisee, unless an alternative form of supervision has been approved by the board based on undue burden for the supervisor or supervisee; and

(e) Continue until the supervisee is licensed by the Board.

(2) The supervision process shall focus on:

(a) Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as established in the Diagnostic and Statistical Manual of Mental Disorders;

(b) Development of treatment skills appropriate to the therapeutic process;

(c) Development of sensitivity to context and issues relating specifically to the family or individual being counseled;

(d) Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;

(e) Increased theoretical and applied knowledge for the therapist;

(f) Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and

(g) Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

Section 4. Standards for Raw Data Used for Supervision. The use of raw data in a supervision session shall constitute a minimum of fifty (50) hours of the 200 hours of required supervision.

Section 5. In a therapy session involving a board-approved supervisor and supervisee:

(1) The role of the board-approved supervisor as a supervisor or co-therapist shall be clearly defined prior to beginning a therapy

session; and

(2) The supervisees shall receive credit for client contact hours and supervision hours.

Section 6. Documentation Requirements. (1) The board-approved supervisor and marriage and family therapist associate shall maintain copies of the completed[a] Supervision Log which shall document:

(a) The frequency and type of supervision provided; and
(b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.

(2) No more than 100 hours of supervision hours may take place in group supervision.

Section 7. Number of Supervisees. (1) A board-approved supervisor shall not supervise more than six (6) marriage and family therapist associates at the same time[c] unless approved by the board[time].

(2) A request to supervise more than six (6) marriage and family therapist associates shall be submitted to the board for approval and shall demonstrate in writing the supervisor's plan and ability to supervise additional marriage and family therapist associates.

Section 8. Temporary Supervision. (1) In extenuating circumstances, if a marriage and family therapist associate is without supervision, the associate may continue working up to ninety (90) calendar days under the supervision of a qualified mental health provider while an appropriate board-approved supervisor is sought and a new supervision contract is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2) The supervisee shall notify the board of these circumstances and shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the change in status of board-approved supervision. The written plan shall include:

- a. The name of the temporary supervisor;
- b. Verification of the credential held by the temporary supervisor;
- c. An address for the temporary supervisor; and
- d. A telephone number for the temporary supervisor.

Section 9. Board-approved Supervisor's Responsibilities to Clients and Supervisees. (1) A board-approved supervisor shall be responsible for ensuring the proper and appropriate delivery of marriage and family therapy services to clients.

(2) A board-approved supervisor shall be responsible for fostering the professional competence and development of the marriage and family therapist associates under his or her supervision.

(3) A board-approved supervisor shall be responsible for compliance with the code of ethics established in 201 KAR 32:050 and take steps to ensure that supervisees comply with the code of ethics as well.

Section 10. Incorporation by Reference. (1) "Diagnostic and Statistical Manual of Mental Disorders", 2009, is incorporated by reference.

(2) "Supervision Log", 10/2011.

(3)[2] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TONY WATKINS, Board Chairman

APPROVED BY AGENCY: December 12, 2011

FILED WITH LRC: December 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 30, 2012 at 10:00 AM Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hear-

ing is open to the public. Any person who wished 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 January 31, 2012. 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: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation limits the number of supervisees a supervisor may have, to six (6) supervisees; and clarifies the duration of supervision.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains the qualifications to be a supervisor and the roles and duties of a supervisor.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations for the practice and licensure of marriage and family therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the qualifications to be a supervisor and the supervisor's role and duties to the supervisee.

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

(a) How the amendment will change this existing administrative regulation: The regulation uses the correct terminology for supervisors used throughout the profession, clarifies the duration of supervision and limits the number of supervisees per supervisor, allowing the supervision quality to improve.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the duration of supervision.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by clarifying the duration of clinical supervision.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will provide associates and licensees with a clearer understanding of supervision, helping them determine whether to apply as a supervisor and encourage associates to obtain licensure status.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 495 individual marriage and family therapists and 140 associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Marriage and Family Therapist Associates will have to be supervised until licensed, even if all hours have been obtained.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Supervisees pay the supervisor for supervision, thus the cost is dependent on the duration of supervision and the supervisor's rate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All associates and licensees will be operating under the same understanding of supervision and its duration and requirements to be a supervisor.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the registration fees paid by 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: It will not be necessary to increase existing fees or funding to implement the regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to 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? The Kentucky Board of Licensed Marriage & Family Therapists is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320 and KRS 335.332

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. Expenditures will not be affected by the regulation.

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure for Marriage and Family Therapists (Amendment)

201 KAR 32:045. Examination.

RELATES TO: KRS 335.320, 335.332(1)

STATUTORY AUTHORITY: KRS 335.320(9), 335.330

NECESSITY, CONFORMITY, AND FUNCTION: KRS 335.330 requires the board to administer a test for licensure for marriage and family therapists.

Section 1.[General Requirements. (1) The board shall publish pertinent instructions and establish the examination schedule which shall include the:

(a) Place;

(b) Time; and

(c) Final date by which the board shall have received the applicant's materials.

cant's materials.

(2)(a) An applicant for examination shall:

1. Submit a complete "Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate"; and

2. Pay the application fee, as required by Section 1 of 201 KAR 32:030.

(b) Once the application has been approved by the board, the applicant shall be scheduled to take the examination at the next regularly scheduled date.

(3) The examination shall be deferred until the next scheduled date, without forfeiture of the examination fee, if the applicant fails to appear for the examination because of:

(a) Illness of an immediate family member;

(b) Death of a family member; or

(c) Similar unforeseen emergency.

(4) If an applicant fails to appear for an examination without one (1) of the reasons described in subsection (3) of this section:

(a) The application shall be terminated on the date of the examination;

(b) Licensure shall be denied on the basis of failure of the examination by default; and

(c) The applicant shall:

1. Forfeit all application fees;

2. Be required to resubmit an application to the board; and

3. Take the examination at the next regularly scheduled date.

(5) If an applicant fails to appear for or to complete the examination without presenting a valid reason in writing, including illness or death in the immediate family:

(a) The application shall be terminated on the date of the examination; and

(b) The applicant shall be denied licensure on the basis of failure of the examination by default.

Section 2.] Examination for Licensure. (1) An applicant for licensure shall submit to a written examination in accordance with subsections (2) and (3) of this section.

(2) An applicant shall submit a complete "Application for Licensure as a Marriage and Family Therapist." Once the application is approved by the Board, the applicant's name shall be sent to the testing agency. The applicant shall then contact the testing agency to schedule the examination.

(3) The board shall contract with a testing agency that tests on the requirements in KRS 335.330(1) and (2) and 335.340(2). The test shall be administered to an applicant upon completion of the requirements of KRS 335.330(1) and (2) and 335.340(2). Upon receipt of the test results from the testing agency, the Board shall notify the applicant of the applicant's results.

(4)[3] If an applicant for licensure fails the objective examination, the candidate shall, with payment of the required fee, be rescheduled to take the examination at its next regularly scheduled date.

(5)[4] The candidate may continue to function as a marriage and family therapist associate under the supervision of the board-approved supervisor until:

(a) The examination is successfully completed;

(b) The supervisory contract is terminated; or

(c) The candidate ceases to practice as a marriage and family therapist associate and notifies the board in writing.

(6) Any request for deferment of the examination shall be made by the applicant directly to the testing agency, who shall have full discretion to grant or deny the request.

Section 3. Incorporation by Reference. (1) "Application for Licensure as a Marriage and Family Therapist" (10/2011 Edition)[or Marriage and Family Therapist Associate", (6/17/99 Edition)], Board of Marriage and Family Therapists, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TONY WATKINS, Board Chairman

VOLUME 38, NUMBER 7 – JANUARY 1, 2012

APPROVED BY AGENCY: December 12, 2011

FILED WITH LRC: December 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 30, 2012 at 10:00 AM Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished 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 January 31, 2012. 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: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth the process for applying for and taking the written examination required by law.

(b) The necessity of this administrative regulation: This regulation is necessary because it states the process of applying for the written examination, which every applicant is required to take to receive licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations for the licensure of marriage and family therapists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedure the Board follows for approving applicants for the written examination required by law.

(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 eliminates the Board's duties as it relates to administering the written examination and collecting exam fees.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because the Board now contracts with a testing company to provide the exam electronically. The company has expanded its services and sets the exam schedule and applicants pay all examination fees directly to the company.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by clarifying the procedure to take the licensure exam.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will provide applicants with a clearer understanding of the Board's role regarding the examination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 84 applicants apply for licensure each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Individuals identified in question (3) will no longer have to contact the Board regarding examination information

and will pay examination fees directly to the testing company.

(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 the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be able to directly contact the testing agency for examination information, scheduling and paying examination fees directly to the agency.

(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 cost.

(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 the registration fees paid by licensees and applicants. The examination services are paid for using these 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: It will not be necessary to increase existing fees or funding to implement the regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to 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? The Kentucky Board of Licensed Marriage & Family Therapists is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320

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. Expenditures will not be affected by the regulation.

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure for Marriage and Family Therapists (Amendment)

201 KAR 32:050. Code of ethics.

RELATES TO: KRS 335.320(7), 335.348

VOLUME 38, NUMBER 7 – JANUARY 1, 2012

STATUTORY AUTHORITY: KRS 335.320(7), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.320(5) requires the board to promulgate a code of ethics for licensed marriage and family therapists and marriage and family therapist associates. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) A marriage and family therapist or a marriage and family therapist associate shall:

- (a) Advance and protect the welfare of his client;
- (b) respect the rights of persons seeking his assistance; and
- (c) Make reasonable efforts to ensure that his services are used appropriately.

(2) A marriage and family therapist or marriage and family therapist associate shall not:

- (a) Exploit the trust and dependency of a client;
- (b) Engage in a dual relationship with a client, including a social, business, or personal relationship, that may:
 1. Impair professional judgment;
 2. Incur a risk of exploitation of the client; or
 3. Otherwise violate a provision of this administrative regulation. If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a therapist or therapist associate shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur.

(c) Engage in a sexual relationship with a current client or with a former client for two (2) years following the termination of therapy;

(d) Use his professional relationship with a client to further his own interests;

(e) Continue therapeutic relationships unless it is reasonably clear that the client is benefiting from the relationship;

(f) Fail to assist a person in obtaining other therapeutic services if the therapist or therapist associate is unable or unwilling, for appropriate reasons, to provide professional help;

(g) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;

(h) Videotape, record, or permit third party observation of therapy sessions without having first obtained written informed consent from the client;

(i) Engage in sexual or other harassment or exploitation of a client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(j) Diagnose, treat, or advise on problems outside the recognized boundaries of his competence.

Section 2. Confidentiality. (1) A therapist or therapist associate shall respect and guard the confidences of each individual client.

(2) Marriage and family therapists and marriage and family therapist associates shall not disclose a client confidence except:

- (a) As mandated, or permitted by law;
- (b) To prevent a clear and immediate danger to a person or persons;

(c) If the therapist or therapist associate is a defendant in a civil, criminal, or disciplinary action arising from the therapy, confidences may be disclosed only in the course of that action; or

(d) If a waiver has been obtained in writing, confidential information shall be revealed only in accordance with the terms of the waiver. If more than one (1) person in a family receives therapy, unless a waiver is executed by each family member receiving therapy, who is legally competent to execute a waiver, a therapist or therapist associate shall not disclose information received from any family member.

(3) A marriage and family therapist or marriage and family therapist associate, shall not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(4)[3] A marriage and family therapist or marriage and family therapist associate may use client or clinical materials in teaching, writing, and public presentations if:

- (a) A written waiver has been obtained in accordance with

subsection (2)(d) of this section; or

(b) Appropriate steps have been taken to protect client identity and confidentiality.

(5) [4] A marriage and family therapist or marriage and family therapist associate shall store or dispose of client records so as to maintain confidentiality.

Section 3. Professional Competence and Integrity. A marriage and family therapist or marriage and family therapist associate shall maintain standards of professional competence and integrity and shall be subject to disciplinary action:

(1)(a) Upon conviction of a felony, or a misdemeanor related to his practice as a marriage and family therapist or marriage and family therapist associate.

(b) Conviction shall include conviction based on:

1. A plea of no contest or an "Alford Plea"; or
2. The suspension or deferral of a sentence.

(2) If his license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(3) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the practice of marriage and family therapy;

(4) If he misrepresented or concealed a material fact in obtaining or seeking reinstatement of a license or certificate;

(5) If he has refused to comply with an order issued by the board; or

(6) If he has failed to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to a complaint filed with the board;

(b) Appearing before the board at the time and place designated; or

(c) Properly responding to subpoenas issued by the board; or

(7) Fails to notify the board in writing within ten (10) business days of a change in contact information.

Section 4. Responsibility to a Student or Supervisee. (1) A marriage and family therapist or marriage and family therapist associate shall not exploit the trust and dependency of a student or supervisee.

(2) A marriage and family therapist or marriage and family therapist associate shall:

(a) Be aware of his influential position with respect to a student or supervisee; and

(b) Avoid exploiting the trust and dependency of these persons.

1. A therapist or therapist associate shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with a student or supervisee that may impair professional judgment or increase the risk of exploitation.

2. If a dual relationship cannot be avoided, a therapist or therapist associate shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs.

3. A therapist or therapist associate shall not provide therapy to a student, employee or supervisee.

4. A therapist or therapist associate shall not engage in sexual intimacy or contact with a student or supervisee.

(3) A marriage and family therapist or marriage and family therapist associate shall not permit a student or supervisee to perform or to hold himself out as competent to perform professional services beyond his level of training, experience, and competence.

(4) A marriage and family therapist or marriage and family therapist associate shall not disclose a student's or supervisee's confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the therapist or therapist associate is a defendant in a civil, criminal, or disciplinary action arising from the supervision, the student's or supervisee's confidence may be disclosed only in the course of that action;

(d) In educational or training settings if there are multiple supervisors, to other professional colleagues who share responsibility for the training of the supervisee; or

(e) If there is a waiver previously obtained in writing, information shall be revealed only in accordance with the terms of the waiver.

Section 5. Financial Arrangements. (1) A marriage and family therapist or marriage and family therapist associate shall make financial arrangements with a client, third party payor, or supervisee that are reasonably understandable and conform to accepted professional practices.

(2) A marriage and family therapist or marriage and family therapist associate shall:

- (a) Not offer or accept payment for referrals;
- (b) Not charge excessive fees for services;
- (c) Disclose his fees to clients and supervisees at the beginning of services; or
- (d) Represent facts truthfully to clients, third party payors, and supervisees regarding services rendered.

Section 6. Advertising. A marriage and family therapist shall:

(1) Accurately represent his education, training, and experience relevant to his practice of marriage and family therapy;

(2) Not use professional identification, including a business card, office sign, letterhead, or telephone or association directory listing if it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

(3) A statement shall be false, fraudulent, misleading, or deceptive if it:

- (a) Contains a material misrepresentation of fact;
- (b) Fails to state any material fact necessary to make the statement, in light of all circumstances, not misleading; or
- (c) Is intended to or is likely to create an unjustified expectation.

Section 7. A marriage or family therapist associate may have business cards and letterhead if it is clearly stated that he is an associate. He shall not present himself or imply that he is licensed to practice as a marriage and family therapist.

TONY WATKINS, Board Chairman

APPROVED BY AGENCY: December 12, 2011

FILED WITH LRC: December 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 30, 2012 at 10:00 AM Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished 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 January 31, 2012. 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: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth the code of ethics marriage and family therapists and associates are to adhere to in the practice of marriage and family therapy.

(b) The necessity of this administrative regulation: This regulation is necessary because it states the basic professional stand-

ards to be used when practicing marriage and family therapy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required to adopt a code of ethics for licensed marriage and family therapists and associates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the basic professional standards to marriage and family therapists and associates.

(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 prohibits a therapist from revealing an individual's confidences, even to other family members participating in therapy with that individual. It also requires licensees to notify the Board of any change in the licensee's contact information within ten days of the change.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because the therapists and associates were interpreting the confidentiality issue differently. This amendment will clarify the licensee's duty regarding confidentiality. The amendment is also necessary to clearly explain it is the licensee's duty to notify the Board of any changes in address or contact information, so licensee's can be easily served with documents from the Board.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by clarifying the code of ethics it was required to adopt.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will provide licensees with a clear understanding that confidentiality applies to each individual within the unit receiving therapy and the licensee's duty to provide notice of a change in contact information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 495 marriage and family therapists and 140 associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Individuals identified in question (3) will share this new understanding of confidentiality with their clients.

(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 the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will have a specific rule explaining the extent of revealing confidences among members of the unit receiving therapy.

(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 cost.

(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 the registration fees paid by licensees and applicants. The examination services are paid for using these 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: It will not be necessary to increase existing fees or funding to implement the regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to 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? The Kentucky Board of Licensed Marriage & Family Therapists is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320(7).

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. Expenditures will not be affected by the regulation.

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Marriage and Family
Therapists
(Amendment)**

201 KAR 32:060. Continuing education requirements.

RELATES TO: KRS 335.340

STATUTORY AUTHORITY: KRS 335.320(9), 335.340(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.340(7) authorizes the board to promulgate administrative regulations requiring marriage and family therapists to complete continuing education requirements as a condition of renewal of their license. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of fifteen (15) continuing education hours shall be accrued by each licensee during the one (1) year licensure period for renewal.

(2) All hours shall be in or related to the field of marriage and family therapy.

(3) Three (3) hours of the fifteen (15) hours required by subsection (1) of this section shall be accrued in the fields of professional ethics.

Section 2. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the mandatory license shall be directly related to the professional growth and development of marriage and family therapy practitioners. They may be earned by completing any of the following educational activities: (1) Programs not requiring board review and approval. Programs from the following sources shall be deemed to be relevant to the practice of marriage and family therapy and shall be approved without further review by the board:

(a) Programs provided by the American Association for Marriage and Family Therapy (AAMFT) and its state affiliates;

(b) Academic courses as defined in 201 KAR 32:010; and

(c) Continuing education programs offered by Commission on

Accreditation for Marriage and Family Therapy Education accredited institutions.

(2) Programs requiring board review and approval. Programs from the following sources shall be reviewed and may be determined to be relevant and therefore subsequently approved by the board:

(a) Relevant programs, including home study courses and in-service training provided by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course;

(c) Relevant publications in a professionally recognized or juried publication. Credit shall not be granted except for those publications that were published within the one (1) year period immediately preceding the renewal date. A licensee shall earn one-half (1/2) of the continuing education hours required for a relevant publication. More than one (1) publication shall not be counted during each renewal period; and

(d) Related areas not specifically a part of the field of marriage and family therapy may be approved for up to two (2) continuing education hours out of the fifteen (15) required if the board believes the related areas may serve to enhance the licensee's ability to practice.

Section 3. ~~Procedures for Preapproval of~~ Continuing Education Sponsors ~~and Programs~~. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall pay the fee as established in 201 KAR 32:030, Section 7, and submit an "Application for Continuing Education Sponsor Approval" ~~[apply]~~ to the Board at least sixty (60) days in advance of the ~~[commencement of the]~~ program. The application shall include, ~~[stating]~~ the:

(a) Type of learning activity;

(b) Subject matter;

(c) Names and qualifications of the instructors; and

(d) Number of continuing education hours offered.

(2) A continuing education activity shall be qualified for preapproval if the board determines the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters which integrally relate to the practice of marriage and family therapy;

(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.

Section 4. Responsibilities and Reporting Requirements of Licensees. A licensee shall be responsible for obtaining required continuing education hours. He shall identify his 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 activities by which to earn continuing education hours;

(2) Submit to the board when applicable a request for approval for continuing education activities not approved by the board as set forth in Section 3 of this administrative regulation;

(3) Maintain records of continuing education hours. Each licensee shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours. During each licensure renewal period, 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. Verification of continuing education hours shall not otherwise be reported to the board;

(4) Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, affidavits signed by instructors, receipts for

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fees paid to the sponsor, or less formal evidence including written summaries of experiences that are not otherwise formally or officially documented in any way. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and

(5) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(7) and may result in the refusal to renew, suspension, or revocation of the licensure.

Section 5. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 1 of this administrative regulation into the immediately following licensure renewal period.

Section 6. Board to Approve Continuing Education Hours; Appeal When Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee shall have the right to request reconsideration by the board of its decision. The request shall be in writing 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 7. 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 waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A request for waiver or extension must be in writing and submitted within the ninety (90) day license renewal grace period.

(3) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the licensee and shall be accompanied by a verifying document signed by a licensed physician.

(4) ~~[(3)]~~ A waiver of the minimum continuing education requirements or an extension 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.

(5) ~~[(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 licensee shall reapply for the waiver or extension in writing, prior to the expiration of the extension or waiver.

Section 8. Incorporation by Reference. (1) "Application for Continuing Education Program Sponsor Approval", (10/2011 Edition), Board of Marriage and Family Therapists, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TONY WATKINS, Board Chairman

APPROVED BY AGENCY: December 12, 2011

FILED WITH LRC: December 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 30, 2012 at 10:00 AM Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished 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 January 31, 2012. Send written notification of intent to be heard at the public hearing or written com-

ments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth the requirement that licensees obtain continuing education and the standards for approval of continuing education courses.

(b) The necessity of this administrative regulation: This regulation is necessary because it states the basic professional standards to be used when practicing marriage and family therapy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required to adopt a code of ethics for licensed marriage and family therapists and associates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the basic professional standards to marriage and family therapists and associates.

(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 prohibits a therapist from revealing an individual's confidences, even to other family members participating in therapy with that individual.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because the code of ethics did not specifically address this issue, allowing therapists and associates to interpret the confidentiality issue differently.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by clarifying the code of ethics it was required to adopt.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will provide licensees with a clear understanding that confidentiality applies to each individual within the unit receiving therapy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 495 marriage and family therapists and 140 associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Individuals identified in question (3) will understand that confidentiality applies to each individual within the unit receiving therapy.

(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 the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will have a specific rule explaining the extent of revealing confidences among members of the unit receiving therapy.

(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 cost.

(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 the registration fees paid by licensees and applicants. The examination services are paid for using these 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: It will not be necessary to increase existing fees or funding to implement the

regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to 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? The Kentucky Board of Licensed Marriage & Family Therapists is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320(7).

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. Expenditures will not be affected by the regulation.

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

301 KAR 6:040. Zoning or marking of waterways.

RELATES TO: KRS 235.285, 235.310, 235.315, 33, 33 C.F.R. Part 329 [C.F.R. 1, Subpart 66.10-4]

STATUTORY AUTHORITY: KRS 235.280, 33 C.F.R. 1, Subpart 66.10

NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of Kentucky waters. This administrative regulation establishes the methods used to mark waterways in conformity with 33 C.F.R. 1, subpart 66.10 [66.10-4] and restricts certain boating activities on some Kentucky waters.

Section 1. Definition. (1) "Navigable waters" means a navigable waterway as defined by 33 C.F.R. Part 329.

(2) "Non-navigable" means all waters not defined by subsection 1 of this section.

(3) "Recreational vessel" means a vessel that is not documented as commercial by the U.S. Coast Guard.

Section 2. General Requirements. (1) A person[Persons] shall not zone, or place buoys or signs:

(a)[(4)] On non-navigable[nonnavigable] waters without first obtaining written approval from the department.

(b)[(2)] On navigable waters without first obtaining written approval from the department with concurrence by:

1.[(a)] The United States Coast Guard;

2.[(b)] The United States Army Corps of Engineers; or

3.[(c)] The Tennessee Valley Authority.

(2) A person shall not moor a vessel to a buoy or navigational aid that is[Section 2. Persons shall not moor a vessel to a buoy or navigational aid] not specifically designated as a mooring device.

Section 3. Zoned Waterways. (1) On Herrington Lake, a person[persons] shall not:

(a) Ski except along the main lake channel; or[channel.]

(b) Operate a motorboat at greater than idle speed in inlets;[motorboats at greater than idle speed in inlets.]

(2) A person[Persons] shall not ski on the Big Sandy River.

(3) A person, between the Second Street Bridge and the McAlpine Dam on the Ohio River;[Between the Second Street Bridge and McAlpine Dam on the Ohio River, persons:]

(a) Shall not operate recreational vessels except:

1. To lock through the McAlpine Dam; or

2. To dock at the Louisville Municipal Wharf.

(b) Shall remain within the confines of the commercial channel.

(4) A person shall not operate a motorboat at faster than[Persons shall not operate motorboats at faster than at] idle speed on the Salt River in Mercer County.

(5) A person, between the Brent Spence Bridge and the Daniel Carter Bear Bridge on the Ohio River;[Between the Brent Spence Bridge and the Daniel Carter Beard Bridge on the Ohio River, persons] shall not:

(a) Operate a recreational vessel at greater than idle speed during the period from sunset to sunrise;

(b) Operate a recreational vessel at greater than idle speed within 300 feet of any:

1. Marina;

2. Boat docking facility;

3. Boat gasoline dock;

4. Launch ramp;

5. Recreational boat harbor; or

6. Harbor entrance.[any marina, boat docking facility, boat gasoline dock, launch ramp, recreational boat harbor, or harbor entrance;]

(c) Pull or tow any individual outside of the recreational vessel for a recreational purpose; or

(d) While operating a personal watercraft:

1. Jump the wake of another watercraft;

2. Perform abrupt turns; or

3. Engage in similar acrobatic maneuvers.

Section 4. Flotation devices near locks and dams. (1) A person shall not operate a vessel within an area designated or appropriately marked as a hazardous area below any lock or dam, unless each person aboard is wearing a U.S. Coast Guard approved flotation device of:

(a) Type I;

(b) Type II;

(c) Type III; or

(d) Type V.

(2) On the Kentucky River, a person shall not operate a vessel within 150 feet below any dam or within a designated or appropriately marked hazardous area, unless each person aboard is wearing a U.S. Coast Guard approved flotation device of:

(a) Type I;

(b) Type II;

(c) Type III; or

(d) Type V.

Section 5. 33 C.F.R. 1, Subpart 66.10[4. 33 C.F.R. 1, Subpart 66.10-5 to 66.10-45,] governing the uniform placement and characteristics of navigational and regulatory markers, is adopted without change.

BENJY KINMAN, Deputy Commissioner,

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

VOLUME 38, NUMBER 7 – JANUARY 1, 2012

APPROVED BY AGENCY: December 8, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2012, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business January 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

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 the methods used to mark waterways in conformity with 33 C.F.R. 1, subpart 66.10, and restricts certain boating activities on some Kentucky waters.

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to conform with federal waterway requirements and to provide additional boater safety measures.

(c) How does this administrative regulation conform to the authorizing statutes: KRS 235.280 authorizes the department to govern the fair, reasonable, equitable, and safe use of all waters of the Commonwealth.

(d) How will this administrative regulation assist in the effective administration of the statutes: This regulation assists by conforming with federal requirements on waterway marking and providing fair, reasonable, and equitable requirements for boating safety.

(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: This amendment will require life jackets to be worn in dangerous waters below locks and dams.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to improve boating safety requirements in dangerous waters and to allow Department Conservation Officers to properly enforce the requirements.

(c) How does the amendment conform 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 that will be affected: This amendment affects all those boaters who navigate in dangerous waters below Kentucky locks and dams and all Department Conservation Officers. It is unknown how many individuals will boat in these waters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All boaters will now have to wear personal flotation devices when navigating in said waters.

(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).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The requirements of this regulation will result in a safer experience for boaters and improves the Department's enforcement ability.

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

(a) Initially: This administrative regulation will result in an initial cost of approximately \$1,000 for placement of signage.

(b) On a continuing basis: Approximately \$500 per year 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 through a federal Recreational Boating Safety grant.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements apply to all boaters.

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 Division 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 235.280 and 33 C.F.R. 1, Subpart 66.10.

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 in subsequent years.

(c) How much will it cost to administer this program for the first year? Approximately \$1,000 for the first year.

(d) How much will it cost to administer this program for subsequent years? Approximately \$500 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. United States Coast Guard, 33 C.F.R. 1, Subpart 66.10, Uniform State Waterway Marking System.

2. State compliance standards. The Department of Fish and Wildlife Resources conforms to the requirements of 33 C.F.R. 1, Subpart 66.10 to zone and mark waterways within the state.

3. Minimum or uniform standards contained in the federal mandate. 33 C.F.R. 1, Subpart 66.10 contains the general framework, description, and requirements for zoning and marking waterways.

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. N/A

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(Amendment)**

503 KAR 3:040 Telecommunications (Public Safety Dispatch) Academy[academy] trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15.530-15.590

STATUTORY AUTHORITY: KRS 15.590, 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the commissioner to promulgate administrative regulations. This administrative regulation establishes conduct requirements of trainees attending the telecommunications(public safety dispatch) academy conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Uniforms and Criminal History Records Check Required. (1) A trainee shall wear a uniform, approved by the department, while participating in the[telecommunications] academy.

(2) The required uniform shall consist of:

(a) Men:

1. Polo shirt with DOCJT logo, supplied by the department;
2. Solid black dress pants with belt loops. Cargo pants or low-cut pants shall not be worn;
3. Black belt;
4. Black socks above the ankles. Footies shall not be worn; and

5. Black, plain-toe, dress shoes. Athletic shoes shall not be worn with the uniform.

(b) Women:

1. Polo shirt with DOCJT logo, supplied by the department;
2. Solid black dress pants with belt loops or knee-length skirt. Cargo pants or low-cut pants shall not be worn;
3. Black belt;
4. Black socks or hose above the ankles. Footies or anklets shall not be worn; and

5. Black, plain, closed-toe, dress shoes. Athletic shoes shall not be worn with the uniform.

(3) The following may be worn with the uniform:

(a) A dark blue or black jacket or sweater;[~~Dress jacket or sport coat, solid gray or dark blue is recommended; and~~]

(b) A black undershirt or turtleneck; and

(c) The Department of Criminal Justice Training cap.

(4) The trainee's employing agency shall submit a letter to the department that:

(a) A criminal history check, in accordance with 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days before the trainee attends the[Telecommunications] Academy; and

(b) The trainee is not prohibited by state or federal law from accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

(5) If the criminal history check required by KRS 15.540(1)(c) has been performed within ninety (90) days before the trainee arrives for the [Telecommunications] Academy, an additional criminal records check shall not be required of the employing agency.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee. If a trainee does not meet the law enforcement telecommunicator qualifications in KRS 15.540, he shall:

(a) Be removed from the academy by the:

1. Director;

2. Branch manager; or

3. Section supervisor; and

(b) Not receive credit for completed portions of academy training.

(2) If a trainee is removed from the academy, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of academy training.

Section 3. Gifts. A gift from trainees to department staff shall conform with KRS Chapter 11A, the executive branch code of ethics.

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated.

(b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.

(d) Written reprimand. The trainee is reprimanded in writing for violating a conduct or honor code requirement.

(e) Verbal warning. The trainee is warned verbally that he has violated a conduct or honor code requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct or honor code requirement, upon a second violation of any conduct or honor code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct or honor code requirements, upon a third or subsequent violation of any conduct or honor code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee[~~except a verbal warning, and shall be given verbal notice if a trainee has been charged with a violation of a conduct or honor code requirement and has requested a hearing~~].

(4) Penalty records.

(a) The department shall keep a written record of a penalty imposed on a trainee by placing it in the trainee's file.

(b) Except if required by law, a trainee's training file shall not be available for access except by:

1. The department;
2. The trainee; or
3. The trainee's agency head.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A trainee attending the[telecommunications] academy shall meet the following conduct requirements:

(1) General conduct - chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:

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(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

(b) Refrain from vulgarity, rudeness, confrontation, or other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest. Penalty: verbal warning, written reprimand or suspension.

(3) General conduct - grooming.

(a) A male trainee:

1. Shall be clean shaven with sideburns no longer than the bottom of the ear lobe;

2. May wear a mustache if he had it upon arrival and keeps it neatly trimmed; and

3. Shall not wear a beard unless he receives permission from the department, based upon:

a. A written request from the trainee's agency; and

b. A showing of good cause.

(b) A trainee's hair, male or female, shall:

1. Not be unkempt; and

2. Be kept above the collar.

(c) A trainee shall:

1. Practice good hygiene at all times; and

2. Not wear excess perfume, cologne, or other scented body products.

(d) Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants.

(a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician or a qualified medical professional while enrolled in the [a telecommunications] academy. Penalty: written reprimand, loss of privileges, suspension, or expulsion.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any academy activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the class coordinator or the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician or a qualified medical professional. Penalty: verbal warning, written reprimand or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, [or] branch manager, or other departmental staff observes an unlawfully-possessioned intoxicating substance, he shall immediately confiscate it.

2. A confiscated item shall be stored in a secure facility of the department until the item is [returned to the trainee at the completion of the academy, or] disposed of by the department.

(5) General conduct - weapons and other dangerous devices.

(a) A trainee shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices, or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, knives (except an ordinary pocketknife), or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(b) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director, or commissioner observes an unlawfully-possessioned weapon or other dangerous device, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(b) A trainee shall not have successfully completed the [tele-

communications] academy, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in the [telecommunications] academy. Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting, or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(c) Engage in conduct which violates an Eastern Kentucky University policy or rule. The location of the policies and rules shall be provided to each trainee at the beginning of the academy training. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(8) Academy activities - uniforms.

(a) A trainee shall wear the uniform required by Section 1 of this administrative regulation. Penalty: verbal warning or written reprimand.

(b) Uniforms shall be clean, pressed and in good condition. Penalty: verbal warning or written reprimand.

(c) A name tag, provided by the department, shall be worn on the right [left] shirt breast. Penalty: verbal warning or written reprimand.

(d) Sleeves on long-sleeved shirts shall not be rolled up. Penalty: verbal warning or written reprimand.

(e) Additional clothing may be worn during an academy activity if authorized by the instructor.

(9) Academy activities - absences.

(a) A trainee shall be considered absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall be considered tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A trainee shall give advance notice of an absence if possible. Penalty: verbal warning or written reprimand.

(b) An absence shall be excused if the trainee was absent due to:

1. Illness;
2. Illness of an immediate family member;
3. Death of an immediate family member;
4. Necessity of trainee's agency; or
5. Emergency circumstances.

(c) An absence from the [telecommunications] academy shall be approved by the section supervisor or branch manager.

(d) If a trainee's absence is excused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that academy area.

(e) If a trainee's absence is excused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and reenrolled in a subsequent class beginning at the point at which the trainee was absent. The time period for reenrollment in a subsequent class shall not exceed six (6) months from the date of the class from which the trainee was withdrawn.

(f) If a trainee's absence is unexcused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and receive no credit for completed training.

(10) Academy activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction, if possible. A trainee shall not take a break in an area restricted by the department. Penalty: verbal warning or written reprimand.

(11) Academy activities - general conduct.

(a) A trainee shall be attentive during academy activities. Penalty: verbal warning or written reprimand.

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(b) A trainee shall not possess any electronic devices during scheduled training hours unless written permission is granted by the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A trainee shall not use tobacco products during, or bring food or drink into a academy activity unless so permitted by the branch manager, training director, or commissioner. Penalty: verbal warning or written reprimand.

(d) A trainee shall not engage in conduct which creates or may create a risk of injury to others[during a training session].

(12) Academy activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(13) Residence hall.

(a) During the[telecommunications] academy a trainee shall reside in the residence hall designated by the department.

(b) A trainee shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges.

(c) A trainee shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(f) The use of hot plates is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(h) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning, [or] written reprimand, or loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral, or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

Section 7. Honor Code. (1) The trainee shall abide by the provisions of the honor code which reads as follows: We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As trainees of the Department of Criminal Justice Training, Telecommunications (Public Safety Dispatch) Academy, we will not lie, steal or cheat nor tolerate any among us who do. We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will, or friendships to influence our decisions. We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and compe-

tence. We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of public safety. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - public safety.

(2) The penalty for violating the honor code shall be: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

~~(3)[The instructional staff shall select an honor code representative and a class leader during the first week of the academy.]~~

~~(4)[All trainees shall report honor code violations to the class coordinator[honor code representative who shall report the offense to the class coordinator. The representative shall recommend the penalty to be imposed for the violation].]~~

~~(4)[(5)]~~ All disciplinary procedures contained in this administrative regulation shall apply to the honor code violation. The department may pursue separately any additional offenses discovered during the investigation of the honor code violation.

Section 8. Department's Responsibilities to Trainee's Agency. In order to keep the agency advised of the trainee's progress and performance in the[telecommunications] academy so that the agency may adequately assess the trainee's ability to perform required duties, the department shall provide the following to the police chief, sheriff, or chief administrator of the trainee's agency:

(1) Trainee performance report which shall be completed at the completion of the academy and shall include trainee conduct, demonstrated leadership abilities, examination scores, and overall effort on performance, observed social/interpersonal skills, and appearance.

(2) Immediate notice of specific nonperformance, misconduct, or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking an agency-owned or assigned vehicle at a:

1. Bar;

2. Tavern;

3. Lounge;

4. Nightclub; or

5. Other establishment with the primary purpose of serving alcoholic beverages;

(b) Disorderly conduct;

(c) Speeding; or

(d) Other behavior that gives rise to a[citizen's] complaint by a citizen, student, or departmental staff member.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer. (1) The following department staff members shall have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 10. Removal From the Academy Pending an Initial Appearance Before the Commissioner. (1) If a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would

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be dangerous or disruptive if not removed; or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from the academy pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds for believing that a trainee has violated a conduct or honor code requirement identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of a witness's apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File any charges against the trainee as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date and place the trainee shall make an initial appearance before the commissioner to answer the charges.

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee; and

2. Explain to the trainee:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the trainee the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

JOHN W. BIZZACK, PhD, Commissioner

APPROVED BY AGENCY: December 15, 2011

FILED WITH LRC: December 15, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2012 at 9:00 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 2012, 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 January 31, 2012. 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: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the conduct requirements, procedures, and penalties for those attending the Department of Criminal Justice Training Telecommunications Academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish clear conduct requirements for telecommunications trainees and to establish the procedures and penalties for those who violate the conduct requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent conduct requirements, procedures, and penalties for all who attend the Telecommunications Academy.

(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 does the following: 1. Changes the name of the Telecommunication Academy to incorporate "Public Safety Dispatch." 2. Amends policy regarding excused and unexcused absences and how much time can be missed. 3. Other minor drafting changes.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to update the title of the course and address excused and unexcused absences..

(c) How the amendment conforms to the content of the authorizing statutes: Please see the response contained in (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment amends language in the DOCJT disciplinary requirements in order to improve and better reflect academy practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth that employ law enforcement telecommunications or dispatchers.

(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 agencies should not have to take any actions. These amendments relate only to rules for trainees in the Telecommunications Academy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments should not cost anything more than what it costs presently.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive a better trained dispatcher upon graduation.

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

(a) Initially: No additional costs.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(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 should be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(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. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect city, county, and state agencies that employ law enforcement dispatchers. New city, county, and state telecommunications are required to attend the Telecommunications Academy and abide by all disciplinary rules.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), KRS 15.330(1)(a) and (h).

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 should be no additional costs to the Department of Criminal Justice Training or the employing agencies of Academy trainees.

(d) How much will it cost to administer this program for subsequent years? No additional costs over that which the Department of Criminal Justice Training currently spends to administer the telecommunications public safety dispatch training program. The amendments to this administrative regulation are relatively minor and should have no additional fiscal impact.

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: Please see answers to 4(c) and 4(d) above.

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 3:050. Telecommunications (Public Safety Dispatch) Academy-CJIS[academy:] graduation requirements; records.

RELATES TO: KRS 15.530, 15.550, 15.560(1), 15.565

STATUTORY AUTHORITY: KRS 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.590 authorizes the Kentucky Law Enforcement Council [requires the Commissioner of the Department of Criminal Justice Training] to promulgate administrative regulations regarding training and telecommunications practices. This administrative regulation establishes the course and graduation requirements of the Telecommunications (Public Safety Dispatch) Academy-CJIS.[Academy:]

Section 1. Definition. "Academy" means the 205[168] hour Telecommunications (Public Safety Dispatch) Academy-CJIS[Academy] course conducted by the department.

Section 2. Academy Content. The academy shall consist of the following eight (8)[seven (7)] areas:

- (1) Introduction to Dispatching:[Basic telecommunications;]
- (2) Duties and Responsibilities:[Criminal justice information system (CJIS);]
- (3) Phone procedures:[Emergency medical dispatch;]
- (4) Radio procedures:[Cardiopulmonary resuscitation (CPR);]
- (5) Calls for service:[Critical incidents;]
- (6) Emergency medical dispatch:[Spanish—for—the telecommunicator; and]
- (7) Criminal justice information system (CJIS); and
- (8) Final Exam and Graduation.[Incident command, Homeland Security;]

Section 3. Academy Graduation Requirements. (1) To graduate from the academy, a trainee shall:

(a) Successfully complete a minimum of 205[168] hours of Kentucky Law Enforcement Council (KLEC)-approved training;

(b) Attain a passing score on all examinations for which a numerical score is assigned, as follows:

1. Minimum score on the Emergency Medical Dispatch written examination as set by the Emergency Medical Dispatch provider:[Eighty (80) percent on the Emergency Medical Dispatch written examination;]

2. Minimum score on the CPR written examination as set by the CPR provider:[Eighty (80) percent on the CPR written examination;] and

3. Seventy (70) percent on all other examinations for which a

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numerical score is assigned;

(c) Pass all examinations for which a pass-or-fail designation is assigned; and

(d) Successfully complete all other assignments, exercises, and projects included in the academy. After-hours assignments may be required, and shall be successfully completed in order to pass the training area for which they were assigned.

(2) A trainee shall be considered to have failed the academy if the trainee does not meet the requirements established in subsection (1) of this section. ~~[(3) To avoid unnecessary repetition of coursework:~~

~~(a) A telecommunicator who attends the telecommunications academy and has previously successfully completed basic telecommunications or any other area of the telecommunications academy, as established in Section 2 of this administrative regulation, shall:~~

~~1. Receive credit for that training area; and~~

~~2. Not be required to repeat that training area of the telecommunications academy; and~~

~~(b) The Commissioner of the Department of Criminal Justice Training may, upon written request, award a certificate of completion to a CJIS telecommunicator who has successfully completed all of the training areas that compose the telecommunications academy.]~~

Section 4. Reexaminations. (1) A trainee shall be permitted one (1) reexamination.

(2) A trainee who fails an examination shall not be reexamined:

(a) Earlier than twenty-four (24)~~[forty-eight (48)]~~ hours from the original examination; or

(b) Later than the last scheduled day before the academy graduation~~[of the telecommunications academy.]~~

(3) A trainee shall be considered to have failed the academy if the trainee fails a reexamination.

Section 5. Failure and Repetition of Academy. (1) A trainee who has failed an academy shall be permitted to repeat one (1) academy in its entirety during the following twelve (12) months.

(2) The trainee or his agency shall pay all fees for the repeated academy.

Section 6. Absence. (1) A trainee may have excused absences from the academy with approval of the ~~[Professional Development]~~ Branch Manager or Telecommunications Training Section Supervisor.

(2) An excused absence from the academy which causes a trainee to miss any of the ~~205~~168 hours of training shall be made up through an additional training assignment.

(3) If a trainee's absence is excused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and reenrolled in a subsequent class beginning at the point at which the trainee was absent. The time period for reenrollment in a subsequent class shall not exceed six (6) months from the date of the class from which the trainee was withdrawn.

(4) If a trainee's absence is unexcused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and receive no credit for completed training.

Section 7. Circumstances Preventing Completion of the ~~[Telecommunications]~~ Academy. If a trainee is prevented from completing the ~~[telecommunications]~~ academy due to extenuating circumstances beyond the control of the trainee, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the academy within 180 days immediately following the termination of the extenuating circumstance, if the:

(1) Extenuating circumstance preventing completion of the academy does not last for a period of longer than one (1) year; and

(2) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

Section 8. Termination of Employment While Enrolled. If while

enrolled in the ~~[telecommunications]~~ academy, a trainee's employment as a ~~dispatcher~~telecommunicator is terminated by resignation or dismissal and he is unable to complete the academy, he may complete the remaining training within one (1) year of reemployment as a ~~dispatcher~~telecommunicator. The trainee shall repeat the ~~[telecommunications]~~ academy in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the trainee while enrolled in the ~~[telecommunications]~~ academy.

Section 9. Maintenance of Records. All training records shall be:

(1) Available to the council and the secretary for inspection or other appropriate purposes; and

(2) Maintained in accordance with applicable standards in KRS Chapter 171.

KEITH CAIN, Chair

APPROVED BY AGENCY: December 15, 2011

FILED WITH LRC: December 15, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2012 at 9:00 a.m. in Room 211, Funderburk Building, Richmond, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 2012, 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 January 31, 2012. 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: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the guidelines and procedures for graduation from the Department of Criminal Justice Training (DOCJT) Telecommunications (Public Safety Dispatch) academy. The necessity of this administrative regulation: The regulation is necessary so that the Kentucky Law Enforcement Council can fulfill his responsibility, as established in KRS 15.590, to promulgate administrative regulations necessary for the proper training of Law Enforcement Telecommunicators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.590 authorizes the Kentucky Law Enforcement Council to promulgate administrative regulations regarding telecommunications practices. This administrative regulation is necessary to establish graduation requirements for the DOCJT Telecommunications (Public Safety Dispatch) academy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for graduation from DOCJT Telecommunications (Public Safety Dispatch) Academy.

(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: 1. Changes the name of the Telecommunications Academy to incorporate "Public Safety Dispatch." 2. Amends the course content of the academy and passing scores for the courses. 3. Deletes old provisions regarding completion of individual parts of the academy. 4. Amends reexamination time periods. 5. Amends

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policy regarding excused and unexcused absences and how much time can be missed.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been amended in over five years. These amendments are necessary to update the subjects and training material that is taught to dispatchers in the Academy.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.590 authorizes the Kentucky Law Enforcement Council to promulgate administrative regulations necessary for training, in-service training, and telecommunications practices.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will benefit law enforcement agencies that employ dispatchers and permit the Kentucky Law Enforcement Council to fulfill its statutory responsibilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth that employ law enforcement telecommunications or dispatchers.

(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 agencies should not have to take any actions. These amendments relate only to the Telecommunications (Public Safety Dispatch) Academy conducted by the Department of Criminal Justice Training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment adds three days of training to the current schedule. Other than the salary paid to trainees, compliance with the amendments should not impose additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive a better trained dispatcher upon graduation.

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

(a) Initially: No additional costs.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(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 should be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(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. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? 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 city, county, and state agencies that employ law enforcement dispatchers. New city, county, and state telecommunications are required to attend the Telecommunications

(Public Safety Dispatch) Academy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(a) and (h), KRS 15.590.

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 should be little additional costs to the Department of Criminal Justice Training other than the daily meal allowance, which is \$17.00 per trainee for each of the three additional days of training.

(d) How much will it cost to administer this program for subsequent years? No additional costs over that which the Department of Criminal Justice Training currently spends to administer the telecommunications public safety dispatch training program.

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: Please see answers to 4(c) and 4(d) above.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Licensing (Amendment)

601 KAR 9:160. Surrender or reactivation of vehicle title [Surrendered title of a vehicle].

RELATES TO: KRS 186A.215 (3); KRS 186A.295

STATUTORY AUTHORITY: KRS 186A.020; 186A.215(4);

NECESSITY, FUNCTION, AND CONFORMITY: KRS

186A.020 authorizes the cabinet to promulgate administrative regulations necessary to carry out the provisions of Chapter 186A. KRS 186A.215(4) authorizes the cabinet to promulgate an administrative regulation establishing the procedures for the transfer of a motor vehicle where the transferee fails to submit the required documentation to the county clerk. [If a vehicle had been so severely damaged that it can never safely be rebuilt and can be sold only for its undamaged parts or as a source of scrap metal, the title on it is to be surrendered to the county clerk or the Transportation Cabinet pursuant to KRS 186A.295. There are times when an owner mistakenly surrenders a vehicle title. In those instances, a procedure is needed to reactivate the title to the vehicle. This administrative regulation establishes sets forth the procedure to be followed in having a surrendered title reactivated when necessary.] This administrative regulation establishes the procedures for the transfer of a motor vehicle where the transferee of the motor vehicle fails to submit the documentation as required by KRS 186A.215(3). This administrative regulation also establishes the procedures for a motor vehicle owner to reactivate a vehicle title that has been mistakenly surrendered.

Section 1. Transfer of vehicle ownership. (1) If the transferee of a motor vehicle fails to submit the documents required in KRS 186A.215(3) to a county clerk's office within fifteen (15) days, the transferor of the motor vehicle shall submit TC Form 96-3, Affidavit of Incomplete Transfer to his or her county clerk of residence;

(2) Upon receipt of TC Form 96-3, a county clerk shall enter data into the titling system that will surrender the title and restrict a registration transaction on the motor vehicle until the transfer has been processed.

Section 2[4]. Reactivation of Surrendered Title. (1) A vehicle

owner who has mistakenly surrendered a vehicle title[,] may apply to the county clerk for the reactivation of the title. The vehicle owner shall provide the following information to the county clerk's office:

- (a) Name of the vehicle owner;
- (b) Address of the vehicle owner;
- (c) Identification number or complete description of the vehicle;
- (d) Reason why the title needs to be reactivated, including a statement of how the title was mistakenly surrendered.

(2) The Transportation Cabinet shall not reactivate a title surrendered pursuant to KRS 186A.295 unless the owner of record or his or her agent is the applicant for the reactivation.

Section 3. Incorporation by Reference. (1) "Affidavit of Incomplete Transfer", TC Form 96-3, revised December, 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622.

(3) This material may also be obtained by accessing the cabinet's website at <http://transportation.ky.gov/>.

THOMAS O. ZAWACKI, Commissioner

MIKE HANCOCK, Secretary

APPROVED BY AGENCY: December 1, 2011

FILED WITH LRC: December 5, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2012 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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 for the owner of a motor vehicle who mistakenly surrenders a vehicle title and wishes to reactivate the title. This regulation also establishes procedures for the transferor of a motor vehicle where the purchaser or transferee does not submit documentation to the county clerk within fifteen (15) days.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to inform the public of the procedures available when a vehicle title is mistakenly surrendered and when a purchaser of a motor vehicle doesn't file documentation with the county clerk's office.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186A.020 authorizes the cabinet to promulgate an administrative regulation to carry out the provisions of Chapter 186A. KRS 186A.215(4) authorizes the cabinet to promulgate an administrative regulation establishing the procedures for the transferor of a motor vehicle where the purchaser

fails to submit the documentation to the county clerk's office.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish procedures for the transferor of a motor vehicle as authorized in KRS 186A.215(4). This regulation also establishes the procedures to reactivate a surrendered title.

(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 adds language authorized by KRS 186A.215(4) to establish procedures for the transferor of a motor vehicle who finds that the purchaser has not filed the paperwork with the county clerk within fifteen (15) days.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to inform the public of the procedures available to them if the person who buys their motor vehicle fails to file the paperwork with the county clerk.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes the procedures authorized in KRS 186A.215(4).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will establish the procedures for the transferor of a motor vehicle to follow if the transferee fails to file paperwork with the county clerk within fifteen (15) days.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals buying and selling motor vehicles, County Clerks, Department of Vehicle Regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The transferor of a motor vehicle will submit a Transportation Cabinet form to the County Clerk of residence. The clerk will enter the data into the AVIS system which will prevent any registration transaction until the transfer of the motor vehicle has taken place.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit is to the seller of the motor vehicle who finds that the purchaser of his or her vehicle did not file the paperwork as required.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no costs associated with implementing these amendments.

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with implementation and enforcement of this regulation.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied. Any seller of a motor vehicle who finds that the purchaser of the car has not filed the paperwork can file a form with the County Clerk's office.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? This administrative regulation impacts the Department of Vehicle Regulation and the County Clerk's offices.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186A.020; 186A.215(4)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effects on expenditures or revenue are expected.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 administrative costs are required or expected based on these amendments.

(d) How much will it cost to administer this program for subsequent years? No subsequent administrative costs are anticipated.

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

Revenues (+-):
Expenditures (+-):
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

703 KAR 5:070. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor and ensures accountability~~[establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts]~~. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. Incorporation by Reference. (1) "Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs", December 15, 2011~~[February 12, 2009]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 17th~~18th~~ Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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

TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson

APPROVED BY AGENCY: December 15, 2011

FILED WITH LRC: December 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 30, 2012, at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321 or email at kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability system to classify schools and districts.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for implementation of the statewide assessment and accountability system. The regulation provides procedures for inclusion of special populations in the requirements of KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the inclusion of student special populations in the state-required assessment and accountability programs. The regulation defines accommodations permitted with state-required testing for students with particular education plans (i.e., individualized education programs, 504 Plans and Program Services Plan as an English learners) and for students enrolled in particular programs (i.e., alternative programs, state agency, home/hospital settings); and for students participating in the alternate assessment program.

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

(a) How the amendment will change this existing administrative regulation: The amendment makes policy changes (i.e., remove the use of the reader accommodation on reading tests; remove the use of a calculator on non-calculator portion of the state assessments; reduce prompting and cueing to a cue to remain on task; for English learners, remove student-generated glossaries and focus on word-to-word translation); removes outdated terminology; reorganizes the document incorporated by reference and adds clarification.

(b) The necessity of the amendment to this administrative regulation: The amendment provides clarification and aligns Kentucky's accommodation policy to the policies used in most states and with national programs (i.e., National Assessment of Educational Progress (NAEP)).

(c) How the amendment conforms to the content of the authorizing statute: The amendment provides guidance on inclusion of

special populations in the requirements of KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides necessary clarification on testing accommodations to ensure valid test results.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The regulation will impact schools and districts by providing guidance on the inclusion of students in special populations in assessment and accountability system used to classify school and district performance.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff in schools and school districts administer the state-required assessment using consistent rules and procedures. The amendment ensures consistent procedures for the inclusion of students in special populations.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky schools and districts will have clear guidance on the inclusion of students in special populations.

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

(a) Initially: The proposed amendment will require development of new explanatory materials and data programs for new assessment and accountability program in the normal course of work for staff. No additional costs are expected.

(b) On a continuing basis: The proposed regulation does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KDE operating funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Current funding supports implementation and data reporting for school and district accountability.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. No additional costs to school districts are expected.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? The proposed regulation will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will require no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

703 KAR 5:140. Requirements for school and district report cards.

RELATES TO: KRS 158.031, 158.6453(20)[158.6453(13)]

STATUTORY AUTHORITY: KRS 158.6453(20)[158.6453(13)]

NECESSITY, FUNCTION, AND CONFORMITY:

KRS 158.6453(20)[158.6453(13)] requires the Kentucky Board of Education to promulgate an administrative regulation to define the implementation and the components of a school and district report card that clearly communicates with parents and the public about school and district performance. This administrative regulation establishes the standards for a school and district report card.

Section 1. Definitions. (1) "Average student/teacher ratio" means the total enrollment of the school (end of year membership) divided by the number of teachers on a full-time equivalent (FTE) basis, not including administrators, guidance counselors, or media specialists.

(2) "Average years of experience" means the average number of years of professional experience of classroom teachers excluding certified staff such as administrators, guidance counselors, or media specialists.

(3) "Base year" means the academic year immediately preceding the publication of the school report card components.

[4] "~~Content-focused professional development~~" means ~~professional development that is teacher focused, discipline-based and content grounded, and provides teachers with in-depth learning experiences in the chosen core discipline.~~

[4] [5] "Core academic subject" means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history, and geography.

[5] [6] "District report card" means the summary of district and school information that may be published in the newspaper with the largest paid circulation in the county in which the district resides.

[6] [7] "School" means an institution as defined in KRS 160.345(1)(b).

[7] [8] "School report card" means the compilation of school information to be published on the Kentucky Department of Education Web site and linked to school Web sites or in a printed copy if requested.

[8] [9] "School safety data" means a list of components as established in Section 2 of this administrative regulation, critical to providing for a safe school environment for students and school staff.

[9] [10] "Spending per student - district" means the current expenditures made divided by the total primary through grade twelve (12) end of year average daily attendance in the district.

[10] [11] "Spending per student - school" means the current expenditures made divided by the end-of-year average daily attendance in the school.

[11] [12] "Spending per student - state" means the current

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expenditures made divided by the total primary through grade twelve (12) end of year average daily attendance in the state.

~~(12)(13)~~ "Total enrollment" means the number of primary through grade twelve (12) students enrolled in a school or district as reported by the local superintendent at the close of the year.

Section 2. School Report Card. (1) A school report card shall be published on the Kentucky Department of Education Web site and linked to school Web sites. The school report card shall be printed by the school upon request.

(2) A school report card shall include the following information:

(a) The name and address of the school, the name of its principal, and telephone, fax and e-mail contact information, all of which shall be current;

(b) The total enrollment of the school

(c) The school level results of all components of the Unbridled Learning: College/Career-Ready for All Accountability System [Commonwealth Accountability Testing System]; (d) The school level results of state-sanctioned performing arts competitions or other state-sanctioned academic or speech competition, if applicable; (d)(e) Teacher qualification information, including:

~~[1. The percent of classes taught by teachers participating in content-focused professional development related to the content being taught during the base year;]~~

~~1.[2.] Average years of teaching experience;~~

~~2.[3.] Percentage of teachers with emergency or provisional certification;~~

~~3.[4.] Percentage of core academic subject classes not taught by highly qualified teachers;~~

~~4.[5.] The number of teachers certified by the National Board for Professional Standards; and~~

~~5.[6.] The professional qualifications of all teachers expressed as percentages, including bachelors, masters, Rank I, specialist, and Ph.D. or Ed.D. degrees;~~

(f) School safety data including:

1. Whether visitors are required to sign in;

2. Whether all parents receive the district discipline code; ~~[3. What procedures are in place for drug and weapons detection;]~~

~~3.[4.] The percentage of classrooms with telephones able to access outside lines; and~~

~~4.[5.] Data detailing safety violations of 1st Degree [aggravated] assault (with intent to cause injury), drug abuse, and weapons. The safety data shall include:~~

~~a. The number of incidents; and~~

~~b. The number of students suspended or expelled for that kind of incident;~~

(g) Student resource data including:

1. Spending per student at the school, district and state level;

2. Average student to teacher ratios at the school, district, and state level;

3. Student to internet connected instructional computer ratios at the school, district and state level;

4. Percentage of computers meeting the Department's annual survey for minimal standards for computers. ~~[five (5) years old or less and~~

~~5. Description of integration of technology into instruction;]~~

(h) Parental involvement information including:

1. Number of students whose parent or guardian had at least one (1) teacher conference;

2. Number of parents and guardians voting in school council elections;

3. Number of parents and guardians serving on the school council or its committees; and

4. Number of school-related volunteer hours; ~~[(i) A narrative describing to the public actions being taken to address issues in equity related to the delivery of educational services to all students; and]~~

~~i.[(j)] The names of members of the current year school council with contact information, including telephone numbers or e-mail addresses where the members can be reached for questions or comments. [(k) Hyperlink to the current Comprehensive School Improvement Plan (CSIP) if on the school Web site, or the CSIP available for examination in school.]~~

Section 3. As accurate, reliable data become available from student information systems, the Kentucky Department of Education shall link school, district, and state data to the school and district report cards, including existing reports, participation, and performance in Advanced Placement (AP) ~~[advanced placement] tests and courses, [the issuance of commonwealth diplomas, participation in gifted and talented programs and participation in special education with instructional and testing accommodations, all]~~ disaggregated to the extent permitted under KRS 160.700-160.730, which protects the confidentiality of an individual student's educational records.

Section 4. District Report Card. (1) A district report card shall include a district level summary of all school data required on the school report card and shall be the aggregation of the school report cards by grade level. ~~[(2) The district report card shall include a narrative describing to the public actions being taken to address issues in equity related to the delivery of educational services to all students.]~~

~~2.[(3)] The district report card shall include the names and appropriate addresses of the district superintendent and members of the local board of education.~~

~~3.[(4)] The district report card shall contain the federal accountability [Adequate Yearly Progress (AYP)] status of all district schools and the percentage of core academic subject classes not taught by highly qualified teachers aggregated and disaggregated by high poverty compared to low poverty schools (schools in the top quartile of poverty and the bottom quartile of poverty in the state).~~

~~4.[(5)] The district report card shall include a list of district schools with primary programs and the number of students in each school, requiring five (5) years to complete the primary program.~~

~~5.[(6)] The district report card shall be linked to the District Comprehensive Improvement Plan and other Web-based reports detailing district academic performance when these reports become available.]~~

Section 5. Reporting Requirements; Timelines. (1) Prior to publication the principal and the superintendent or a designee shall review and approve the text and data provided for the school and district report cards. The school report card and district report card shall be published on the Kentucky Department of Education Web site and school and district Web sites and shall be supplied by the school and districts in printed format if requested.

Section 6. Verification; Audits. The Department of Education shall conduct an audit of school and district report cards for compliance with the provisions of this administrative regulation. School and district report card components generated at the school and district shall be delivered to the Department of Education upon request.

Section 7. Noncompliance. (1) Noncompliance shall include unauthorized alteration of data or falsification of data.

(2) If a school or district publishes incorrect information in a component of the report card, it shall supply corrected information to the audience that received the incorrect information, using the same medium by which it conveyed the original information.

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

TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson

APPROVED BY AGENCY: December 15, 2011

FILED WITH LRC: December 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 30, 2012, at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing,

of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321 or email at kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for a school and district report card.

(b) The necessity of this administrative regulation: KRS 158.6453 (20) requires the Kentucky Board of Education to promulgate an administrative regulation to define the implementation and the components of a school and district report card that clearly communicates with parents and the public about school and district performance.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for the state report card program. The regulation relates to reporting data from requirements of KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides requirements of school and district report cards.

(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 aligns the school and district report cards to the new state-required assessment and accountability program for public schools and school districts. It streamlines the components to those required in state or federal reporting. It decreases the demands that data collection and narrative production make on school and district resources. It eliminates ineffective indicators of school and district performance or information already collected and available to the public in other venues.

(b) The necessity of the amendment to this administrative regulation: The amendment aligns the school and district report card program to the new assessment and accountability program.

(c) How the amendment conforms to the content of the authorizing statute: The amendment provides information necessary for the report card program. The amendment relates to reporting data from requirements of KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide definitions and components required in the school report card.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The regulation will impact schools and districts by providing school report card requirements.

(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: Schools and school districts shall continue to publish annually a school report card including the compo-

nents defined in the regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky schools and districts will have clear requirements for the school report card program that align to the new assessment and accountability program.

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

(a) Initially: The proposed amendment will require development of new explanatory materials and data programs for the revised school report card in the normal course of work for staff. No additional costs are expected.

(b) On a continuing basis: The proposed regulation does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education operating funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Current funding supports state-level implementation and data reporting for school and district report cards.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. No additional costs to school districts are expected since districts are currently complying with school and district report cards.

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

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

(c) How much will it cost to administer this program for the first year? The proposed regulation will require no additional cost beyond costs that are currently being expended for the school and district report card program.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will require no additional cost beyond costs that are currently being expended for the school and district report card program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

810 KAR 1:014. Weights.

RELATES TO: KRS 230.215, 230.260

STATUTORY AUTHORITY: KRS 230.215, 230.260~~[-230.290]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted in the Commonwealth. This administrative regulation provides the requirements for assigning weights to a horse in a race.

Section 1. (1) Weight penalties shall be obligatory. Weight allowance shall be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.

(2) A horse shall start with only the allowance of weight to which it is entitled at the time of starting, regardless of its allowance at time of entry.

(3) A horse incurring a weight penalty for a race shall not be entitled to any weight allowance for that race. A horse not entitled to the first weight allowance in a race shall not be entitled to any subsequent allowance specified in the conditions.

(4) Claim of weight allowance to which a horse is not entitled shall not disqualify the horse, unless protest is made in writing and lodged with the stewards at least one (1) hour before post time.

(5) A horse shall not incur a weight penalty or be barred from any race for having been placed second or lower in any race. A horse shall not be given a weight allowance for failure to finish second or lower in any race.

(6)(a) Except as provided in paragraph (b) of this subsection, a horse shall not receive allowance of weight and shall not be relieved of extra weight for having been beaten in one (1) or more races.

(b) A horse may receive maiden allowances or allowances if it has not won a race within a specified period or a race of a specified value.

(7) Penalties incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.

(8) In determining eligibility, allowances,~~[allowances]~~ and penalties, the reports, records, and statistics as published in the Daily Racing Form and the monthly chart books, or corresponding official publications of any foreign country, shall be considered official, except they may be corrected until forty-five (45) minutes prior to post time of the race.

(9) Horses winning races at unrecognized meetings shall not be penalized for the winnings in races run thereafter under the jurisdiction of the commission. The maiden allowance, however, shall be lost by the winning of a race at any unrecognized meeting.

(10) With the exception of apprentice allowances, handicap races, three (3) year old horses entered to run in races against horses four (4) years old and upwards, and the allowance provided in subsection (11) of this section, a jockey shall not be assigned a weight of less than 118 pounds. For three (3) year old horses entered to run in races against horses four (4) years old and upwards from January 1 through September 1, a jockey shall not be assigned a weight of less than 116 pounds.

~~(11)(40) Except in handicaps, fillies two (2) years old shall be allowed three (3) pounds, and fillies and mares three (3) years old and upwards[upward] shall be allowed five (5) pounds before September 1, and three (3) pounds thereafter in races where they are competing against horses of the opposite sex. (41) In all races of one (1) mile or over, other than maiden races, races for nonwinners at a mile or over, stakes races or handicaps, any horse which has never won at a distance of one (1) mile or over, shall be allowed three (3) pounds weight allowance in addition to any other allowances to which it may be entitled in the race; the allowance shall be claimed at time of entry.~~

~~(12) With the exception of apprentices, a jockey shall not be assigned a weight of less than 118 pounds.]~~

~~(12)(43) Jockeys shall be weighed out for their respective mounts by the clerk of scales not less than fifteen (15) minutes~~

before post time.

~~(13)(44) A jockey's weight shall include his clothing, boots, saddle and its attachments, and any other equipment except as specified in this subsection. The following items shall not be included in a jockey's weight: riding crop, bridle, bit, reins, safety helmet, safety vest, blinkers, goggles, over-girth, breast collar, and number cloth. Upon approval of the stewards, a jockey[jockeys] may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions.~~

~~(14)(45) Five (5) pounds shall be the limit of overweight any horse is permitted to carry.~~

~~(15)(46) Only valets furnished by the association shall assist a jockey[jockeys] in weighing out.~~

~~(16)(47) After a race has been run, the jockey shall ride promptly to the finish line, dismount, and present himself to the clerk of scales to be weighed in. He shall carry [over]to the clerk of scales all pieces of equipment with which he weighed out. The post-race weighing of a jockey[jockeys] shall include any sweat, dirt, and mud that have accumulated on the jockey, jockey's clothing, jockey's safety helmet, jockey's safety vest, and over-girth. This accounts for additional weight depending on specific equipment, as well as weather, track, and racing conditions.~~

~~(17)(48) Each jockey shall weigh in at no less than that at which he weighed out, and if short, the stewards shall investigate and if warranted take disciplinary action against the individual or individuals responsible for the violation. If warranted, the action shall include disqualification of the horse from receiving what would otherwise be its share of the purse.~~

~~(18)(49) If a jockey is prevented from riding his mount to the finish line because of an accident or illness either to himself or his mount, he may walk or be carried to the scales, or he may be excused by the stewards from weighing in.~~

~~(19)(20) A notice shall be included in the daily program that each jockey[all jockeys] will carry approximately three (3) pounds more than the published weight to account for safety helmets and safety vests that is not included in required weighing out procedures. A notice shall also be published that, upon approval of the stewards, a jockey may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions.~~

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 15, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 26, 2012 at 10:00 a.m., at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by January 19, 2012, 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 January 31, 2012. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susan Bryson Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan Bryson Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-

tive regulation sets forth the weight requirements for horses and jockeys.

(b) The necessity of this administrative regulation: This amendment corrects an error that was included in the last version of the regulation that became effective on October 7, 2011.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 and KRS 230.260 grant the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation corrects and error in the last version of the regulation with regards to the amount of weight assigned to a jockey for particular races.

(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 clarify the circumstance under which a jockey may be assigned a weight of less than 118 pounds.

(b) The necessity of the amendment to this administrative regulation: The prior amendments to the regulation that went into effect on October 7, 2011 omitted a specific circumstance under which a jockey may be assigned a weight of less than 118 and is consistent with actual practice.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 grants the Commission broad authority to promulgate regulations governing horse racing.

(d) How the amendment will assist in the effective administration of the statutes: The amendments clarify the scale of weights.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 100 jockeys licensed in Kentucky each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The updated scale of weights is consistent with current practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be imposed on the commission to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jockeys will benefit from the additional clarity provided in the regulation.

(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: None.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? No tiering is applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.

3. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. None.

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 regulation will not impose additional costs upon any government agency.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? 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:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

900 KAR 6:125. Certificate of Need annual surveys, and registration requirements for new Magnetic Resonance Imaging units.

RELATES TO: KRS 216B.010, 216B.040

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes voluntary [the requirements for] registration of Magnetic Resonance Imaging units and the requirements for submission of annual survey data that are used to produce annual reports necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Days" means calendar days, unless otherwise specified.

(3) "Exempt physicians" means physicians that operate a Magnetic Resonance Imaging unit pursuant to the exemption allowed in KRS 216B.020(2)(a).

(4) "Long term care facility" means any entity with licensed long term care beds including nursing facility, nursing home, intermediate care, Alzheimer's, intermediate care facility for the mentally retarded, or personal care.(5) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(6) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(7) "Year" means a calendar year from January 1 through December 31.

Section 2. Entities Completing Surveys. The following entities shall submit annual surveys:

(1) Licensed Ambulatory Surgery Centers;

(2) Licensed Hospitals performing ambulatory surgery services or performing outpatient surgical services;

(3) Licensed Home Health Agencies;

(4) Licensed Hospice Agencies;

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- (5) Licensed Hospitals;
- (6) Licensed Private Duty Nursing Agencies;
- (7) Facilities with licensed long term care beds;
- (8) Entities that hold a certificate of need for MRI equipment;
- (9) Facilities with Megavoltage Radiation equipment;
- (10) Licensed Psychiatric Residential Treatment Facilities; and
- (11) Facilities with Positron Emission Tomography equipment.

Section 3. Entities completing surveys on a voluntary basis. Exempt physicians that have MRI equipment may submit surveys on a voluntary basis.

Section 4. Annual Survey Submission. Entities Completing Surveys on a Voluntary Basis. Exempt physicians that have MRI equipment shall submit surveys on a voluntary basis. An annual survey shall be completed for the previous year and transmitted electronically by accessing the Office of Health Policy's Web site at <http://chfs.ky.gov/ohp>.

Section 5. Surveys shall be submitted annually as follows:

- (1) Annual Survey of Licensed Ambulatory Surgical Services;
- (2) Annual Survey of Licensed Home Health Services;
- (3) Annual Survey of Hospice Providers;
- (4) Annual Survey of Licensed Hospitals;
- (5) Annual Survey of Licensed Private Duty Nursing Agencies;
- (6) Annual Survey of Long Term Care Facilities;
- (7) Annual Survey of Magnetic Resonance Imaging (MRI) Equipment and Services;
- (8) Annual Survey of Megavoltage Radiation Services;
- (9) Annual Survey of Psychiatric Residential Treatment Facilities; and
- (10) Annual Survey of Positron Emission Tomography (PET) Services.

Section 6. Annual surveys shall be completed and submitted no later than March 15th of each year. If the 15th falls on a week-end or holiday, the submission due date shall be the next working day.

Section 7. Extensions for Survey Submission. (1) A request for an extension for submission of data shall be made in writing or via email to the administrator of the specific survey.

(2) The request for an extension shall state the facility name, survey log-in identification number, contact person, contact phone number, contact email address, and a detailed reason for the requested extension.

(3) One extension per survey of up to 10 (ten) days shall be granted.

(4) An additional extension shall only be granted if circumstances beyond the entity's control prevents timely completion of a survey.

Section 8. Data Corrections to Draft Annual Reports Utilizing Data Submitted in the Annual Surveys. (1)(a) Prior to the release of draft reports to facilities for their review, the Office of Health Policy shall review data for completeness and accuracy.

(b) If an error is identified, the facility shall be contacted by the Office of Health Policy and allowed fourteen (14) days to make corrections.

(2)(a) Prior to publication of the reports, the Office of Health Policy shall publish draft reports available only to the entities included in each individual report.

(b) The facilities shall be notified of a website and provided with a login identification and password required to access each applicable draft report and shall have fourteen (14) days to review their data for errors.

(c) Corrections shall be submitted in writing or via email to the Office of Health Policy before the expiration of the fourteen (14) day review period.

(3)(a) After publication of the reports, reports shall not be revised as a result of data reported to the Office of Health Policy incorrectly by the facility.

(b) Corrections received after the fourteen (14) day review period shall not be reflected in the published report.

(c) Facilities may provide a note in the comments section for the following year's report, referencing the mistake from the previous year.

Section 9. Annual Reports. (1) Utilizing data submitted in the annual surveys, the Office of Health Policy shall publish reports annually as follows:

- (a) Kentucky Annual Ambulatory Surgical Services Report;
- (b) Kentucky Annual Home Health Services Report;
- (c) Kentucky Annual Hospice Services Report;
- (d) Kentucky Annual Hospital Utilization and Services Report;
- (e) Kentucky Annual Private Duty Nursing Agency Report;
- (f) Kentucky Annual Long Term Care Services Report;
- (g) Kentucky Annual Magnetic Resonance Imaging Services Report;
- (h) Kentucky Annual Megavoltage Radiation Services Report;
- (i) Kentucky Annual Psychiatric Residential Treatment Facility Report; and
- (j) Kentucky Annual Positron Emission Tomography Report.

(2) Electronic copies of annual reports may be obtained at no cost from the Office of Health Policy's Web site at <http://chfs.ky.gov/ohp>. A paper copy may be obtained for a fee of twenty (20) dollars at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621.

Section 10. Any facility, other than an exempt physician that has MRI equipment, that fails to complete a required annual survey shall be referred to the Office of Inspector General for further action which may impact the facility's license renewal as provided for in 902 KAR 20:008, Section 2(6).

Section 11. Magnetic Resonance Imaging Equipment Registration on a voluntary basis by exempt physicians that have MRI equipment.

(1) An exempt physician who uses a Magnetic Resonance Imaging unit (MRI) may register the MRI equipment by disclosing the following information by telephone contact and followed up in writing to the Cabinet for Health and Family Services:

- (a) Name, address, and telephone number of the facility at which each unit is located or to be utilized;
- (b) Identification of designated contact person or authorized agent of each facility;
- (c) Make, model, and serial number of each unit;
- (d) Date the unit became operational at each site; and
- (e) Whether the unit is free-standing or mobile. If the unit is mobile, the submission shall also identify the number of days the unit is operational.

(2) Within thirty (30) days of a change in the facility's address or the addition of another MRI unit as well as the discontinuation of any units, the designated contact person or authorized agent shall notify the Office of Health Policy in writing.

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

- (a) "2011[2040] Annual Survey of Licensed Ambulatory Surgical Services";
- (b) "2011[2040] Annual Survey of Licensed Home Health Services";
- (c) "2011[2040] Annual Survey of Hospice Providers";
- (d) "2011[2040] Annual Survey of Licensed Hospitals";
- (e) "2011[2040] Annual Survey of Licensed Private Duty Nursing Agencies";
- (f) "2011[2040] Annual Survey of Long Term Care Facilities";
- (g) "2011[2040] Annual Survey of Magnetic Resonance Imaging (MRI) Equipment and Services";
- (h) "2011[2040] Annual survey of Megavoltage Radiation Services";
- (i) "2011[2040] Annual survey of Psychiatric Residential Treatment Facilities"; and
- (j) "2011[2040] Annual Survey of Positron Emission Tomography (PET) Services".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services.

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ly Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

CARRIE BANAHAN, Executive Director

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 14, 2011

FILED WITH LRC: December 15, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2012, at 9:00 a.m. in the Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 16, 2012, 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 January 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for completion of annual surveys and the voluntary registration of new Magnetic Resonance Imaging (MRI) units with the Office of Health Policy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.010, 216B.062, 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.062, 216B.990 by establishing the requirements for completion of annual surveys and the voluntary registration of new Magnetic Resonance Imaging units with the Office of Health Policy for the orderly administration of the certificate of need program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.010, 216B.062, 216B.990 by establishing the requirements for completion of annual surveys and the voluntary requirement to register new Magnetic Resonance Imaging units with the Office of Health Policy.

(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 incorporates by reference the 2011 annual surveys.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the 2011 version of the annual surveys to entities required to submit annual surveys.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by providing the 2011 version of the annual surveys.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the 2011 version of the annual surveys.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity required to submit annual surveys and an entity wishing to voluntarily register a Magnetic Resonance Imaging unit. Approximately 800 entities complete a survey each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the annual survey process and MRI registration process identified in the administrative regulation are already established for all facilities, no action will be required of regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the annual survey process and the registration of MRI units identified in the administrative regulation are already established, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will provide specific instructions for submission of annual surveys and the voluntary registration of new Magnetic Resonance Imaging units with the Office of Health Policy for the administration of the certificate of need program.

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

(a) Initially: No additional costs will be incurred to implement this regulation as we already utilize these surveys and MRI registration process as part of our normal operations.

(b) On a continuing basis: No additional costs will be incurred to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. As stated above, the annual survey process and voluntary registration of MRI units identified in the administrative regulation are already used as part of our normal operations, so no additional funding will be required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established as a result of amendments to this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.062, 216B.990.

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

(a) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative includes a \$20.00 fee for anyone wishing to purchase a paper copy of annual reports. As the reports are available electronically at no cost, the fee is necessary to recoup the agency's printing costs incurred in producing paper reports; therefore, any revenue generated will simply cover the printing costs. There is no net revenue. We anticipate that approximately 40 reports will be purchased.

(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 includes a \$20.00 fee for anyone wishing to purchase a paper copy of annual reports. As the reports are available electronically at no cost, the fee is necessary to recoup the agency's printing costs incurred in producing paper reports; therefore, any revenue generated will simply cover the printing costs. There is no net revenue. We anticipate that approximately 40 reports will be purchased.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, DECEMBER 15, 2011

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(New Administrative Regulation)**

601 KAR 1:019 Overweight or overdimensional farm equipment.

RELATES TO: KRS 189.270(3); (4), 281.010(1)

STATUTORY AUTHORITY: KRS 189.270(6), 189.271(9)(b), 189.2717(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.271(9)(b) requires the cabinet to promulgate administrative regulations establishing the requirements to issue a permit for the movement of a divisible or nondivisible load exceeding legal weights and dimensions. KRS 189.270(6) requires the cabinet to establish safety requirements for the escort vehicles accompanying an overweight or overdimensional vehicle. This administrative regulation establishes the requirements for the issuance of single and annual permits for overweight and overdimensional farm equipment. This administrative regulation establishes the safety requirements for escort vehicles accompanying farm equipment. This administrative regulation also exempts certain farm equipment movements from the requirement of obtaining an over-dimensional permit, but retains the associated safety requirements.

Section 1. Definitions. (1) "Convoy" means multiple pieces of farm equipment moving in a continuous stream and travelling together for safety and convenience.

(2) "Farm equipment" means machinery, an implement, or a vehicle used exclusively in a farm or agriculture operation including non registered self propelled farm equipment.

(3) "Farm supplies" means supplies, materials, or equipment necessary to carry out a farming operation engaged in the production of agricultural crop products, meats, livestock, or poultry.

(4) "Fully controlled access highway" is defined by 601 KAR 1:018, Section 1.

(5) "Nondivisible" is defined by 601 KAR 1:018, Section 1.

(6) "Overdimensional" is defined by 601 KAR 1:018, Section 1.

(7) "Overweight" is defined by 601 KAR 1:018, Section 1.

(8) "Person" is defined by KRS 281.010(1).

(9) "Self propelled farm equipment" means a non registered vehicle used exclusively in a farm or agricultural operation that is capable of movement on its own power.

(10) "Toll Road" is defined by 601 KAR 1:018, Section 1.

Section 2. Permit Not Required. (1) A permit shall not be required for the transport of overweight or overdimensional farm equipment, or self propelled farm equipment from:

- (a) One farm to another;
- (b) A farm to a repair shop or dealer; or
- (c) A repair shop or dealer to a farm.

(2) A non permitted move shall comply with the safety requirements of this administrative regulation.

Section 3. Annual or single trip permit required. (1) An annual or single trip permit shall be required if a move is from a:

- (a) Manufacturer to a dealer;
- (b) Dealer to a manufacturer; or
- (c) Dealer to a dealer.

(2) An annual or single trip permit shall be required for the movement of farm equipment on:

- (a) A fully controlled access highway;
- (b) A toll road parkway;
- (c) An interstate highway.

(3) The cabinet shall consider the following when making the determination on a single or annual permit application:

- (a) The strength of bridges and structures on the route;
- (b) Traffic congestion on the route;
- (c) Horizontal and vertical clearance on the route;
- (d) The availability of alternate routes that afford greater safety;
- (e) Urban development in residential and commercial areas on

the route;

(f) The proximity of schools to the route; and

(g) Any other condition that would unduly compromise public safety and convenience.

Section 4. Single Trip permits. (1)(a) A single trip permit may be issued for the movement of farm equipment or self propelled farm equipment if a load is non divisible farm equipment exceeding the weight or dimensions established in KRS 189.222 or 189.270(3) and (4).

(2) The permit fee for the Cabinet to issue a single trip permit shall be as established in KRS 189.270(2).

(3) An applicant for an overweight or overdimensional single trip permit shall submit to the Division of Motor Carriers a completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10.

Section 5. Annual Permits. (1) An annual permit may be issued by the cabinet for the movement of farm equipment or self propelled farm equipment as established in KRS 189.270(3) and (4).

(2) The permit fee for the cabinet to issue an annual permit shall be as established in KRS 189.270(3) and (4).

(3) An applicant for an overweight or overdimensional annual permit shall submit to the Division of Motor Carriers a completed Application for Annual Overweight or Overdimensional Permit, TC Form 95-25.

Section 6. Permits for self propelled farm equipment. (1) Self propelled farm equipment shall not operate on a:

- (a) Toll road;
- (b) Parkway; or
- (c) Interstate highway.

(2) Self propelled farm equipment shall be issued a single trip or annual permit to operate on a fully-controlled access highway if the movement:

- (a) Does not create an unreasonable impedance of the flow of traffic; and
- (b) Is accompanied by escorts as established in Section 7 of this regulation.

Section 7. Escort Vehicles for Farm Equipment. (1) One (1) lead escort vehicle is required for a move on a two (2) lane highway where the length of vehicle and load exceed seventy-five (75) feet but is not more than eighty-five (85) feet.

(2) A lead escort may tow farm equipment or farm supplies on a two (2) lane or secondary route.

(3) One (1) trail escort is required for:

- (a) A move on a four (4) lane highway where the vehicle and load do not exceed forty-five (45) miles per hour;
- (b) A move on a four (4) lane or wider highway where the width of the vehicle and load exceed twelve (12) feet;
- (c) A move on a four (4) lane or wider highway where the vehicle and load have a length of 120 feet.

(4) One (1) lead and one (1) trail escort is required for:

- (a) A move on a two (2) lane highway where the width of the farm equipment and load exceed twelve (12) feet.
- (b) A move on a two (2) lane highway where the length of the farm equipment and load exceed eighty-five (85) feet;
- (c) A move on a four (4) lane or wider highway where the length of the farm equipment and load are 120 feet.
- (d) A movement of farm equipment travelling in a convoy.

Section 8. Sign, Flag, and Lighting Requirements. (1) The distance requirement for escort vehicles that accompany overdimensional farm equipment shall be as established in 601 KAR 1:018, unless due to safety or road conditions the escort vehicle is required to travel at a distance closer or farther away from the farm equipment it accompanies.

(2) The provisions of this section shall apply to farm equipment that exceeds twelve (12) feet in width.

(3) An escort vehicle shall display a warning sign six (6) to

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eight (8) feet in width stating "OVERSIZE LOAD" in black letters on a yellow background.

(4) The black letters shall be eighteen (18) inches high (11,612.7 millimeters) with a brush stroke of one and four tenths (1.4) inches (35.56 millimeters).

(5) A warning sign shall be mounted on an escort vehicle so that it is visible to oncoming traffic.

(6) An escort vehicle shall have amber oscillating or flashing lights and keep its headlights on at all times.

(7) A farm implement whose width exceeds twelve (12) feet shall display:

- (a) Amber oscillating or flashing lights visible from the rear; and
- (b) Flags displayed at the widest points of the load.
- (8) A flag shall be:
 - (a) Red or fluorescent orange; and
 - (b) Eighteen (18) inches (11,612.7 millimeters) square.

Section 9. Travel Restrictions. (1) The travel restrictions for overweight and over-dimensional loads established in 601 KAR 1:018 Section (2) shall apply to the movement of farm equipment and farm implements with the following exceptions:

(a) Farm equipment or a farm implement that is less than twelve (12) feet wide;

(b) Farm equipment or a farm implement that is used in part for off-road use; and

(c) Farm equipment that is not transporting cargo.

(2) The movement of farm equipment or self propelled farm implements in excess of twelve (12) feet in width shall not be made on a highway if adverse weather or road conditions will cause the move to be dangerous.

(3) As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lighting, or warning flags.

Section 10. Height and Weight Requirements. (1) Height requirements for farm equipment shall be as established in 601 KAR 1:018 Section 3(1) and

(2). Weight requirements for farm equipment shall be as established in 601 KAR 1:018 Section 4.

Section 11. Responsibility of Permit Holder. (1) The Responsibility of a permit holder for a permit issued for farm equipment shall be as established in 601 KAR 1:018 Section 5.

Section 12. Duplicate Permits. (1) A duplicate permit shall be obtained as established in 601 KAR 1:018 Section 7.

Section 13. Incorporation by reference. (1) The following material is incorporated by reference:

(a) "Application for Annual Overweight or Overdimensional Permit", TC Form 95-25, December, 2011;

(b) "Kentucky Overweight or Overdimensional Permit Worksheet", TC Form 95-10, December, 2011.

THOMAS O. ZAWACKI, Commissioner

MIKE HANCOCK, Secretary

APPROVED BY AGENCY: December 5, 2011

FILED WITH LRC: December 5, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2011 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be

heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the issuance of single trip and annual permits for overweight and overdimensional farm equipment. This regulation establishes the conditions under which self propelled farm equipment can be operated. This regulation also establishes safety requirements for escort vehicles accompanying farm equipment.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the procedures for persons involved in the agricultural industry to obtain permits to move overweight and overdimensional farm equipment. It is also necessary to establish the safety requirements that must be followed in order to move overweight and overdimensional farm equipment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 189.271(9)(b) requires the cabinet to promulgate administrative regulations establishing the requirements to issue a permit for the movement of divisible or nondivisible loads exceeding legal weights and dimensions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify and establish requirements and procedures relating to the issuance of overweight and overdimensional permits to farm equipment. This regulation will also clarify the safety escort requirements for farm vehicles including the signage and lighting requirements.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects persons involved in the agricultural industry in Kentucky including both farmers and farm implement dealers who regularly transport large loads and supplies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If necessary, persons hauling overweight or overdimensional farm equipment will have to obtain a single or annual permit from the cabinet. They will also be required to follow the safety requirements relating to escort vehicles for farm equipment.

(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 this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation informs and clarifies requirements relating to the movement of overweight and overdimensional farm equipment and supplies. This regulation also

clarifies safety requirements including sign, flag, and lighting requirements for overweight and overdimensional farm equipment.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: At this time, there are no known costs associated with implementing this new administrative regulation.

(a) Initially:

(b) On a continuing basis:

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

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

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

(9) TIERING: Is tiering applied? Yes. Tiering is applied because restrictions on travel vary depending on the length of trip (single or annual) and safety issues involved in the movement.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Ann D'Angelo

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 Department of Vehicle Regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189.270(6), 189.271(9)(b), 189.2717(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. There should not be any effect on the expenditures of a state or local agency.

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

(c) How much will it cost to administer this program for the first year? No administrative costs are required or expected.

(d) How much will it cost to administer this program for subsequent years? No subsequent administrative costs are anticipated.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Repealer)

703 KAR 5:002. Repeal of 703 KAR 5:001, 020, 040, 050, 060, 130 and 160.

RELATES TO: KRS 158.6451, 158.6453

STATUTORY AUTHORITY: KRS 158.6451, 158.6453

NECESSITY, FUNCTION, AND CONFORMITY: This is to repeal seven administrative regulations under Title 703, Chapter 5

Assessment and Accountability. These administrative regulations are no longer required because the Kentucky Board of Education is authorized by KRS 158.6453(3) to promulgate administrative regulations for creating and implementing a balanced statewide assessment program that measures the students', schools' and districts' achievement of the goals set forth in KRS 158.645 and 158.6451, to ensure compliance with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, and to ensure school accountability. The Kentucky Board of Education (KBE) has established a new statewide assessment and accountability program that begins in school year 2011-2012. The KBE has promulgated administrative regulations 703 KAR 5:200 Next-Generation Learners and 703 KAR 5:240 Next-Generation Learners Procedures to establish the general rules for testing and reporting and accountability guidance thus removing the need for some assessment and accountability administrative regulations. If these administrative regulations remained or were amended, the administrative regulations would be superfluous and could create ambiguity since new administrative regulations are established for the new statewide assessment and accountability program.

Section 1. The following administrative regulations are hereby repealed:

1. 703 KAR 5:001, Assessment and accountability definitions;
2. 703 KAR 5:020, The formula for determining school accountability;
3. 703 KAR 5:040, Statewide Assessment and Accountability Program, relating accountability to A1 schools and A2-A6 programs;
4. 703 KAR 5:050, Statewide Assessment and Accountability Program, school building appeal of performance judgments;
5. 703 KAR 5:060, Interim assessment and accountability process;
6. 703 KAR 5:130, School district accountability; and
7. 703 KAR 5:160, Commonwealth Accountability Testing System administration procedures.

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

TERRY HOLLIDAY, PH.D., Commissioner of Education
DAVID KAREM, Chairperson

APPROVED BY AGENCY: December 15, 2011

FILED WITH LRC: December 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 30, 2012, at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321 or email at kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals seven existing regulations related to Ken-

tucky's assessment and accountability program for public schools and school districts. As required in legislation enacted in the 2009 Kentucky General Assembly, the Commonwealth begins in school year 2011-2012a new assessment and accountability system used to classify school and district performance. The regulations proposed for repeal are no longer applicable and do not match the new system.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation removes information that is no longer accurate for the new assessment and accountability system. The regulation removes confusing and outdated regulatory language related to KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation removes confusing and outdated regulatory language. New regulations are being promulgated by the Kentucky Board of Education to provide further definition to the new assessment and accountability system.

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

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The regulation will impact schools and districts by removing confusing and outdated regulatory language related to the new assessment and accountability system used to classify school and district performance.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky schools and districts will not have confusing and outdated regulatory language.

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

(a) No additional costs are expected.

(b) On a continuing basis: The proposed regulation does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is not 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: Current funding supports implementation and data reporting for school and district accountability.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in

this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. No additional costs to school districts are expected.

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

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

(c) How much will it cost to administer this program for the first year? The proposed regulation will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will require no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(New Administrative Regulation)

703 KAR 5:222. School and district accountability recognition, support and consequences.

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 158.6453; 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education, following the revision of academic standards and development of a student assessment program, to create an accountability system to classify schools and districts, including a formula for accountability, goals for improvement, and rewards and consequences. This administrative regulation establishes the statewide system of accountability, recognition, support and consequences, and meets requirements of the U.S. Department of Education to receive approval of a state-level waiver of specific requirements of the No Child Left Behind Act.

Section 1. Definitions. (1) "Annual measurable objective (AMO)" means the annual improvement goal for all schools and districts calculated each year from the Overall Score.

(2) "Adequate yearly progress (AYP)" means the attainment of the annual measurable objective, which is the annual improvement goal for all schools and districts calculated from the Overall Score.

(3) "Comprehensive School Improvement Plan (CSIP)" means

a plan developed by the school council or their successor pursuant to KRS 160.346 with the input of parents, faculty and staff, based on a review of relevant data that includes targets, strategies, activities and a time schedule to support student achievement and student growth, and eliminate achievement gaps among groups of students.

(4) "Comprehensive District Improvement Plan (CDIP)" means a plan developed by the local school district with the input of parents, faculty and staff, and representatives of school councils from each school in the district, based on a review of relevant data that includes biennial targets, strategies, activities and a time schedule to support student achievement and student growth, and eliminate achievement gaps among groups of students.

(5) "Overall Score" means the score resulting from a compilation of accountability components that determines placement of a school or district in a classification for recognition, support or consequences.

(6) "Mean" means the arithmetic average of a number of scores.

(7) "Next-Generation Learners" means a component of the state-wide accountability system for Kentucky public schools and districts based on student data.

(8) "Next-Generation Instructional Programs and Supports" means a component of the state-wide accountability system for Kentucky public schools and districts based on reviews of instructional programs.

(9) "Next-Generation Professionals" means a component of the state-wide accountability system for Kentucky public schools and districts based on teacher and administrator data.

(10) "Next-Generation Schools and Districts" means a component of the state-wide accountability system that reports performance data for schools and districts.

(11) "Standard deviation" means a measure of the dispersion of a set of data from its average. The more spread apart the data, the higher the deviation. Standard deviation is calculated as the square root of variance.

(12) "Student gap group" means an aggregate count of achievement scores of student groups that have historically had achievement gaps, including ethnicity/race (African American, Hispanic, Native American) Special Education, Poverty and Limited English Proficient.

Section 2. Statewide System of Accountability Recognition, Support and Consequences. (1) The accountability system shall be called Unbridled Learning: College and Career Ready for All.

(2) An Overall Score shall be used to classify schools and districts for recognition, support and consequences. Except as provided in subsection (3) of this section, the Overall Score shall be a compilation of the following accountability components:

(a) Next Generation Learners, as established in 703 KAR 5:200; and

(b) Next Generation Instructional Programs and Support, as established in 703 KAR 5:230.

(3) Next Generation Professionals, following the promulgation of an administrative regulation by the Kentucky Board of Education to establish the requirements for Next Generation Professionals.

Section 3. Weighting of Components Comprising the Overall Score. (1) Upon full implementation in 2013-2014, the total number of points earned in each component of Next Generation Learners, Next Generation Instructional Programs and Support, and Next Generation Professionals shall be weighted in the following manner to obtain the Overall Score:

Grade Range	Next-Generation Learner	Next-Generation Instructional Programs and Support	Next-Generation Professionals	Total Overall Score
Elementary	70	20	10	100
Middle	70	20	10	100
High	70	20	10	100

(2) The phase-in of each component as a percentage of Overall

Score shall occur as follows:

Overall Score Phase-In		
Year	Component	Percentage of Overall
2011-12	Next-Generation Learners	100%
2012-13	Next-Generation Learners Next-Generation Instructional Programs and Support	77% 23%
2013-14	Next-Generation Learners Next-Generation Instructional Programs and Support Next-Generation Professionals	70% 20% 10%

Section 4. Goals, Annual Measurable Objectives and Categories. (1) The goals shall be set in the following manner:

(a) After the 2011-12 school year, the Overall Score shall be comprised of the components within the Next Generation Learner, as follows:

1. By level of elementary, middle and high, a distribution of scores from the Overall Score shall be computed in order to determine the percentiles associated with each Overall Score for all schools and districts.

2. The Overall Score associated with the 70th percentile shall become the score needed to be placed in the Proficient category and the Overall Score associated with the 90th percentile shall be the score needed to be placed in the Distinguished category.

3. These Overall Scores shall remain in place as a goal until Next Generation Instructional Support and Programs is added to Overall Score.

4. Once the Next Generation Instructional Support and Programs is added to the Overall Score the Overall Score for the 70th percentile for the Proficient score and 90th percentile for the Distinguished score shall be recalculated and applied as the goals.

5. These Overall Scores shall remain in place as a goal until Next Generation Professionals is added to the Overall Score.

6. Once the Next Generation Professionals is added to the Overall Score the Overall Score for the 70th percentile for the Proficient score and 90th percentile for the Distinguished score shall be recalculated and applied as the goals.

7. Once all three components have been added to the Overall Score, the Overall Scores goals shall then be held in place for five years.

8. At the end of the five years the distribution of the Overall Scores for all schools and districts shall be computed again and the Overall Scores for the 70th and 90th percentiles shall be the goals for another five year period.

9. The recomputing of five years goals shall continue.

(b) Schools and districts shall receive an Annual Measurable Objective (AMO) each year. The methods of determining the AMO are as follows:

1. The Overall Score shall be used to create an annual improvement goal for all schools and districts. The annual improvement goal shall be called the Annual Measurable Objective.

2. Using the Overall Score, a mean and standard deviation shall be computed for the elementary, middle, and high school levels.

3. The mean and standard deviation shall be recalculated as the components of the accountability system are added and shall follow the phase-in schedule described in Section 3 of this regulation.

4. The goal for schools/districts scoring below the 70th percentile shall be to increase the Overall Score by 0.7 of a standard deviation in each year.

5. The goal for schools/districts scoring at or above the 70th percentile shall be to increase Overall Score by 0.035 of a standard deviation in each year.

(c) Categories of schools and districts shall be determined in the following manner:

1. All schools and districts at or above the 90th percentile shall be called Distinguished. In addition, if the school or district makes its AMO goal they shall be called Progressing.

2. All schools and districts at or above the 70th percentile but under the 90th percentile shall be called Proficient. In addition, if

the school or district makes its AMO goal they shall also be called Progressing.

3. All schools and districts below the 70th percentile shall be called Needs Improvement schools unless the school or district met its AMO goal. If the school or district meets its AMO goal it shall be called Progressing.

(2) If data cannot be calculated for any component, the weights shall be redistributed equally to components that shall be reported for the school or district.

(3) Reporting of component scores and the Overall Score shall include the numeric score and the classification resulting from that score. A directional indicator shall also be reported with the overall and component scores to indicate whether the scores are advancing or declining from previous year scores.

Section 5. Categories for recognition, support and consequences. (1) Schools and districts shall be placed in categories for the purposes of recognition, support, and consequences based upon the Overall Score and classification. Categories for the purposes of recognition, support and consequences shall be as follows:

(a) "Kentucky Schools or Districts of Distinction" shall include Kentucky Highest-Performing elementary, middle or high schools or districts that have also received school or district accreditation from a recognized accreditation organization and that score at the 95th percentile or higher on the Overall Score.

(b) "Kentucky Highest-Performing Schools or Districts" shall include elementary, middle or high schools or districts that score at the 90th percentile or higher on the Overall Score. Districts shall not qualify as a Highest-Performing District if any of their schools are categorized as Kentucky Focus Schools or Kentucky Priority Schools.

(c) "Kentucky High-Progress Schools or Districts" shall include:

1. Title I schools that have an improvement score indicating the school is in the top 10% of improvement of Title I elementary schools, middle schools, or high schools as determined by the difference in the two most recent calculations of the Overall Score;

2. Non-Title I schools that have an improvement score indicating the school is in the top 10% of improvement of all elementary schools, middle schools, or high schools as determined by the difference in the two most recent calculations of the Overall Score; and

3. Districts that have an improvement score indicating the district is in the top 10% of improvement of all districts as determined by the difference in the two most recent calculations of the Overall Score.

(d) "Kentucky Focus Schools or Districts" shall include:

1. Title I schools that have a Student Gap Group score in the bottom 10% of Student Gap Group scores for all Title I elementary schools, middle schools and high schools that have failed to make AMO and AYP for the last two consecutive years;

2. Non-Title I schools that have a Student Gap Group score in the bottom 10% of Student Gap Group scores for all elementary schools, middle schools and high schools that have failed to make AMO and AYP for the last two consecutive years;

3. High schools that have a graduation rate that has been less than 60% for two consecutive years;

4. Schools that have an individual student performance group of more than 25 students within assessment grades by level with a score that is in the third standard deviation below the state average for all students;

5. Districts that have a Student Gap Group score in the bottom 10% of Student Gap Group scores for all districts and that have failed to make AMO and AYP for the last two consecutive years; and

6. In order to exit Kentucky Focus School or District status, a school or district must meet AMO and AYP goals for two consecutive years and must no longer be identified by the applicable percent calculation.

(e) "Kentucky Priority Schools or Districts" shall include:

1. Schools that have been identified as "Persistently low-achieving schools (PLAS)" as defined by KRS 160.346; and

2. Districts that have an Overall Score in the bottom 5% of Overall Scores for all districts that have failed to make AMO and

AYP for the last two consecutive years.

(f) In order to exit Kentucky Priority School or District status, a school or district must meet AMO and AYP goals for two consecutive years and must no longer be identified by the applicable percent calculation.

Section 6. Conditions for Recognition or Consequences. (1) Schools and districts identified in Section 5 of this administrative regulation shall continue to meet eligibility criteria in order to retain their designation and receive recognition for that category.

(2) Schools and districts identified as Kentucky Priority Schools or Districts or Kentucky Focus Schools or Districts shall not be eligible for recognition as Kentucky Proficient Schools or Districts, Kentucky Highest-Performing Schools or Districts or Kentucky Schools or Districts of Distinction, but may receive recognition as Kentucky High-Progress Schools or Districts, if they meet eligibility criteria set forth in Section 5 (1) (c) of this regulation.

(3) Beginning in 2013, schools and districts must meet AMO and AYP goals in order to qualify for any level of recognition.

Section 7. Recognition. Schools and districts shall receive recognition based on the attainment of one or more of the recognition categories described in Section 5. Each recognized school or district shall be authorized to use a KDE-approved web logo and other promotional materials as may be designated by KDE reflecting the category of recognition earned. Subject to availability of funds, financial rewards may be used in conjunction with other recognition activities, including funding for special professional growth opportunities or support to enable recognized schools or districts to partner with and mentor a lower-performing school or district. Kentucky Schools and Districts of Distinction shall receive special recognition as determined by the Commissioner.

Section 8. Comprehensive school and district improvement plan process. (1) All schools and districts shall annually develop, review and revise a comprehensive school or district improvement plan.

(2) Elements of school and district comprehensive improvement plans shall include:

(a) Executive Summary, which shall include a vision and a mission;

(b) Needs assessment, which shall include:

1. a description of the data reviewed and the process used to develop the needs assessment, and

2. a review of the previous plan and its implementation to inform development of the new plan;

3. perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions;

(c) Process for development, which shall include:

1. Analysis of data to determine causes and contributing factors;

2. Prioritization of needs;

3. A process for development of goals, objectives, strategies and activities based on the needs assessment and root cause analysis, which shall include:

4. Targets or measures of success;

5. Timelines;

6. Persons responsible;

7. A budget that includes resources needed and source of funding; and

8. A process for meaningful stakeholder communications and input;

(d) Inclusion of a set of assurances, approved by and on file with the local board of education, with a signed declaration by the superintendent that all schools in the district are in compliance with the requirements of the statutes and regulations included in those assurances; and

(e) A process for annual review and revision.

(3) Continuous improvement and capacity building shall drive the development of the plan.

(4) Other required components in the process shall include:

(a) A standards-based process for measuring organizational effectiveness which shall include:

1. Purpose and Direction

2. Governance and Leadership
3. Teaching and Assessing for Learning
4. Resources and Support Systems
5. Using Results for Continuous Improvement

(b) A data driven self-evaluation based on the standards, including a means to gather meaningful stakeholder input;

(c) A written improvement plan based on the issues identified in the self-evaluation;

(d) A set of assurances that includes a determination of compliance with each assurance and the ability to upload any supporting documentation needed;

(e) Electronic submission of all elements of the plan;

(f) Monitoring implementation of the plan through implementation and impact checks; and

(g) Evaluation of the effectiveness based on the strategies and activities in the plan.

Section 9. Supports and Consequences for Focus and Priority Districts. (1) Supports and consequences shall be applied to districts identified as Kentucky Priority or Kentucky Focus Districts. These districts shall receive notification from the Commissioner of Education within 5 days of release of the annual accountability data, identifying their category and the required supports and consequences that shall apply.

(2) A district that is identified as a Kentucky Priority or Kentucky Focus District for the first time shall revise the CDIP within ninety (90) days of receiving the notice from the Commissioner.

(3) Kentucky Priority Districts shall receive the consequences and supports required in KRS 160.346 and 703 KAR 5:180.

(4) Priority and Focus districts shall use a variety of relevant sources that shall include perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions to inform the needs assessment required by the CDIP.

(5) The CDIP shall include the support to be provided to schools by the district.

(6) The needs assessments and the revised plans for Kentucky Focus districts shall be informed by guidance from the Commissioner's Raising Achievement and Closing Gaps Council.

(7) The CDIP for both Priority and Focus districts shall be posted to the district website, and shall address the following areas:

(a) Curriculum alignment within the school(s), ensuring there is alignment with the Kentucky Core Academic Standards as described in 704 KAR 3:303;

(b) Evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;

(c) Professional development to address the goals of the plan;

(d) Parental and community communication and engagement;

(e) Attendance improvement and dropout prevention;

(f) Activities to target the underperforming areas of achievement, gap, growth, college and career readiness or graduation rate;

(g) Activities to target demonstrators of weakness in program reviews;

(h) Activities to target areas of need identified in teacher and leader effectiveness measures; and

(i) Technical assistance that will be accessed.

(8) In addition to the above requirements, the CDIP for Focus districts shall include specific strategies to address gaps in achievement and graduation rates between the highest-achieving student performance group and the lowest-achieving student performance group.

(9) Additional consequences shall apply to districts that remain in Priority and Focus status for more than one year, as follows:

(a) A district that is identified as a Kentucky Priority District for the second or more consecutive times or a district that remains in the Kentucky Focus District category and does not make AMO and AYP for three consecutive compilations of the Overall Score, shall revise the CDIP as specified in subsections (4 - 8) of this Section and submit it for approval by KDE within ninety (90) days of receiving the notice from the Commissioner. Upon approval by KDE, the CDIP shall be posted to the district website.

(b) In addition to the requirements of subsection (9) (a) of this Section, a district that is identified as a Kentucky Priority District for the third or more consecutive time, or that remains in the Kentucky Focus District category and does not make AMO and AYP for four consecutive compilations of the Overall Score shall engage in the following:

1. Participate in a set of improvement strategies outlined by a district-wide accreditation process;

2. If directed by the Department, receive the assignment of a high-achieving partner district of similar demographics for mentor activities as directed by the Department; and

3. Accept ongoing assistance and resources throughout the year as assigned or approved by the Department.

(10) The Department shall review and approve all submissions required by this Section.

(11) The Department shall monitor implementation of CDIPS and shall provide necessary guidance based upon information gathered from the following:

(a) Progress reports from the district;

(b) Data reviews;

(c) On-site observations; and

(d) Other information supplied at the district's discretion.

Section 10. Support and Consequences for Priority and Focus Schools. (1) Supports and consequences shall be applied to schools identified as Priority and Focus schools. These schools and their school districts shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data identifying their category and the required supports and consequences that shall apply.

(2) Priority Schools identified pursuant to KRS 160.346 as persistently lowest-achieving schools shall also receive the supports and consequences required by that statute and 703 KAR 5:180.

(3) A district containing a school(s) in the Priority School category shall require that school(s) to comply with the provisions in this Section for no less than three years.

(4) A school that is identified in the Kentucky Priority or Focus School category for the first time shall revise the comprehensive school improvement plan (CSIP) and submit it for approval by the district within ninety (90) days of receiving notice from the Commissioner.

(5) The district shall assist the school in using a variety of relevant sources that shall include perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions to inform the needs assessment required by the CSIP.

(6) Priority Schools shall document meaningful family and community involvement in selecting the intervention strategies that shall be included in the revised CSIP.

(7) Focus Schools shall use guidance from the Commissioner's Raising Achievement and Closing Gaps Council to inform their needs assessment and revised plan.

(8) The school's CSIP shall include the support that will be provided by the district.

(9) Upon approval by the district, the CSIPs for both Priority and Focus School shall be posted to the appropriate school website, and shall address the following areas:

(a) Curriculum alignment within the school, ensuring the school's instructional program is based on student needs, is research-based, rigorous, and is aligned with the Kentucky Core Academic Standards as described in 704 KAR 3:303;

(b) Provision of time for collaboration on the use of data to inform evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;

(c) Professional development to address the goals of the plan;

(d) Parental and community communication and engagement;

(e) Attendance improvement and dropout prevention;

(f) Activities to target the underperforming areas of achievement, gap, growth, college and career readiness or graduation rate;

(g) Activities to target demonstrators of weakness in program reviews;

(h) Activities to target areas of need identified in teacher and leader effectiveness measures;

(i) School safety, discipline strategies and other non-academic factors that impact student achievement, such as students' social, emotional and health needs;

(j) Design of the school day, week, or year to include additional time for student learning and teacher collaboration; and

(k) Technical assistance that will be accessed.

(10) The CSIP for Priority Schools shall include short-term, monthly plans for the first 90 days of implementation, and require the establishment of teacher assistance teams with intensive year-round training focused on teacher effectiveness and school improvement in the professional development component of their plan.

(11) The CSIP for Focus Schools shall include specific strategies to address gaps in achievement and graduation rates between the highest-achieving student performance group and the lowest-achieving student performance group

(12) Additional consequences shall apply to schools that remain in Priority and Focus status for more than one year, as follows:

(a) A school that is identified in the Kentucky Priority School category for the second or more consecutive times, or a school that remains in the Kentucky Focus School category and does not make AMO and AYP for three consecutive compilations of the Overall Score shall revise the CSIP as specified in subsection 2 of this Section and submit it for approval by the district prior to submission for approval by the Department within ninety (90) days of receiving notice from the Commissioner. Upon approval by the Department, the CSIP shall be posted to the school website.

(b) In addition to the requirements of paragraph (a) of this subsection, a school that is identified in the Kentucky Priority School category for third or more consecutive time, or a school that remains in the Kentucky Focus School category and does not make AMO and AYP for four consecutive compilations of the Overall Score, shall engage in the following:

1. Participate in a set of improvement strategies outlined by either a school-level or a district-wide accreditation process.

2. If directed by the Department, receive the assignment of a high-achieving partner school of similar demographics for mentor activities as directed by the Department; and

3. Accept ongoing assistance and resources throughout the year as assigned or approved by the Department.

(13) The Department shall review and approve all submissions required by this Section.

(14) The Department shall monitor implementation of CSIPs and shall provide necessary guidance based upon information gathered from the following:

(a) Progress reports from the school through the district;

(b) Data reviews;

(c) On-site observation; and

(d) Other information supplied at the district's or school's discretion.

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

TERRY HOLLIDAY, PH.D., Commissioner of Education

DAVID KAREM, Chairperson

APPROVED BY AGENCY: December 15, 2011

FILED WITH LRC: December 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 30, 2012 at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be

made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, or email at kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates an accountability system to classify schools and districts for recognition, supports and consequences as required by KRS 158.6455.

(b) The necessity of this administrative regulation: KRS 158.6455 requires the Kentucky Board of Education to promulgate regulations to identify successful schools and establish appropriate consequences for schools failing to meet their accountability measures

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes the elements of the above-referenced systems that that the Kentucky Board of Education was statutorily directed to provide.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific standards and procedures to be used to identify schools and districts for recognition, supports, and consequences and outlines the activities schools and districts must undertake as a result of their identification in a specific category.

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

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public schools and school districts in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed regulation will identify all schools and districts in an accountability classification and will direct specific school improvement activities to be undertaken as a result of their identification.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Upon identification in a specific accountability classification, lower-performing schools and districts will be required to implement school improvement activities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to schools and districts will vary widely based on the category of identification and the activities included in their improvement plans. Higher-performing schools and districts may have very little or no cost. Lower-performing schools and districts will have costs associated with activities needed to improve student achievement. Schools and districts that remain low-performing over time will have additional costs due to the additional requirements placed upon them by regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Schools and districts will be aware of their assessment results and the classification of the school and district based on those results. Schools and districts will assess their weaknesses and address needed changes in the instructional programs and supports being provided to their

schools. The schools and districts will have the opportunity to access additional supports designed to improve the quality of their instructional program.

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

(a) Initially: The proposed regulation results in additional staff costs to the Kentucky Department of Education to calculate the Overall Score and place schools and districts in categories, to provide promotional materials and to review, monitor and provide assistance to identified lower-performing schools and districts. Additional financial expenditures that will be needed for implementation are not known at this time.

(b) On a continuing basis: The proposed regulation results in additional staff costs to the Kentucky Department of Education to calculate the Overall Score and place schools and districts in categories, to provide promotional materials and to review, monitor and provide assistance to identified lower-performing schools and districts. Additional financial expenditures that will be needed for implementation are not known at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current staff will be used, and other financial resources will be required to be found.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Yes, once the cost of implementing the program is ascertained.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453, 158.6455, 20 U.S.C. secs.6301, et seq., US Department of Education No Child Left Behind (NCLB) Act waiver process.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. The amount of dollars expended by the State and by local school districts depends on the numbers of schools and districts classified in an accountability category that require supports and consequences.

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

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

(c) How much will it cost to administer this program for the first year? The proposed regulation results in additional staff costs to the Kentucky Department of Education to calculate the Overall Score and place schools and districts in categories, to provide promotional materials and to review, monitor and provide assistance to identified lower-performing schools and districts. Additional financial expenditures that will be needed for implementation are not known at this time.

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

quent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The proposed regulation results in additional staff costs to the Kentucky Department of Education to calculate the Overall Score and place schools and districts in categories, to provide promotional materials and to review, monitor and provide assistance to identified lower-performing schools and districts. Additional financial expenditures that will be needed for implementation are not known at this time.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

The Kentucky Board of Education was tasked by the legislature (KRS 158.6455 (1) and (4)) to promulgate regulations to create an accountability system to classify schools and districts for recognition, supports and consequences. This regulation outlines that system. Once schools and districts have been placed in an accountability classification, lower-performing schools and districts are required to undertake school improvement activities and the Kentucky Department of Education is required to monitor implementation and provide guidance. Undertaking the activities in the new system will require additional expenditures by KDE, schools and districts that are as yet unknown.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (New Administrative Regulation)

703 KAR 5:240. Accountability Definitions and Procedures.

RELATES TO: KRS 158.6451

STATUTORY AUTHORITY: KRS 158.6453; KRS 158.6455

NECESSITY, FUNCTION, AND CONFORMITY:

KRS 158.6451 requires the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor and ensures accountability. This administrative regulation establishes technical definitions and administrative guidelines for Kentucky's assessment and accountability program.

Section 1. Definitions for accountability purposes. (1) "A1" means a school under administrative control of a principal and eligible to establish a school-based decision-making council. An A1 school is not an alternative program operated by, or as a part of, another school.

(2) "Alternative program" means all other education programs not classified as A1.

Section 2. Assigning Students for School and District Accountability (1) A student enrolled in an A1 school for a full academic year as defined in 703 KAR 5:200 shall be counted in the membership of the A1 school and shall be attributed to the A1 school for accountability purposes. This shall include students who have been enrolled in an A1 school by any authority including state agency children.

(2) A student enrolled in an A1 school and attending an alternative program during the year as a result of local school district policies or procedures shall be counted in the membership of the A1 school and shall be attributed to the A1 school for accountability purposes if the student's combined enrollment in the A1 school and alternative program is a full academic year as defined in 703 KAR 5:200.

(3) A student enrolled in an alternative program for a full academic year as defined in 703 KAR 5:200 shall be attributed to the accountability of the A1 school that the student would have attended if not enrolled in the alternative program.

(4) A student not enrolled in an A1 school or an alternative

program for a full academic year as defined in 703 KAR 5:200, but enrolled in a district for a full academic year shall be assigned to the district for accountability purposes.

Section 3. Assigning Students for State Accountability. (1) Students enrolled in alternative programs, and not attributed to an A1 school or district shall be aggregated into a state level accountability report.

(2) If a student is enrolled in an alternative program by a court, a governmental agency other than a Kentucky public school or Kentucky school district, the student is accountable to the state.

Section 4. Inclusion of schools in accountability. (1) All A1 schools shall receive annual accountability classifications as defined in the state's assessment and accountability system and shall receive recognition or support defined by 703 KAR 5:222.

(2) For reporting purposes, all alternative programs shall receive annual reports based on tested students. Reports for alternative programs shall be separate from the A1 school accountability reporting. The alternative programs reports shall outline the unique features and characteristics of the alternative program and the appropriate uses and limitations of the data. State support and recognition as defined in 703 KAR 5:222 may apply to an alternative program at the discretion of the Commissioner of Education.

Section 5. Standard grade configuration for accountability. (1) Accountable grade level configurations shall be elementary, middle, or high school.

(a) Elementary includes any configuration of grades K-5 or K-6;

(b) Middle school includes any configuration of grades 5- 8 or 6-8; and

(c) High school includes any configuration of grades 9-12.

(2) An A1 school and alternative program may fall into one, two or three levels for accountability reporting.

Section 6. Reporting of Schools with Changed School Service Area (1) For reporting purposes, a school's past data trend shall be removed from public reporting if a school has a significant change in its stable population. A school shall be considered to have a stable population, if as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, the population of the school remains at sixty (60) percent or higher of its original students from the previous year in the accountability grades. To determine if the population is stable, the number of students in the stable population shall be divided by the total number of students in the grades included in the accountability calculations. If the stable population is sixty (60) percent or higher, the school's past trend data shall be reported.

(2) A school district shall notify the Department of Education of any school that has an unstable population compared to the prior years by October 1.

Section 7. Data Review and School or district appeal of accountability classifications. (1) A written request for a data review shall be submitted to the Department of Education within ten (10) days after the Department of Education officially releases the final classifications to the public.

(2) A written appeal of a final accountability classification shall be submitted to the Commissioner of Education within forty-five (45) days after the Department of Education officially releases the accountability classifications. The appeal of a final classification shall:

(a) Identify clearly the basis for the wrongful effect on the calculations used to place a school into a classification.

(b) Detail the requested adjustment to be made to the calculations used to place a school into a classification.

(3) The request for an appeal for a school accountability classification shall be signed by the principal upon approval of the school council. If there is no school council, the request shall also be signed by the superintendent, upon approval of the local board of education. The request for an appeal for a district accountability classification shall be signed by superintendent upon approval of the local board of education.

(4) Department of Education staff shall review the request for

an appeal against the standards set forth in KRS 158.6455(8). A committee shall be appointed by the Commissioner of Education to review the pending appeals and make recommendations to the Commissioner of Education as to whether to dispute an appeal. The committee may include a teacher, a parent, a principal, a district assessment coordinator, a superintendent, and a counselor. If the appeal is disputed by the department, it shall submit the request to the hearing officer for the Kentucky Board of Education.

(5) The hearing officer shall conduct a hearing in accordance with KRS Chapter 13B. The hearing officer shall submit a written recommended order to the Kentucky Board of Education for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B.

Section 8. Student participation in state assessments. (1) All students enrolled shall participate in at the appropriate grade level for the state-required assessments in grades 3-8, the college readiness tests, and the writing on demand tests. For assessment and accountability purposes the state shall not use the primary level designator and all students in grades 3-12 shall be assigned a single grade level. The assigned grade level will determine the state tests to administer. Exceptions for testing shall be made for medical-exempted students and foreign-exchange students. Students categorized as English Learners (EL) shall follow testing guidelines set forth by the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor.

(2) High school students shall participate in the state-required end of course testing program after completing the appropriate course linked to the end of course test.

(3) For the state assessments in grades 3-8, the college readiness tests and the writing on demand tests, a school shall test all students enrolled in each accountability grade on the first day of the school's testing window and shall complete a Kentucky Department of Education approved roster of students.

(4) For the end of course tests, the school shall test all students completing the end of course test and shall complete a Kentucky Department of Education approved roster of students.

(5) A student retained in a grade in which state-required assessments are administered shall participate in the assessments for that grade again and shall continue to be included in all accountability calculations. A high school student who re-takes a course attached to an end of course test shall take the end of course test at the end of each appropriate course.

(6) A student who is suspended or expelled but continues to receive instructional services required under KRS 158.150 shall participate in the state-required assessments.

Section 9. Students not participating in state-required assessments. (1) If a student does not participate in state-required assessments, the school at which the student was enrolled on the first day of the testing window shall include the student in the Department of Education approved roster of students.

(2) A student who does not take the state assessments and does not qualify for approved exempted status shall be assigned the lowest reportable score on the appropriate test for accountability calculations.

(3) A student reaching the age of twenty-one (21) years of age who no longer generates state funding under Support Education Excellence in Kentucky shall not be required to participate in state-required assessments.

(4) A student who is expelled and legally not provided instructional services under the standards established in KRS 158.150 shall not be considered to be enrolled for a full academic year, and shall not be included in accountability calculations.

(5) If a student has been expelled or suspended at some point during a year and is enrolled but does not complete the state-required assessment, the student shall be included in the accountability calculation.

(6) If participation in the state-required assessment would jeopardize a student's physical, mental or emotional well-being, a school or district shall submit a request for medical exemption, which is subject to the approval of the Department of Education and which describes the medical condition that warrants exempting a student from the assessments. An identified disability or handi-

capping condition alone shall not be considered sufficient reason for granting a medical exemption to state-required assessment and accountability requirements. A student with an approved medical exemption shall be excluded from state-required assessments and state and federal accountability calculations.

(7) A foreign exchange student may be assessed with state-required assessments, but the foreign exchange student scores shall not be included in the accountability calculations.

(8) If the student moves out of state or to a private school before state-required assessments can be completed in the school or district's announced testing window, the student shall be excluded from accountability calculations.

Section 10. Required participation in the National Assessment of Educational Progress (NAEP) and state-required field testing.

(1) If a school is selected by the U.S. Department of Education or its designated contractors to participate in NAEP testing, the school shall participate fully.

(2) If a school is selected by the Kentucky Department of Education to participate in field testing for state assessment purposes, the school shall participate fully.

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

TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson

APPROVED BY AGENCY: December 15, 2011

FILED WITH LRC: December 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 30, 2012, at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321 or email at kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes accountability definitions and procedures for the Commonwealth's new assessment and accountability system to classify schools and districts.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for the statewide assessment and accountability program. The regulation implements the requirements of KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation provides definitions and procedures for the Commonwealth's new assessment and accountability system to classify schools and districts.

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

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The regulation will impact schools and districts by providing procedures for implementing the new assessment and accountability system used to classify school and district performance.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulation provides definitions and procedures for schools, districts or the state to use when assigning students for school, district and state accountability calculations; reporting schools in accountability; defining standard grade configuration in accountability; reporting of schools with changed school service area; processing data review and appeal of accountability classifications; testing students or documenting non-participation and participating in the National Assessment of Educational Progress (NAEP) or state-required field testing.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky schools and districts will have clear procedures for Kentucky's assessment and accountability system used to classify school and district performance.

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

(a) Initially: The proposed amendment will require development of new explanatory materials and data programs for the assessment and accountability system in the normal course of work for staff. No additional costs are expected.

(b) On a continuing basis: The proposed regulation does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KDE operating funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Current funding supports implementation and data reporting for school and district accountability.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? School districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. No additional costs to school districts are expected.

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

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

(c) How much will it cost to administer this program for the first year? The proposed regulation will require no additional cost beyond costs that are currently being expended for the state assessment and accountability system.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will require no additional cost beyond costs that are currently being expended for the state assessment and accountability system.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(New Administrative regulation)

704 KAR 5:070. Common Kindergarten Entry Screener.

RELATES TO: KRS 156.070, KRS 156.160

STATUTORY AUTHORITY: KRS 156.070, KRS 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 gives the Kentucky Board of Education the management and control over all programs operated in the public schools. KRS 156.160 gives the Kentucky Board of Education specific authority to promulgate administrative regulations establishing standards which school districts shall meet in student, operational, and program service to students. A common kindergarten entry screener is a key element of measurement for students entering the public schools and is necessary to determine a student's readiness for school in the five domains of school readiness outlined in this administrative regulation. This administrative regulation establishes minimum requirements for administration of a common kindergarten entry screener in school districts.

Section 1: Definitions. (1) "School readiness" in Kentucky means students entering school ready to engage in and benefit from early learning experiences that best promote the student's success.

(2) "Screener" means an instrument designed to identify students who need further diagnostic assessment for evaluation.

(3) "Prior early learning settings" means the categories of early learning settings in which each student participated prior to attending kindergarten. The settings are:

- (a) Child care center;
- (b) Head Start program;
- (c) State funded preschool;
- (d) Home; and
- (e) Other.

(4) "System of measurement" means the use of multiple assessments for multiple purposes across the learning continuum for data to be tracked and used to guide continuous improvement for students.

Section 2: Required kindergarten entry screener. Pursuant to KRS Chapter 45A, the Department shall adopt a statewide kindergarten entry screener that:

(1) Aligns with the definition of school readiness and the Kentucky Early Childhood Standards, June 2009;

(2) Assesses the domains of adaptive, cognitive, communication, motor, and social emotional as established in Kentucky's Early Childhood Standards, June 2009;

(3) Is a reliable and valid screener for its intended purposes for the target populations, including English learners and students with disabilities; and

(4) Produces point in time student level results that indicate level of school readiness in the five domains outlined in this subsection.

Section 3: Administration of kindergarten entry screener. (1) Beginning in the 2012-13 academic year, Kentucky public school districts shall administer the common kindergarten entry screener adopted by the Department.

(2) School districts shall administer the kindergarten entry screener to each student entering kindergarten in the school district no earlier than 15 days prior to the start of the current academic year and no later than the 30th instructional day of the academic year.

Section 4: Data Collection and Reporting. (1) Each school containing kindergarten students shall enter the data from the kindergarten entry screener in the student information system within thirty (30) days of the district's administration of the kindergarten entry assessment screener.

(2) Data shall be reported by the Department at an aggregate level by:

- (a) School district
- (b) School readiness domain;
- (c) Student demographics; and
- (d) Prior early learning settings.

Section 5: District use of kindergarten entry screener: (1) A district shall provide individual student results of the screener to parents or guardians of individual students.

(2) A district shall not use the kindergarten entry screener results to determine eligibility for enrollment. All students who meet the enrollment requirements of KRS 159.010 shall be entitled to enter kindergarten without regard to the results of the kindergarten entry screener.

(3) Districts may use the kindergarten entry screener data as a system of measurement in the following ways:

- (a) To inform districts, parents and communities about early learning in order to close the school readiness gap;
- (b) To inform policy decisions at the local level to support early learning experiences prior to school entry;
- (c) To establish local goals for program improvement in order to achieve early learning outcomes; and
- (d) To include data as evidences in the Kindergarten through Grade three (3) Program Evaluation under 703 KAR 5:230.

(4) The results of the screener shall not be utilized as part of the school's or districts' overall score to determine recognition or support contained in any regulation promulgated by the Board pursuant to KRS 158.6455.

Section 6. Incorporation by Reference. (1) "Kentucky Early Childhood Standards", June 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office Next Generation Learners, 18th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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

VOLUME 38, NUMBER 7 – JANUARY 1, 2012

TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson

APPROVED BY AGENCY: December 15, 2011

FILED WITH LRC: December 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 30, 2012, at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321 or email at kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum requirements for administration of a common kindergarten entry screener.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that all districts have a common screener as part of a system of measurement to best meet the needs of early learners.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.160 gives the Kentucky Board of Education specific authority to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. Establishing a common screener falls within the Kentucky Board of Education's authority in this statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation outlines the requirements for the administration of a common kindergarten entry screener.

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

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky that have kindergarten programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed regulation will impact identified schools and districts by providing for them (at KDE expense) a common screener and professional development related to the screener. Districts are currently using district funds to pay for their screener. Also, the data collected from the common kindergarten entry screener will assist districts and schools to meet the needs of primary students.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts and schools will need to

administer the common kindergarten entry screener provided by the Kentucky Department of Education and support KDE in providing professional development on the administration and use of resulting data. The districts and schools will need to report data aggregately to be publically reported.

(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 districts and schools other than minimal administrative costs. The common kindergarten entry assessment is funded by the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The school districts and schools will benefit from the use of the screener by having data to do the following:

Districts may use the kindergarten entry screener data in the following ways:

(a) As part of a system of measurement to inform districts, parents and communities about early learning in order to close the school readiness gap;

(b) To inform policy decisions at the local level to support early learning experiences prior to school entry;

(c) To establish local goals for program improvement in order to achieve early learning outcomes;

(d) To utilize the data as part of the Kindergarten through Grade three (3) Program Review.

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

(a) Initially: The proposed regulation results in additional costs to the Kentucky Department of Education for the screener and professional development. The estimated cost is between 1.3 and 3.0 million dollars.

(b) On a continuing basis: The proposed regulation results in additional costs to the Kentucky since students would be screened every year. The cost will decrease once the screener has been administered over time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The kindergarten entry screener will be paid for out of state general fund dollars.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts containing kindergarten programs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and 156.160

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. The amount of dollars expended by the Department for this administrative regulation is estimated at \$1.3 – \$3 million dollars. There will be minimal administration cost at the district level.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

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fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? The proposed regulation is estimated to cost the Kentucky Department of Education between \$1.3 – \$ 3 million dollars.

(d) How much will it cost to administer this program for subsequent years? The estimated cost per year remains this same with a reduction each year as teachers are trained.

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

Revenues (+/-):

Expenditures (+/-): \$1.3 - \$3 million

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of December 6, 2011

Call to Order and Roll Call

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 6, 2011, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Joe Bowen, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the November 2011 meeting were approved.

Present were:

Members: Senators Joe Bowen, David Givens, and Joey Pendleton, and Representatives Johnny Bell, Robert Damron, and Jimmie Lee.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, Betsy Cupp, and Laura Napier.

Guests: Sue Cain, Travis Powell, Council on Postsecondary Education; Tim Bennett, Rob Carter, DeVon Hankins, Doug Hendrix, Jeff Mosley, Department of Revenue; Mike Burleson, Board of Pharmacy; Harold Brantey, Larry Disney, Jim Grawe, Real Estate Appraisers Board; Margaret Everson, Karen Waldrop, Mark Mangeot, Department of Fish and Wildlife Resources; Michael Mullins, Billy A. Ratliff, Department for Natural Resources; John Cummings, Verman Winburn, Parole Board; Graham Gray, Heather Wagers, Kentucky State Police; Vickie Bourne, Ann D'Angleo, Jeremy Thompson, Alice Wilson, Jeff Wolfe, Transportation Cabinet; Bill Clark, Russell Cory, Blanche Minor, DJ Wasson, Cecilia Webber, Department of Insurance; Virginia Carrington, Elizabeth Caywood, Cabinet for Health and Family Services; Brent King, KYTC Office of Audit; Roy Cornett, Marvin Dever, Ky Association of Real Estate Appraisers; Peter Stephatch, Campbell Transportation Company.

The Administrative Regulation Review Subcommittee met on Tuesday, December 6, 2011, and submits this report:

The Subcommittee determined that the following administrative regulation did not comply with statutory requirements and was deficient:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Property Valuation: Ad Valorem Tax; State Assessment

103 KAR 8:010. Watercraft allocation. Doug Hendrix, staff attorney, and Jeff Mosley, general counsel, represented the office. Peter Stephatch, CEO, Campbell Transportation Company, and Mark Summers, counsel, appeared in support of this administrative regulation.

Mr. Stephatch stated that he was the CEO of Campbell Transportation Company, whose home office was in Pittsburg. He was also chair of the American Waterways trade association, whose home office was in Washington, D.C., and he was a member of another national association of barge companies. He stated that he supported this administrative regulation, which would make exports from Kentucky more competitive with exports from other states. He said that Mark Summers, an attorney, was available if needed for legal inquiries from the members.

Mr. Hendrix stated that this administrative regulation was first promulgated in 1975. The authorizing statutes for that 1975 version were repealed, effective 2008, and replaced with new provisions. Some taxpayers claimed that those provisions violated the Commerce Clause of the United States Constitution.

Mr. Mosley stated that potential litigation concerning this administrative regulation was expected; therefore, the office's testimony may be limited.

In response to a question by Co-Chair Bowen, Mr. Mosley stated that the office respectfully declined to defer consideration of this administrative regulation or to withdraw it from consideration.

In response to questions by Senator Givens, Mr. Hendrix stated that the original authorizing statutes had been repealed and replaced. The current statute established a formula for determining the tax amount based on a route miles calculation. This administrative

regulation established an alternative method of determining the tax amount. There was concern that the department did not have constitutional authority to process the apportionment calculations as established by statute. KRS 13A.120 allowed for promulgation of an administrative regulation pursuant to a federal mandate. Mr. Mosley stated that a federal mandate was in place if the administrative regulation was unconstitutional, even if state law provided otherwise. Mr. Mosley stated that the legislative process was also a vehicle to achieve the same end; however, making the amendment to the administrative regulation benefitted the department by avoiding legal challenges and by interpreting the statutes in accordance with the United States Constitution.

In response to questions by Co-Chair Bell, Mr. Stephatch stated that this administrative regulation would make Kentucky more competitive because more barge companies would choose to use Kentucky waterways for transportation; therefore, the overall cost to import and export goods into and out of Kentucky would be lowered. Mr. Hendrix stated that the constitutionality of the underlying statute depended on the type of business using the apportionment formula. Mr. Mosley stated that the department's legal opinion was that the authorizing statute, as applied, may be unconstitutional. If so, the statute was void.

Co-Chair Bell stated that the question of constitutionality was a matter for the court system, not a subcommittee of the legislature. Amending an administrative regulation to correct a statutory problem bypassed the legislative process and violated the separation of powers, which would also be unconstitutional.

In response to questions by Co-Chair Bowen, Mr. Mosley stated that, although the 2012 legislative process began in less than thirty (30) days and offered another vehicle for making the needed correction, the agency respectfully declined to defer consideration of this administrative regulation or to withdraw the amendment. The agency believed it was on firm legal ground by making the correction via an administrative regulation.

Co-Chair Bowen stated that it was inappropriate to bypass the legislative process by attempting to correct a statutory problem with an amendment to an administrative regulation. He stated that he had a consistent record of being "pro business" and was an advocate for competition; however, it was necessary to make this change through the proper legal process.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 2 to make CONFORMING AMENDMENTS to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by the agency; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Co-Chair Bowen made a motion, seconded by Representative Damron, to find 103 KAR 8:010, as amended, deficient. On a roll-call vote, the administrative regulation was found deficient with Co-Chair Bowen, Senator Givens, Senator Pendleton, Co-Chair Bell, Representative Damron, and Representative Lee voting in favor of the finding of deficiency.

Administrative Regulations Reviewed by the Subcommittee:

COUNCIL ON POSTSECONDARY EDUCATION: Public Educational Institutions

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky. Sue Cain, coordinator, college readiness and developmental education, and Travis Powell, general counsel, represented the council.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without

objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Sales and Excise Taxes: Forms

103 KAR 3:020. Sales and Telecommunications Forms Manual. Tim Bennett, assistant director, and Robert Carter, revenue tax policy research consultant, represented the office.

In response to questions by Senator Givens, Mr. Bennett stated that this administrative regulation was amended to make administrative and technical changes and to revise definitions. This administrative regulation facilitated efforts to consolidate, minimize, and reduce forms. For example, farmers would only have two (2) forms to complete after this administrative regulation became effective. Mr. Carter stated that many of the forms were exemption requests that went directly to vendors rather than to the department. Mr. Bennett stated that some forms were available on line, but on-line availability was not an option for the forms that went directly to the individual vendors.

In response to a question by Representative Lee, Mr. Bennett stated that Congress held a hearing on the proposed compact to streamline sales taxes nationwide. The idea of the compact seemed well received. The compact standardized definitions, but each state would still have its own sales tax rate.

A motion was made and seconded to approve the following amendment: to amend Section 3 to correct the edition date of one (1) form incorporated by reference. Without objection, and with agreement of the agency, the amendment was approved.

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:170. Computerized recordkeeping. Mike Burleson, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to make CONFORMING AMENDMENTS to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by with agency; (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Real Estate Appraisers Board: Board

201 KAR 30:310 & E. Fees for registration of appraisal management companies. Harold Brantley, board member; Larry Disney, executive director; and Jim Grawe, assistant attorney general, represented the board. Marvin Dever, past president, Kentucky Association of Real Estate Appraisers, and current appraiser, appeared in support of this administrative regulation.

Co-Chair Bowen and Representative Damron thanked the board for working to amend these administrative regulations.

Mr. Dever stated that he supported these administrative regulations, as amended, and thanked the board and Representative Damron for working on these provisions.

A motion was made and seconded to approve the following amendments: to amend Section 1 to lower the registration fee from \$3,500 to \$2,000. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:320 & E. Surety bond.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 and the material incorporated by reference to reduce the amount of the required surety bond from \$500,000 to \$25,000; and (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs, Sections 1 and 2, and the material incorporated by reference to update citations 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.

201 KAR 30:330 & E. Application for registration.

A motion was made and seconded to approve the following amendments: (1) to amend the material incorporated by reference to reduce the amount of the registration fee from \$3,500 to \$2,000; (2) to amend Section 1 and the material incorporated by reference to clarify application procedures and to comply with the application requirements of KRS 324A.152; and (3) to amend the RELATES TO paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:360. Operation of an appraisal management company.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to update citations; (2) to delete provisions in Section 1 that repeated statutory provisions in violation of KRS 13A.120; and (3) to amend Section 1 to clarify which types of indemnification agreements are prohibited. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:142. Spring wild turkey hunting. Margaret Everson, assistant general counsel; Mark Mangeot, legislative liaison; and Karen Waldrop, director, Wildlife Division, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:221 & E. Waterfowl seasons and limits.

301 KAR 2:222 & E. Waterfowl hunting requirements on public lands.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Reclamation and Enforcement: Surface Effects of Noncoal Mining

405 KAR 5:085. Enforcement. Michael Mullins, regulation coordinator, and Billy A. Ratliff, director, Mine Reclamation and Enforcement, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to add specific language; (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

General Provisions

405 KAR 7:091. General practice provisions.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to add specific language; (2) to amend the RELATES TO paragraph, to correct statutory citations; and (3) to amend the NECESSITY, FUNCTION, AND CON-

FORMITY paragraph, and Sections 1 through 7 and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Inspection and Enforcement

405 KAR 12:020. Enforcement.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to add specific language; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 7 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Parole Board: Board

501 KAR 1:080. Parole Board policies and procedure. John Cummings, staff attorney, and Verman Winburn, chairman, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 and the material incorporated by reference to clarify provisions and make technical corrections; and (3) to make CONFORMING AMENDMENTS 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.

Department of State Police: Concealed Deadly Weapons

502 KAR 11:020. Applicant photograph requirements for license to carry concealed deadly weapon. John Cummings, staff attorney, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to make CONFORMING AMENDMENTS 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.

TRANSPORTATION CABINET: Office of the Secretary: Office of Audits: Professional Engineering and Related Services

600 KAR 6:080. Financial records and audit or other engagement of firms. Brent R. King, assistant director, Ann D'Angelo, assistant general counsel; and Alice Wilson, executive director, represented the office.

A motion was made and seconded to approve the following amendments: to amend 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.

Department of Highways: Traffic

603 KAR 5:050. Uniform traffic control devices. Vickie Bourne, executive director; Ann D'Angelo, assistant general counsel; Jeremy Thompson, branch manager; and Jeff Wolfe, director, represented the department.

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, 2, and 3 to: (a) comply with the drafting and formatting requirements of KRS Chapter 13A; and (b) make CONFORMING AMENDMENTS 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.

Office of Transportation Delivery: Mass Transportation

603 KAR 7:080. Human service transportation delivery.

Representative Lee thanked the department for working with patient advocates to make changes to nonemergency medical transportation provisions. Vickie Bourne, executive director; Ann D'Angelo, assistant general counsel; Jeremy Thompson, branch manager; and Jeff Wolfe, director, represented the department.

In response to a question by Senator Givens, Subcommittee staff stated that the amendment specified the counties for each region to comply with statutory requirements.

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 and Sections 1 through 8, 10 through 19, and 21 through 26 to: (a) comply with the drafting and formatting requirements of KRS Chapter 13A; (b) clarify provisions; and (c) make CONFORMING AMENDMENTS to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by the agency; (3) to amend Section 2 to: (a) specify the counties in each of the established regions; and (b) require that if a company is awarded more than one (1) region and those regions geographically touch, the regions shall be administratively combined; and (4) to amend Section 26 to incorporate by reference the required forms. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Financial Standards and Examination Division: Authorization of Insurers and General Requirements

806 KAR 3:190. Risk-based capital for insurers. Russell Coy, attorney, and DJ Wasson, staff assistant, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 through 7, and 10 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Division of Family Support: Food Stamp Program

921 KAR 3:030. Application process. Virginia Carrington, branch manager, and Elizabeth Caywood, internal policy analyst, represented the division.

The following administrative regulations were deferred to the January 9, 2012, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Licensed Professional Counselors: Board

201 KAR 36:060. Qualifying experience under supervision.

201 KAR 36:070. Education and examination requirements.

The Subcommittee adjourned at 2 p.m. until January 9, 2012.

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 REVIEW ON
HEALTH AND WELFARE
Meeting of December 19, 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 December 19, 2011, having been referred to the Committee on December 7, 2011, pursuant to KRS 13A.290(6):

201 KAR 23:050
201 KAR 23:075
900 KAR 6:075
902 KAR 100:142
908 KAR 1:310

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 19, 2011 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

G - 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

G - 13

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

G - 21

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

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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 37 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2011 bound Volumes were published.					
SYMBOL KEY:			As Amended	1963	
* Statement of Consideration not filed by deadline			16 KAR 6:030		
** Withdrawn, not in effect within 1 year of publication			Amended	2665	
*** Withdrawn before being printed in Register			31 KAR 5:010		
**** Emergency expired after 180 days			Amended	2254	
(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	2542	6-3-11
			31 KAR 6:030		
			Amended	2443	
			As Amended	2828	7-1-11
			32 KAR 1:030		
			Amended	1502	
			32 KAR 1:190		
			Amended	1504	
			32 KAR 2:130		
			Amended	2256	
			101 KAR 1:325		
			Amended	2666	7-21-11
			101 KAR 2:095		
			Amended	2669	(See 38 Ky.R.)
			101 KAR 2:102		
			Amended	2672	(See 38 Ky.R.)
			101 KAR 3:015		
			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		
EMERGENCY ADMINISTRATIVE REGULATIONS:					
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)					
31 KAR 5:010E	2128	2-1-11			
Replaced	2542	6-3-11			
31 KAR 6:030E	2352	3-10-11			
Replaced	2828	7-1-11			
32 KAR 1:030E	1381	11-2-10			
Replaced	2828	7-1-11			
32 KAR 1:190E	1382	11-2-10			
32 KAR 2:130E	2130	2-7-11			
Replaced	2256	6-3-11			
101 KAR 2:095E	2522	3-31-11			
Replaced		(See 38 Ky.R.)			
101 KAR 2:102E	2525	3-31-11			
Replaced		(See 38 Ky.R.)			
101 KAR 3:015E	2530	3-31-11			
Replaced		(See 38 Ky.R.)			
103 KAR 15:195E	2535	4-1-11			
Replaced		(See 38 Ky.R.)			
201 KAR 8:008E	2807	4-21-11			
Expired		10-18-11			
201 KAR 8:532E	2808	4-21-11			
Replaced		(See 38 Ky.R.)			
201 KAR 8:550E	2143	2-2-11			
Replaced	2876	8-5-11			
201 KAR 8:562E	2812	4-21-11			
Replaced		(See 38 Ky.R.)			
201 KAR 43:010E	2817	4-29-11			
Replaced		(See 38 Ky.R.)			
201 KAR 43:020E	2818	4-29-11			
Replaced	3032	12-2-11			
201 KAR 43:030E	2820	4-29-11			
Replaced	3034	12-2-11			
201 KAR 43:040E	2821	4-29-11			
Replaced	3035	12-2-11			
401 KAR 51:052E	2352	3-14-11			
Replaced		8-4-11			
815 KAR 10:070E	2824	5-10-11			
Replaced		(See 38 Ky.R.)			
900 KAR 5:020E	3005	5-6-11			
Replaced		10-19-11			
922 KAR 1:420E	1960	1-3-11			
Expired	****	7-2-11			
ORDINARY ADMINISTRATIVE REGULATIONS:					
13 KAR 2:060					
Amended	2250				
As Amended	2539				
16 KAR 3:050					
Amended	1500				

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
Amended	2911	8-17-11	201 KAR 39:100		
201 KAR 20:411			Amended	2464	
Amended	2913	8-17-11	Withdrawn		9-15-11
201 KAR 20:470		(See 38 Ky.R.)	201 KAR 39:120		
Amended	2915	8-17-11	Amended	2466	
201 KAR 26:115			Withdrawn	9-15-11	
Amended	1511		201 KAR 41:100	1112	
As Amended	1976		As Amended	1987	
201 KAR 26:121			201 KAR 42:010		
Amended	1513		Amended	1009	
201 KAR 26:125			Amended	1695	
Amended	1514		As Amended	1988	
As Amended	1977		201 KAR 42:020		
201 KAR 26:130			Amended	1011	
Amended	1516		Amended	1696	
As Amended	1977		As Amended	1989	
201 KAR 26:155			201 KAR 42:030		
Amended	1518		Amended	1012	
As Amended	1978		As Amended	1989	
201 KAR 26:171			201 KAR 42:035		
Amended	1520		Amended	1013	
As Amended	1979		Amended	1697	
201 KAR 26:175			As Amended	1990	
Amended	1523		201 KAR 42:040		
201 KAR 26:180			Amended	1015	
Amended	1526		Amended	1699	
201 KAR 26:185			As Amended	1991	
Amended	1527		201 KAR 42:050		
As Amended	1982		Amended	1016	
201 KAR 26:190			Amended	1700	
Amended	1529		As Amended	1992	
As Amended	1983		201 KAR 42:060		
201 KAR 26:200			Amended	1018	
Amended	1532		Amended	1702	
As Amended	1984		As Amended	1993	
201 KAR 26:215			201 KAR 42:070		
Amended	1533		Amended	1020	
201 KAR 26:230			Amended	1704	
Amended	1535		As Amended	1993	
As Amended	1985		201 KAR 42:080	1113	
201 KAR 26:270			Amended	1705	
Amended	1537		As Amended	1994	
201 KAR 26:290			201 KAR 42:040	2700	
Amended	1539		201 KAR 42:110		
201 KAR 26:310			Amended	1022	
As Amended	1987		As Amended	1996	
201 KAR 30:040			201 KAR 43:010	3031	(See 38 Ky.R.)
Amended	101		201 KAR 43:020	3032	12-2-11
201 KAR 39:010	2507		201 KAR 43:030	3034	12-2-11
Withdrawn		9-15-11	201 KAR 43:040	3035	12-2-11
201 KAR 39:030			301 KAR 1:152	2772	
Amended	2451		Withdrawn	7-8-11	
Withdrawn		9-15-11	301 KAR 1:155		
201 KAR 39:040			Amended	2056	
Amended	2453		Amended	2430	
Withdrawn		9-15-11	As Amended	2565	
201 KAR 39:050			301 KAR 2:049		
Amended	2453		Amended	228	
Withdrawn		9-15-11	301 KAR 2:095		
201 KAR 39:060			Amended	2682	8-4-11
Amended	2457		301 KAR 2:178		
Withdrawn		9-15-11	Amended	2065	
201 KAR 39:070			As Amended	2568	
Amended	2459		301 KAR 2:300		
Withdrawn		9-15-11	Amended	2683	(See 38 Ky.R.)
201 KAR 39:080			400 KAR 2:090		
Amended	2460		Amended	2920	
Withdrawn		9-15-11	401 KAR 5:006		
201 KAR 39:090			Amended	1757	
Amended	2461		Amended	2434	
Withdrawn		9-15-11	401 KAR 8:020		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
Amendment	2924	(See 38 Ky.R.)	Amendment	2938	(See 38 Ky.R.)
401 KAR 10:030			501 KAR 3:030		
Amended	2071		Amendment	2940	(See 38 Ky.R.)
Amended	2655	8-5-211	501 KAR 3:040		
401 KAR 42:005			Amendment	2942	(See 38 Ky.R.)
Amended	2686	(See 38 Ky.R.)	501 KAR 3:050		
401 KAR 42:011			Amendment	2943	(See 38 Ky.R.)
Amended	2691	(See 38 Ky.R.)	501 KAR 3:060		
401 KAR 42:020			Amendment	2949	(See 38 Ky.R.)
Amended	2693	(See 38 Ky.R.)	501 KAR 3:070		
401 KAR 42:030			Amendment	2951	(See 38 Ky.R.)
Amended	2696	(See 38 Ky.R.)	501 KAR 3:080		
401 KAR 42:040			Amendment	2952	(See 38 Ky.R.)
Amended	2700	(See 38 Ky.R.)	501 KAR 3:090		
401 KAR 42:045	2773	(See 38 Ky.R.)	Amendment	2954	(See 38 Ky.R.)
401 KAR 42:050			501 KAR 3:100		
Amended	2702	(See 38 Ky.R.)	Amendment	2956	(See 38 Ky.R.)
401 KAR 42:060			501 KAR 3:110		
Amended	2704	(See 38 Ky.R.)	Amendment	2958	(See 38 Ky.R.)
401 KAR 42:070			501 KAR 3:120		
Amended	2706	(See 38 Ky.R.)	Amendment	2959	(See 38 Ky.R.)
401 KAR 42:080			501 KAR 3:130		
Amended	2709	(See 38 Ky.R.)	Amendment	2961	(See 38 Ky.R.)
401 KAR 42:090			501 KAR 3:140		
Amended	2711	(See 38 Ky.R.)	Amendment	2964	(See 38 Ky.R.)
401 KAR 42:095	2775	(See 38 Ky.R.)	501 KAR 3:150		
401 KAR 42:200			Amendment	2966	(See 38 Ky.R.)
Amended	2713	(See 38 Ky.R.)	501 KAR 3:160	3038	(See 38 Ky.R.)
401 KAR 42:250			501 KAR 3:170	3040	(See 38 Ky.R.)
Amended	2715	(See 38 Ky.R.)	501 KAR 7:010		
401 KAR 42:290			Amended	2969	(See 38 Ky.R.)
Amended	2726	(See 38 Ky.R.)	501 KAR 7:020		
401 KAR 42:300			Amended	2970	(See 38 Ky.R.)
Amended	2729	(See 38 Ky.R.)	501 KAR 7:030		
401 KAR 42:315	2777	10-6-11	Amended	2972	(See 38 Ky.R.)
401 KAR 42:316			501 KAR 7:040		
Amended	2731	(See 38 Ky.R.)	Amended	2973	(See 38 Ky.R.)
401 KAR 42:320			501 KAR 7:050		
Amended	2733	(See 38 Ky.R.)	Amended	2975	(See 38 Ky.R.)
401 KAR 42:330			501 KAR 7:060		
Amended	2735	(See 38 Ky.R.)	Amended	2978	(See 38 Ky.R.)
401 KAR 42:335			501 KAR 7:070		
Amended	2738	(See 38 Ky.R.)	Amended	2979	(See 38 Ky.R.)
401 KAR 42:340			501 KAR 7:080		
Amended	2739	(See 38 Ky.R.)	Amended	2981	(See 38 Ky.R.)
401 KAR 47:205	2778	(See 38 Ky.R.)	501 KAR 7:090		
401 KAR 47:207	2781	(See 38 Ky.R.)	Amended	2982	(See 38 Ky.R.)
401 KAR 48:205	2784	(See 38 Ky.R.)	501 KAR 7:100		
401 KAR 48:206	2788	(See 38 Ky.R.)	Amended	2984	10-7-11
401 KAR 48:207	2792	(See 38 Ky.R.)	501 KAR 7:110		
401 KAR 48:208	2795	(See 38 Ky.R.)	Amended	2985	(See 38 Ky.R.)
401 KAR 49:080			501 KAR 7:120		
Amended	1349		Amended	2987	(See 38 Ky.R.)
Amended	1707		501 KAR 7:130		
401 KAR 51:052			Amended	2989	(See 38 Ky.R.)
Amended	2470	8-4-11	501 KAR 7:140		
500 KAR 8:010			Amended	2990	(See 38 Ky.R.)
Amendment	2927	(See 38 Ky.R.)	501 KAR 7:150	3041	(See 38 Ky.R.)
501 KAR 2:020			501 KAR 13:010		
Amendment	2929	(See 38 Ky.R.)	Amended	2992	(See 38 Ky.R.)
501 KAR 2:040			502 KAR 12:010		
Amendment	2930	10-7-11	Amended	1546	
501 KAR 2:050			As Amended	1997	
Amendment	2932	10-7-11	505 KAR 1:130		
501 KAR 2:060			Amended	2289	
Amendment	2933	(See 38 Ky.R.)	Amended	2881	8-5-2011
501 KAR 2:070			601 KAR 1:018		
Amendment	2935	10-7-11	Amended	808	
501 KAR 3:010			As Amended	2000	
Amendment	2936	(See 38 Ky.R.)	603 KAR 4:035		
501 KAR 3:020			Amended	2741	

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Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
Withdrawn	7-13-2011		As Amended	2855	7-1-11
702 KAR 7:125			810 KAR 1:120	895	
Amended	2291		As Amended	2859	7-1-11
As Amended	2572		811 KAR 1:005		
703 KAR 5:200	3042		Amended	834	
787 KAR 1:070			As Amended	2860	7-1-11
Amended	2994	9-2-11	Reprint		(See 38 Ky.R.)
787 KAR 1:090			811 KAR 1:125		
Amended	2996	(See 38 Ky.R.)	Amended	837	
787 KAR 1:210			As Amended	2862	7-1-11
Amended	2898	(See 38 Ky.R.)	811 KAR 1:240	1130	
787 KAR 2:020			Amended	1720	
Amended	1551		As Amended	2013	
803 KAR 25:089			811 KAR 1:250	898	
Amended	1078		As Amended	2871	7-1-11
Amended	1492		811 KAR 1:280	2318	
803 KAR 25:091			As Amended	2575	
Amended	1080		811 KAR 2:010		
As Amended	2005		Amended	847	
806 KAR 2:150	1938		As Amended	2872	7-1-11
Amended	2438		Reprint		(See 38 Ky.R.)
806 KAR 3:170			811 KAR 2:060		
Amended	2746		Amended	851	7-1-11
806 KAR 9:220			811 KAR 2:150	1136	
Amended	1554	(See 38 Ky.R.)	Amended	1723	
806 KAR 12:120			As Amended	2015	
Amended	2754		811 KAR 2:160	900	7-1-11
806 KAR 13:120			811 KAR 2:180	2328	
Amended	1557		As Amended	2584	
As Amended	2007		811 KAR 2:190	2338	
806 KAR 44:010	1603		Amended	2883	(See 38 Ky.R.)
As Amended	2010		815 KAR 7:120		
808 KAR 10:010			Amended	1092	
Amended	2482		Amended	1727	
As Amended	2836	7-1-11	815 KAR 7:125		
808 KAR 10:030			Amended	1095	
Amended	2484		Amended	1729	
As Amended	2837	7-1-11	815 KAR 10:070	3045	(See 38 Ky.R.)
808 KAR 10:050			815 KAR 20:030		
Amended	2487		Amended	2757	
As Amended	2839	7-1-11	815 KAR 20:034		
808 KAR 10:200			Amended	1568	
Amended	2488		As Amended	2017	
As Amended	2839	7-1-11	815 KAR 20:070		
808 KAR 10:240			Amended	2759	8-5-11
Amended	2492		815 KAR 35:060		
As Amended	2842	7-1-11	Amended	3000	(See 38 Ky.R.)
808 KAR 10:260			815 KAR 35:100		
Amended	2493		Amended	3002	(See 38 Ky.R.)
As Amended	2842	7-1-11	900 KAR 5:020		
808 KAR 10:280			Amended	3005	10-19-11
Amended	2494		900 KAR 6:030		
As Amended	2843	7-1-11	Amended	2762	(See 38 Ky.R.)
808 KAR 10:410			900 KAR 7:030		
Amended	2498		Amended	2763	(See 38 Ky.R.)
As Amended	2845	7-1-11	902 KAR 8:160		
808 KAR 10:440			Amended	3006	(See 38 Ky.R.)
Amended	2500		902 KAR 8:165		
As Amended	2847	7-1-11	Amended	3010	(See 38 Ky.R.)
808 KAR 10:450			902 KAR 8:170		
Amended	2503		Amended	3012	(See 38 Ky.R.)
As Amended	2849	7-1-11	902 KAR 20:410	1142	
808 KAR 10:480	2509		Amended	1731	
As Amended	2850	7-1-11	As Amended	2019	
808 KAR 10:490	2511		902 KAR 100:010		
As Amended	2851	7-1-11	Amended	1799	
810 KAR 1:001			As Amended	2594	
Amended	825		902 KAR 100:021		
As Amended	2852	7-1-11	Amended	1814	
810 KAR 1:011			As Amended	2607	
Amended	828		902 KAR 100:058		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
Amended	1820		908 KAR 3:050		
As Amended	2612		Amended	1358	
902 KAR 100:070			As Amended	2022	
Amended	1827		922 KAR 1:420		
As Amended	2618		Amended	2092	
902 KAR 100:072					
Amended	1837				
As Amended	2627				
902 KAR 100:165					
Amended	1863				
As Amended	2651				
907 KAR 1:014					
Amended	551				
As Amended	984				
907 KAR 1:715					
Amended	2298				
Amended	2886	(See 38 Ky.R.)			

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

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 3:040E	1278	12-9-11
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
201 KAR 43:010E		(See 37 Ky.R.)
Replaced	899	12-2-11
301 KAR 2:221E		
Amended	874	9-20-11
301 KAR 2:222E		
Amended	876	9-20-11
301 KAR 2:225E	732	8-18-11
302 KAR 20:052E	1088	11-10-11
302 KAR 29:061E	11	6-3-11
302 KAR 45:010E	456	8-2-11
Replaced	903	11-3-11
815 KAR 4:010E	212	7-8-11
Replaced	914	11-30-11
815 KAR 4:025E	215	7-8-11
Replaced	915	11-30-11
815 KAR 4:030E	217	7-8-11
Replaced	916	11-30-11
815 KAR 4:040E	219	7-8-11
Replaced	917	11-30-11
815 KAR 4:050E	221	7-8-11
Replaced	818	11-30-11
815 KAR 4:060E	223	7-8-11
Replaced	919	11-30-11
815 KAR 4:070E	225	7-8-11

Replaced	444	11-30-11
815 KAR 10:070E		(See 37 Ky.R.)
Replaced	241	8-17-11
900 KAR 7:030	1089	10-28-11
902 KAR 15:020E	227	6-30-11
907 KAR 1:595E	459	7-21-11
907 KAR 17:005	1093	10-28-11
921 KAR 3:090E	232	6-30-11
Replaced	416	10-19-11

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 3:100		
Amended	49	10-7-11
As Amended	464	
11 KAR 15:090		
Amended	64	
As Amended	476	10-7-11
13 KAR 2:020		
Amended	804	
Amended	1163	
As Amended	1288	
13 KAR 2:110	1243	
16 KAR 2:010		
Amended	68	
As Amended	479	10-7-11
16 KAR 2:040		
Amended	635	
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16 KAR 4:060		
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16 KAR 5:020		
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16 KAR 9:090	705	
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As Amended	890	11-16-11	As Amended	508	10-7-11
101 KAR 2:046			201 KAR 14:180		
Amended	643		Amended	1183	
As Amended	891	11-16-11	201 KAR 18:192		
101 KAR 2:056			Amended	654	
Amended	645		As Amended	894	12-2-11
As Amended	892	11-16-11	201 KAR 20:056		(See 37 Ky.R.)
101 KAR 2:095		(See 37 Ky.R.)	As Amended	235	8-17-11
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Amended	646		201 KAR 20:161		
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101 KAR 2:106			201 KAR 20:260		
Amended	648		Amended	1186	
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101 KAR 2:140			Amended	1189	
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101 KAR 2:180			Amended	299	10-19-11
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101 KAR 2:210			Amended	1190	
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As Amended	1116		As Amended	237	8-17-11
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103 KAR 8:010			Amended	89	10-19-11
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105 KAR 1:440			Amended	1197	
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200 KAR 21:010			Amended	1200	
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200 KAR 21:031	166	9-28-11	201 KAR 27:035		
201 KAR 1:160			Amended	1208	
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201 KAR 3:045			Amended	300	
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201 KAR 3:090			As Amended	897	11-16-11
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201 KAR 30:375	1069		Amended	821	
201 KAR 32:010			301 KAR 2:228	168	
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Amended	1368		As Amended	16	8-5-11
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201 KAR 32:035			Amended	1380	
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201 KAR 32:045			Amended	1216	
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201 KAR 32:050			Amended	659	
Amended	1375		As Amended	903	11-3-11
201 KAR 32:060			304 KAR 1:070	1072	
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201 KAR 36:060			Amended	623	
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Amended	1021		As Amended	508	10-7-11
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201 KAR 39:030			Amended	255	
Amended	1022		As Amended	510	10-6-11
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201 KAR 39:060			As Amended	515	
Amended	1028		As Amended	741	10-6-11
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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

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18A.075	101 KAR 1:335	131.081	103 KAR 3:040
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61.546	105 KAR 1:140	141.120	103 KAR 3:040
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61.637	105 KAR 1:140	141.170	103 KAR 3:040
61.645	105 KAR 1:440	141.180	103 KAR 3:040
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141.310	103 KAR 3:040	150.445	301 KAR 1:152
141.325	103 KAR 3:040	150.450	301 KAR 1:152
141.330	103 KAR 3:040	150.603	301 KAR 2:225
141.335	103 KAR 3:040	150.620	301 KAR 3:011
141.347	103 KAR 3:040	150.625	301 KAR 1:015
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141.381	103 KAR 3:040		301 KAR 1:152
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141.383	103 KAR 3:040		301 KAR 2:082
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141.386	103 KAR 3:040		301 KAR 2:222
141.390	103 KAR 3:040		301 KAR 2:228
141.395	103 KAR 3:040		301 KAR 3:011
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146.440	400 KAR 2:090		703 KAR 5:002
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150.025	301 KAR 2:221		703 KAR 5:220
150.090	301 KAR 1:015		703 KAR 5:222
150.170	301 KAR 1:152	158.6455	703 KAR 5:070
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150.175	301 KAR 1:152		703 KAR 5:222
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150.320	301 KAR 2:082	161.028	16 KAR 2:010
150.330	301 KAR 2:082		16 KAR 4:060
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	16 KAR 5:040	198B.510	815 KAR 4:010
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163.470	782 KAR 1:010	198B.662	815 KAR 8:030
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164.020	13 KAR 2:020		815 KAR 4:040
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164.030	13 KAR 2:020	198B.4009	815KAR 4:030
164.295	13 KAR 2:110		815 KAR 4:040
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164.744	11 KAR 3:100		815 KAR 4:060
164.748	11 KAR 3:100		815 KAR 4:070
164.753	11 KAR 3:100	198B.4011	815 KAR 4:030
164.772	201 KAR 22:020		815 KAR 4:050
164.7871	11 KAR 15:090		815 KAR 4:060
164.7874	11 KAR 15:090		815 KAR 4:070
164.7877	11 KAR 15:090	198B.4013	815 KAR 4:040
164.7879	11 KAR 15:090		815 KAR 4:050
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186.576	782 KAR 1:070		815 KAR 4:070
186.577	782 KAR 1:070	198B.4025	815 KAR 4:030
186.578	782 KAR 1:070		815 KAR 4:040
186.579	782 KAR 1:070		815 KAR 4:050
189.125	603 KAR 7:080		815 KAR 4:060
189.270	601 KAR 1:019	198B.4027	815 KAR 4:030
189.337	603 KAR 5:050	199.011	922 KAR 1:490
189A.010	908 KAR 1:310	199.462	922 KAR 1:490
189A.040	908 KAR 1:310	202A.011	603 KAR 7:080
189A.045	908 KAR 1:310	202B	603 KAR 7:080
189A.070	908 KAR 1:310	205	603 KAR 7:080
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196	501 KAR 6:060	205.220	921 KAR 2:050
197	501 KAR 6:060	205.245	921 KAR 2:040
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198B.040	815 KAR 7:120	205.5631	907 KAR 1:018
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197.410	501 KAR 1:030	205.5634	907 KAR 1:018
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198B.060	815 KAR 7:120	205.6316	907 KAR 1:018
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198B.080	815 KAR 7:120	210	603 KAR 7:080
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198B.110	815 KAR 7:120		908 KAR 3:060
	815 KAR 7:125	210.720	908 KAR 3:050
198B.260	815 KAR 7:120		908 KAR 3:060
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198B.400	815 KAR 4:010		908 KAR 3:060
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216B.010-130	900 KAR 6:080	227.550	815 KAR 7:120
216B.015-216B.130	900 KAR 6:030		815 KAR 7:125
615B.040	900 KAR 6:125	229.011	201 KAR 27:100
216B.095	900 KAR 6:075	229.021	201 KAR 27:011
216B.330-339	900 KAR 6:080		201 KAR 27:012
216B.455	900 KAR 6:075		201 KAR 27:016
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216B.990	900 KAR 6:075		201 KAR 27:100
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216.2923	900 KAR 7:040		201 KAR 27:016
216.2925	900 KAR 7:040		201 KAR 27:017
217	201 KAR 2:170		201 KAR 27:100
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217.015	907 KAR 1:018		201 KAR 27:012
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219.991	902 KAR 15:020		201 KAR 27:017
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222.221	908 KAR 1:310		201 KAR 27:012
222.231	908 KAR 1:310		201 KAR 27:016
222.271	908 KAR 1:310		201 KAR 27:017
222.990	908 KAR 1:310		201 KAR 27:055
224.01	401 KAR 42:005		201 KAR 27:100
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224.01-310	103 KAR 3:020	229.131	201 KAR 27:011
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224.01-405	401 KAR 42:250		201 KAR 27:016
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224.20-120	401 KAR 51:052	229.190	201 KAR 27:035
224.40	401 KAR 42:060		201 KAR 27:055
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224.46	401 KAR 42:060		810 KAR 1:014
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224.60	401 KAR 42:005	230.225	810 KAR 1:090
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230.260	810 KAR 1:014		807 KAR 5:110
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	810 KAR 1:150		807 KAR 5:110
	811 KAR 1:285	278.708	807 KAR 5:100
	811 KAR 1:290		807 KAR 5:110
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230.290	810 KAR 1:027	278.712	807 KAR 5:100
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230.361	810 KAR 1:150	304.3-240	806 KAR 3:170
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235.310	301 KAR 6:040	304.5-050	806 KAR 3:190
235.315	301 KAR 6:040	304.5-060	806 KAR 3:190
235.990	301 KAR 1:015	304.5-070	806 KAR 3:190
237.110	502 KAR 11:010	304.5-080	806 KAR 3:190
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237.142	502 KAR 13:040	304.9-105	806 KAR 9:070
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246.650	302 KAR 45:010	304.9-190	806 KAR 9:070
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246.990	302 KAR 45:010	304.9-260	806 KAR 9:220
247.920	103 KAR 3:020	304.9-295	806 KAR 9:220
257.010	301 KAR 20:052	304.9-320	806 KAR 9:320
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278.160	807 KAR 5:076		806 KAR 12:170
278.180	807 KAR 5:076	304.12-020	806 KAR 12:150
278.185	807 KAR 5:076		806 KAR 12:170
278.190	807 KAR 5:076	304.12-130	806 KAR 9:020
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