

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 39, NUMBER 1
WEDNESDAY, JULY 1, 2012

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, June 15, 2012.

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet July 10, 2012 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 1-2 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2012 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, JULY 10, 2012, at 1:00 p.m., Room 149 Capitol Annex**

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services**

Kentucky Loan Program

11 KAR 3:100. Administrative wage garnishment.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes**

Sales and Use Tax; Administration and Accounting

103 KAR 31:170 & E. Disaster area relief sales and use tax refunds. ("E" expires 11/7/2012)

**GENERAL GOVERNMENT CABINET
Department of Military Affairs
Division of Administrative Services**

Military Assistance Trust Funds

106 KAR 2:030. National Guard adoption benefit program.

Board of Dentistry

Board

201 KAR 8:562. Licensure of dental hygienists. (Deferred from June)

Kentucky State Board of Licensure for Professional Engineers and Land Surveyors

Board

201 KAR 18:220. Administrative hearings.

Board of Nursing

Board

201 KAR 20:450. Alternative program.

201 KAR 20:510. Voluntary relinquishment of a license or credential.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Board of Emergency Medical Services

Board

202 KAR 7:601. Training, education, and continuing education. (Amended After Comments)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 2:041. Shooting areas, dog training areas, commercial foxhound training enclosures, and bobwhite shoot-to-train season. (Deferred from June)

301 KAR 2:300. Black bears. (Amended After Comments)

Hunting and Fishing

301 KAR 3:022. License, tag, and permit fees. (Amended After Comments)

Department of Parks

Park and Campgrounds

304 KAR 1:040. Campgrounds.

304 KAR 1:080. Kentucky Proud™ Promotion Program.

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits**

Bond and Insurance Requirements

405 KAR 10:011E. Repeal of 405 KAR 10:010 and 405 KAR 10:020. ("E" expires 10/31/2012)

405 KAR 10:030. General requirements for liability insurance.

Performance Standards for Surface Mining Activities

405 KAR 16:020. Contemporaneous reclamation.

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

Office of the Secretary

501 KAR 6:050. Luther Luckett Correctional Complex.

501 KAR 6:110. Roederer Correctional Complex.

501 KAR 6:260. Procedures for recommendation of early termination of probation and review of compliance of supervised individuals. (Deferred from June)

501 KAR 6:280. Risk and needs assessment. (Deferred from June)

**LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training**

Occupational Safety and Health

803 KAR 2:300. General.

803 KAR 2:307. Hazardous materials.

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803 KAR 2:309. General environmental controls.
803 KAR 2:313. Materials handling and storage.
803 KAR 2:316. Welding, cutting, and brazing.
803 KAR 2:317. Special industries.
803 KAR 2:319. Commercial diving operations.
803 KAR 2:320. Toxic and hazardous substances.
803 KAR 2:403. Occupational health and environmental controls.
803 KAR 2:405. Fire protection and prevention.
803 KAR 2:407. Adoption of 29 C.F.R. Part 1926.250-252.
803 KAR 2:425. Toxic and hazardous substances.
803 KAR 2:500. Maritime employment.

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control

Licensing

804 KAR 4:370. Entertainment destination center license.

Kentucky Horse Racing Commission

Thoroughbred Racing

810 KAR 1:018. Medication; testing procedures; prohibited practices.
810 KAR 1:028. Disciplinary measures and penalties.
810 KAR 1:040. Drug, medication, and substance classification schedule and withdrawal guidelines.

Harness Racing

811 KAR 1:090. Medication; testing procedures; prohibited practices.
811 KAR 1:093. Drug, medication, and substance classification schedule and withdrawal guidelines.
811 KAR 1:095. Disciplinary measures and penalties.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:093. Drug, medication, and substance classification schedule and withdrawal guidelines.
811 KAR 2:096. Medication; testing procedures; prohibited practices.
811 KAR 2:100. Disciplinary measures and penalties.

Department of Housing, Buildings and Construction Division of Plumbing

Plumbing

815 KAR 20:100. Joints and connections.

CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy

Data Reporting and Public Use Data Sets

900 KAR 7:030. Data reporting by health care providers.

Governor's Office of Electronic Health Information

Kentucky Health Information Exchange

900 KAR 9:010. Kentucky health information exchange participation.

REMOVED FROM JULY 2012 AGENDA

GENERAL GOVERNMENT CABINET ~~Board of Physical Therapy~~

Board

~~201 KAR 22:001. Definitions for 201 KAR Chapter 22. (Withdrawn by agency 5-24-12)~~
~~201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants. (Withdrawn by agency 5-24-12)~~

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits

Bond and Insurance Requirements

405 KAR 10:015 & E. General bonding provisions. ("E" expires 10/31/2012)(Comments Received)

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

STATEMENT OF EMERGENCY
105 KAR 1:400E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed amendment to the administrative regulation should be enacted on an emergency basis. This emergency amendment to the administrative regulation amends the current regulation in accordance with the provisions of the Worker, Retiree, and Employer Recovery Act, Pub.L. 110-458, which made a corrective amendment to the Pension Protection Act, Pub.L. 109-280. An emergency amendment to the administrative regulation is necessary to comply with the deadlines for compliance found in the Pension Protection Act, Pub.L. 109-280. This emergency amendment to the administrative regulation shall be replaced by an ordinary amendment to the administrative regulation. The ordinary amendment to the administrative regulation is identical to this emergency amendment to the administrative regulation.

STEVEN L. BESHEAR, Governor
THOMAS ELLIOTT, Chair

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Emergency Amendment)

105 KAR 1:400E. Federal taxation limitation year.

RELATES TO: KRS 61.645(9)(g)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

EFFECTIVE: May 30, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.510 to 61.705, 16.510 to 16.652, and 78.510 to 78.852. This administrative regulation concerns the administration of testing contribution and benefit limits in accordance with 26 U.S.C. Section 415.

Section 1. Definitions. (1) "Fiscal year" is defined by KRS 16.505(32), 61.510(19), and 78.510(19).

(2) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(3) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

Section 2. The "fiscal year" shall be the limitation year as set out in 26 U.S.C. Section 415 for determining contribution and benefit limits in the plans administered by the Kentucky Retirement Systems.

Section 3. This administrative regulation shall apply to all plans administered by Kentucky Retirement Systems. Subject to the provisions of this administrative regulation, benefits paid from, and employee contributions made to, these plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under 26 U.S.C. 415.

Section 4. Participation in Other Qualified Plans: Aggregation of Limits. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in 26 U.S.C. 414(j) maintained by the member's employer in a KRS plan shall apply as if the total benefits payable under all those defined benefit plans in which the member has been a member were payable from one (1) plan.

Section 5. The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in 26 U.S.C. 414(i) maintained by the member's employer in a KRS plan shall apply as if the total annual additions under all those defined contribution plans in which the member has

been a member were payable from one (1) plan.

Section 6. Basic 415(b) Limitation. Before January 1, 1995, a member shall not receive an annual benefit that exceeds the limits specified in 26 U.S.C. 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in 26 U.S.C. 415(b) and subject to any additional limits that are specified in this section. A member's annual benefit payable in any limitation year from a KRS plan shall not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to 26 U.S.C. 415(d) and the Treasury Regulations under that section.

Section 7. Definition of Annual Benefit. For purposes of 26 U.S.C. 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

Section 8. Adjustments to Basic 415(b) Limitation for Form of Benefit. (1) If the benefit under a KRS plan is other than the form specified in Section 6 of this administrative regulation, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(2) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence shall be applied by either reducing the section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii) that takes into account the additional benefits under the form of benefit as follows:

(a) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) does not apply a monthly benefit, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity (if any) payable to the member under the KRS plan commencing at the same annuity starting date as the form of benefit to the member; or

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five (5) percent interest assumption (or the applicable statutory interest assumption); and;

a. On or before December 31, 2008, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62);

b. On or after January 1, 2009, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B), (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 26 U.S.C. 417(e)(3)(B)); or

(b) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) applies a lump sum benefit, the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the KRS plan for actuarial experience;

2. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest

assumption), and:

a. On or before December 31, 2008, the applicable mortality tables

b. On or after January 1, 2009, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 26 U.S.C. 417(e)(3)(B)); or

3. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the thirty (30) year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate [the] in effect for the first day of the plan year with a one (1) year stabilization period)); and;

a. On or before December 31, 2008, the applicable mortality tables[rate] for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality[mortality] table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05;[-]

b. On or after January 1, 2009, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 26 U.S.C. 417(e)(3)(B)) divided by 1.05.

Section 9. Benefits Not Taken into Account for 415(b) Limit. (1) For purposes of this administrative regulation, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity and that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under 26 U.S.C. 415(b)(2) and Treasury Regulations thereunder to be taken into account for purposes of the limitation of 26 U.S.C. 415(b)(1).

Section 10. Other Adjustments in 415(b) Limitation. (1) If the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of 26 U.S.C. 415(b), so that the limit (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to a \$160,000 (as adjusted) annual benefit beginning at age sixty-two (62).

(2) If the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for subsection (1) of this section shall not apply.

(3) The reductions provided for in subsection (1) of this section shall not be applicable to preretirement disability benefits or preretirement death benefits.

Section 11. Less than Ten (10) Years of Participation[Service Adjustment for 415(b) Limitations]. The maximum retirement benefits payable to any member who has completed less than ten (10) years of participation[service] shall be the amount determined under Section 6 of this administrative regulation as adjusted under Sections 8 or 10 of this administrative regulation[(2)] multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this section shall not reduce the maximum benefit below ten (10) percent of the limit determined without regard to this section. The reduction provided by this section shall not be applicable to preretirement disability benefits or preretirement death benefits.

Section 12. \$10,000 Limit Less than Ten (10) Years of Service. Notwithstanding anything in this administrative regulation to the contrary, the retirement benefit payable with respect to a member

shall be deemed not to exceed the [415(b)]limit set forth in this section if the benefits payable, with respect to the member under a KRS plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed \$10,000 for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated. If the member has completed less than ten (10) years of service with the employer, the limit under this section shall be a reduced limit equal to \$10,000 multiplied by a fraction, the numerator of which is the number of years of service the member has and the denominator of which is ten (10).

Section 13. Effect of COLA without a Lump Sum Component on 415(b) Testing. Effective on and after January 1, 2003, for purposes of applying the 415(b) limit to a member with no lump sum benefit, the following will apply:

(1) A member's applicable 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments;

(2) To the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases from the funds created by KRS 16.510, 61.515, 78.520, until the time that the benefit plus the accumulated increases are less than the 415(b) limit; and

(3) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit under 26 U.S.C. 415(d), and the Treasury Regulations thereunder. Nothing in this section shall prevent the member receiving benefits from the funds created by KRS 16.568, 61.663, and 78.652.

Section 14. Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit shall be applied taking into consideration cost of living increases as required by 26 U.S.C. 415(b) and applicable Treasury Regulations.

Section 15. 415(c) Limit. After-tax member contributions or other annual additions with respect to a member shall not exceed the lesser of \$40,000 (as adjusted pursuant to 26 U.S.C. 415(d)) or 100 percent of the member's compensation. (1) Annual additions shall mean the sum (for any year) of employer contributions to a defined contribution plan, post-tax member contributions, and forfeitures credited to a member's individual account. Member contributions shall be determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying the 415(c) limits only and for no other purpose, the definition of compensation if applicable shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; except that member contributions picked up under 26 U.S.C. 414(h) shall not be treated as compensation.

(3) Unless another definition of compensation that is permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation, is specified by a KRS plan, compensation shall be defined as wages within the meaning of 26 U.S.C. 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under 26 U.S.C. 6041(d), 6051(a)(3), and 6052 and shall be determined without regard to any rules under 26 U.S.C. 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).

(a) However, for limitation years beginning on and after January 1, 1998, compensation shall also include amounts that would otherwise be included in compensation but for an election under 26 U.S.C. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation shall also include any elective amounts that are not includible in

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the gross income of the employee by reason of 26 U.S.C. 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of two and one-half (2 1/2) months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is:

a. Regular compensation for services during the employee's regular working hours;

b. Compensation for services outside the employee's regular working hours, such as overtime or shift differential; or

c. Commissions, bonuses, or other similar payments; and

2. Absent a severance from employment, the ~~payments would have been paid to the~~ employee would have been able to use the payments (including unused accrued bona fide sick, vacation, or other leave) if employment had continued.

(c) Any payments not described in paragraph (b) of this subsection are not considered compensation if paid after severance from employment, even if they are paid within two and one half (2 1/2) months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of 26 U.S.C. 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service. An employee who is in qualified military service (within the meaning of 26 U.S.C. 414(u)(1)) shall be treated as receiving compensation from the employer during such period of qualified military service equal to:

(i) The compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or

(ii) If the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(d)[(e)] Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

Section 16. Service Purchases Under Section 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under a KRS plan, then the requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit;

(2) For purposes of applying this section, a KRS plan shall not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation under 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3)(a) For purposes of this section the term "permissive service credit" shall mean service credit:

1. Recognized by a KRS plan for purposes of calculating a member's benefit under a KRS plan;

2. Which the member has not received under a KRS plan; and

3. Which the member may receive only by making a voluntary additional contribution, in an amount determined under a KRS plan, which does not exceed the amount necessary to fund the benefit attributable to the service credit;

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (a)2 of this subsection of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under a KRS plan.

(4) The KRS plan shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this section; or

(b) Any nonqualified service credit is taken into account under this section before the member has at least five (5) years of participation under a KRS plan.

(5) For purposes of subsection (4) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" shall mean permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3));

(b) Service as an employee (other than as an employee described paragraph (a) of this subsection of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or

(d) Military service (other than qualified military service under 26 U.S.C. 414(u)) recognized by the KRS plan.

(6) In the case of service described in subsection (5)(a), (b), or (c) of this section, the service will be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

(a) The limitations of subsection (4) shall of this section will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable under federal law to a KRS plan shall apply to these amounts and any benefits attributable to these amounts.

(8) For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a KRS plan as in effect on August 5, 1997. For purposes of this subsection an eligible member shall be an individual who first became a member in a KRS plan before January 1, 1998.

Section 17. Modification of Contributions for 415(c) and 415(n) Purposes. The department may modify a request by a member to make a contribution to a KRS plan if the amount of the contribution would exceed the limits provided in Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, Kentucky Retirement Systems may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to subsection (1) of this section will not avoid a contribution in excess of the limits imposed by 26 U.S.C. 415(c) or 415(n), Kentucky Retirement Systems may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section 18. Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the KRS plan with respect

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to an amount previously refunded upon a forfeiture of service credit under the KRS plan or another governmental plan maintained by the State or a local government within the state shall not be taken into account for purposes of the 415(b) or (c) limits.

THOMAS ELLIOTT, Chair

APPROVED BY AGENCY: May 17, 2012

FILED WITH LRC: May 30, 2012 at 1 p.m.

CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clearly identifies a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax law.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly identify a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by clearly identifying a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax 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 establishes the applicable morality tables to be used, the limitations regarding members with less than ten years of participation, and compliance with the HEART Act, Pub.L. 110-245 regarding rights of reemployed veterans.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with federal law.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes the applicable morality tables to be used, the limitations regarding members with less than ten years of participation, and compliance with the HEART Act, Pub.L. 110-245 regarding rights of reemployed veterans.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes because it establishes the applicable morality tables to be used, the limitations regarding members with less than ten years of participation, and compliance with the HEART Act, Pub.L. 110-245 regarding rights of reemployed veterans for compliance with federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None.

(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: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

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

entities identified in question (3): N/A.

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

(a) Initially: \$0.00

(b) On a continuing basis: \$0.00

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the amendment is applied the same to every plan.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Worker, Retiree, and Employer Recovery Act, Pub.L. 110-458, which made a corrective amendment to the Pension Protection Act, P. L. 109-280, 26 U.S.C 415, and HEART Act, Pub.L. 110-245.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Worker, Retiree, and Employer Recovery Act, Pub.L. 110-458, which made a corrective amendment to the Pension Protection Act, Pub.L. 109-280, and 26 U.S.C 415.

2. State compliance standards. KRS 61.645(9)(g) requires Kentucky Retirement Systems to comply with federal statutes and administrative regulations.

3. Minimum or uniform standards contained in the federal mandate. The applicable morality tables to be used, the limitations regarding members with less than ten years of participation, and compliance with the HEART Act, Pub.L. 110-245 regarding rights of reemployed veterans.

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.

**STATEMENT OF EMERGENCY
502 KAR 10:120E**

The Justice and Public Safety Cabinet Department of Kentucky State Police is charged with administering all drivers' tests including Commercial Driver's License testing. The current regulation promulgated in 2005 contained erroneous requirements that are in conflict with the federal regulations because it requires an applicant to obtain a CDL prior to seeking a security threat assessment from the Transportation Security Administration, as required under 49 C.F.R. Part 383, for an applicant to obtain a Class C CDL with a hazardous materials endorsement. Unfortunately, a security threat assessment is required for a person to obtain a Class C CDL. Please note that a hazardous materials endorsement can only be issued to a person with a Class C CDL. Thus this emergency regulation is necessary under KRS 13A.190(1)(a)(3) as the regulation allowing the issuance of a Class C CDL with a hazardous materials endorsement was to be effective in 2005 pursuant to 49 C.F.R. Part 383 and this emergency regulation brings the Commonwealth into compliance and consistency with those federal regulations. While the agency is submitting an ordinary administrative regulation concurrent with this emergency regulation, in the time it takes to fully promulgate an ordinary administrative regulation persons seeking to obtain gainful employment driving a Class C vehicle will be unable to do so because of a regulatory conflict. Currently, the Kentucky State Police is unable to issue hazardous endorsements for Class C CDLs. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this administrative regulation.

STEVEN L. BESHEAR, Governor
RODNEY BREWER, Commissioner

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Emergency Amendment)**

502 KAR 10:120E. Hazardous materials endorsement requirements.

RELATES TO: KRS 281A.120, 281A.130, 281A.150, 281A.160, 281A.170, 49 U.S.C. 5103a, 49 C.F.R. Part 1572, 49 C.F.R. Part 383

STATUTORY AUTHORITY: KRS 281A.040

EFFECTIVE: May 31, 2012 at 1 p.m.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate administrative regulations to reasonably carry out the provisions of KRS 281A.040. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining for the first time a hazardous materials endorsement for a commercial driver's license no later than January 31, 2005. On or after May 31, 2005, this requirement shall further apply to all persons seeking to renew a hazardous materials endorsement for a commercial driver's license. This administrative regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

Section 1. Definitions. (1) "CDL" or "Commercial Driver's License" is defined by KRS 281A.010(5) and 49 C.F.R. 383.5.

(2) "Determination of No Security Threat" is defined by 49 C.F.R. 1572.3.

(3) "DOT" means the federal Department of Transportation.

(4) "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.3.

(5) "Fingerprint centers" means regional offices of Kentucky State Police's Division of Driver's Testing established to process the fingerprints of applicants for a hazardous materials endorsement for a commercial driver's license holder under KRS 281A.170(2)(b).

(6) "HME" means hazardous materials endorsement.

(7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.3.

(8) "KDOT" means the Kentucky Department of Transportation.

(9) "KSP" means the Kentucky State Police.

(10) "Proper identification" means:

(a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or

(b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee or refugee status.

(11) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME Submitted on or After January 31, 2005. (1) An applicant applying for a hazardous materials endorsement on or after January 31, 2005, shall first obtain a commercial driver's instruction permit or CDL prior to requesting a security threat assessment from the TSA. In order to receive the security threat assessment, the applicant shall complete a "Transportation Security Administration Application for Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9. The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.

(2) To begin the process, an applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.

(3) An applicant shall bring proper identification, their DOT medical card, a completed "Transportation Security Administration Application for Hazardous Materials Endorsement," OMB No. 1652-0027, and a certified check of \$115 for the fingerprint fee.

(4) An applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the biographical information sheet to the TSA.

(5) If TSA informs the commonwealth of a finding of Determination of No Security Threat, then the applicant shall be notified and may proceed to the circuit clerk's office to take the knowledge test required to qualify for the HME.

(6) If TSA informs the commonwealth of a finding of Initial Determination of Security Threat, the applicant shall not be issued a HME. The applicant shall be entitled to appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1572.141. Following appeal, if the applicant receives a Final Determination of Security Threat, applicant may seek a waiver from TSA in accordance with procedures set forth in 49 C.F.R. 1572.143.

(7) Within fifteen (15) days after the TSA has notified the commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Threat, KDOT shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications For HME Submitted On or After May 31, 2005. (1) KDOT shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.

(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.

(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655. A renewal applicant shall submit to fingerprinting and further complete the "Transportation Security Administration Application for Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.

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(4) A renewal applicant shall bring to their appointment proper identification, their DOT medical card, a completed "Transportation Security Administration Application for Hazardous Materials Endorsement," OMB No. 1652-0027, and a certified check of \$115 for the fingerprint fee.

(5) A renewal applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.

(6) If the commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the commonwealth may extend the expiration date of the HME for a period up to ninety (90) days. Any additional extension shall be approved by TSA.

(7) If TSA informs the commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified and may proceed to the circuit clerk's office to take the knowledge test required to qualify for the HME.

(8) If TSA informs the commonwealth of a finding of Initial Determination of Security Threat, the renewal applicant shall not be issued a HME. The renewal applicant is entitled to appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1572.141. Following appeal, if the renewal applicant receives a Final Determination of Security Threat, applicant may seek a waiver from TSA in accordance with procedures set forth in 49 C.F.R. 1572.143.

(9) Within fifteen (15) days after the TSA has notified the commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Threat, KDOT shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

(10) An applicant who has received a passing score on the HME test and is applying for a Class C CDL with a hazardous endorsement must drive a Class C placarded vehicle for the skills test.

Section 4. Transfer Applications For HME Submitted On or After May 31, 2005. (1) In accordance with 49 C.F.R., 1572.13(g), an applicant who applies to transfer an existing HME from another state to the commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

Section 5. Regional Fingerprint Centers. KSP shall establish eight (8) regional fingerprinting centers in the commonwealth. These centers shall be located in the following cities:

(1) Lexington at 162 East Main Street, Room 201, Lexington, Kentucky 40507;

(2) Louisville at Bowman Field, 3501 Roger E. Schupp Street, Louisville, Kentucky 40205;

(3) Erlanger at 645 Stevenson Road, Erlanger, Kentucky 41018;

(4) Paducah at McCracken County Courthouse, South 7th, Paducah, Kentucky 42003;

(5) Madisonville at Hopkins County Courthouse, Main Street, Room 11, Madisonville, Kentucky 42431;

(6) Bowling Green at Warren County Courthouse, 1001 Center Street, Room 103, Bowling Green, Kentucky 42101;

(7) London at 225 West 5th Street (corner of 5th and Long Street), London, Kentucky 40743; and

(8) Paintsville at Johnson County Courthouse, Court Street, 2nd Floor, Paintsville, Kentucky 41240.

Section 6. Incorporation by Reference. (1) "Transportation Security Administration Application For Hazardous Materials Endorsement" OMB No. 1652-0027, Exp. 1/31/08, is incorporated by reference~~[, is incorporated by reference]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at any KSP regional fingerprint centers, and at KSP Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BREWER, Commissioner

APPROVED BY AGENCY: May 31, 2012

FILED WITH LRC: May 31, 2012 at 1 p.m.

CONTACT PERSON: Emily Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Perkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Allows persons with a commercial driver's instruction permit or CDL to obtain a security threat assessment that is required to obtain a hazardous materials endorsement.

(b) The necessity of this administrative regulation: To conform to federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Allows a person seeking a hazardous materials endorsement on their Class C CDL to apply for a security threat assessment with a commercial driver's instruction permit or CDL instead of requiring that they have a CDL.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Currently KSP is unable to process a Class C CDL with a hazardous materials endorsement because it requires a person to have a CDL when you cannot obtain a CDL without a security threat assessment.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows KSP to begin issuing Class C CDL with hazardous materials endorsements by clarifying that persons with a commercial driver's instruction permit may obtain a security threat assessment.

(b) The necessity of the amendment to this administrative regulation: To conform with 49 U.S.C. 5103a, 49 C.F.R. Part 1572.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 281A.160 requires KSP to administer the knowledge and skills tests for commercial driver's license applicants. 281A.040 authorizes any agency with specific authority under functions authorized by 218A to promulgate administrative regulations. The amendment conforms with these statutes to enable KSP to perform the knowledge and skills tests for Class C CDL with a hazardous materials endorsement.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows KSP to perform its mandate to conduct the knowledge and skills testing for applicants seeking a Class C CDL with a hazardous materials endorsement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects all employers who require a Class C CDL with a hazardous materials endorsement, i.e. oxygen supply, etc.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs. This amendment does not change the fee base.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employers will be able to send employees to obtain a Class C CDL with a hazardous materials endorsement.

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

(a) Initially: No additional costs, as this regulation does not alter the fee schedule.

(b) On a continuing basis: No additional costs, as this regulation does not alter the fee schedule.

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

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Police; Department of Transportation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 49 U.S.C. 5103a, 49 C.F.R. Part 1572

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Ophthalmic Dispensers
(As Amended at ARRS, June 12, 2012)

201 KAR 13:040. Licensing; application, examination; experience; renewal; and inactive status.

RELATES TO: KRS 326.020, 326.040, 326.080

STATUTORY AUTHORITY: KRS 326.020(3), 326.040, 326.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 326.020(3) authorizes the board to promulgate administrative regulations to carry out the purposes and provisions of KRS Chapter 326. KRS 326.040 establishes the requirements for the issuance of a license including experience and passage of an examination. KRS 326.080 requires the annual renewal of licensure. This administrative regulation prescribes the forms, required examinations, experience, renewal requirements, and provisions for inactive status required for licensees.

Section 1. Application for License. (1) A[any] person wishing to obtain a license to practice as an ophthalmic dispenser, pursuant to KRS Chapter 326, shall make application to the Kentucky Board of Ophthalmic Dispensers on the form, Application for Ophthalmic Dispenser License [Form O.D. No. 1-00].

(2) An applicant for licensure as an apprentice shall complete the form, Application for Apprentice License [Form O.D. No. 1A-00].

(3) The board shall admit to the practical examination a[any] candidate who pays the required examination fee of fifty (50) dollars and who meets the requirements of KRS 326.040 [submits satisfactory evidence to the board], under oath, that he qualifies pursuant to KRS 326.040 and 201 KAR Chapter 13 [the administrative regulations adopted by the board].

Section 2. Required Examinations. (1) The examination required pursuant to KRS 326.040(4) shall consist of passage of each of the following:

- (a) The American Board of Opticians (ABO);
- (b) The National Contact Lens Examiners (NCLE); and
- (c) The NCSORB National Practical [The practical examination established in Section 7 of this administrative regulation.]

(2) The ABO and the NCLE shall be:

- (a) Taken before the expiration of thirty (30) months from the date of the original receipt of the apprentice license; and
- (b) Passed within five (5) years of the date of the original receipt of the apprentice license.

(3) The practical examination shall not be taken until all other licensure requirements have been completed.

Section 3. Experience. In addition to the experience requirement established in KRS 326.040(3), the board shall [may] also count as qualifying experience any time spent:

- (1) Attending a recognized school for ophthalmic dispensing; or
- (2) Working in an optical laboratory as an ophthalmic technician.

Section 4. Licensure Renewal. (1) Each license shall be renewed each year on or before December 31.

(2) Each licensee shall complete and submit one (1) of the following:

(a) Application for Renewal [application form No. 2] for a licensed ophthalmic dispenser; or

(b) Application for Apprentice Renewal [application form No. 2A] for a licensed apprentice ophthalmic dispenser.

(3) For a renewal postmarked on or before December 31, the renewal fee shall be:

- (a) Fifty (50) dollars for a licensed ophthalmic dispenser; or
- (b) Twenty-five (25) dollars for an apprentice ophthalmic dispenser.

(4) In addition to the renewal fee, a ten (10) dollar penalty shall be paid on a[any] renewal postmarked after December 31. At the end of a thirty (30) day grace period, January 31, a license that has not been renewed shall be revoked.

(5) In order to qualify for licensure renewal, a licensee shall comply with the continuing education requirements of KRS 326.020(3)(b) and 201 KAR 13:055.

Section 5. Temporary Permit Application. (1) The board shall, if requested by the applicant, [may] issue a temporary permit to a qualified ophthalmic dispenser, who otherwise would qualify for a license but is in the state on a temporary basis or who has not yet had an opportunity to take an examination to procure a license and whose immediate employment depends upon being licensed by the board.

(2) The permit shall be valid only until the next regular examination date and in no case shall exceed six (6) months following date of issuance.

(3) The fee for a temporary permit shall be fifty (50) dollars, which amount shall accompany the application.

Section 6. Board Action, Notification. (1) The board shall act only upon those applications that are complete [which are completely and properly filled out by the applicant].

(2) Each applicant shall enclose the prescribed license fee in the form of a check or money order made payable to the Commonwealth of Kentucky State Treasurer.

(3) Each applicant [Applicants] shall be notified of the action of the board; and, if favorable, when and where the examination will be held.

Section 7. Inactive Status. (1) Upon application, the board shall [may] grant inactive status to a qualified licensee. While on inactive status, the licensee shall not engage in the practice of ophthalmic dispensing.

(2) The fee for licensure on inactive status shall be ten (10) dollars per year.

(3)(a) Continuing education requirements shall be waived for a licensee [licensees] on inactive status during the time they remain [time] inactive period.

(b) If [at any time] the inactive licensee applies to the board to return to active status, the licensee shall submit proof that he has completed six (6) hours of continuing education for ophthalmic dispenser licensees and four (4) hours of continuing education for apprentice ophthalmic dispenser licensees within the last twelve (12) month period immediately preceding the date on which the application is submitted.

(c) The licensee may request that he be allowed to return to active status immediately, with the provision that he shall receive the appropriate number of continuing education hours within six (6) months of the date on which he returns to active status.

(d) Additionally, the licensee shall be responsible for meeting the requirements established [set forth] in 201 KAR 13:055 in order to qualify for renewal.

(4) The reactivation fee for changing from inactive status to active status shall be forty (40) dollars for an ophthalmic dispenser licensee. ~~[Section 8. Practical Examination Content And Procedures. (1) The board shall hold examinations for candidates for ophthalmic dispensers' licenses at its regular March, July, and November meetings, and at other time as the board may determine.]~~

(2) ~~The examination of applicants for a license shall be upon the following subjects:~~

- ~~(a) Ophthalmic lenses, including spectacle and contact lenses;~~

- (b) Dispensing procedure;
- (c) Visual aids;
- (d) Mathematics and physics; and
- (e) Mechanical optics including:
 1. Pupillary distance;
 2. Decentration; and
 3. Base curve.

(3)(a) Examinations shall be conducted in a manner so that the result shall be entirely fair and impartial.

(b) The applicants shall be known by numbers only, so that no member of the board shall be able to identify the written examination of any applicant until it has been graded.

(c) All applicants examined at the same time shall have the same written questions.

(d) An applicant shall be required to make an average grade of seventy (70) with a minimum grade of fifty (50) in any one (1) branch.

(e) Part of the examination may be oral or demonstrative.

(4) All written, oral or demonstrative examinations administered by this board shall be conducted in the presence of at least one (1) board member.

(5) An applicant who has been rejected may become an applicant at any future examination by submitting a new application on a prescribed form and the payment of the required fee of fifty (50) dollars.

(6) An application for a license shall be filed with the board at least ten (10) days before the examination.]

Section 8 [9.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Ophthalmic Dispenser License", June 2012;

(b) "Application for Apprentice License", June 2012;

(c) "Application for Renewal", June 2012; and

(d) "Application for Apprentice Renewal", June 2012. [Form O.D. 1-00, April 2012][March 2004][edition;

(b) Form O.D. 1A-00, April 2012][March 2004] [edition;

(c) Renewal Application Form No. 2, April 2012][March 2004] [edition; and

(d) Renewal Application Form No. 2A, April 2012][March 2004] [edition.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Ophthalmic Dispensers, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHERYL TURNER, Board Chair

APPROVED BY AGENCY: March 21, 2012

FILED WITH LRC: April 12, 2012 at 10 a.m.

CONTACT PERSON: Lindsey Lane, Board Administrator, Kentucky Board of Licensure for Ophthalmic Dispensers, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296, ext. 228, fax (502) 696-4961.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Marriage
and Family Therapists
(As Amended at ARRS, June 12, 2012)

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 ~~three (3) to six (6)~~ more than one (1), but less than seven (7), 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 sessions, live observation, or co-therapy with a board-approved supervisor.

(4) "Individual supervision" means supervision of one (1) or two (2) supervisees with the 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;

(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 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.

(c) Each approved course shall ~~The approved courses may~~ be live or online and shall include:

1. Kentucky law governing the practice of marriage and family therapy, both KRS Chapter 335 and 201 KAR Chapter 32 ~~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.

(3) To maintain board-approved supervisor status, a non-AAMFT approved supervisor shall complete at least two (2) hours of continuing education in supervision every year. These two (2) hours shall be included in the fifteen (15) hours of continuing education required for licensure renewal.

(a) Each approved course shall ~~The courses may~~ be live or online and shall include:

1. Kentucky law governing the practice of marriage and family therapy, both KRS Chapter 335 and 201 KAR Chapter 32 ~~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 at least one (1) hour of continuing education every year in Kentucky law governing the practice of marriage and family therapy. The course shall ~~may~~ be attended live or on-line. The one (1) hour shall be included in the fifteen (15) hours of continuing education required for licensure renewal.

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 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 shall [hours may] take place in group supervision.

(3) At least 100 hours shall take place in individual 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, unless approved by the board.

(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 professional [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) The following material is incorporated by reference:

(a) "Diagnostic and Statistical Manual of Mental Disorders", 2009; and

(b) "Supervision log", 10/2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SANDRA MILLER, Board Chairman

APPROVED BY AGENCY: March 27, 2012

FILED WITH LRC: March 28, 2012 at 1 p.m.

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.

**TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, June 12, 2012)**

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, [150.025(1), 150.120,] 150.170, 150.175, 150.235, [150.360, 150.370, 150.440,] 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280 [150.470,]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those[such] requirements apply to a limited area. [wildlife and to regulate bag or creel limits.] KRS 150.440 requires [authorizes] the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 re-quires [authorizes] the department to promulgate administrative regulations for bag or creel limits for fish. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods including underwater spearing, scuba diving, sport fishing trotlines, jugging, setlines, gigging, [jugging and setlines, gigging and] snagging, grabbing, bow fishing, and the taking of rough fish from backwaters.

Section 1. Definitions. (1) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(2) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(3) "Bowfishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment or a crossbow.

(4) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.

(5) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

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(6) "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes those persons who are license exempt pursuant to KRS 150.170.

(7) "Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(8) "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

Section 2. Skin Diving, Scuba Diving, and Underwater Spear Fishing. (1) Skin diving or scuba diving ~~shall be~~ prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) ~~(2) and (3)~~ of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department's Division of Law Enforcement; or

(b) The local conservation officer who is assigned to the particular department-owned lake. ~~[permitted in salvage operations upon receipt of written permission by the diver from the Division of Law Enforcement or the local Conservation Officer assigned to the specific body of water in which the diving is to take place.]~~

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim ~~[victim of drowning.]~~

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a ~~the~~ designated cove pursuant to subsection (4) of this subsection shall display an international diving flag pursuant to the requirements established in 301 KAR 6:030.

(6) ~~(5)~~ Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if, but only when, an international diving flag is present in the cove. ~~[section.]~~

(7) ~~(6)~~ Underwater spearing of fish with a hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 acres in size or larger as measured at the normal summer pool level, with the following provisions: ~~[normal or summer pool level.]~~

(a) A participant who is spearing fish shall:

1. Be completely submerged in the water where ~~[in the underwater spearing of fish shall be completely submerged in the water in which] spearing takes place.~~

2. ~~(b) A person shall~~ Possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170; and

3. ~~(c) A person shall~~ Only spear rough fish; and

~~(b) ~~(d)~~ Only rough fish shall be taken, and an appropriate fishing license shall be required.~~(c) The daily limit shall be fifteen (15) rough fish, ~~no~~ more than five (5) of which shall be catfish.

Section 3. Sport Fishing Trotlines, Jugging, and Setlines. (1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the name and address of the person using it.

(2) Each trotline, jug line, and setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if:

(a) It is not properly labeled or tagged; or

(b) It is not checked or baited at least once every twenty-four (24) hours.

(4) A sport fisherman shall not use more than:

(a) Two (2) sport fishing trotlines;

(b) Twenty-five (25) setlines; or

(c) Fifty (50) jug lines.

(5) Multiple sport fishermen in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) A person using a sport fishing trotline shall:

(a) Set the trotline at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) Sport fishing trotlines, jugs, or setlines shall not be used in the following waters:

(a) In the Tennessee River within 700 yards of Kentucky Dam;

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area lakes ~~[Lakes,]~~ Ballard County;

2. Peal Wildlife Management Area lakes ~~[Lakes,]~~ Ballard County; and

3. Swan Lake ~~[Lakes]~~ Wildlife Management Area lakes ~~[Lakes,]~~ Ballard County; or

(d) In the following areas of the Ohio River;

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K&I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9) ~~(a) The~~ Taylorsville Lake blue and channel catfish limits shall be and:

~~(a)]~~ aggregate daily creel limit of fifteen (15); and

(b) Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

Section 4. Temporary Aquatic Areas and Temporary Pools. (1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where rough fish may be taken by any method except:

(a) Poison;

(b) Electrical devices;

(c) Firearms; and

(d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person shall be required to possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170.

(4) A person with a valid commercial fishing license may use nets and seines as long as the nets and seines are appropriately tagged, pursuant to 301 KAR 1:146.

(5) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 5. Giggling and Snagging. (1) Giggling and snagging season shall be February 1 through May 10, except as provided in subsections (7) and (9) of this section. ~~[:]~~

(2) A person shall not:

(a) Gig or snag a sport fish, pursuant to 301 KAR 1:060, except as provided in subsections (7) and (9) of this section;

(b) Gig or snag from a platform;

(c) Gig from a boat in a lake with a surface area of less than 500 acres;

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- (d) Gig at night from a boat; ~~[from a boat at night];~~
- (e) Snag from a boat; or
- (f) Have a snagging rod in excess of seven (7) and one-half (1/2) feet in length, including the handle; ~~[.]~~
- (3) A snagging rod shall be equipped with:
 - (a) Line;
 - (b) Guides;
 - (c) A reel; and
 - (d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used when snagging in:
 - 1. The Green River and its tributaries; or
 - 2. The Rolling Fork River and its tributaries.
- (4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as provided in subsections (7) and (9) of this section.
- (5) A person shall not gig or snag in the following areas or bodies of water:
 - (a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;
 - (b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;
 - (c) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;
 - (d) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;
 - (e) Cave Run Lake; or
 - (f) Within 200 yards of any dam on a river or stream, except as specified in subsection (7) of this section.
- (6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.
- (7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the ~~[new]~~ U.S. 62 ~~bridge~~; ~~[bridge];~~
- (a) For twenty-four (24) hours a day from January 1 through May 31; and
- (b) From sunset to sunrise from June 1 through December 31.
- (8) A person shall not snag in that section of the Tennessee River from the ~~[new]~~ U.S. 62 bridge to the ~~Interstate 24~~ ~~[Interstate-24]~~ bridge.
- (9) A person may snag sport fish or rough fish year round in that section of the Tennessee River from the ~~Interstate 24~~ ~~[Interstate-24]~~ bridge to the Ohio River.
- (10) A person shall not snag on the Tennessee River:
 - (a) Under the U.S. 62 bridge;
 - (b) Under the P & L Railroad bridge; and
 - (c) From the fishing piers located below the U.S. 62 bridge.
- (11) There shall not be a daily creel limit for rough fish except:
 - (a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8) except there shall not be a creel limit on Asian Carp;
 - (b) The daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8) except there shall not be a creel limit on Asian Carp; and
 - (c) 1. The statewide daily creel limit for paddlefish shall be two (2), in all areas outside those described in paragraphs (a) and (b) of this subsection; and
- 2. In an area described in paragraph (a) or (b) of this subsection, [where] up to eight (8) paddlefish may be taken.
- (12) A person shall immediately retain, and not release or cull, any gilled or snagged paddlefish.
- (13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.
- (14) All gilled or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.
- (15) A person shall immediately cease snagging if:
 - (a) A daily limit of paddlefish is reached; or
 - (b) A daily limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that

sport fish is less than eight (8).

Section 6. Grabbing (Tickling and Noodling). (1) The grabbing season for rough fish, also known as tickling and noodling, shall be June 1 to August 31 during daylight hours.

(2) Tickling and noodling shall be permitted in all waters.

(3) The daily creel limit for tickling and noodling shall be fifteen (15) fish, no more than five (5) of which may ~~[shall] be catfish.~~ ~~[not more than five (5) of which shall be catfish in aggregate.]~~

Section 7. Bow Fishing. (1) A person using archery equipment or a crossbow shall not take:

(a) Sport fish;

(b) More than five (5) catfish ~~[in aggregate]~~ daily; or

(c) More than two (2) paddlefish daily.

(2) Any paddlefish or catfish shot with archery equipment or a crossbow shall be immediately retained, and not released or culled, and shall count toward a person's daily limit.

(3) Bow fishing shall be open statewide, except:

(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;

(b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream; and

(c) From a boat in restricted areas below navigation, power generating, or flood control dams.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: May 11, 2012

FILED WITH LRC: May 14, 2012 at 2 p.m.

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

TOURISM, ARTS AND HERITAGE CABINET Kentucky Department of Fish and Wildlife Resources (As Amended at ARRS, June 12, 2012)

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

RELATES TO: KRS 150.010, 150.170, 150.370, 150.399, 150.400, 150.410, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), ~~[150.025;]~~ 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) ~~[150.025]~~ authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply statewide or to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes exceptions to statewide small game and furbearer regulations on public areas.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Upland bird" means a grouse or northern bobwhite.

(3) "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.

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

Section 2. This administrative regulation shall establish exceptions to the statewide requirements established in 301 KAR 2:122, 2:251, and 3:010.

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Section 3. On a Wildlife Management Area owned or managed by the department:

(1) A person shall wear hunter orange clothing if a firearm is allowed for deer hunting, as established in 301 KAR 2:172.

(2) The hunter orange clothing requirement in subsection (1) of this section shall not apply to a person hunting:

(a) Waterfowl; or

(b) Raccoon or opossum at night.

(3) There shall be a free youth small game hunting week for seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting license.

(4) There shall be a free youth trapping week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may trap without a trapping license.

Section 4. Exceptions on Specific Public Areas. (1) Barren River Wildlife Management Area.

(a) The WMA shall be considered to be entirely within the Eastern Zone, as established in 301 KAR 2:122.[:]

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.[:and]

(c) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not hunt with a breech-loading firearm.[:]

(2) Beaver Creek WMA, including private inholdings.

(a) Grouse season shall be open from October 1 through December 31.[:and]

(b) Northern bobwhite and rabbit seasons shall be[:] closed after December 31.

(3) Big South Fork National River and Recreation Area, McCreary County.

(a) Grouse season shall be open from October 1 through December 31.[:and]

(b) Northern bobwhite and rabbit seasons shall be[:] closed after December 31.

(4) Cane Creek WMA, including private inholdings.

(a) Grouse season shall be open from October 1 through December 31.[:and]

(b) Northern bobwhite and rabbit seasons shall be[:] closed after December 31.

(5) Cedar Creek Lake WMA.[:]

(a) Rabbit season shall be closed after December 31.[:]

(b) Squirrel season shall coincide with the statewide season.[:and]

(c) The area shall be closed to all other small game and furbearer hunting.

(6) Clay WMA.

(a) The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.[:]

(b) Rabbit season shall be closed after December 31.[:]

(c) Grouse and northern bobwhite hunting shall be restricted to quota hunt dates established in Section 5 of this administrative regulation.

(d) Pheasant may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

1. Any person with a valid hunting license may take a pheasant.[:and]

2. The daily limit per hunter shall be three (3) birds of either sex.

(e) Quota fox hunting field trials.[:]

1. There shall be a maximum of two (2) four (4) day events per calendar year.

2. Each event shall be limited to 250 participants.

3. The area shall be closed to nonparticipants.

4. A participant shall:

a. Wear a laminated identification badge issued by the department during the event.[:and]

b. Return the laminated badge at the close of the event.

(7) Curtis Gates Lloyd WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall not allow a dog to be unleashed from April 1

until the third Saturday in August except if squirrel hunting.

(8) Dix River WMA.[:]

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Grouse season shall be open from October 1 through December 31.

(9) Fleming WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Grouse season shall be open from October 1 through December 31.

(10) Green River Lake WMA.

(a) The area shall be closed to all hunting for four (4) consecutive days beginning on the third Friday in November except for archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) Pheasant.

1. Beginning on the Tuesday following the pheasant quota hunt through December 31, any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) birds of either sex.

(d) The area shall be closed to grouse hunting and trapping. [Grouse: closed to hunting and trapping.]

(11) Higginson-Henry WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(12) Kleber WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(13) Lake Cumberland WMA.

(a) Grouse season shall be open from October 1 through December 31.[:and]

(b) Northern bobwhite and rabbit seasons shall be[:] closed after December 31.

(14) Mill Creek WMA. Northern bobwhite and rabbit seasons

shall be closed after December 31.

(15) Miller-Welch Central Kentucky WMA.

(a) Small game and furbearer hunting seasons shall be closed, except that squirrel season shall be open.[:and]

(b) A person shall not allow a dog to be unleashed:

1. From April 1 until the third Saturday in August.[:and]

2. On a Monday, Wednesday, or Friday during the remainder of the year, except:

a. If a person is hunting squirrels during an open season; or[:and]

b. If a person is participating in an authorized field trial.

(16) Mullins WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(17) Nolin Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(18) Otter Creek Outdoor Recreation Area.

(a) Except as authorized by the department, a person shall not enter the area during a deer quota hunt without a valid quota hunt confirmation number.[:]

(b) Northern bobwhite season shall be closed.[:]

(c) Rabbit hunting season shall be from December 1 through December 31.[:]

(d) Trapping season shall be from January 1 through the last day in February.[:]

(e) A person who traps on the area shall:

1. First obtain prior authorization from the area manager; and

2. Only trap in department designated areas.[:]

(f) Except during deer quota hunts, a person shall not use the following to take furbearers:

1. A rifle;

2. Ball ammunition; or

3. Slug ammunition.[:and]

(g) A person shall not use a rimfire gun to take small game, except during a deer quota hunt.

(19) Paul Van Booven WMA. The area shall be closed to vehicle access from one (1)[an] hour after sunset until one (1)[an] hour before sunrise.[:(a) Shall be closed to vehicle access from an hour after sunset until an hour before sunrise; and

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(b) ~~Shall be closed to Northern bobwhite hunting.;~~

(20) Pennyryle Forest WMA.

(a) Grouse season shall be open from December 1 through December 31.~~;~~~~and]~~

(b) The daily limit shall be two (2).

(21) Pioneer Weapons WMA. A person shall not hunt with a breech-loading firearm.

(22) Robinson Forest WMA.

(a) Hunting shall not be permitted on the Main Block.~~;~~~~and]~~

(b) The remainder of the WMA shall be open under statewide requirements.

(23) Taylorsville Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(24) Tradewater WMA.

(a) Grouse season shall be open from December 1 through December 31.~~;~~~~and]~~

(b) The daily limit shall be two (2).

(25) West Kentucky WMA.

(a) A person shall check in daily at a designated check station prior to using an "A" tract.~~[A person shall not hunt on "A" tracts.;~~

(b) Northern bobwhite and rabbit seasons shall be closed after December 31 on Tracts 2, 3, 6, and 7.~~;~~

(c) Northern bobwhite and rabbit seasons shall be open on Tracts 1, 4, 5, and "A" beginning~~[and 5]~~ one-half (1/2) hour before sunrise until 1 p.m. local time from January 1 through January 10.~~;~~, except if harvest limits are reached prior to January 10;

1. A hunter shall report harvest numbers and total hours hunted to the area supervisor on a daily basis.~~;~~~~and]~~

2. If a tract is closed prior to January 10, a sign indicating closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.~~;~~~~and]~~

(d) A person shall not:

1. Use a rifle, ball, or slug ammunition;

2. Operate a vehicle on Tract 6 from February 1 through April 16;~~or[and]~~

3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.

(26) Yellowbank WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Pheasant may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

(c) A person shall:

1. Possess a valid hunting license to take pheasant, unless exempt pursuant to KRS 150.170: and

2. Not take more than three (3) pheasants of either sex.

Section 5. Pheasant Quota Hunts. (1) There shall be a pheasant quota ~~hunt on:~~~~[hunt.;~~

(a) ~~Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November.;~~~~[On the Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November; and]~~

(b)~~[On]~~ Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in ~~December.;~~~~and]~~

(c) Yellowbank Wildlife Management Area for three (3) consecutive days beginning on the second Friday in December.

(2) There shall be a one (1) day clean-up hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular WMA.

(3) Hunt hours for each day shall be from 9 a.m. to 4 p.m.:

(a) Eastern time for the Green River Wildlife Management Area and Clay Wildlife Management Area hunts; and

(b) Central time for the Yellowbank Wildlife Management Area hunt.[p.m. Eastern time.]

(4) During a quota hunt of clean-up hunt, a person shall wear orange clothing as specified in 301 KAR 2:172.

(5) The daily bag limit per hunter shall be two (2) birds of either sex, except there shall be a daily bag limit of three (3) birds of either sex during the one (1) day clean-up hunt.

(6) Pheasant quota hunt procedures.

(a) A person selected for a pheasant quota hunt may hunt on the one (1) day clean-up hunt for that area.

(b) A person applying for a pheasant quota hunt shall:

1. Not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

2. Not apply as a group of more than five (5) people.

(c) A person who is drawn to hunt shall pay the pheasant quota hunt permit fee established in 301 KAR 3:022, prior to the hunt.~~[shall, by October 30, pay the permit fee established in 301 KAR 3:022, Section 5(2), by:~~

1. ~~A check containing the drawn confirmation number;~~

2. ~~A money order enclosed with the draw confirmation number;~~
or

3. ~~Credit card via the department's Web site as an applicant reviews the drawing results.~~

(d) ~~If a group is drawn to hunt, then one group member shall submit a single payment for the entire group along with the confirmation number data.]~~

Section 6. Northern Bobwhite and Upland Bird Quota Hunts.

(1) There shall be one (1) day northern bobwhite quota hunts on two (2) tracts of Peabody WMA on the following days:

(a) The fourth Saturday in November, which shall only be a youth-mentor hunt;

(b) The Tuesday following the fourth Saturday in November;

(c) The Tuesday following the third Saturday in December;

(d) The first Saturday in January;

(e) The second Saturday in January; and

(f) The Tuesday following the third Saturday in January.

(2) There shall be one-day upland bird quota hunts on Clay WMA on the following days:

(a) On the Wednesday following the first Saturday in November;

(b) The third Sunday in November;

(c) The second Sunday in December; and

(d) The third Tuesday in December.

(3) A person participating in a quota hunt shall:

(a) Only hunt from one-half (1/2) hour before sunrise to two (2) p.m.;

(b) Wear hunter orange clothing pursuant to 301 KAR 2:172; and

(c) Not take more than four (4) northern bobwhite on a daily basis.

(4) A person who participates in an upland bird quota hunt:

(a) Shall not take more than four (4) grouse daily; and

(b) May take woodcock pursuant to the requirements established in 301 KAR 2:225.

(5) A person applying for a northern bobwhite or upland bird quota hunt shall:

(a) Not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

(b) Not apply as a group of more than three (3) people.

(6) A person selected for a quota hunt shall only hunt the species identified on the permit.

Section 7. General Quota Hunt Requirements. (1) A person applying for a pheasant, northern bobwhite, or upland bird quota hunt shall:

(a) Call the toll-free number listed in the current Fall Hunting and Trapping Guide from a touch tone phone between September 1 and September 30;

(b) Enter each applicant's Social Security number;

(c) Indicate a choice of days to hunt; and

(d) Pay a three (3) dollar application fee for each applicant prior to the drawing by:

1. Check;

2. Money order;

3. Visa; or

4. MasterCard.

(2) A person, prior to participating in a quota hunt, shall be required to show:

(a) A department-issued quota hunt permit;

(b) A valid Kentucky hunting license or proof of exemption; and

(c) A hunter education card, if required.

(3) A person or group participating in a northern bobwhite or upland bird quota hunt shall submit a hunting log within seven (7)

days [day] after the hunt.

(4) A youth-mentor quota hunt party shall have a minimum of one (1) youth as a member of the party.

(5) A person shall comply with all quota hunt requirements or be ineligible to apply for any other quota hunt during the following year, except for an elk quota hunt.

(6) A youth shall only apply as part of a party that has at least one (1) adult.

(7) The department may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(8) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(9) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(10) A person shall forfeit all accumulated points if, in a given year, **the person does**~~(they do)~~ not apply for the hunt in which points were earned.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: March 2, 2012

FILED WITH LRC: April 12, 2012 at noon

CONTACT PERSON: ROSE Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, June 12, 2012)

301 KAR 2:081. Transportation and holding of live native wildlife.

RELATES TO: KRS 150.015, 150.290, 150.305, 150.320, 150.330, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.180, 150.280, 50 C.F.R. 21.29 [150.025, 150.180, 150.280]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations for the buying, selling, or transporting of wildlife. KRS 150.180 authorizes the department to regulate the buying, selling, or transporting of protected wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. 50 C.F.R. 21.29 establishes the federal standards for holding raptors. [150.025 authorizes the department to regulate the buying, selling, or transporting of game and the seasons and methods of taking. KRS 150.180 authorizes the department to regulate the buying, selling, or transporting of protected wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife.] This administrative regulation **establishes requirements for the buying, selling, holding, and transportation of wildlife** [is necessary to control the indiscriminate possession and commercialization of wildlife, to ensure minimum welfare standards for lawfully possessed wildlife, to protect the public and native wildlife from wildlife-borne diseases, and to prevent the introduction of wildlife that might be detrimental to native fauna and flora].

Section 1. **Definition**[Definitions]. [(1)]["Circus" means a traveling public entertainment show consisting of acrobats, clowns, and trained animals, but shall not include a show including wrestling bears or other direct contact between members of the public and inherently dangerous animals.

(2)] "Native wildlife" means wildlife species which have historically existed or currently exist in the wild in Kentucky without intro-

duction by man, **except for**[not including] introduced species which have become naturalized.

Section 2. Taking and Possessing Native Wildlife. (1) A person shall not possess native wildlife that was not legally acquired.

(2) A person shall not do any of the following with native wildlife obtained from the wild:

- (a) Buy;
- (b) Sell;
- (c) Offer to buy;
- (d) Offer to sell; or
- (e) Trade or barter.

(3) Except as specified in Section 7 of this administrative regulation and subsections (4)[(5)] and (5) of this section, a person holding native wildlife in captivity shall apply for and obtain a permit prior to acquiring wildlife.

(4) Northern bobwhite.

(a) A person may possess 100 or fewer northern bobwhite [may be possessed] without a captive wildlife permit, **if**[provided] the birds are not propagated or sold.

(b) A person possessing northern bobwhite for dog training areas or a shoot-to-train season shall comply with all applicable requirements of 301 KAR 2:041.

(c) Proof of purchase shall be retained as permission to possess.

(d) Confining facilities shall comply with Sections 8, 9, 10, and 11 of this administrative regulation.

(5) Amphibians and reptiles.

(a) Five (5) or fewer individuals of each species of native reptile or amphibian may be taken year round or possessed for personal use without a permit. **The following shall be exceptions to taking or possessing five (5) individuals of each species. There shall be:**[Exception to taking or possessing five (5) individuals of each species:]

- 1. No limit on snapping or softshell turtles;
- 2. A limit of fifteen (15) per night [limit] on bullfrogs; and
- 3. A[Possession] limit of twenty-five (25) dusky salamanders or spring lizards[(spring lizards)] of the genus *Desmognathus*.

(b) There shall be no limit on the number of individuals of each species possessed by a commercial or noncommercial captive wildlife permit holder, **if**[provided] the permit holder does not possess more than five (5) wild-caught individuals of each species of amphibian or reptile.

(c) A captive wildlife permit shall not be required to hold reptiles with a color morphology that is distinctly different from the wild type of the same species of reptile.

Section 3. Captive Wildlife Permits and Record Keeping. (1) Commercial captive wildlife permit.

(a) A commercial captive wildlife permit shall be required for a person to:

- 1. Sell;
- 2. Offer to sell;
- 3. Trade; or
- 4. Barter native wildlife.

(b) A commercial captive wildlife permit shall be renewable annually from the date of issue.

(2) Noncommercial captive wildlife permit.

(a) A noncommercial captive wildlife permit shall be required for a person possessing native wildlife, but not selling, offering to sell, trading, or bartering animals.

(b) A noncommercial captive wildlife permit shall be renewable three (3) years from the date of issue.

(3) A captive wildlife permit holder shall maintain accurate records for all captive-bred and wild-captured wildlife and include the following information:

- (a) For each captive-bred animal:
 - 1. Common and scientific name;
 - 2. The following evidence of legal acquisition:
 - a. Bill of sale;
 - b. Receipted invoice; or
 - c. Certificate of origin;[-]
 - 3. Date of birth;
 - 4. Each transaction date related to:

a. Sale;
b. Purchase;
c. Trade;
d. Barter; or
e. Gifting; and
5. The following information for the person either receiving or transferring captive wildlife:
a. Name;
b. Address;
c. Phone number; and
d. The person's captive wildlife permit number.
(b) For each wild-captured animal:
1. Common and scientific name;
2. Date of capture or date when received;
3. Location of capture;
4. Trapping license or hunting license number, if applicable, of the individual obtaining the wildlife; and
5. The following information for the person to whom the animal was given or received:
a. Name;
b. Address;
c. Phone number; and
d. The person's captive wildlife permit number.
(4) A captive wildlife permit holder shall:
(a) Maintain all records for five (5) years; and
(b) Allow records to be inspected by a department representative upon request.

Section 4. Transportation Permits and Certificate of Veterinary Inspection. (1) A person shall apply for and obtain a valid transportation permit or permit authorization number from the department for all shipments of wildlife, native or exotic, unless otherwise exempted by this or another administrative regulation, prior to:
(a) Receiving a shipment of wildlife;
(b) Importing wildlife into Kentucky; or
(c) Transporting wildlife into and through the state to a destination outside Kentucky.
(2) A copy of a valid transportation permit or permit authorization number shall accompany all shipments of wildlife into and through Kentucky.
(3) An individual transportation permit shall be valid for one (1) shipment of wildlife.
(4) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue.
(5) All shipments of wildlife, except for amphibians and reptiles, shall be accompanied by:
(a) A certificate of veterinary inspection stating that the wildlife is free from symptoms of disease; or
(b) A federal quarantine certificate.

Section 5. Applying for Permits. (1) A person shall complete an application for a captive wildlife permit or a[er] transportation permit on a form supplied by the department.
(2) An applicant for a captive wildlife permit shall indicate one of the following legal sources for obtaining the wildlife:
(a) A legal purchase or transfer of captive-bred animals from a commercial captive wildlife permit holder;
(b) A receipt, if it is a gift from a commercial or noncommercial captive wildlife permit holder;
(c) Trapping during a legal season for the species with a valid trapping license, if applicable; or
(d) A legal out-of-state source if[when] accompanied by a valid transportation permit.
(3) Following permit issuance, the permit holder shall retain records as specified in Section 3(3) and (4) of this administrative regulation.
(4) An applicant shall construct holding facilities that meet or exceed the enclosure specifications established in Sections 8 and 9 of this administrative regulation for each listed species to be acquired before submitting the captive wildlife application.
(5) The department shall deny a captive wildlife or transportation permit to an applicant that:
(a) Is less than eighteen (18) years of age;
(b) Has been convicted within the last year of a violation of:

1. This administrative regulation; or
2. 301 KAR 2:082;[]
(c) Does not submit a completed application; or
(d) Does not remit the correct fee pursuant to 301 KAR 3:022.
(6) The department shall deny a captive wildlife permit to an applicant that:
(a) Has acquired wildlife prior to receiving an approved captive wildlife permit except as allowed in Sections 2(4) and (5) of this administrative regulation; or
(b) Holds a wildlife rehabilitation permit as specified in 301 KAR 2:075.
(7) An annual transportation permit holder shall notify the department of any amendments to the original application at least forty-eight (48) hours prior to any wildlife shipment by calling the department by telephone at 800-858-1549, Monday through Friday, between 8 a.m. and 4:30 p.m. Eastern time.
(8) A person importing and possessing native wildlife shall be responsible for following local ordinances and rules regarding captive wildlife.

Section 6. Prohibited Species. (1) Except as specified in Section 7 of this administrative regulation, a person shall not import, transport, or possess:
(a) Alligator snapping turtle (*Macrochelys temminckii*);
(b) Black bear (*Ursus americanus*);
(c) Copperbelly water snake (*Nerodia erythrogaster neglecta*);
(d) Cougar or mountain lion (*Felis concolor*);
(e) Wild turkey (*Meleagris gallopavo*); or
(f) Wolf (*Canis lupus*).
(2) The following species shall not be imported into or transported through Kentucky, except as specified in Section 7 of this administrative regulation:
(a) Coyotes (*Canis latrans*);
(b) Foxes (*Vulpes* spp.; *Alopex lagopus*; *Urocyon cinereoargenteus*);
(c) Raccoons (*Procyon lotor*); or
(d) Skunks (*Mephitis* spp.; *Spilogale putorius*; *Conepatus leuconotus*).

Section 7. Exemptions. (1) A facility that is accredited by the American Zoo and Aquarium Association shall:
(a) Not be required to obtain a transportation permit for native wildlife; and
(b) Be allowed to import, transport, and possess the prohibited species listed in Section 6(1) and (2) of this administrative regulation.
(2) Upon written request, the department shall consider an exemption for the importation or possession of the prohibited species listed in Sections 6(1) and (2) for legitimate scientific or educational purposes by the following entities:
(a) A facility that is designated as the official zoo of a municipality;
(b) A government agency;
(c) A college or university; or
(d) A licensed or accredited institution of:
1. Research; or
2. Education.

Section 8. Confining Facilities. (1) Cages, pens, or other enclosures for confining native wildlife shall be of sufficient structural strength to:
(a) Prevent the escape of the captive animals;
(b) Protect the caged animal from injury and predators; and
(c) Prevent the entrance of free individuals of the same species.
(2) Wing-clipped and pinioned birds may be kept in suitable unroofed enclosures even though wild birds of the same species may enter the enclosure.
(3) A person shall not maintain any native wildlife in captivity in an unsanitary or unsafe condition or in a manner that results in the maltreatment or neglect of that wildlife.
(4) Native wildlife shall not be confined in any cage or enclosure that does not meet the cage specifications in Section 9 of this administrative regulation.

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(5) Cages and enclosures shall be maintained as follows:

(a) Clean drinking water shall be provided daily in clean containers;

(b) Swimming or wading pools shall be cleaned as needed to ensure good water quality;

(c) Enclosures shall provide adequate drainage of surface water;

(d) A captive mammal or bird shall be fed daily;

(e) Food shall be:

1. Of a type and quantity that meets the nutritional requirements for the particular species; and

2. Provided in an unspoiled and uncontaminated condition;

(f) Feeding containers shall be kept clean, and uneaten food removed within a reasonable time;

(g) A shelter shall be provided for security and protection from inclement weather;

(h) Shade or an overhead structure shall be provided in warm seasons;

(i) Fecal and food waste shall be:

1. Removed from cage daily; and

2. Stored or disposed of in a manner that prevents noxious odors or insect pests;

(j) Cage and enclosures shall be ventilated to prevent noxious odors;

(k) Hard floors within cages or enclosures shall be cleaned a minimum of once per week;

(l) Cages or enclosures with dirt floors shall be raked a minimum of once every three (3) days with the waste removed;

(m) Animals that are compatible may be held in the same enclosure if the required floor space is provided; and

(n) Common walls shall be constructed between animals that are not compatible so the animals cannot interact.

Section 9. Minimum Enclosure Sizes and Associated Requirements for Stationary Facilities. (1) Birds.

(a) Northern bobwhite older than fourteen (14) weeks shall be held in an enclosure with the following minimum specifications:

1. An enclosure for a single Northern bobwhite shall be a minimum of 100 square feet.

2. There shall be an increase in one (1) square foot per additional bobwhite.

3. Bobwhite may be held in smaller breeding pens during the breeding season.

(b) A duck shall be held in an enclosure with the following minimum specifications:

1. No more than two (2) pairs or one (1) pair and their offspring prior to first molt shall be confined to an area smaller than 100 square feet;

2. There shall be at least ten (10) square feet of water that is one (1) foot or greater in depth; and

3. There shall be at least twenty (20) square feet of additional land space and five (5) square feet of water surface for each additional adult duck.

(c) A goose shall be held in an enclosure with the following minimum specifications:

1. No more than two (2) pair or one (1) pair and their offspring prior to first molt shall be confined to an area smaller than 500 square feet;

2. There shall be a minimum of fifty (50) square feet of water that is two (2) feet or greater in depth; and

3. There shall be at least 100 square feet of land and twenty-five (25) square feet of water surface for each additional adult goose.

(d) Ruffed grouse shall be held in an enclosure with the following minimum specifications:

1. There shall be 200 square feet of floor space for five (5) or fewer birds with a height of at least six (6) feet; and

2. There shall be an additional twenty (20) square feet of floor space for each additional bird.

(e) Raptors shall be held in an enclosure meeting the federal falconry standards described in 50 C.F.R. Part 21.29.

(2) Mammals.

(a) A bat shall be kept in an enclosure with the following minimum specifications:

1. A little brown bat, long-eared bat, and pipistrelle shall be kept in an enclosure that is at least 6 ft. x 6 ft. x 6 ft.

2. An evening or red bat shall be kept in an enclosure that is at least 8 ft. x 12 ft. x 8 ft.

3. A big brown or hoary bat shall be kept in an enclosure that is at least 10 ft. x 20 ft. x 8 ft.

(b) A fox, bobcat, or raccoon shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft.; and

2. There shall be thirty (30) square feet floor space for each additional animal.

(c) A coyote shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft.; and

2. There shall be twenty-five (25) square feet floor space for each additional animal.

(d) A beaver or otter shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 8 ft. x 12 ft. x 6 ft. with a 4 ft. x 6 ft. pool that is three (3) feet deep at one (1) end;

2. There shall be an increase in horizontal cage size and pool size by eight (8) square feet for each additional animal;[1]

3. An otter shall have a slide and a dry place for sleeping and retreat; and

4. A beaver shall be supplied with gnawing logs and a dry place for sleeping and retreat.

(e) Muskrat and mink shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 6 ft. x 4 ft. x 3 ft. with a 2 ft. x 4 ft. pool which is two (2) feet deep at one (1) end;

2. There shall be an increase in horizontal cage size by eight (8) square feet and a pool size of two (2) square feet; and

3. A muskrat shall have gnawing material.

(f) A gray squirrel, fox squirrel, or flying squirrel shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 4 ft. x 4 ft. x 8 ft.; and

2. There shall be an increase in floor space by two (2) square feet for each additional animal.

(g) A skunk, opossum, rabbit, or woodchuck shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 6 ft. x 8 ft. x 8 ft.;

2. There shall be an increase in floor space by four (4) square feet for each additional animal; and

3. A woodchuck shall have several gnawing logs approximately six (6) inches in diameter.

(h) A weasel shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 3 ft. x 3 ft. x 3 ft.; and

2. There shall be an increase in floor space by three (3) square feet for each additional animal.

Section 10. Mobile Facility. A mobile facility used in transporting native wildlife shall meet the following requirements:

(1) It shall be equipped to provide fresh air and adequate protection from the elements, without injurious drafts;[without injurious drafts and adequate protection from the elements;]

(2) The animal housing area shall be free of engine exhaust fumes;

(3) A cage shall be large enough to ensure that each animal has sufficient room to stand erect and lay naturally;

(4) The structural strength of the enclosure shall be sufficient to contain the live animals and to withstand the normal rigors of transportation; and

(5) Wildlife transported in the same cage area shall be in compatible groups.

Section 11. Temporary Facility. Native wildlife housed in a temporary facility or exhibit shall be housed in a cage that meets the minimum cage specifications provided in Section 8 of this administrative regulation if present in any geographical location for more than ten (10) days.

Section 12. Inspections and Permit Revocation. (1) A permit holder shall allow a conservation officer to inspect the holding fa-

cilities at any reasonable time.

(2) The conservation office shall immediately notify the permit holder if the inspection reveals a violation of any provision of this administrative regulation.

(3) A captive wildlife permit shall be revoked for a period of one (1) year and all captive wildlife confiscated if a violation is not corrected within ten (10) days of the initial inspection.

(4) A fee shall not be refunded for a permit that is revoked.

(5) An individual whose permit has been revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Captive Wildlife Permit Application", 2012 edition;

(b) "Annual Transportation Permit Application", 2012 edition; and

(c) "Individual Transportation Permit Application", 2012 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. [wildlife which have historically existed or currently exist in the wild in Kentucky without introduction by man, not including naturalized introduced species such as starlings, house sparrows and Eurasian collared doves.

Section 2. Exemptions. Transportation permits and captive wildlife permits shall not be required for the importation or possession of species listed in this administrative regulation by facilities that are accredited by the American Zoo and Aquarium Association.

Section 3. (1) Except as specified in Section 2 of this administrative regulation and subsection (2) of this section, a person shall not import or possess:

(a) Alligator snapping turtle (*Macrochelys temminckii*);

(b) Black bear (*Ursus americanus*);

(c) Copperbelly water snake (*Nerodia erythrogaster neglecta*);

(d) Cougar or mountain lion (*Felis concolor*);

(e) Any federally threatened or endangered species;

(f) Wild turkey (*Meleagris gallopavo*); or

(g) Wolf (*Canis lupus*).

(2) The commissioner may allow the importation or possession of the species listed in subsection (1) of this section by circuses or for legitimate scientific or educational purposes by:

(a) A zoo that is designated as the official zoo of a municipality.

(b) A government agency;

(c) A college or university; or

(d) A similar educational or research institution.

Section 4. Importation prohibited. (1) The following species shall not be imported into Kentucky unless specified in Section 2 of this administrative regulation or subsection (2) of this section:

(a) Coyotes (*Canis latrans*);

(b) Foxes (*Vulpes* spp.; *Alopex lagopus*; *Urocyon cinereoargenteus*);

(c) Raccoons (*Procyon lotor*); and

(d) Skunks (*Mephitis* spp.; *Spilogale putorius*; *Conepatus leuconotus*).

(2) The commissioner may allow the importation or possession of the species listed in subsection (1) of this section by circuses or for legitimate scientific or educational purposes by:

(a) A zoo that is:

designated as the official zoo of a municipality.

(b) A government agency;

(c) A college or university; or

(d) A similar educational or research institution.

Section 5. Taking and Possessing Native Wildlife. (1) A person shall not hold native wildlife in captivity that was not legally taken or possessed. A person shall not buy or sell, offer to buy or sell, trade, or barter native wildlife or parts thereof, obtained from the wild.

(2) Except as specified in Section 2 of this administrative regu-

lation and subsections (7) and (8) of this section, a person holding native wildlife in captivity shall apply for and obtain a permit prior to acquiring wildlife.

(3) A person permitted to rehabilitate native wildlife as specified in 301 KAR 2:075 shall not be issued a commercial or non-commercial captive wildlife permit.

(4) A commercial and noncommercial captive wildlife permit holder shall maintain accurate records for captive bred and wild-captured wildlife for five (5) years. Records shall be available for inspection by a department representative. Records shall include:

(a) For each captive bred animal:

1. Common and scientific name;

2. A certificate of origin, bill of sale, receipted invoice or evidence of legal acquisition from out of state;

3. Date of birth;

4. Date of each transaction related to the sale, purchase, trade, barter or gifting; and

5. The complete name, address, phone number and captive wildlife permit number of the person to whom the animal was sold, traded, bartered or gifted or from whom the animal was purchased or otherwise received.

(b) For each wild-captured animal:

1. Common and scientific name;

2. Date and location of capture from the wild or date when received or given as a gift;

3. Trapping or hunting license number of the individual obtaining the animal except for reptiles and amphibians; and

4. The complete name, address, phone number and captive wildlife permit number of the person to whom the animal was gifted or from whom the animal was received as a gift.

(5) Commercial captive wildlife permit:

(a) A commercial captive wildlife permit shall be required for persons selling, offering to sell, trading, or bartering native wildlife.

(b) A commercial captive wildlife permit shall be renewable annually from the date of issue.

(6) Noncommercial captive wildlife permits.

(a) A noncommercial captive wildlife permit shall be required for persons possessing native wildlife, but not selling, offering for sale, trading or bartering animals.

(b) A noncommercial captive wildlife permit shall be renewable three (3) years from the date of issue.

(7) Northern bobwhite.

(a) Fifty (50) or fewer Northern bobwhite may be possessed for personal use without a permit, provided the birds are not propagated or sold.

(b) Proof of purchase shall be retained as permission to possess.

(8) Amphibians and reptiles.

(a) Except as provided for in Section 2 of this administrative regulation and this subsection, captive wildlife permits are not required for persons taking or possessing up to five (5) individuals of each species of a native reptile or amphibian. Exception to taking or possessing five (5) individuals of each species:

1. No limit on snapping and smooth and spiny softshell turtles;

2. Fifteen (15) per night limit on bullfrogs; and

3. Possession limit of twenty-five (25) dusky salamanders (spring lizards) of the genus *Desmognathus*.

(b) There shall not be a limit on the number of individuals of each species possessed by a commercial or noncommercial captive wildlife permit holder, provided the permit holder does not possess more than five (5) wild-caught individuals of each species of amphibian or reptile.

(c) A captive wildlife permit shall not be required to hold reptiles with a color morphology that is distinctly different from the wild type of the same species of reptile.

(9) Transportation permits and certificate of veterinary inspection.

(a) Prior to entry into Kentucky, a transportation permit shall be obtained for all shipments of wildlife (native and exotic). A person shall be responsible for applying for a transportation permit if he or she:

1. Receives a shipment of wildlife;

2. Imports wildlife for his or her own use or possession; or

3. Transports wildlife into and through the state to a destination

outside Kentucky.

(b) A copy of a valid transportation permit shall accompany all shipments of wildlife into Kentucky.

(c) An individual transportation permit shall be valid for one (1) shipment of wildlife.

(d) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue. An annual transportation permit holder shall:

1. Notify the department in writing of any changes or additions subsequent to the original application so that the permit may be amended prior to future wildlife importation; and

2. Notify the department by telephone 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 the date of expected shipment, source of the shipment and the species and number being shipped.

(e) All shipments of wildlife, except for amphibians and reptiles, shall be accompanied by a certificate of veterinary inspection stating that the wildlife is free of symptoms of disease. A federal quarantine certificate may be substituted for the certificate of veterinary inspection.

Section 6. Applying for Permits. (1) An application for a captive wildlife and transportation permit shall be made on standard forms.

(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 application shall construct holding facilities that meet or exceed the enclosure specifications established in Sections 6 and 7 of this administrative regulation for each listed species to be acquired before submitting the captive wildlife application.

(6) An applicant shall possess an approved permit before acquiring animals.

(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.

Section 7. Confining Facilities. (1) Cages, pens, or other enclosures for confining native wildlife shall be of sufficient structural strength to:

(a) Prevent the escape of the captive animals;

(b) Protect the caged animal from injury and predators; and

(c) Prevent the entrance of free individuals of the same species.

(2) Wing-clipped and pinioned birds may be kept in suitable unroofed enclosures even though wild birds of the same species may enter the enclosure.

(3) A person shall not maintain any native wildlife in captivity in an unsanitary or unsafe condition or in a manner that results in the maltreatment or neglect of that wildlife.

(4) Native wildlife shall not be confined in any cage or enclosure that does not meet the cage specifications in Section 8 of this administrative regulation.

(5) Cages and enclosures in which native wildlife is held in captivity shall be maintained as follows:

(a) Clean drinking water shall be provided daily in clean containers;

(b) Swimming or wading pools shall be cleaned as needed to ensure good water quality;

(c) Enclosures shall provide adequate drainage of surface water;

(d) Captive mammals and birds shall be fed daily;

(e) Food shall be of a type and quantity that meets the nutritional requirements for the particular species and shall be provided in an unspoiled and uncontaminated condition;

(f) Feeding containers shall be kept clean, and uneaten food removed within a reasonable time;

(g) A shelter shall be provided for security and protection from inclement weather;

(h) Shade or an overhead structure shall be provided in warm

seasons;

(i) Fecal and food wastes shall be removed from cages daily and stored or disposed of in a manner that prevents noxious odors or insect pests;

(j) Cage and enclosures shall be ventilated to prevent noxious odors;

(k) Hard floors within cages or enclosures shall be cleaned a minimum of once weekly;

(l) Cages or enclosures with dirt floors shall be raked a minimum of once every three (3) days and the waste removed;

(m) Animals that are compatible with one (1) another may be held in the same enclosure if the required floor space is provided; and

(n) Common walls shall be constructed between animals that are not compatible so the animals cannot interact.

Section 8. Minimum Enclosure Sizes and Associated Requirements for Stationary Facilities. (1) Birds.

(a) Northern bobwhite older than fourteen (14) weeks shall be held in an enclosure with the following minimum specifications:

1. An enclosure for a single Northern bobwhite shall be a minimum of 100 square feet.

2. There shall be an increase in one (1) square foot per additional Northern bobwhite.

3. Northern bobwhite may be held in smaller breeding pens during the breeding season.

(b) Ducks shall be held in an enclosure with the following minimum specifications:

1. There shall be no more than two (2) pairs or one (1) pair and their offspring confined to an area smaller than 100 square feet;

2. There shall be at least ten (10) square feet of water that is one (1) foot or greater in depth; and

3. There shall be at least twenty (20) square feet of additional land space and five (5) square feet of water surface for each additional adult duck.

(c) Geese shall be held in an enclosure with the following minimum specifications:

1. There shall be no more than two (2) pair or one (1) pair and their offspring confined to an area smaller than 500 square feet;

2. There shall be a minimum of fifty (50) square feet of water that is two (2) feet or greater in depth; and

3. There shall be at least 100 square feet of land and twenty-five (25) square feet of water surface for each additional adult goose.

(d) Ruffed grouse shall be held in an enclosure with the following minimum specifications:

1. 200 square feet of floor space for five (5) or fewer birds with a height of at least six (6) feet; and

2. There shall be an additional twenty (20) square feet of floor space for each additional bird.

(2) Mammals.

(a) Bats shall be kept in an enclosure with the following minimum specifications:

1. Little browns, long-eared and pipistrelles shall be kept in an enclosure that is at least 6 ft. x 6 ft. x 6 ft.

2. Evening and red bats shall be kept in an enclosure that is at least 8 ft. x 12 ft. x 8 ft.

3. Big browns and hoary bats shall be kept in an enclosure that is at least 10 ft. x 20 ft. x 8 ft.

(b) Foxes, bobcats and raccoons shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft. width; and

2. There shall be thirty (30) square feet floor space for each additional animal.

(c) Coyotes shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft. width; and

2. There shall be twenty-five (25) square feet floor space for each additional animal.

(d) Beaver and otter shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 8 ft. x 12 ft. x 6 ft. with a

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ft. x 6 ft. pool that is three (3) feet deep at one (1) end;

2. There shall be an increase in horizontal cage size and pool size by eight (8) square feet for each additional animal.

3. Otters shall have a slide and a dry place for sleeping and retreat; and

4. Beavers shall be supplied with gnawing logs and a dry place for sleeping and retreat.

(e) Muskrat and mink shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 6 ft. x 4 ft. x 3 ft. with a 2 ft. x 4 ft. pool which is two (2) feet deep at one (1) end;

2. There shall be an increase in horizontal cage size by eight (8) square feet and a pool size of two (2) square feet; and

3. Muskrats shall have gnawing material.

(f) Gray squirrels and fox squirrels shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 4 ft. x 4 ft. x 8 ft.; and

2. There shall be an increase in floor space by two (2) square feet for each additional animal.

(g) Skunk, opossum, rabbit and woodchuck shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 6 ft. x 8 ft. x 8 ft.;

2. There shall be an increase in floor space by four (4) square feet for each additional animal; and

3. Woodchucks shall have several gnawing logs approximately six (6) inches in diameter.

(h) Weasel shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 3 ft. x 3 ft. x 3 ft.; and

2. There shall be an increase in floor space by three (3) square feet for each additional animal.

Section 9. Mobile Facilities. Mobile facilities used in transporting native wildlife shall comply with the following requirements:

(1) Facilities shall be equipped to provide fresh air without injurious drafts and adequate protection from the elements;

(2) The animal housing area shall be free of engine exhaust fumes;

(3) A cage shall be large enough to ensure that each animal has sufficient room to stand erect and lay naturally;

(4) The structural strength of the enclosure shall be sufficient to contain the live animals and to withstand the normal rigors of transportation; and

(5) Wildlife transported in the same cage area shall be in compatible groups.

Section 10. Temporary Facilities. Native wildlife housed in temporary facilities or exhibits shall be housed in cages that meet the minimum cage specifications as provided in Section 7 of this administrative regulation when wildlife are present in any geographical location for more than ten (10) days.

Section 11. Inspections. (1) The holder of a captive wildlife permit shall allow a conservation officer to inspect the facilities at any reasonable time.

(2) The conservation officer shall immediately notify the permit holder and the commissioner if his inspection reveals that wildlife is being kept in unsanitary or inhumane conditions.

(3) The captive wildlife permit shall be revoked and all captive wildlife confiscated if the unsatisfactory conditions are not corrected within ten (10) days of the initial inspection.

(4) The captive wildlife permit shall be revoked and all captive wildlife confiscated if an application was not made in good faith or if the permit holder is convicted of any law violation concerning the species for which he holds the permit.

(5) Fees shall not be refunded for permits that are revoked.

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

(a) "The Commercial and Noncommercial Captive Wildlife Permit Application, January 2006 edition";

(b) "The Annual Transportation Permit Application, January 2006 edition"; and

(c) "The Individual Transportation Permit Application, January

2006 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: April 10, 2012

FILED WITH LRC: April 12, 2012 at noon

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.

TOURISM, ARTS AND HERITAGE CABINET Kentucky Department of Fish and Wildlife Resources (As Amended at ARRS, June 12, 2012)

301 KAR 2:082. Transportation and holding of live exotic wildlife.

RELATES TO: KRS 150.010, 150.015, 150.305, 150.320, [150.330,] 150.990

STATUTORY AUTHORITY: KRS 65.877, 150.025(1), 150.180(6), [150.025, 150.180,] 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the department and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1) authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.180(6) authorizes the department to regulate the importation of wildlife into Kentucky. KRS 150.280 requires[authorizes] the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. This administrative regulation establishes the procedures[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.

Section 1. Definition.[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.

Section 2. Permits and Certificates of Veterinary Inspection. (1) Pursuant to 301 KAR 2:081, a person shall apply for and obtain a valid transportation permit or permit authorization number from the department, unless otherwise exempted by this or another administrative regulation, prior to:

(a) Receiving a shipment of wildlife;

(b) Importing exotic wildlife into Kentucky; or

(c) Transporting exotic wildlife into and through the state to a destination outside Kentucky.[.]

(2) A copy of a valid transportation permit or permit authorization number shall accompany all shipments of wildlife into and through Kentucky.

(3) An individual transportation permit shall be valid for one (1) shipment of wildlife.

(4) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue.

(5) Any shipment of wildlife, except for amphibians and reptiles, shall be accompanied by a:

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- (a) Certificate of veterinary inspection stating that the wildlife is free from symptoms of disease; or
- (b) A federal quarantine certificate.

Section 3. Applying for Permits. (1) A person shall apply for a transportation permit, in accordance with 301 KAR 2:081[on a form supplied by the department].

- (2) The department shall deny a permit to an applicant that:
 - (a) Is less than eighteen (18) years of age;
 - (b) Has been convicted within the last year of a violation of:
 - 1. This administrative regulation; or
 - 2. 301 KAR 2:081;[.]
 - (c) Does not submit a completed application; or
 - (d) Does not remit the correct fee pursuant to 301 KAR 3:022.
- (3) Failure to provide accurate, factual, 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.
- (4) An annual transportation permit holder shall notify the department of any amendments to the original application at least forty-eight (48) hours prior to any wildlife shipment by calling the department by telephone at 800-858-1549, Monday through Friday, between 8 a.m. and 4:30 p.m., Eastern time.
- (5) A person importing or possessing exotic wildlife shall be responsible for following local ordinances and rules regarding captive wildlife.

Section 4. Prohibited Species. (1) Except as specified in Section 5 of this administrative regulation, a person shall not import, possess, or transport through Kentucky the following species that are considered potentially injurious to native ecosystems:

- (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 (Genus *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) Starling (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 finch (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*); or
- (gg) A member of the following families:
 - 1. Suidae (pigs or hogs), except for domestic swine;
 - 2. Viverridae (civits, genets, lingsangs, mongooses and fossas); or
 - 3. Tayassuidae (peccaries and javelinas).

(2) Except as specified in Section 5 of this administrative regulation, a person shall not import or possess the following species of inherently dangerous wildlife:

- (a) Alligators or caimans (Family *Alligatoridae*);
- (b) African buffalo (*Syncerus caffer*);
- (c) Bears (Family *Ursidae*);
- (d) Cheetah (*Acinonyx jubatus*);
- (e) Clouded leopard (*Neofelis nebulosa*);
- (f) Crocodiles (Family *Crocodylidae*);
- (g) Elephants (Family *Elephantidae*);
- (h) Gavials (Family *Gavialidae*);
- (i) Gila monsters or beaded lizards (Family *Helodermatidae*);
- (j) Hippopotamus (*Hippopotamus amphibius*);
- (k) Honey badger or ratel (*Mellivora capensis*);
- (l) Hyenas (Family *Hyaenidae*), all species except aardwolves (*Proteles cristatus*);
- (m) Lions, jaguars, leopards or tigers (Genus *Panthera*);
- (n) Old world badger (*Meles meles*);
- (o) Primates, nonhuman (Order *Primates*);
- (p) Rhinoceroses (Family *Rhinocerotidae*);
- (q) Snow leopard (*Uncia uncia*);
- (r) Venomous exotic snakes of the families *Viperidae*, *Atractaspididae*, *Elapidae*, and *Colubridae*, except for hognose snakes (Genus *Heterodon*);
- (s) Wolverine (*Gulo gulo*); or
- (t) Hybrids of all species contained in this list.

Section 5. Exemptions. (1) A facility that is accredited by the American Zoo and Aquarium Association shall:

- (a) Not be required to obtain a transportation permit for exotic wildlife; and
- (b) Be allowed to import, transport, and possess the prohibited exotic species listed in Section 4(1) and (2) of this administrative regulation.
- (2) Upon written request, the department shall consider an exemption for the importation of prohibited exotic species for the following entities:
 - (a) A 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 institution of:
 - 1. Research; or
 - 2. Education;[.]
 - (e) A lawfully operated circus; or
 - (f) An exhibitor sponsored or contracted by a lawfully operated state or county fair.
- (3) Wildlife possessed or imported into Kentucky per subsection (2) or (4) of this section shall be maintained within an enclosure sufficient 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 the 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 the handlers;
 - d. Protective barriers; and
 - e. Third party liability insurance coverage from death or injury in an amount equal to or greater than \$3,000,000.

(4) A person may apply for a transportation permit to temporarily transport into and through the state to a destination outside of Kentucky a prohibited animal listed in Section 4(2) of this administrative regulation and shall not:

- (a) Remain in the state in excess of forty-eight (48) hours;
- (b) Stop in Kentucky for exhibition purposes; or
- (c) Sell, trade, barter, or offer for sale, trade, or barter a prohibited animal while in Kentucky.
- (5) A person who legally possessed wildlife listed in Section 4(2) of this administrative regulation prior to July 13, 2005, may continue to possess the animal and shall maintain:
 - (a) Veterinary records;
 - (b) Acquisition papers for the animal; or

(c) Any other evidence that establishes that the person possessed the animal in Kentucky prior to July 13, 2005.

(6) A person who legally possesses wildlife pursuant to subsection (5) of this section shall not, without an exemption pursuant to subsections (2) and (3) of this section:

(a) Replace the wildlife; or

(b) Allow the wildlife to reproduce.

(7) If exotic wildlife listed in Section 4(1) and (2) of this administrative regulation escapes, the owner shall immediately contact local emergency services and the department at 800-252-5378 to report the escape or release.

Section 6. Permit-exempt Animals.[(4)] The following exotic animals shall not require permits from the department for importation, transportation, or possession:

[(1)][(a)] Alpaca (*Vicugna pacos*);

[(2)][(b)] American bison (*Bison bison*);

[(3)][(c)] Breeds and varieties of goats derived from the wild goat or bezoar (*Capra hircus*);

[(4)][(d)] Camel (*Camelus bactrianus* and *Camelus dromedarius*);

[(5)][(e)] Chinchilla (*Chinchilla laniger*);

[(6)][(f)] Cockatoo (family *Cacatuidae*);

[(7)][(g)] Domesticated races of ducks and geese (family *Anatidae*) morphologically distinguishable from wild ducks or geese;

[(8)][(h)] Domesticated races of the European rabbit (*Oryctolagus cuniculus*) morphologically distinguishable from wild rabbits;

[(9)][(i)] Domesticated races of mink (*Mustela vison*), if:

[(a)][1.] Adults are heavier than 1.15 kilograms; or

[(b)][2.] The fur color can be distinguished from wild mink;

[(10)][(j)] Domesticated races of rats (*Rattus norvegicus* or *Rattus rattus*) or mice (*Mus musculus*);

[(11)][(k)] 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;

[(12)][(l)] Domestic yak (*Bos grunniens*);

[(13)][(m)] Gerbil (*Meriones unguiculatus*);

[(14)][(n)] Guinea fowl (*Numida meleagris*);

[(15)][(o)] Guinea pig (*Cavia porcellus*);

[(16)][(p)] Hamster (*Mesocricetus* spp.);

[(17)][(q)] Indian Hill mynah (*Gracula religiosa*);

[(18)][(r)] Llama (*Lama glama*);

[(19)][(s)] Parrot, lovebird, cockatiel, budgerigar, parakeet (except monk parakeet (*M. monachus*), and macaw (family *Psittacidae*);

[(20)][(t)] Peafowl (*Pavo cristatus*);

[(21)][(u)] Pigeon (*Columba domestica* or *Columba livia*) or domesticated races of pigeons;

[(22)][(v)] Ratite, as defined by KRS 247.870; and

[(23)][(w)] Toucan (family *Rhamphastidae*).

Section 7. 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 8. Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.[(2)] "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 *Hydrophidae*);

(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.

(4) Wildlife possessed or imported into Kentucky per subsections (3) or (5) of this section shall be maintained within an enclosure sufficient 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 \$3,000,000.

(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.

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(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: April 10, 2012

FILED WITH LRC: April 12, 2012 at noon

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET Kentucky Department of Fish and Wildlife Resources (As Amended at ARRS, June 12, 2012)

301 KAR 2:084. Importation of game birds.

RELATES TO: KRS 150.280, 150.290

STATUTORY AUTHORITY: KRS 150.025(1), 150.180(6), 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing requirements for buying, selling, or transporting protected wildlife. KRS 150.180(6) requires[authorizes] the department to regulate the importation of wildlife into Kentucky. KRS 150.280 requires[authorizes] the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. This administrative regulation establishes the procedures[KRS 150.780 authorizes the department to promulgate administrative regulations governing the holding of protected wildlife. KRS 150.180(6) requires a person transporting live wildlife into Kentucky to obtain a permit from the department. This administrative regulation establishes the procedure] for obtaining a transportation permit for the importation of certain game bird[birds] species into Kentucky to prevent the introduction and spread of the avian influenza virus into Kentucky.

Section 1. Definition. "Game bird[birds]" means[turkeys,] quail,

pheasant, chukar[chukars], grouse, waterfowl, or other avian species normally imported for propagation or for the purpose of hunting, shooting, training, or field trial activities.

Section 2. Importation of Game Birds. (1) Before any live game bird is imported into Kentucky, a person[the person importing the bird or birds] shall obtain a transportation permit from the department.

(2) A transportation permit[permits] shall not be required for the importation of any live game bird by a facility that is[facilities that are] accredited by the American Zoo and Aquarium Association.

Section 3. Applying for Permits. (1) A person shall apply for a transportation permit in accordance with 301 KAR 2:081[on a form supplied by the department pursuant to 301 KAR 2:081 and 2:082].

~~(2)[All applications for importation or transportation permits shall be made on the Standard Department of Transportation Permit Application.~~

~~(2) The applicant shall indicate the source of supply of the wildlife.~~

~~(3)[The applicant shall be responsible to ensure that the shipment is in compliance with the Department of Agriculture's entry and avian influenza health requirements established[found] in 302 KAR 20:020, 20:040, and 20:250.[also provide documentation that the shipment is in compliance with the Department of Agriculture's avian influenza health requirements found in 302 KAR 20:020, 302 KAR 20:040, and 302 KAR 20:250.~~

~~Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "The Commercial and Noncommercial Captive Wildlife Permit Application, January 2006 edition";~~

~~(b) "The Annual Transportation Permit Application, January 2006 edition"; and~~

~~(c) "The Individual Transportation Permit Application, January 2006 edition".~~

~~(2) The document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m., Monday through Friday.]~~

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: April 10, 2012

FILED WITH LRC: April 12, 2012 at noon

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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, June 12, 2012)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

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

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

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Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," June 12~~April 13~~, 2012~~November 9, 2010~~, are incorporated by reference. Department of Corrections Policies and Procedures include:

- 1.2 News Media (Amended 12/08/09)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 2/15/06)
- 2.12 Abandoned Inmate Funds (Amended 6/12/12)~~(Added 4/13/12)~~
- 3.1 Code of Ethics (Amended 07/09/07)
- 3.5 Sexual Harassment and Anti-Harassment (Amended 5/15/08)
- 3.9 Student Intern Placement Program (Added 9/13/2010)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 9/13/10)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 9/13/10)
- 3.14 Employee Time and Attendance Requirements (Added 9/13/2010)
- 3.17 Uniformed Employee Dress Code (Amended 4/10/06)
- 3.23 Internal Affairs Investigation (Added 8/25/09)
- 4.4 Educational Assistance Program (Amended 8/25/09)
- 5.1 Research and Survey Projects (Amended 5/15/08)
- 5.3 Program Evaluation and Measurement (Amended 6/12/12)~~(Added 4/13/12)~~
- 6.1 Open Records Law (Amended 5/14/07)
- 8.2 Fire Safety (Amended 2/15/06)
- 8.7 Notification of Extraordinary Occurrence (Amended 12/13/05)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 11/9/04)
- 9.6 Contraband (Amended 6/12/12~~4/13/12~~~~4/2/13/05~~)
- 9.8 Search Policy (Amended 11/9/10)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 9.20 Electronic Detection Equipment (Amended 10/14/05)
- 10.2 Special Management Inmates (Amended 6/12/12~~4/13/12~~~~8/25/09~~)
- 10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
- 11.2 Nutritional Adequacy of Inmate Diet (Amended 5/15/08)
- 11.4 Alternative Dietary Patterns (Amended 5/15/08)
- 13.1 Pharmacy Policy and Formulary (Amended 8/25/09)
- 13.2 Health Maintenance Services (Amended 11/9/10)
- 13.3 Medical Alert System (Amended 10/14/05)
- 13.5 Advance Healthcare Directives (Added 4/12/05)
- 13.6 Sex Offender Treatment Program (Amended 5/15/08)
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
- 13.8 Substance Abuse Program (Amended 11/9/10)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 12/13/05)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 9/13/10)
- 14.3 Marriage of Inmates (Amended 10/14/05)
- 14.4 Legal Services Program (Amended 07/09/07)
- 14.5 Board of Claims (Amended 10/14/05)
- 14.6 Inmate Grievance Procedure (Amended 6/12/12~~4/13/12~~~~5/15/08~~)
- 14.7 Sexual Abuse Assault Prevention and Intervention Programs (Amended 11/15/06)
- 15.1 Hair, Grooming and ID Card Standards (Amended 9/13/10)
- 15.2 Rule Violations and Penalties (Amended 9/13/10)
- 15.3 Meritorious Good Time (Amended 12/13/05)
- 15.4 ~~Treatment~~ Program~~Time~~ Credit (Amended 6/12/12~~4/13/12~~~~12/08/09~~)

- 15.5 Restoration of Forfeited Good Time (Amended 5/14/07)
- 15.6 Adjustment Procedures and Programs (Amended 10/14/05)
- 15.7 Inmate Account Restriction (Amended 11/9/10)
- 15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
- 16.1 Inmate Visits (Amended 6/12/12~~4/13/12~~~~8/25/09~~)
- 16.2 Inmate Correspondence (Amended 11/9/10)
- 16.3 Inmate Access to Telephones (Amended 9/13/10)
- 16.4 Inmate Packages (Amended 07/09/07)
- 17.1 Inmate Personal Property (Amended 6/12/12~~8/25/09~~)
- 17.2 Assessment Center Operations (Amended 11/15/06)
- 17.3 Controlled Intake of Inmates (Amended 5/15/08)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
- 18.1 Classification of the Inmate (Amended 07/09/07)
- 18.2 Central Office Classification Committee (Amended 10/14/05)
- 18.5 Custody and Security Guidelines (Amended 6/12/12~~4/13/12~~~~5/15/08~~)
- 18.7 Transfers (Amended 07/09/07)
- 18.9 Out-of-state Transfers (Amended 2/15/06)
- 18.11 Placement for Mental Health Treatment in CPTU, KCIW-PCU, or KCPC (Amended 1/9/07)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 07/09/07)
- 18.15 Protective Custody (Amended 11/15/06)
- 18.16 Information to the Parole Board (Effective 11/15/06)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 07/09/07)
- 19.2 Sentence Credit for Work (Added 2/13/04)
- 19.3 Inmate Wage/Time Credit Program (Amended 12/08/09)
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 22.1 Privilege Trips (Amended 10/14/05)
- 23.1 Religious Programs (Amended 9/13/10)
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
- 25.3 Prerelease Program (Effective 11/15/06)
- 25.4 Institutional Inmate Furloughs (Amended 07/09/07)
- 25.6 Community Center Program (Amended 07/09/07)
- 25.8 Extended Furlough (Amended 4/12/05)
- 25.10 Administrative Release of Inmates (Amended 11/9/10)
- 25.11 Victim Services Notification (Amended 8/25/09)
- 26.1 Citizen Involvement and Volunteer Service Program (Added 9/15/04)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: April 13, 2012

FILED WITH LRC: April 13, 2012 at 11 a.m.

CONTACT PERSON: Amber Arnett, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone: (502) 564-3279, fax (502) 564-6686.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (As Amended at ARRS, June 12, 2012)

702 KAR 1:160. School health services.

RELATES TO: KRS 156.160(1)(g), (h), (i), 156.501, 156.502, 161.145, 214.034, 214.036, 29 C.F.R. 1910.1030
STATUTORY AUTHORITY: KRS 156.070, 156.160(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS

156.160(1)(g) requires the Kentucky Board of Education to promulgate administrative regulations governing medical inspection, physical and health education and recreation, and other administrative regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children. KRS 156.160(1)(h) and (i) require the board to promulgate an administrative regulation governing a required vision examination and a dental screening or examination. This administrative regulation establishes standards and criteria for preventative health care examinations at the local school district level.

Section 1. School Employee Medical Examinations. (1) Except as provided in subsection (2) of this section, a local board of education shall require a medical examination of each certified or classified employee, including each substitute teacher, The medical examination shall, that:

- (a) Be conducted prior to initial employment; and
- (b) Include a tuberculosis (TB) risk assessment.

1. If the individual is identified by that assessment as being at high risk for TB, the individual shall be required to undergo the administration of a tuberculin skin test (TST).

2. The TB risk assessment shall be performed and reported by a physician, an advanced practice registered nurse, a physician's assistant, or a registered nurse.

(2) The medical examination requirement shall not apply to school bus drivers who are covered by 702 KAR 5:080.

(3) A local board of education may require by policy that a school employee physical examination be conducted no earlier than a ninety (90) day period prior to initial employment.

(4) A medical examination shall be reported on the form, Medical Examination of School Employees, KDESHS001.

(5) A person who tests positive for TB shall be required to comply with the directives of the local board of health and the Kentucky Department for Public Health for further evaluation and treatment of the TB infection.

(6)(a) Following the required medical examination for initial employment and any subsequent examinations as may be required for positive tuberculin reactors, a school district employee other than a bus driver shall submit to the local school superintendent the completed Medical Examination of School Employees from required by subsection (4) of this section.

(b) The medical examination shall be performed and signed for by a physician, physician's assistant, or an advanced practice registered nurse.

(7) Documentation of a TST and chest x-ray, if performed, shall include:

- (a) The date given;
- (b) Type of test;
- (c) Millimeters of induration;
- (d) Date read and by whom; and
- (e) Date x-ray taken and results as related to TB status.

(8)(a)1. A local board of education shall require all school personnel exhibiting symptoms of chronic respiratory disease to undergo a TB risk assessment and examinations as indicated.

2. The evaluation and any recommended treatment for TB infection shall be based upon the directives of the local board of health and the Kentucky Department for Public Health.

(b) An employee exposed to infectious TB shall be tested and, if necessary, treated for TB infection according to the directives of the local board of health.

(c) In a county with an incidence of cases of active TB that is equal to or greater than the national average as established by the Department for Public Health, Division of Epidemiology, Tuberculosis Control Program, the local board of health may, with the approval of the Kentucky Department for Public Health, require more extensive testing of school district employees for TB.

Section 2. Preventative Health Care Examinations. (1)(a) A local board of education shall require a preventative health care examination of each child within one (1) year prior to the child's

initial admission to school.

(b) A second examination shall be required within one (1) year prior to entry into the sixth grade.

(c) A third examination may be required by policy of the local board of education within one (1) year prior to entry into the ninth grade.

(2) An out-of-state transfer student shall be required to submit documentation of a preventative health care examination.

(3) A local school board may extend the deadline by which to obtain a preventative health care examination, not to exceed two (2) months.

(4) A preventative health care examination shall be performed and signed for by a physician, an advanced practice registered nurse, a physician's assistant, or by a health care provider in the early periodic screening diagnosis and treatment programs.

(5) A preventative health care examination shall be reported on the form Preventative Health Care Examination Form, KDESHS002, and shall include:

- (a) A medical history;
- (b) An assessment of growth and development and general appearance;
- (c) A physical assessment including hearing and vision screening; and
- (d) Recommendations to the school regarding health problems that may require special attention in classroom or physical education activities.

(6)(a) A vision examination shall be reported on the form, Kentucky Eye Examination Form for School Entry, KDESHS004.

(b) A dental screening or examination shall be reported on the form, Kentucky Dental Screening/Examination Form for School Entry, KDESHS005.

(7) A record of immunization shall be submitted on an Immunization Certificate, EPID-230 Form, EPID-230.

(8) A local school district shall establish a plan for implementation and compliance required for the sixth grade preventative health care examination.

(9) A current Immunization Certificate, EPID-230 Form, EPID-230, shall be on file within two (2) weeks of the child's enrollment in school.

(10)(a) A board of education shall adopt a program of continuous health supervision for all school enrollees.

(b) Supervision shall include scheduled, appropriate screening tests for vision, and hearing, and scoliosis. [(11) A local spinal screening program for scoliosis, pursuant to subsection (10)(b) of this section, shall include:

- (a) Training sessions for teachers or lay volunteers who will be doing the screening;
- (b) Obtaining parental permission for scoliosis screening;
- (c) Established screening times, at least in grades six (6) and eight (8) and appropriate procedures and referral criteria;
- (d) Mandated education of students regarding scoliosis screening; and
- (e) Required referral of all children with abnormal screening results for appropriate diagnosis and treatment and follow-up on these referrals. Local referral and follow-up procedures shall include:

1. Notification of parents of students who need further evaluation by a physician;

2. Tracking referrals to determine whether all children with abnormal screening results receive appropriate diagnosis and treatment; and

3. Reporting of data on screening, referral, and follow-up tracking to the Department of Education.

(12) The Department of Education shall:

- (a) Monitor the spinal screening and referral programs provided by local boards of education;
- (b) Provide consultation and technical assistance to local school districts concerning spinal screening, referral, and follow-up for appropriate diagnosis and treatment; and
- (c) Encourage local school districts to work cooperatively with local health departments and local Commission for Children with Special Health Care Needs offices to plan, promote, and implement scoliosis screening programs.

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(13) Referral and appropriate follow-up of any abnormality noted by a screening assessment or teacher observation shall be recorded on school health records.]

(11)[(14)] A school shall have emergency care procedures, which shall include:

(a) First aid facilities, including provisions for designated areas for the child to recline;

(b) A requirement that whenever children are present during school hours, there shall be at least one (1) adult present in the school who is certified in a standard first aid course which includes CPR for infants and children;

(c) A number at which parents can be reached; **and**

(d) The name of a family physician.

(12) [(15)] A local board of education shall require immunizations as required by KRS 214.034.

Section 3. Cumulative Health Records. (1) A school shall initiate a cumulative health record for each pupil entering its school.

(a) The record shall be maintained throughout the pupil's attendance.

(b) The record shall be uniform and shall be on the form ["Pupil's Cumulative Health Record, KDESHS006,"] or the record shall be maintained electronically in the student information system.

(c) The record shall include screening tests related to growth and development, vision, hearing, **and** dental, [and scoliosis].] and findings and recommendations of a physician and a dentist.

(d) A follow-up by the proper health or school authorities shall be made on each abnormality noted, and the result shall be recorded.

(2) A local school authority shall report all known or suspected cases of communicable disease immediately to the local health department.

Section 4. Physical Environment. (1) A board of education shall provide and maintain a physical environment that is conducive to the health and safety of school children in each school under its jurisdiction.

(2) A local board of education shall comply with current laws and administrative regulations applicable to all public buildings pertinent to health, sanitation, and safety.

(3) A local board of education shall establish and maintain:

(a) An adequate supply of water of safe, potable, sanitary quality;

(b) A state-approved sanitary disposal of sewage, other water carried waste, and solid waste;

(c) Adequate toilet and lavatory facilities, including soap or detergent as well as towels or other methods for drying hands, and other sanitary fixtures;

(d) Adequate heating, lighting, and ventilation in all school buildings;

(e) Adequate facilities and equipment for cafeterias and lunchrooms;

(f) Supervision of general sanitation and safety of the school buildings, grounds, and playground equipment;

(g) Beginning with the 2010-2011 school year, proof that all unlicensed school personnel who have accepted delegation to perform medication administration in school have completed a training course provided by the Kentucky Department of Education. This course shall be developed in consultation with the Kentucky Board of Nursing to ensure compliance with 201 KAR 20:400;

(h) Adequate control of air pollutants; and

(i) Universal precautions guidelines compatible with Occupational Safety and Health Administration requirements established in 803 KAR 2:320 and 29 C.F.R. 1910.1030.

Section 5. A superintendent shall designate a person to serve as school[local district] health coordinator **for the district**. (1) The person designated shall meet the minimum qualifications required of this position as determined by the Educational Professional Standards Board in 16 KAR 4:010 or by the Kentucky Department of Education in the Local District Classification Plan for Class Code: 7271, **as indicated in the document Setting Up Employee Classification Codes**.

(2) Class Title: School[Local District] Health Coordinator **for**

the district. The school[local district] health coordinator shall work in cooperation with all school personnel, the local board of education, the State Department of Education, the local health department, family resource and youth services centers, and parents in planning, promoting, and implementing a school health services program.

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

(a) "Medical Examination of School Employees", KDESHS001, February 2012 [October 2007];

(b) "Preventative Health Care Examination Form", KDESHS002, February 2012 [December 1999];

(c) "Pupil's Cumulative Health Record", KDESHS006, March 2012 [January 1993];

(d) "Setting Up Employee Classification Codes", March 2012["Local District Classification Plan", "Class Code: 7271, Class Title: Local District Health Coordinator", December 1999];

(e) "Kentucky Eye Examination Form for School Entry", KDESHS004, March 2012 [August 2000];

(f) "**Immunization Certificate**", EPID-230, August 2010; [(f) "Immunization Certificate Form", EPID 230, October 2007];] and

(g)[(f)][(g)] "Kentucky Dental Screening/Examination For School Entry", KDESHS005, March 2012 [August 2010].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of District Support [Nutrition and Health Services], Department of Education, 500 Mero Street [2545 Lawrenceburg Road], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TERRY HOLLIDAY, Ph.D., Commissioner of Education

DAVID KAREM, Chairperson, Board of Education

APPROVED BY AGENCY: March 14, 2012

FILED WITH LRC: March 15, 2012 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 at kevin.brown@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(As Amended at EAARS, June 12, 2012)

703 KAR 5:002. Repeal of 703 KAR 5:001, 5:020, 5:040, 5:050, 5:060, 5:130 and 5:160.

RELATES TO: KRS 158.6451, 158.6453

STATUTORY AUTHORITY: KRS 158.6451, 158.6453

NECESSITY, FUNCTION, AND CONFORMITY: This **administrative regulation repeals seven (7)**[is to repeal seven] administrative regulations under **703 KAR**[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.

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Section 1. The following administrative regulations are hereby repealed:

~~(1)[4-] 703 KAR 5:001, Assessment and accountability definitions;~~

~~(2)[2-] 703 KAR 5:020, The formula for determining school accountability;~~

~~(3)[3-] 703 KAR 5:040, Statewide Assessment and Accountability Program;[.] relating accountability to A1 schools and A2-A6 programs;~~

~~(4)[4-] 703 KAR 5:050, Statewide Assessment and Accountability Program;[.] school building appeal of performance judgments;~~

~~(5)[5-] 703 KAR 5:060, Interim assessment and accountability process;~~

~~(6)[6-] 703 KAR 5:130, School district accountability; and~~

~~(7)[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

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321 or email at kevin.brown@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(As Amended at EAARS, June 12, 2012)

703 KAR 5:140. Requirements for school and district report cards.

RELATES TO: KRS 158.031, 158.6453(20)[458.6453(13)]

STATUTORY AUTHORITY: KRS 158.6453(20)[458.6453(13)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453(20)[458.6453(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, or[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 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:~~

~~(1)[(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;~~

~~(2)[(b)] The total enrollment of the school;~~

~~(3)[(c)] The school level results of all components of Kentucky's accountability system to classify schools and districts, which is:~~

~~(a) Established in 703 KAR 5:200, Section 2; and~~

~~(b) Also known as 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;]~~

~~(4)[(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;]~~

~~(a)[1-][2-] Average years of teaching experience;~~

~~(b)[2-][3-] Percentage of teachers with emergency or provisional certification;~~

~~(c)[3-][4-] Percentage of core academic subject classes not taught by highly qualified teachers;~~

~~(d)[4-][5-] The number of teachers certified by the National Board for Professional Standards; and~~

~~(e)[5-][6-] The professional qualifications of all teachers expressed as percentages, including bachelors, masters, Rank I, specialist, and Ph.D. or Ed.D. degrees;~~

~~(5)[(f)] School safety data including:~~

~~(a)[1-] Whether visitors are required to sign in;~~

~~(b)[2-] Whether all parents receive the district discipline code;[3- What procedures are in place for drug and weapons detection;]~~

~~(c)[3-][4-] The percentage of classrooms with telephones able to access outside lines; and~~

~~(d)[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:~~

~~1.[a-] The number of incidents; and~~

~~2.[b-] The number of students suspended or expelled for that kind of incident;~~

~~(6)[(g)] Student resource data including:~~

~~(a)[1-] Spending per student at the school, district and state level;~~

~~(b)[2-] Average student to teacher ratios at the school, district, and state level;~~

~~(c)[3-] Student to internet connected instructional computer ratios at the school, district and state level;~~

~~(d)[4-] Percentage of computers meeting the minimum~~

standards for acceptable computers in Kentucky schools and districts pursuant to the master plan for education technology required by KRS 156.670;~~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;]

(7)(h) Parental involvement information including:

(a)(4) Number of students whose parent or guardian had at least one (1) teacher conference;

(b)(2) Number of parents and guardians voting in school council elections;

(c)(3) Number of parents and guardians serving on the school council or its committees; and

(d)(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]

(8)(i)(i) 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 data and information that complies with the federal No Child Left Behind Act of 2001, and the waiver provisions of that act, as may be applicable to the Department, 20 U.S.C. secs. 6301 et seq., or its successor ~~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. **(4)** 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. Each~~The~~ school report card and district report card shall be published on the Kentucky Department of Education Web site and the applicable school and district Web sites and shall be supplied by the school and districts in printed format if requested.

Section 6. Verification; Audits. **(1)** 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 alters data without authorization, falsifies data, or 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

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**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended by EAARS, June 12, 2012)**

703 KAR 5:240. Accountability administrative procedures and guidelines~~Definitions and Procedures~~.

RELATES TO: KRS 158.6451, **158.6453, 158.6455**

STATUTORY AUTHORITY: KRS 158.6453~~;~~ KRS 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS **158.6453(3)(a)**~~[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 procedures and guidelines for Kentucky's assessment and accountability program.

Section 1. Definitions~~for accountability purposes~~. (1) "A1" means a school that:

(a) Is under administrative control of a principal and eligible to establish a school-based decision-making council; and
(b)~~An A1 school~~ Is not an alternative education program operated by, or as a part of, another school.

(2) "Alternative education program" is defined by KRS 160.380(1)(a).

(3) "Full Academic Year" means 100 or more instructional days of enrollment within the school year~~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 state agency children or other 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 education 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 education program is a full academic year~~[as defined in 703 KAR 5:200]~~.

(3) A student enrolled in an alternative education program for

a full academic year as a result of local school district policies or procedures [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 education program.

(4) A student not enrolled in any[an] A1 school or an alternative education 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 education programs, and not attributed to an A1 school or district, shall be aggregated into a state level accountability report.

(2) If a student, before completing a full academic year in a school or district as provided in Section 2 of this administrative regulation, is enrolled in an alternative education program by a court, a governmental agency other than a Kentucky public school, or Kentucky school district, the student shall be[is] accountable to the state.

Section 4. Inclusion of Schools in Accountability. (1) All A1 schools shall receive annual accountability classifications as established in 703 KAR 5:200, Section 4(6)(b), for[defined in] the state's assessment and accountability system and shall receive recognition or support as provided by 703 KAR 5:225[defined by 703 KAR 5:222].

(2)(a) For reporting purposes, all alternative education programs shall receive annual reports based on tested students.

(b) Reports for alternative education programs shall be separate from the A1 school accountability reporting.

(c) The alternative education programs reports shall outline the unique features and characteristics of the alternative education program and the appropriate uses and limitations of the data.

(d) State support and recognition as provided[defined] in 703 KAR 5:225[5:222] may apply to an alternative education program at the discretion of the Commissioner of Education if resources are available.

Section 5. Standard Grade Configuration for Accountability. (1) Accountable grade level configurations shall be elementary, middle, or high school.

(a) Elementary shall include[includes] any configuration of grades K-5 or K-6[.];

(b) Middle school shall include[includes] any configuration of grades 5-8 or 6-8[.]; and

(c) High school shall include[includes] any configuration of grades 9-12.

(2) An A1 school or an alternative education program shall fall into one (1), two (2), or three (3)[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)(a) 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.

(b) 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.

(c) 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.

1. If the stable population is sixty (60) percent or higher, the school's past trend data shall be reported.

2. If the stable population is less than sixty (60) percent, the school's past trend data shall not 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 Ac-

countability 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 accountability classifications as established in 703 KAR 5:200, Section 4(6)(b), 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; and[.];

(b) Detail the requested adjustment to be made to the calculations used to place a school into a classification.

(3)(a) 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.

(b) The request for an appeal for a district accountability classification shall be signed by the superintendent upon approval of the local board of education.

(4)(a) Department of Education staff shall review the request for an appeal against the standards set forth in KRS 158.6455(8).

(b) 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.

(c) 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)(a) 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.

(b) 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 shall[will] determine the state tests to administer.

(c) Exceptions for testing shall be made for medical-exempted students and foreign-exchange students.

(d) 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 during the test window that are enrolled in each accountability grade on the first day of the school's testing window and shall complete a roster in the electronic application provided by the Kentucky Department of Education[approved roster of students].

(4) For the end-of-course examination[end-of-course tests], the school shall test all students enrolled at the completion of the course associated with the state-required end-of-course examination[completing the end-of-course test] and shall complete a roster in the electronic application provided by the 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 examination[end-of-course test] shall take the end-of-course examination[end-of

course-test] at the end of the[each] appropriate course-work[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 roster in the electronic application provided by 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)(a) 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 shall be[is] subject to the approval of the Department of Education and which describes the medical condition that warrants exempting a student from the assessments.

(b) An identified disability or handicapping condition alone shall not be considered sufficient reason for granting a medical exemption to state-required assessment and accountability requirements.

(c) 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

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, June 12, 2012)

704 KAR 3:340. Commonwealth Diploma Program.

RELATES TO: KRS 156.070, 156.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board of Education to prescribe courses of study, curriculums, and programs as it deems necessary for the common schools. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations determining the courses of study for the different grades and the requirements for graduation from offered courses. This administrative regulation implements a Commonwealth Diploma Program and sets forth the conditions and criteria under which a Commonwealth Diploma shall be issued.

Section 1. (1) The Kentucky Board of Education shall award to each student in the public schools of this state completing a Commonwealth Diploma Program a Commonwealth Diploma.

(2) The diploma shall be printed by the Kentucky Department of Education and sent to the appropriate district upon verification of program completion to the Department of Education by the local district. The diploma shall be issued in the name of the student.

(3) A student receiving a Commonwealth Diploma shall be cited as a recipient at graduation ceremonies.

Section 2. The requirements for obtaining a Commonwealth Diploma shall include:

(1) Successful completion of at least twenty-two (22) approved units of credit, including all the minimum unit requirements for high school graduation established in 704 KAR 3:305 and any additional units specified by the applicable local board of education;

(2) Successful completion of all minimum requirements of the Precollege Curriculum established by the Council on Postsecondary Education in 13 KAR 2:020;

(3)(a) Successful completion (i.e., receiving a grade or the equivalent of "C" or better) of at least four (4) courses, which contain essential content as described in the Advanced Placement (AP) Program Course Description booklets of the College Entrance Examination Board and which include:

1. English - one (1) course;
2. Science or mathematics - one (1) course (selected from biology, chemistry, or physics, or mathematics);
3. World[Foreign] language - one (1) course (selected from French, German, Latin, or Spanish); and
4. One (1) additional AP course (selected from English, science, foreign language, history, computer science, political science, music, or art);

(b) Successful completion (i.e., receiving a grade or the equivalent of "C" or better) of at least four (4) courses, which contain essential content as described in the International Baccalaureate (IB) program course description booklets and which include:

1. [Language A, the student's first language] English[,] - one (1) course;
 2. Natural or experimental science or mathematics - one (1) course (selected from biology, chemistry, physics, or mathematics);
 3. World[Language B, a foreign] language - one (1) course (selected from French or Spanish); and
 4. One (1) additional IB or AP course; or
- (c) A combination of AP and IB courses that address the content areas specified in this section; and[or]
- (4) Completion of one (1) AP Examination in at least three (3) of the AP or IB areas specified in subsection (3) of this section, without regard to score.

Section 3. (1) The Commonwealth Diploma shall not be awarded by the Kentucky Board of Education after the 2012-2013 academic year.

(2) Local districts may develop policies and procedures to

award local recognitions. [Section 3. (1) Reimbursement to the local school district by the Department of Education for the costs of the required AP examinations for a student successfully completing the criteria established in Section 2(4) of this administrative regulation shall be contingent upon the student receiving a minimum composite score of eight (8) on the three (3) required AP examinations.

(2) Reimbursement funds shall be sent to local districts once each year on the basis of documentation supplied by the district.]

TERRY HOLLIDAY, PH.D., Commissioner

DAVID KAREM, Chairperson

APPROVED BY AGENCY: April 12, 2012

FILED WITH LRC: April 12, 2012 at 4 p.m.

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, June 12, 2012)

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, to determine a student's readiness for school in the five (5) domains of school readiness established in this administrative regulation.

Section 1.[:] Definitions. (1) "Prior early learning settings" means the following five (5) categories of early learning settings in which each student participated prior to attending kindergarten:

- (a) Child care center;
- (b) Head Start program
- (c) State funded preschool;
- (d) Home; or
- (e) Other.

(2) "School readiness" [in—Kentucky] means a student[students] entering school is ready to engage in and benefit from early learning experiences that best promote the student's success.

(3)[(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 Common Kindergarten Entry Screener. In accordance with[Pursuant to] KRS Chapter 45A, the Department shall adopt a statewide common kindergarten entry screener that:

(1) Aligns with the definition of school readiness and the standards established in Building a Strong Foundation for School Success: Kentucky's[Kentucky] Early Childhood Standards[, June 2009];

(2) Assesses the domains of adaptive, cognitive, communication, motor, and social emotional as established in Building a Strong Foundation for School Success: 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[point-in-time] student level results that indicate level of school readiness in the five (5) domains listed in subsection (2) of this section[outlined in this subsection].

Section 3.[:] Administration of the Common Kindergarten Entry Screener. (1) Beginning in the 2013-2014[2012-13] academic year, each Kentucky public school district[districts] shall administer the common kindergarten entry screener adopted by the Department in accordance with Section 2 of this administrative regulation.

(2) Each school district[districts] shall administer the common kindergarten entry screener to each student entering kindergarten in the school district no earlier than fifteen (15)[45] days prior to the start of the current academic year and no later than the thirtieth (30th)[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 common kindergarten entry screener in the student information system within thirty (30) days of the district's administration of the common 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 the common 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 common 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 common kindergarten entry screener.

(3) Districts may use the common 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 make informed[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 3rd grade[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 administrative regulation promulgated by the Board pursuant to KRS 158.6455.

Section 6. Incorporation by Reference. (1) "Building a Strong Foundation for School Success: Kentucky's[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 of Next Generation Learners, 18th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through

Friday, 8 a.m. to 4:30 p.m.

TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson

APPROVED BY AGENCY: December 15, 2011

FILED WITH LRC: December 15, 2011 at noon

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PUBLIC PROTECTION CABINET
Department of Insurance
Financial Standards and Examination Division
(As Amended at ARRS, June 12, 2012)

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 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 the National Association of Insurance Commissioners. This administrative regulation establishes risk-based capital requirements for all insurers authorized to transact insurance business in Kentucky.

Section 1. Definitions. (1) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with Section 3(6)(2)(6) 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) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(5) "Domestic insurer" is defined by KRS 304.1-070(1).

(6) "Foreign insurer" is defined by KRS 304.1-070(2).

(7) "Fraternal benefit society" is defined by KRS 304.29-011.

(8) "Insurer" is defined by KRS 304.1-040.

(9)(8) "Life and health insurer" means any insurer 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.

(10)(9) "Mandatory control level RBC" means the product of seven-tenths (.70) and the authorized control level RBC.

(11)(10) "NAIC" is defined by KRS 304.7-012(59).

(12)(11) "Negative trend" means, with respect to a life or health insurer or a fraternal benefit society, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the Life or Fraternal RBC instructions.

(13)(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.

(14)(13) "RBC" means risk-based capital.

(15)(14) "RBC instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC.

(16)(15) "RBC Level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC.

(17)(16) "RBC plan" means a comprehensive financial plan containing the elements specified in Section 4(2) of this administrative regulation.

(18)(17) "RBC report" means the report required in Section 3 of this administrative regulation.

(19)(18) "Regulatory action level RBC" means the product of one and five-tenths (1.5) and its authorized control level RBC.

(20)(19) "Revised RBC plan" means an RBC plan that has been rejected by the commissioner and then revised by the insured.

(21)(20) "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 **KRS Chapter 304**, 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 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 in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report no later than:

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 or a fraternal benefit society'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) If a domestic insurer files an RBC report which in the judgment of the commissioner is inaccurate, then the commissioner 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. Company Action Level Event. (1) A company action level event shall be 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 or a fraternal benefit society, 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 three (3.0)~~two and five-tenths (2.5)~~; and

b. A negative trend; or

3. If a property and casualty insurer, the insurer:

a. Has 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 three (3.0); and

b. Triggers the trend test determined in accordance with the trend test calculation included in the Risk-Based Capital Forecasting & Instructions, Property/Casualty;[-]

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in paragraph (a) of this subsection, if the insurer does not challenge the adjusted RBC report under Section 8 of this administrative regulation; or

(c) If, pursuant to Section 8 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 to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) If a company action level event occurs, the insurer shall prepare and submit to the commissioner 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;

(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. Exposure to risk;
- 4. Mix of business; and
- 5. Use of reinsurance.

(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 of this administrative regulation, within forty-five (45) days after notification to the insurer that the commissioner 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, the commissioner shall notify the insurer whether the RBC plan shall be implemented or is[] unsatisfactory.

(5) If the commissioner 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.

(6) Upon notification from the commissioner, the insurer shall prepare a revised RBC plan which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five (45) days after the notification from the commissioner; or

(b) If the insurer challenges the notification from the commissioner under Section 8 of this administrative regulation, within forty-five (45) days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(7) If there is a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may subject to the insurer's right to a hearing under Section 8 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 shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner 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(1) of this administrative regulation; and

(b) The insurance commissioner 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. Regulatory Action Level Event. (1) A regulatory action level event shall be 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 to an insurer of an adjusted RBC report that indicates a regulatory action level event, if the insurer does not challenge the adjusted RBC report under Section 8 of this administrative regulation;

(c) If, pursuant to Section 8 of this administrative regulation, the insurer challenges an adjusted RBC report that indicates a regulatory action level event, the notification by the commissioner to the insurer that the commissioner 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 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 within the time period set forth in Section 4(3) of this administrative regulation;

(f) Notification by the commissioner to the insurer that:

1. The RBC plan or revised RBC plan submitted by the insurer is unsatisfactory; and

2. The notification constitutes a regulatory action level event with respect to the insurer, if the insurer has not challenged the determination under Section 8 of this administrative regulation;

(g) If, pursuant to Section 8 of this administrative regulation, the insurer challenges a determination by the commissioner under subsection (1)(f) of this section, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge;

(h) If the insurer has not challenged the determination under Section 8 of this administrative regulation, notification by the commissioner 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 of this administrative regulation, the insurer challenges a determination by the commissioner under paragraph (h) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.

(2) If a regulatory action level event occurs, the commissioner 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 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 shall determine are required.

(3) In determining corrective actions, the commissioner may take into account relevant factors based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, which shall include[] 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 of this administrative regulation and the challenge is not frivolous, within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised RBC plan pursuant to Section 8 of this administrative regulation and the challenge is not frivolous, within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) The commissioner may retain actuaries and investment experts and other consultants as may be necessary 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.

Section 6. Authorized Control Level Event. (1) An authorized control level event shall be 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 to the insurer of an adjusted RBC report that indicates an authorized control level event, if the insurer does not challenge the adjusted RBC report under Section 8 of this administrative regulation;

(c) If, pursuant to Section 8 of this administrative regulation, the insurer challenges an adjusted RBC report that indicates an authorized control level event, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to respond to a corrective order, if the insurer has not challenged the corrective order under Section 8 of this administrative regulation; or

(e) If the insurer has challenged a corrective order under Section 8 of this administrative regulation and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond to the corrective order subsequent to rejection of modification by the commissioner.

(2) If an authorized control level event occurs with respect to an insurer, the commissioner shall:

(a) Take actions as are required under Section 5 of this administrative regulation regarding an insurer to which a regulatory ac-

tion 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 it to be in the best interest of the policyholders, creditors of the insurer, and public.

(3) The authorized control level event shall be sufficient grounds for the commissioner to take action under KRS Chapter 304, Subtitle 33. If the commissioner takes actions under this section pursuant to an adjusted RBC report, the insurer shall be entitled to the protections afforded to insurers under the provisions of the section pertaining to summary proceedings.

Section 7. Mandatory Control Level Event. (1) A mandatory control level event shall be 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 to the insurer of an adjusted RBC report that indicates a mandatory control level event, if the insurer does not challenge the adjusted RBC report under Section 8 of this administrative regulation; or

(c) If, pursuant to Section 8 of this administrative regulation, the insurer challenges an adjusted RBC report that indicates a mandatory control level event, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) If a mandatory control level event occurs for a life insurer or fraternal benefit society:

(a) The commissioner shall take actions as are necessary pursuant to KRS Chapter 304, Subtitle 33.

(b) If the commissioner 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 may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

(3) If a mandatory control level event occurs for a property and casualty insurer:

(a) The commissioner shall take actions as are necessary pursuant to KRS Chapter 304, Subtitle 33.

(b) If an insurer is writing no business and is running-off its existing business, the commissioner may allow the insurer to continue its run-off under the supervision of the commissioner.

(c) The mandatory control level event shall be sufficient grounds for the commissioner to take action under KRS Chapter 304, Subtitle 33.

(d) If the commissioner 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 may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

Section 8. Hearings. (1) Upon any of the following notifications, the insurer shall have the right to a confidential hearing at which the insurer may challenge any determination or action by the commissioner:

(a) Notification to an insurer by the commissioner of an adjusted RBC report;

(b) Notification to an insurer by the commissioner 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;

(c) Notification to any insurer by the commissioner 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 of a corrective order.

(2) The insurer shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner under subsection (1) of this section.

(3) Upon receipt of the insurer's request for a hearing, the commissioner 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. Confidentiality; Prohibition on Announcements, Prohibition on Use in Ratemaking. (1) The following records shall be confidentially disclosed pursuant to the requirements of this administrative regulation and shall be proprietary information that, if disclosed, would create an unfair competitive advantage to competitors and shall be kept confidential by the commissioner:

(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.

(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 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 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. Exemption. The commissioner 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. Foreign Insurers. (1) Any foreign insurer shall, upon the written request of the commissioner, submit to the commissioner 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, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(4) The commissioner 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 of the insurer's state of domicile fails to require the foreign insurer to file an RBC.

(5) If the commissioner 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 shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.

(6) If 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 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. Notices. (1) All notices by the commissioner 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, ~~if or~~

(2) If notices are transmitted other than by regular or certified mail, they shall be effective upon the insurer's receipt of the notice.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Risk-Based Capital Forecasting & Instructions, Life" (2011)~~[(2010)]~~;

(b) "Risk-Based Capital Forecasting & Instructions, Property/Casualty" (2011)~~[(2010)]~~; and

(c) "Risk-Based Capital Forecasting & Instructions, Fraternal" (2011)~~[(2010)]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: April 10, 2012

FILED WITH LRC: April 12, 2012 at 4 p.m.

CONTACT PERSON: DJ Wasson, Staff Assistant, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(Amended After Comments)

202 KAR 7:601. Training, education, and continuing education.

RELATES TO: KRS 311A.110, 311A.115, 311A.120, 311A.130
STATUTORY AUTHORITY: KRS 311A.020, 311A.030,
311A.110, 311A.115, 311A.120, 311A.125, 311A.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.110, 311A.115, 311A.120 and 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 relates to the provision of proper in-service and in-house in-service training and education. This administrative regulation establishes requirements for an organization to be approved by the Board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also sets standards for the certification and recertification of EMS educators.

Section 1. Education Committee. (1) The board shall create and recognize a standing committee on EMS Education.

(2) The Education Committee shall consist of seven (7) voting members representative of EMS Educators in the state of Kentucky. At least one voting member of the Education Committee shall also be a member of the Kentucky Board of Emergency Medical Services.

(3) A quorum shall be a majority of the seven (7) members of the Education Committee.

(4) As a standing committee, the Education Committee shall report directly to the board, with the Chair of the Education Committee tasked to deliver a written as well as verbal report at each regular meeting of the board.

(5) The Education Committee shall schedule on an annual basis at least six (6) regular meetings of the Committee.

(6) The Chair of the Kentucky Board of EMS shall appoint the membership and the officers of the Education Committee as required under 202 KAR 7:020.

(7) The Chair of the Kentucky Board of EMS may also, at his discretion, appoint ex officio members to the Education Committee who shall have no authority to raise issues, move the Committee, or vote upon Motions under consideration.

(8) The Director of Education for the Kentucky Board of EMS shall serve as an ex officio member with the purpose and intent to provide guidance and act as a resource to the Education Committee and to the full board.

(9) The purpose and charge of the Education Committee shall be to

(a) Assist the board in developing a strategic plan for EMS education in the state of Kentucky;

(b) Act as a resource for EMS educators and EMS-TEIs in the Commonwealth;

(c) Assume the lead role in formulating, drafting, and sending to the board for approval and subsequent promulgation of all administrative regulations that set the standards and requirements for EMS education in Kentucky.

(10) No carried motion of the Education Committee shall be final without motion and positive vote by the board.

Section 2. EMS-TEI Certification. (1) Only an entity certified by the board as an EMS-TEI shall be authorized to conduct training and education programs that lead to certification or licensure by the Kentucky Board of Emergency Medical Services (KBEMS).

(2) An applicant for certification as an EMS-TEI in Kentucky may be certified at the following levels:

(a) EMS-TEI 1 which includes EMR

(b) EMS-TEI 2 which includes EMR and EMT

(c) EMS-TEI 3 which includes EMR, EMT and AEMT

(d) EMS-TEI 4 which include EMR, EMT, AEMT and EMT-P, or

(e) EMS-TEI CE which includes continuing education only.

(3) An applicant may seek one or multiple levels of certification at any time during the ~~two (2)~~~~[five (5)]~~ year certification term.

(4) An applicant for any level of EMS-TEI certification shall meet all requirements of that level.

(5) An applicant for certification at any level of EMS-TEI in Kentucky shall submit a completed board-approved initial application with the Kentucky Board of Emergency Medical Services (KBEMS)

(6) An applicant shall submit fees as required by 202 KAR 7:030 with the board-approved application for certification as an EMS-TEI.

Section 3. Initial Certification Requirements for EMS-TEIs. (1) If an applicant is organized as a business entity required under Kentucky law to file with Kentucky's Secretary of State, the applicant for EMS-TEI certification shall provide proof of registration with the Kentucky Secretary of State that the EMS-TEI is legally able to conduct business in the state.

(2) An applicant shall provide the board with an organizational chart indicating, at a minimum,

(a) The names and addresses of the owner, operator, chief administrative officer, and any other personnel necessary for operation of the entity as an EMS-TEI;

(b) The names and addresses of the EMS-TEI's designated agent for receiving service;

(c) The name and address of the EMS-TEI's medical director, proof that the medical director is qualified under 202 KAR 7:801, and a document executed between the owner of the EMS-TEI and the medical director outlining the relationship, duties, and requirements of a medical director for an EMS-TEI; and

(d) The name and address of the EMS-TEI's program coordinator.

(3) If the EMS-TEI will be offering courses leading to certification or licensure for EMS personnel in Kentucky that is dependent on EMS-TEI accreditation, the applicant for EMS-TEI shall submit proof of accreditation effective December 31, 2012.

Section 4. Certification Periods and Inspections. (1) An EMS-TEI shall display the current certificate issued through the Kentucky Board of Emergency Medical Services in a prominent place in the EMS-TEI's business.

(2) Certification of an EMS-TEI shall be valid for a period of ~~two (2)~~~~[five (5)]~~ years except when limited by imposition of disciplinary action.

(3)~~[(2)]~~ Prior to expiration of the ~~two (2)~~~~[five (5)]~~ year certification period, an EMS-TEI may apply for recertification for a subsequent ~~two (2)~~~~[five (5)]~~ year period.

(4)~~[(3)]~~ Upon application for recertification, an applicant shall resubmit an application form and all documents required by the board.

(5)~~[(4)]~~ An EMS-TEI seeking recertification shall pay all applicable fees at the time of application. Failure to pay fees or subsequent rejection of any payment method shall result in denial of the EMS-TEI application.

(6)~~[(5)]~~ A newly certified EMS-TEI shall undergo an inspection prior to offering the EMS-TEI's first class. Failure to submit to the inspection shall result in immediate revocation of the application.

(7)~~[(6)]~~ Inspections shall ensure that the EMS-TEI has met all applicable requirements in Section 5 of this administrative regulation. If the board's inspection finds that the EMS-TEI has failed to meet any requirement, the EMS-TEI shall correct all deficiencies prior to offering any classes.

(8)~~[(7)]~~ The board shall inspect an EMS-TEI when the EMS-TEI submits notice of intent to upgrade the level of courses offered.

(9)~~[(8)]~~ The board may inspect an EMS-TEI upon submission of application to renew certification as an EMS-TEI.

(10)~~[(9)]~~ The board shall conduct the inspection of an EMS-TEI no more than ninety (90) days following KBEMS' receipt of notice of intent to upgrade.

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~~(11)~~~~[(40)]~~ Approval of notice of intent to upgrade shall not extend the ~~two (2)~~~~[five (5)]~~ year EMS-TEI certification period.

Section 5. EMS-TEI Operating Requirements. (1) EMS-TEIs shall maintain files for a period of seven (7) years beyond the end date of each EMS Course program that contain the following documentation:

(a) For courses requiring accreditation, all documents necessary for the EMS-TEI to have met the accrediting agency's standards, policies, and guidelines as approved by the board;

(b) The student attendance sign-in sheets for each course taught, including

1. Lectures;

2. Practical skills lessons; and

3. Clinical and field rotations.

(c) A master copy of each set of written examinations administered and answer keys for the exams;

(d) A master copy of practical skills examination forms;

(e) A master copy of each course syllabus;

(f) Current, written affiliation agreements executed between hospitals or EMS agencies and the EMS-TEI;

(g) Health records for students as may be required by the EMS-TEI or as expressly required in written affiliation agreements and determined necessary for students to complete clinical assignments, field-internships, or summative field evaluations;

(h) Records of all disciplinary actions taken against any student; records shall include notification to students of the complaint, any responses made by or on behalf of the student, and actions taken as a result of a complaint or other documented incident, grievance, or deficiency;

(i) For students requiring remediation, documentation of specific activities or procedures requiring remediation and actions taken in response to deficiencies, including how the specific remediation was accomplished and if the success or failure of remediation;

(j) A master file of the objectives and competencies to be achieved by students during each educational program; and

(k) Documentation of any other requirements that the EMS-TEI has established as part of the offered courses.

(2) Failure of an EMS-TEI to maintain records required by the board may result in disciplinary action against an EMS-TEI.

(3) KBEMS may require an EMS-TEI to submit a copy of the EMS-TEI's annual accreditation report when accreditation is necessary for licensure or certification of the students taking the EMS-TEI's offered courses.

(4) EMS-TEIs shall conduct an annual review and revision of all courses and programs to ensure the EMS-TEI has complied with necessary updates to courses, programs, and accepted educational standards.

(5) An EMS-TEI shall document in writing the required annual review and any updates resulting from the annual assessment.

(6) Documentation of the annual review shall be in writing, signed by the owner or program coordinator, and maintained in the course or program file.

(7) An EMS-TEI shall assure all physical resources required by the curriculum, including classrooms, skill practice areas, notice of where to purchase or access textbooks, instructional aides, equipment, and supplies are

(a) Available at each class session where skills are taught or practiced;

(b) Adequate in number to allow for practice by students enrolled; and

(c) In good working order and well-maintained.

(6) An EMS-TEI shall maintain and protect the privacy of all records pertaining to the health and safety of patients, students, and faculty members that are obtained or developed through or as a result of participation in training and educational activities with the EMS-TEIs.

(7) The EMS-TEI is responsible for knowing and following all federal and state laws relevant to safeguarding privacy of records, including educational and health records.

(8) The EMS-TEI shall develop and make available to all prospective students a clearly-defined admissions policy and procedure.

(9) An EMS-TEI's admission policy shall include specific re-

quirements for students to gain admission, maintain enrollment, and all academic requirements necessary to successfully complete the offered course or program. Admissions policies and procedures shall include at a minimum

(a) Tuition rates and any fees associated with the training and education program;

(b) Fees and other costs associated with remediation;

(c) A descriptive synopsis of the curriculum for each type of course taught;

(d) Course educational objectives;

(e) Classroom lecture and skills practice schedules;

(f) Clinical or field rotation locations with tentative beginning and ending dates;

(g) Participation requirements for each clinical or field rotation site; and

(h) Citations to and language of prohibited actions under KRS Chapter 311A.050 that provide grounds for sanctions against or denial of individuals making application for certification or licensure by the board.

(10) EMS-TEIs shall establish written policies that provide for

(a) the creation and use of course or program advertising that accurately portrays the course or program content as offered by the EMS-TEI;

(b) A uniform process for filing, investigating, and resolving complaints or grievances by applicants, students, preceptor sites, patients, members of the general public, or faculty members;

(c) A procedure for a students to withdraw from courses, and clear statements of refund policies and the steps necessary for students to obtain refunds of tuition or fees already paid;

(d) Faculty to develop examinations for each course offered; and

(e) The establishment of and adherence to examination procedures and policies;

(f) The requirements for students to take and pass examinations in courses the EMS-TEI offers; and

(g) Notification to all students and prospective students of their right to ask for and obtain the pass/fail rates of past students who have taken the National Registry Exam or other board approved certification test. The pass/fail rate shall be calculated for courses given within the last two (2) years.

(11) An EMS-TEI shall assure each student, while participating in a clinical or field rotation, is clearly identified as a student and by first and last name. Identification shall be accomplished by use of

(a) A nameplate;

(b) A uniform; or

(c) Other publicly apparent means.

(12) EMS-TEIs shall include a chief administrative officer (CAO) or designee who shall

(a) Administer and oversee the EMS-TEI;

(b) Assure the quality and credentials of the program coordinator, EMS educators, EMS educator adjuncts, and students accepted into any of the EMS-TEI's programs or courses;

(c) Assure the security of examination results and materials;

(d) Monitor the activities of the EMS-TEI's faculty and students; and

(e) Maintain records and documents and submit reports as required by the board.

(13) When applicable, an EMS-TEI shall have a Paramedic Course Coordinator for paramedic training and education courses. The Paramedic Course Coordinator shall maintain a Level III EMS Educator status in the Commonwealth of Kentucky.

(14) A certified EMS-TEI shall maintain an ongoing level of competence, evidenced by a minimum pass rate of thirty (30) percent based upon a measurement of students who have taken the board approved exam for the first time within the twenty-four (24) months immediately preceding the EMS-TEI's renewal date.

(15) An EMS-TEI's competency shall also be demonstrated by compliance with statutory and regulatory requirements, adherence to established educational standards, and the EMS-TEI's process for remediating students who take but fail to pass the board's approved test.

(16) When an EMS-TEI fails to meet an ongoing level of competence determined according to this section, the EMS-TEI shall be subject to a plan of correction mediated through the office of the

board.

(17) An EMS-TEI that cannot maintain an ongoing level of competence may be subject to discipline pursuant to KRS 311A.

Section 6. Disciplinary Action Against an EMS-TEI. (1) As certified entities under the board's jurisdiction, all EMS-TEIs shall be subject to the disciplinary procedures and sanctions established in KRS 311A.

(2) Discipline against an EMS-TEI as a certified entity does not prevent the board from taking disciplinary action against certified or licensed individuals associated with the EMS-TEI at any level of certification or licensure applicable.

Section 7. Reporting Requirements for EMS-TEI. (1) An EMS-TEI shall submit to KBEMS the required documents for all EMS courses that lead to licensure or certification by the board.

(2) A list of documents required in this section shall be made available to EMS-TEIs on the board's Web site.

(3) Upon submission of all required documents for courses that lead to licensure or certification, the Office of the board shall assign a number or other identifier to the course.

(4) An EMS-TEI shall notify the board Office thirty (30) days prior to the start of any course. Failure to notify KBEMS shall violate this section of this administrative regulation and may subject the EMS-TEI to disciplinary action under KRS 311A.

(5) No class shall commence unless the EMS-TEI has obtained obtain an identification code and notified the board as required in this section.

(6) Any course that does not meet all requirements of this administrative regulation shall not lead to certification or licensure for the EMS students enrolled in the course.

Section 8. Requirements For All Training and Education Courses. (1) All EMS training and education courses that lead to certification or licensure by KBEMS shall:

(a) Be approved by board established procedures;

(b) Not commence until the EMS-TEI has filed all documents required under those procedures, including course notification and other documents required under Section 7 of this administrative regulation;

(c) Not begin until the EMS-TEI has paid all fees required under 202 KAR 7:030;

(d) Use the National Education Guidelines current at the time the course is offered;

(e) Teach students the board approved Scope of Practice;

(f) Reflect EMS-TEI compliance with any changes to the National Education Guidelines or Scope of Practice no later than one (1) year following the change; EMS-TEIs are presumed to know the changes and may be subject to disciplinary action if not in compliance within one (1) year of any change;

(g) Meet the course administrative and faculty requirements in this administrative regulation and as established by the board approved accrediting agency; and

(h) Use lead instructors certified by KBEMS as EMS educators who are minimally certified or licensed at the level of the offered course.

(2) The EMS-TEI may use adjunct faculty for initial certification or licensure courses who

(a) Meet one (1) of the requirements of Section 13 of this administrative regulation; and

(b) Teach for no more than five (5) percent of the classroom education time for each EMS course without the supervision of the Program Coordinator or certified instructor present and available in the classroom.

(3) The EMS-TEI shall have additional skills educators for classroom sessions where skills are practiced. These sessions shall not proceed without the presence of

(a) A certified educator for the first ten (10) students; and

(b) An additional educator or adjunct faculty for each one (1) to ten (10) additional students. Additional adjunct faculty used shall not be required to be certified as an EMS educator but shall be certified by the board as an EMS provider at or above the level for the course being taught and shall meet at least one (1) requirement of Section 13 of this administrative regulation;

(4) The EMS-TEI shall have a medical director who

(a) Is employed by or under written contract with the EMS-TEI to serve as the medical director of the program;

(b) Is routinely available to the EMS-TEI to provide consultation regarding issues related to the training and education program;

(c) Participates in the approval of the didactic clinical and evaluation material and student progress review;

(d) Meets the accrediting agency standards, policies and guidelines as approved by the KBEMS; and

(e) Provides medical consultation and guidance to the course faculty.

(5) An EMS-TEI shall maintain a written contractual affiliation agreement or memorandum of agreement with each clinical rotation site that outlines, at a minimum, the responsibilities of each entity and reporting requirements for students involved in clinical and field training and education.

(6) An EMS-TEI shall provide faculty from the EMS-TEI training and education program, clinical coordinators, or designees under contract with the EMS-TEI to oversee student activity while in the clinical setting.

Section 9. Emergency Medical Responder Training and Education Course Requirements. (1) Each Emergency Medical Responder (EMR) training and education course shall:

(a) Follow all training and education requirements under KRS 311A and 202 KAR 7:201; and

(b) Follow the current national education standards for duration of course and individual class segments.

Section 10. Emergency Medical Technician Training and Education Course Requirements. (1) Each Emergency Medical Technician (EMT) training and education course shall:

(a) Include all training and education requirements under KRS 311A and 202 KAR 7:301; and

(b) Follow the current national education standards for duration of course and individual class segments.

(2) To be eligible for certification as EMTs, students shall complete a clinical or field rotation that meets the requirements for EMT education as determined by this administrative regulation and the National Medical Standards Scope of Practice for an EMT student as approved by the accrediting agency's minimum requirements.

(3) The minimum requirements of clinical or field rotations for EMTs shall include minimally

(a) A clinical or field rotation consisting of at least twenty-four (24) hours conducted in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed ambulance service, or other health care facility;

(b) Interviews and assessments of a minimum of ten (10) patients with at least five (5) interviews and assessments conducted in a pre-hospital ambulance service setting; and

(c) Recording patient history and completing assessment on a prehospital care report form for each of the ten (10) patients required in (2)(b) of this section.

(4) If a student fails to achieve any goal established for the EMT education program, the EMS-TEI CAO Officer or Program Director may require the student to repeat any portion of a clinical or field rotation experience.

(5) When a student is required to repeat any portion of a clinical or field rotation experience, the CAO or Program Director shall have a written procedure for remediation that ensures the student is provided with adequate due process protections.

(6) When additional time is required, the notification to the student shall be signed and dated by the student.

Section 11. Advanced-Emergency Medical Technician Training and Education Programs. (1) Advanced-Emergency Medical Technician (A-EMT) Training and Education Course Requirements. Each A-EMT training and education course shall:

(a) Include all training and education as required under KRS 311A;

(b) Follow the current national education standards.

(2) To be eligible for certification as A-EMTs, students shall complete a clinical or field rotation that meets the requirements for A-EMT education as determined by this administrative regulation

and the National Medical Standards Scope of Practice for an A-EMT as approved by the board or the appropriate accrediting agency.

(3) The minimum requirements of clinical and field rotations for A-EMTs shall include

(a) Clinicals or field rotations that occur in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed advanced life support ambulance service or other advanced health care facility;

(b) Interviews and assessments of a minimum of thirty-five (35) patients, including at least fifteen (15) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a prehospital care report form for each of the thirty-five (35) patients required in (2)(b) of this section.

(4) If a student fails to achieve any goal established for the A-EMT education program, the EMS-TEI Chief Administrative Officer or Program Director may require the student to repeat any portion of a clinical or field rotation experience.

(5) When a student is required to repeat any portion of a clinical or field rotation experience, the CAO or Program Director shall have a written procedure for remediation that ensures the student is provided with adequate due process protections.

(6) When the EMS-TEI requires the student to complete additional ride-time, the EMS-TEI shall give the student written notification for the student to sign and date.

Section 12. Paramedic Training and Education Programs. Paramedic Training and Education Course Requirements. (1) Each Paramedic training and education course shall:

(a) Include all training and education as required by this administrative regulation, KRS 311A, and any other Kentucky statutes that place mandates upon paramedic students; and

(b) Follow the current national education standards.

(2) To be eligible for licensure as a Paramedic, a student shall complete a clinical or field rotation that meets the requirements for Paramedic education as determined by this administrative regulation and the National Medical Standards Scope of Practice for a Paramedic as approved by the accrediting agency's minimum requirements.

(3) The minimum requirements of clinical or field rotations for Paramedics shall include

(a) Clinicals or field rotations that are conducted in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed advanced life support ambulance service, or other advanced health care facilities;

(b) Interviews and assessments of a minimum of seventy-five (75) patients, including at least fifty (50) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a prehospital care report form for each of the seventy-five (75) patients required in (3)(b) of this section.

(4) If a student fails to achieve any goal established for the EMS education program, the EMS-TEI Chief Administrative Officer or Program Director may require the student to repeat any portion of a clinical or field rotation experience.

(5) When a student is required to repeat any portion of a clinical or field rotation experience, the CAO or Program Director shall have a written procedure for remediation that ensures the student is provided with adequate due process protections.

(6) When additional time is required to be completed for remediation, the EMS-TEI shall provide written notification of the additional time required and shall obtain a dated signature from the student.

Section 13. Continuing Education. (1) Training and education courses provided to individuals outside the roster of a licensed service and that fulfill the continuing education requirements necessary to recertify or renew a certification or licensure shall be provided by

(a) An entity certified by KBEMS as an EMS-TEI;

(b) An agency or department having contractual agreements

with a KBEMS certified EMS-TEI that is in good standing and not subject to disciplinary action;

(c) Any KBEMS approved symposia, state, national, or international school;

(d) A KBEMS approved or nationally accredited on-line or distance education provider but which shall not provide more than fifty (50) percent of the total continuing education hours to fulfill the CE requirements for renewal under KRS Chapter 311A or any administrative regulation promulgated by the board; or

(e) Any course that has been accredited by the board-approved accrediting agency for continuing education.

(2) Continuing education offerings shall

(a) Contain material relevant to the job specifications and professional development of EMS personnel; and

(b) Be conducted at an EMS level appropriate for the discipline of the participants.

Section 14. Continuing Education Instructor Requirements. (1) The following persons shall be qualified to conduct continuing education courses for persons certified or licensed by KBEMS:

(a) A paramedic licensed by the board or licensed or certified in another state;

(b) A physician licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(c) A registered nurse licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(d) An EMS Educator certified in Kentucky; or

(e) An individual who is at least one (1) of the following:

1. Certified by a state or federal agency to teach or perform subject matter relevant to the National Emergency Medical Services Education Standards-Instructional Guidelines and National EMS Scope of Practice for a prehospital discipline;

2. Certified by a nationally-recognized entity to provide EMS related training and education;

3. A presenter at a National or State Symposium accredited by an agency or other KBEMS approved entity; or

4. A presenter approved by an EMS medical director as uniquely qualified by experience or education; or

5. A presenter approved as being uniquely qualified by an emergency response agency's chief administrative officer.

(2) The EMS-TEI or other approved contractual departments or agencies providing continuing education shall be required to

(a) Maintain a roster, objectives, and outline for every continuing education course taught on file for a period of seven (7) years beyond the end date of each EMS Course; and

(b) Maintain all documentation to have met the accreditation agency standards, policies and guidelines approved by KBEMS.

(3) The EMS-TEI may be required to submit to KBEMS the required documents for EMS continuing education courses taught within the preceding seven (7) years that lead to re-certification or re-licensure by the KBEMS, including

(a) Contractual agreements;

(b) The continuing education educator's curriculum vitae;

(c) A completed "Student Course Roster";

(d) Objectives and outline for each continuing education course.

Section 15. Pilot Programs. (1) A licensed EMS provider agency may apply to KBEMS for authorization to perform a pilot program.

(2) A pilot program involves specialized training and education as well as associated procedures not otherwise provided for in administrative regulations.

(3) Any licensed EMS provider agency seeking authorization for a pilot program shall submit a written request to the board.

(4) The request shall not be approved unless the applicant agency completes all parts of the pilot program packet provided by the office of the board.

(5) An authorized entity approved by the board to conduct a pilot program shall agree in writing

(a) To submit periodic reports related to the progress of the pilot program; and

(b) To abide by the board established requirements for the pilot program.

(6) An individual otherwise certified or licensed by the board who successfully completes an approved pilot program may perform the procedures relevant to the training and education received in the pilot program subject to protocols established by the medical director for the pilot program.

(7) The board may establish pilot program limitations on

(a) the geographic area or service location where the procedure may be performed; and

(b) the performance of the procedure subject to

1. a specific and defined event;

2. a disaster; or

3. a designated directive.

(8) The board may authorize the use of physicians or other medical professionals to supervise and monitor the training and education of students involved in a pilot program.

(9) The board may restrict or limit actions that involve the performance of an invasive procedure or the administration of medication subject to

(a) Required physician or medical director oversight; or

(b) The use of protocols that have been submitted to the board for review and approved by the state medical advisor and the board.

Section 16. EMS Educators. (1) An EMS Educator may be certified at the following levels:

(a) Level I – EMR Educator, which qualifies the individual to teach EMR courses or EMR continuing education;

(b) Level II – EMT Educator, which certifies the individual to teach EMT and EMR courses or EMT and EMR continuing education; or

(c) Level III – Advanced Educator, which certifies the individual to teach EMR, EMT, A-EMT and Paramedic courses or continuing education.

(d) Level IIIR - Registered nurses and physicians who are not currently certified as an EMT, A-EMT or paramedic may only be certified as Level III instructors who teach A-EMTs or Paramedics.

(2) An applicant for certification as a Kentucky EMS educator shall

(a) Already hold a certificate or license in Kentucky as an Emergency Medical Responder (EMR), an Emergency Medical Technician (EMT), an Advanced Emergency Medical Technician (A-EMT) or a Paramedic;

(b) Not be issued a certificate as an EMS educator for a level of instruction higher than their EMS provider certification or license;

(c) Have successfully completed:

1. The National Association of EMS Educators National Guidelines for Educating EMS Educators Course;

2. A KBEMS approved EMS educator course that meets the objectives of the National Highway Traffic Safety Administration (NHTSA) and designed to represent a common core for teaching knowledge and skills to assist the education of adult learners; or

3. A Bachelor's Degree or higher in education;

(d) Have been certified or licensed for a minimum of four (4) years as an EMS provider at the same level or at a higher level for which the applicant seeks to become an EMS educator;

(e) Provide documentation that two (2) years of the four (4) years' experience required in this section is experience providing care with

1. An ambulance service;

2. A medical first response agency such as a fire department or rescue squad;

3. A hospital emergency department or urgent care facility;

4. An industrial emergency response team or service in an industrial first-aid station; or

5. Another environment determined by the KBEMS to have met this requirement;

(f) Provide documentation the applicant has assisted with a course that meets the following requirements:

1. The board has approved the course as leading to certification or licensure;

2. Assistance with the course has been under the supervision of a certified EMS educator who has served as a course coordinator or lead educator for at least three (3) separate courses and who has not been subject to disciplinary action or reprimand by the

board under KRS 311A within the past thirty-six (36) months; and

3. The course in which the applicant will assist is at the same level of EMS educator the applicant is seeking.

(g) Provide evidence of completion of a board sponsored [curriculum] orientation program;

(h) Submit a completed "Application for EMS Educator Initial Certification" and pay all required fees;

(i) If applying to become a Level I or II Educator the applicant shall

1. Be certified minimally as an EMT **to teach EMTs or EMRs and minimally certified as an EMR to teach only EMRs;**

2. Submit documented proof that

a. The applicant completed a minimum of five (5) presentations meeting the objectives of the current National Emergency Medical Services Education Standards-Instructional Guidelines and National Scope of Practice National Education for EMT **or EMR as applicable for level of certification;**

b. The applicant demonstrated skills from at least five (5) subjects meeting the objectives of the current National Emergency Medical Services Education Standards-Instructional Guidelines and National Scope of Practice National Education for EMT **or EMR as applicable for level of certification;**

c. The applicant completed all presentations and all skills demonstrations on different topics for a total of ten (10) separate topics;

d. The applicant attended a minimum of fifty (50) percent of clock hours of the course.

(j) if applying to become a Level III Educator the applicant shall

1. be certified as a paramedic or higher; and

2. Present documented proof of instruction in a minimum of fifty (50) classroom clock hours in a minimum of five (5) different subject areas which shall include instruction in pharmacology, cardiac emergencies, and traumatic injuries, meeting the objectives of the current National Emergency Medical Services Education Standards-Instructional Guidelines and National Scope of Practice for Paramedic Education.

(6) The expiration date of an EMS educator certification shall correspond to those set in KRS 311A and any other administrative regulation relevant to the certification period.

Section 17. Renewal of EMS Educator Certification. (1) An EMS educator shall be eligible to renew the EMS educator certification if the applicant for renewal

(a) Has maintained state certification or licensure as a provider at a level equal to or greater than the level at which they are certified as an EMS educator;

(b) Has submitted to the board written evidence of completion of all training and education as required by KRS 311A;

(c) During the preceding two (2) years, has been actively engaged in instruction and obtained a minimum of fifty-two (52) contact hours that include at least eight (8) contact hours on topics related to methods of instruction (MOI). The eight (8) relevant to MOI

1. May include any board approved and required educator updates; and

2. ~~[Shall be certified in writing by]~~ the Chief Administrative Officer of the EMS-TEI employing the instructor **shall provide proof of the courses or contact hours if requested to do so in an audit by the board;**

(d) Is not subject to discipline under KRS 311A;

(e) Has paid any fee required by 202 KAR 7:030; and

(f) Has submitted to the board a completed and signed application for EMS educator renewal.

(2) The EMS educator shall maintain all training and education documentation outlined in this administrative regulation for four (4) years from the date of completion.

(3) The KBEMS office may audit an EMS educator's continuing education and continuing education records.

Section 18. EMS Educator reinstatement. (1) An EMS Educator whose certification has lapsed for a period not exceeding five (5) years may reinstate his certificate by submitting

(a) A completed EMS Educator application;

(b) Evidence of sixteen (16) hours of training in methodology of

instruction (MOI);

(c) Written evidence of completion of a board sponsored EMS Educator orientation course; and

(d) Payment of the reinstatement fee as set forth in 202 KAR 7:030.

(2) An applicant for reinstatement shall not be subject to disciplinary action under KRS 311A.

(3) An EMS Educator whose certification has lapsed for a period exceeding five (5) years shall seek certification as an initial applicant.

Section 19. Transition for Currently-certified educators. (1) Educators certified on the effective date of this administrative regulation shall be transitioned as follows:

(a) Level I EMS instructors shall be certified as Level I educators;

(b) Level II Instructors shall be certified as Level II Educators;

(c) Currently certified Level III Instructors shall be certified as Level III educators;

(d) Level I and Level II shall be certified as Level I and Level II educators; and

(e)(c) Level III instructors currently licensed as Paramedics shall be certified as Level I, Level II and Level III educators

(f)(d) Level III instructors currently licensed as RNs or physicians shall be certified as Level III R educators.

Section 20. EMS Educator Reciprocity. (1) A person certified as an EMS instructor in another state or US territory shall be eligible for Kentucky EMS instructor certification upon demonstrating

(a) Evidence of certification or licensure as an EMS provider for a minimum of four (4) years at the same level or at a higher level for which they are applying to be a Kentucky EMS educator;

(b) Proof of four (4) years' educational experience in another state or territory;

(c) Submission of a completed EMS Educator application;

(d) Evidence of board approved sixteen (16) hours of training in methodology of instruction (MOI);

(e) Written evidence of completion of a board sponsored EMS Educator orientation course;

(f) Payment of the Educator fee as set forth in 202 KAR 7:030.

(2) An applicant for reinstatement shall not be subject to disciplinary action under KRS 311A.

Section 21. EMS Educator Temporary Certification. (1) An EMS educator applicant holding EMS educator certification or licensure from another state or US territory may be granted a temporary certification in Kentucky upon submission of the educator application.

(2) No temporary card shall be valid for more than one (1) year.

(3) At the end of one (1) year, an applicant for reciprocity who have not completed the requirements appearing in Section 18 of this administrative regulation shall not be eligible for an extension or renewal of the temporary certification period.

(4) An Applicant failing to meet the time limit for obtaining certification through reciprocity shall seek certification as a Kentucky EMS Educator by completing all requirements for initial certification.

(5) No applicant for temporary certification shall be subject to disciplinary action under KRS 311A.

Section 22. EMS Evaluator. (1) An applicant for certification as an EMS evaluator shall

(a) Be currently certified as a Level I, Level II or Level III EMS educator; or

(b) Hold current unrestricted licensure in any state as a physician; and

(c) Have completed a board-approved evaluator training program;

(d) Have a minimum of two (2) years' patient care experience prior to serving as an evaluator;

(e) Submit a completed "Application for EMS Evaluator";

(f) Have paid all fees required by 202 KAR 7:030 or approved

by the board; and

(g) Not be subject to discipline pursuant to KRS 311A.

(2) The certification period of an EMS evaluator shall be contemporaneous with the expiration date of a certificate or license issued by the board, the KBN or KBML or the state that issues their licenses.

(3) An EMS evaluator shall be certified as

(a) Level I, which qualifies the evaluator to assess EMR candidates for certification;

(b) Level II, which certifies the evaluator to assess EMT and EMR candidates for certification; or

(c) Level III, which certifies the individual to evaluate paramedic, EMT, AEMT and EMR candidates for certification or licensure. A licensed physician or registered nurse who are not also licensed or certified EMS providers may evaluate paramedics only. Persons certified as A-EMTs are allowed to evaluate A-EMTs, EMTs, and EMRs.

(4) An Individual shall not be endorsed as an EMS evaluator at any level greater than the level at which certified or licensed as EMS educators.

Section 23. Renewal of EMS Evaluator Endorsement. (1) A person who holds an endorsement as an EMS evaluator shall be eligible to renew the EMS evaluator endorsement if the individual

(a) Maintains current state certification or licensure as a provider;

(b) During the certification period, participates in a minimum of two (2) separate evaluations on two (2) separate dates or attends a board sponsored evaluator class;

(c) Is not subject to discipline pursuant to KRS 311A;

(d) Submits to the board a completed Application for Renewal of EMS Evaluator Endorsement; and

(e) Pays all fees required by 202 KAR 7:030 or approved by the board.

Section 24. Educator and Evaluator Oversight. (1) KBEMS may conduct scheduled or, if part of an official investigation, unscheduled visits to an EMS educator's classroom or to an EMS evaluation site to verify compliance with the administrative regulations, instructional quality, and evaluative standards required in this administrative regulation.

Section 25. Incorporation by reference. (1) The following material is incorporated by reference:

(a) "EMS Responder Application" KBEMS E1 (9/2010);

(b) "Proof of Lecture Form" KBEMS 04-2004; and

(c) "Instructor Certification Packet" (5/2010)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Community and Technical College, Office for the Kentucky Board of Emergency Medical Services, 300 North Main Street, Versailles, Kentucky 40383, Monday through Friday, 8:30 a.m. to 4:30 p.m. [Section 1. EMS-TEI Requirements. (1) Only an entity approved by the Board as an EMS-TEI shall be authorized to conduct training and education programs that lead to certification or licensure by the Board.

(2) An entity that previously was certified as an EMS-TEI and had that certification revoked may be eligible to apply for certification as an EMS-TEI one (1) year after the expiration date of revocation.

(3) An applicant shall file a completed Board-approved application with the KBEMS office for certification as an EMS-TEI.

(4) Each EMS-TEI shall have:

(a) A chief administrative officer or designee who shall:

1. Be responsible for the planning, administration and oversight of the EMS-TEI;

2. Assure the quality and credentials of the program coordinator and students accepted into any program conducted by the EMS-TEI;

3. Assure the security of examination results and materials;

4. Randomly monitor the activities of the faculty and students;

5. Maintain records and documents and submit reports required by the Board; and

6. Serve as a member of the course faculty, if appropriately credentialed; and

(b) A program coordinator for paramedic training courses or lead instructor for first responder or EMT training courses who shall:

1. Assure the quality of content and presentation of course material to the student body;
 2. Assure the quality and credentials of the instructional staff, adjunct faculty, examiners, and proctors;
 3. Assure the quality and security of student examinations;
 4. Monitor the activities of the faculty and students during the didactic, skills, and clinical or field internship and summative field evaluation phases of the educational program; and
 5. Serve as a member of the course faculty, if appropriately credentialed.
- (5) The chief administrative officer may also simultaneously serve as the program coordinator or lead instructor.
- (6) An EMS-TEI may require competency evaluations of technical skills performance, knowledge base, or presentation skills of any staff member or potential staff member.

Section 2. EMS-TEI Certification Periods. (1) The approval of an EMS-TEI shall be valid for a period of five (5) years, notwithstanding disciplinary action as discussed in this administrative regulation.

(2) At the end of the initial five (5) year approval period, an EMS-TEI may apply for recertification for a subsequent five (5) year period.

(3) An EMS-TEI may choose to surrender its certification prior to the end of a certification period by notifying the Board in writing of the intent to do so and the intended effective date of the surrender.

Section 3. EMS-TEI Responsibilities. (1) The EMS-TEI shall maintain on file for a period of five (5) years beyond the ending date of the program:

- (a) A complete, curriculum vitae that was current at the beginning date of the EMS course. The curriculum vitae shall include a listing of academic preparation, clinical experience, current certifications and licenses for each faculty member. The EMS-TEI shall be responsible for verifying information contained on an instructor's curriculum vita;
- (b) Health records for students that may be required by an EMS-TEI or through written clinical, field internship, or summative field evaluation affiliation agreements;
- (c) Records of all disciplinary actions taken against a faculty member, which shall include each response or action taken as a result of a complaint or grievance; and
- (d) Documentation of any other requirements as may be established by the EMS-TEI.

(2) An EMS-TEI shall assure that physical resources as required by the curriculum, including classrooms, skill practice areas, textbooks, instructional aids, equipment, and supplies are:

- (a) In good working condition;
- (b) Available at each class session where skills are taught or practiced; and
- (c) Adequate in number for the number of students enrolled in the program to have sufficient opportunity for skills practice.

(3) The health and safety of patients, students and faculty members shall be protected while participating in educational activities.

(4) A student or a faculty member shall maintain proper personal and professional conduct during classroom and clinical or field internship or summative field evaluation activities.

(5) An EMS-TEI shall develop and make available to all prospective students a clearly defined admission policy and procedure, which shall include specific requirements for admission, including:

- (a) Academic requirements;
 - (b) Health-related requirements; and
 - (c) Admission prerequisites.
- (6) An EMS-TEI shall disclose to an applicant for admission:
- (a) Accurate information regarding program requirements;
 - (b) Tuition and fees including remediation fees or other costs associated with the training and education program;
 - (c) A descriptive synopsis of the curriculum for each type of

course taught;

- (d) Course educational objectives;
- (e) Classroom lecture and skill practice schedules;
- (f) Clinical or field rotation locations with tentative beginning and ending dates and participation requirements for each site;
- (g) Board certification or licensure requirements for the level of training and education being offered; and
- (h) Prohibited actions described in KRS Chapter 311A that provide grounds for a sanction against an individual making application for certification or licensure by the Board, as described at KRS 311A.050.

(7) An EMS-TEI shall establish and maintain written policies to ensure that:

- (a) Announcements and advertising accurately reflect the courses offered;
- (b) A procedure exists that allows complaints and grievances to be processed if filed by an applicant, a student, or a faculty member;
- (c) There is a process for a student to withdraw from a course, and, if allowed, obtain a refund of tuition or fees paid;
- (d) Examinations are developed for each course; and
- (e) There are established and maintained passing requirements and examination policies for each course offered by the EMS-TEI.

(8) An EMS-TEI shall assure that each student, while participating in a clinical or field rotation, is clearly identified by name and student status by the use of:

- (a) A nameplate;
- (b) A uniform; or
- (c) Other apparent means.

(9) An EMS-TEI shall maintain, for at least five (5) years beyond the date of the last classroom session of each EMS course:

- (a) The student attendance sign-in sheets for each course taught including:
 1. Lectures;
 2. Practical skill lessons; and
 3. Clinical and field rotations;
- (b) A master copy of written examinations and answer keys administered for each course taught;
- (c) A master copy of practical skill examination forms used during each course taught;
- (d) A master copy of the current course syllabus for the courses taught;

(e) Health records for students that may be required by an EMS-TEI or through written clinical, field internship, or summative field evaluation affiliation agreements;

(f) Records of all disciplinary actions taken against a student which shall include each response or action taken as a result of a complaint or grievance;

(g) Remediation activity for each student enrolled, including how the specific remediation was accomplished and if the process was successful; and

(h) A master file of the objectives and competencies to be achieved by students during each educational program. The file shall be reviewed annually by the EMS-TEI and updated as necessary.

Section 4. Disciplinary Action Against an EMS-TEI. (1) The Board shall notify the chief administrative officer of an EMS-TEI, by certified mail, of any intent to pursue disciplinary action against the EMS-TEI.

(2) The Board may take disciplinary action against an EMS-TEI, if:

- (a) During a twenty-four (24) month period, an EMS-TEI's cumulative pass rate for initial training and the education programs offered falls below sixty-seven (67) percent. The pass rate percentage shall be determined by dividing the number of students that complete the certification or licensure testing process within the required time frame by the number of students who apply to participate in the certification or licensure exams;
- (b) An inspection or investigation by the KBEMS office determines the EMS-TEI has not met the requirements of any section of this administrative regulation;
- (c) An EMS-TEI is on probationary status and fails to meet

requirements established by the Board;

(d) The faculty or a staff member reproduces or reconstructs, or attempts to reproduce or reconstruct, any portion of an examination for the purpose of assisting a student to cheat or create an unfair advantage for one (1) student over another student on the examination;

(e) The faculty or a staff member disseminates information for purposes of reproduction or reconstruction of any portion of an examination in order to assist a student to cheat or create an unfair advantage for one (1) student over another student on the examination;

(f) The faculty member or a staff member cheats, or assists students to cheat or create an unfair advantage for one (1) student over another student, on an examination;

(g) The EMS-TEI falsifies a record of education, training, or continuing education;

(h) The EMS-TEI fails to pay a fee or issues a check for any fee required by administrative regulation on an invalid account or an account that does not have sufficient funds;

(i) The EMS-TEI fails to file reports required by this administrative regulation; or

(j) The EMS-TEI fails to meet the requirements of the "EMS-TEI Affidavit".

(3) A recommendation to take disciplinary action against an EMS-TEI shall be considered in executive session of the Board and shall include the opportunity for the Chief Administrative Officer or designee to be present and make a presentation on behalf of the EMS-TEI.

(4) After consideration of information presented during the executive session, the Board may take any of the following actions:

(a) Take no action;

(b) Restrict the certificate of the EMS-TEI;

(c) Establish a probationary period for the certificate of the EMS-TEI;

(d) Suspend the certificate of the EMS-TEI; or

(e) Revoke the certificate of the EMS-TEI.

(5) The KBEMS office shall notify the chief administrative officer of the EMS-TEI by certified mail of the decision to take no action, restrict, probate, suspend, or revoke the certification of the EMS-TEI.

(6) The Board may direct an EMS-TEI against whom disciplinary action has been taken to:

(a) Not begin new courses at that level of training or education during the term of the disciplinary action and to notify students who are currently enrolled in an affected program of the action of the Board;

(b) Conduct an internal evaluation of the programs offered by the EMS-TEI. If an EMS-TEI is required to conduct an internal evaluation, it shall include a review of:

1. The qualifications, responsibilities, and performance of the program coordinator, medical director, and course faculty;

2. Student admission practices;

3. Syllabi and objectives of all courses offered;

4. Graduation requirements for all courses offered by the EMS-TEI;

5. Faculty involvement in program and course planning, serving as a liaison for clinical and field internship sites and classroom participation;

6. Clinical or field rotation requirements and activities;

7. Quality and adequacy of clinical or field rotation opportunities;

8. Textbooks, equipment, supplies and ancillary learning aids used by the EMS-TEI; and

9. The ability of the EMS-TEI to meet the stated goals and objectives of the program; and

(c) Require an EMS-TEI to provide a written report to the Executive Director of KBEMS that shall include a list of problems identified during the review process conducted pursuant to this section and a detailed corrective action plan, including a time frame for the completion of the plan.

(7) If a corrective action plan is required, the executive director, within sixty (60) days of receipt shall review the plan and notify the chief administrative officer, by certified mail, of the planned action, which may include:

(a) Approving the entire plan;

(b) Approving a portion or portions of the plan;

(c) Requiring additional or alternative corrective actions; or

(d) Forwarding the report to the Board with or without a recommendation for action by the Board.

(8) The executive director of the Board or a designee shall monitor compliance and may conduct announced or unannounced site visits to determine if all requirements established for any level of disciplinary action are being met.

(9) The Board upon recommendation of the executive director may:

(a) Terminate disciplinary action and reinstate an EMS-TEI; or

(b) Take action to pursue additional disciplinary action against an EMS-TEI.

(10) Any EMS-TEI against whom the Board takes disciplinary action may file an appeal pursuant to KRS Chapter 13B.

(11) Any disciplinary action taken against an EMS-TEI may also be commensurate with their status as an EMS-TA.

Section 5. Public Notice of Negative Action. The KBEMS office shall cause to be published, in the EMS Newsletter, or similar publication of the Board, or otherwise disseminate the name of an EMS-TEI that:

(1) Has had no action taken based on the results of an investigation conducted as a result of a complaint;

(2) Is placed on probationary status;

(3) Is placed on restrictive status;

(4) Is suspended; or

(5) Has had certification revoked.

Section 6. Reporting Requirements for EMS-TEI. (1) Approved EMS-TEIs shall submit an "EMS Course Notification Report" for all courses that lead to licensure or certification by the Board to the KBEMS office within ten (10) working days of the commencement of each course, which report shall contain:

(a) The type of course to be offered;

(b) The location for the course;

(c) The tentative starting and ending dates of each course;

(d) A nine (9) digit number and alpha indicator for each EMS course conducted, which shall be assigned in the following manner:

1. The first three (3) digits shall correspond to the EMS-TEI approval number assigned by the Board;

2. The fourth and fifth digits shall correspond to the fiscal, (July 1– June 30) academic year. For example, if a course is taught between July 1, 2000 through June 30, 2001, the academic year number assigned shall be zero one (01);

3. The sixth and seventh digits shall correspond to the sequential number of courses begun between July 1 and June 30 of each year; and

4. An alpha designator that shall follow the seventh digit shall be:

a. FR for first responder courses;

b. B for EMT-Basic courses;

c. P for paramedic courses;

d. EI for EMS Instructor courses;

e. CE for continuing education offerings; or

f. Z for other educational offering;

(e) The maximum number of students to be accepted into the program; and

(f) Contact information for:

1. The chief administrative officer of the EMS-TEI;

2. The medical director, if required, for the training and education program; and

3. The lead program coordinator for the training and education program.

(2) Approved EMS-TEIs shall:

(a) Within two (2) weeks following an EMS course completion date, submit to the Board a Student Testing Eligibility Form; and

(b) Submit to the Board by no later than July 31, of each year an "EMS-TEI Annual Summary Report". If courses were not taught during the last reporting period an EMS-TEI shall file an annual report with the Board stating that no courses were taught during the reporting period.

Section 7. Requirements For All Training and Education Courses. EMS training and education courses shall meet the following instructional staff requirements:

(1) The EMS-TEI shall have instructional staff who are certified by the Board as EMS instructors and are minimally certified or licensed at the level at which the course is being offered.

(2) The EMS-TEI may also utilize adjunct faculty that meet one (1) of the requirements of Section 12 of this administrative regulation.

(3) The EMS-TEI shall have additional skill instructors for classroom sessions where skills are practiced. These sessions shall not proceed without the presence of:

(a) An instructor for the first ten (10) students; and

(b) An additional instructor for each one (1) to ten (10) additional students. The additional instructor shall not be required to be certified as an EMS instructor but shall be certified by the Board minimally at the level for the course being taught.

(4) The EMS-TEI, if providing initial training programs or continuing education programs that encompass invasive skills or procedures that routinely require medical oversight, shall have a medical director who:

(a) Is employed by or under contract with the EMS-TEI to serve as the medical director of the program;

(b) Is routinely available to the EMS-TEI to provide consult regarding issues related to the training and education program;

(c) Participates in the selection of students for the training and education program;

(d) Provides medical consultation and guidance to the course faculty; and

(e) Meets other requirements established by the Board.

Section 8. First-responder Training and Education Course Requirements. (1) Each first-responder training and education course shall utilize the United States Department of Transportation, National Highway Traffic Administration, 1995 EMT-First Responder National Standard Curriculum and the "Emergency Medical Technician First Responder Instructor Manual Initial Training Curricula - Kentucky Required Mandatory Supplemental Curricula for the Emergency Medical Technician First Responder"; and include training and education in:

(a) Acquired immune deficiency syndrome, as required by KRS 214.610 and 311A.110; and

(b) The appropriate use of:

1. AEDs;

2. Oxygen therapy delivery devices, including bag-valve-mask;

3. Cervical collar and long spine Board immobilization; and

4. The sphygmomanometer and stethoscope for obtaining blood pressure.

(2) Each first-responder training and education program shall be a minimum of forty-seven and one-half (47 1/2) hours in duration.

Section 9. EMT Training and Education Course Requirements.

(1) Each EMT training and education course shall:

(a) Be a minimum of 119 hours in duration;

(b) Utilize the 1994 version of the United States Department of Transportation, National Highway Traffic Administration, Emergency Medical Technician Basic: National Standard Curriculum;

(c) Provide training and education in acquired immune deficiency syndrome as required by KRS 311A.110; and

(d) Utilize the "Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician Basic (EMT-B)" for:

1. Initial training in the monitoring, maintaining, and discontinuing of preestablished patient intravenous infusions in prehospital, interfacility and facility to home encounters; and

2. Initial training in advanced airway management to provide assistance to those licensed to perform advanced airway procedures.

(2) Each student shall, in order to be eligible for certification in Kentucky, be required to complete a clinical or field rotation that meets the following minimum requirements:

(a) A clinical or field internship, which shall consist of at least ten (10) hours;

(b) A clinical or field internship, which shall be conducted in a

hospital emergency department or a licensed ambulance service or ALS medical first-response agency;

(c) Interviews and assessments of a minimum of five (5) patients; and

(d) Record of patient history and assessment on a prehospital care report form for each of the five (5) patients required in (2)(c) of this section.

(3) The EMS-TEI Chief Administrative Officer may require the student to repeat clinical or field rotation experience, as necessary, until the EMS instructor deems the student to have achieved the goals established for the EMS education program.

(4) If, in an extreme circumstance, an EMS-TEI is unable to obtain clinical or field rotation experiences for their students, the EMS-TEI shall file with the KBEMS office a request for approval for a variance from the requirement. The written request shall include:

(a) Written evidence of a good faith effort to obtain a clinical or field rotation site, within forty (40) miles from the location of the EMT course site, by contacting at least three (3) Board-licensed ambulance services, ALS medical first response agencies; or hospital emergency departments; and

(b) A description of proposed alternatives to the clinical or field rotation.

(5) An EMT student may begin the field internship required in this section after completion of the patient assessment module of the training and education course.

Section 10. Paramedic Training and Education Programs. (1) Each paramedic training and education program shall:

(a) Utilize the 1998 version of the United States Department of Transportation, National Highway Traffic Administration, Paramedic: National Standard Curriculum, incorporated by reference in this administrative regulation requiring as a minimum, the mean number of hours for didactic, clinical laboratory, and summative field evaluation hours as recommended by the curriculum;

(b) Provide training and education in AIDS as required by KRS 311A.110, for which the printed curriculum has been reviewed, approved and assigned an approval number by the HIV and AIDS Branch of the Cabinet for Health Services unless all students are credentialed currently;

(c) Provide training and education in determination of death and preservation of evidence as required by administrative regulation;

(d) Have a medical director who conducts or supervises a minimum of three (3) oral examinations with each student;

1. One (1) during the didactic portion of the course;

2. One (1) during the clinical portion of the course; and

3. One (1) during the final 100 hours of the field summative evaluation.

(2) As a part of each paramedic program, the EMS-TEI shall provide sufficient opportunities and locations for students to complete clinical rotations that shall:

(a) Be conducted at hospitals, clinics, physician offices, or other health care facilities. The EMS-TEI shall have a written contract, affiliation agreement or memorandum of agreement with each clinical rotation site, which at a minimum, outlines the responsibilities of each entity and reporting requirements for students while involved in clinical training and education;

(b) Be supervised by faculty from the paramedic training and education program or by clinical coordinators or supervisors employed by or under contract with the EMS-TEI to monitor student activity while in the clinical setting; and

(c) Require that a specified number of the following procedures be accomplished under supervision during the clinical rotation:

1. ALS patient assessments;

2. Intubations and other airway management techniques;

3. Placement of I.V. and I.O. lines;

4. Administration of medications utilizing I.V., I.M., I.O., endotracheal, subcutaneous, inhalation, oral and rectal routes;

5. Mixing, if applicable, and administration of I.V. piggyback medications;

6. Electrocardiographic monitoring and dysrhythmia interpretation; and

7. Other procedures as may be required by the program medical director.

(3) As a part of each paramedic program, the EMS-TEI shall provide sufficient opportunities and locations for students to complete a field internship and summative field evaluation that shall be:

(a) Conducted at Class I, Class III, or Class VII locations licensed as ALS providers by the Board. An EMS-TEI may apply to the Board for consideration of other field internship or summative field evaluation sites where a portion of the field internship or summative field evaluation requirement may be obtained. The EMS-TEI shall have a written contract, affiliation agreement or memorandum of agreement with each field internship or summative field evaluation site which as a minimum, outlines the responsibilities of each entity and reporting requirements for students while involved in field internship or summative field evaluation training;

(b) Monitored by preceptors; and

(c) A minimum of seventy-five (75) ALS patient contacts.

Section 11. Continuing Education. (1) Continuing education offerings shall:

(a) Contain material relevant to the job duties and professional development of EMS personnel; and

(b) Be conducted at a level appropriate for the discipline of the participants.

(2) Continuing education offerings may consist of:

(a) Those provided by an EMS-TEI or EMS provider;

(b) National or international programs;

(c) Symposia or national or international special schools;

(d) On-line or distance education, which shall not to exceed fifty (50) percent of the total required continuing education as established by the Board; or

(e) Other education approved by the ambulance service's medical director.

(3) Organizations other than EMS-TEIs that provide emergency medical services continuing education to the general public shall complete a Board approved application.

(4) Organizations certified to provide continuing education may utilize the Kentucky "Optional Training Curriculum" for use in service-specific continuing education for its employees or other EMTs receiving such training and education. Each student shall complete training and education and competency-based evaluations for each of the following procedures prior to being authorized to perform each respective procedure:

(a) "Application of End Tidal CO2 Monitoring";

(b) "Use of an Automated Blood Glucose Analysis Device";

(c) "EMT Application of Pulse Oximetry"; and

(d) "Application of Electrocardiogram Electrodes and Monitor".

(5) An organization certified to provide continuing education that desires to conduct training and education for EMTs who were initially certified before the implementation of the Kentucky supplemental curricula established in this administrative regulation may:

(a) Use the printed documents available from the Board; or

(b) Use service-developed printed curricula documents that have been submitted to, reviewed and approved by the Board.

Section 12. Continuing Education Instructor Requirements. (1) The following persons shall be qualified to conduct continuing education courses for persons certified or licensed by the Board:

(a) A physician licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(b) A registered nurse licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(c) A paramedic licensed by the Board or licensed or certified in another state;

(d) An EMSI certified in Kentucky; or

(e) An individual who:

1. Is certified by a state or federal agency to teach or perform subject matter relevant to the National Standard Curriculum for a prehospital discipline;

2. Is certified by a nationally-recognized entity to provide EMS related training and education;

3. Is a presenter at a National Symposium which has been accredited by the Continuing Education Coordinating Board for EMS; or

4. Is a presenter approved by EMS medical director or EMS-TEI as uniquely qualified by experience or education.

(2) Individuals shall not hold themselves out to be an approved continuing education instructor if they do not meet the qualifications of this section.

Section 13. Pilot Programs. (1) An EMS-TEI, Class I, Class III, or Class VII provider may apply to the KBEMS office for authorization to perform field pilot testing of specialized training and education and associated procedures not otherwise provided for in administrative regulations.

(2) An entity seeking authorization to execute a field pilot test shall submit a written request to the Board with a written description of:

(a) How the pilot program shall be implemented and monitored;

(b) The proposed training and education curriculum;

(c) A list of instructors and their qualifications;

(d) The beginning and ending dates of the field pilot testing program;

(e) How the procedure shall benefit or improve the quality of patient care; and

(f) The methods to be used to evaluate the proposed training and education and procedure.

(3) An authorized entity approved by the Board to conduct a pilot program shall agree, in writing:

(a) To submit periodic reports related to the progress of the pilot program, as required by the Board; and

(b) To abide by the requirements established by the Board for the pilot program.

(4) An individual otherwise certified or licensed by the Board who successfully completes an approved pilot program may perform the procedures relevant to the training and education received in the pilot program subject to protocols established by the medical director.

(5) The Board may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed; or

(b) The performance of the procedure related to:

1. A specific event;

2. A disaster; or

3. A designated directive.

(6) The Board may authorize and utilize physicians, other than EMS medical directors to supervise and monitor training and education and students involved in a pilot program.

(7) The Board may restrict or limit actions that involve the performance of an invasive procedure or the administration of medication subject to:

(a) Required physician or medical director oversight; or

(b) The establishment of protocols that have been reviewed and approved by the state medical advisor and the Board.

Section 14. EMS Instructors. (1) An applicant for certification as a Kentucky certified EMS instructor shall be certified or licensed as a first responder, an EMT, or a paramedic. Unless certified as a first responder or EMT, an RN or EMS medical director may only be certified as a Level III EMS instructor.

(2) An individual seeking certification as an EMS instructor shall:

(a) Complete a United States Department of Transportation National Standard Curriculum for EMS instructor course or other Board-authorized methods of instruction program conducted by an entity approved by the Board;

(b) Have been certified at the level for which they are applying for a minimum of two (2) years and shall provide documentation of a minimum of two (2) years experience with:

1. An ambulance service;

2. A medical first response agency such as a fire department or rescue squad;

3. A hospital emergency department as a caregiver; an industrial emergency response team or service in an industrial first aid station; or

4. Another environment determined by the Executive Director to have met this requirement;

(c) If teaching a first responder or EMT course, applicants shall

provide documentation that they have assisted with a basic training course at the level for which they are making application during which they have made a minimum of five (5) lecture and five (5) skill presentations under the supervision of a certified instructor. The certified instructor of the basic training course shall have served as a course coordinator or lead instructor for at least three (3) separate basic training courses and shall not have been subject to disciplinary action or reprimand by the Board within the previous thirty-six (36) months;

(d) Provide evidence of completion of a Board-sponsored curriculum orientation program for the appropriate level of certification;

(e) Submit a completed "Application for EMS Instructor Initial Certification";

(f) Not be an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense;

(g) Not have been disciplined or ever subject to discipline pursuant to KRS Chapter 311A that would prevent current certification, or have an action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States; and

(h) Pay any fees required by 202 KAR 7:030.

(3) The expiration date of an EMS instructor shall be the same as those of other certificates or licenses issued by the Board.

(4) EMS instructors shall be certified as:

(a) Level I, which qualifies the individual to teach first responder courses or continuing education;

(b) Level II, which certifies the individual to teach EMT and first responder courses or continuing education; or

(c) Level III, which certifies the individual to teach paramedic courses or continuing education.

(5) No individual shall be certified as an EMS instructor at a level greater than the level at which they are certified or licensed.

Section 15. ~~Renewal of EMS Instructor Certification.~~ (1) A person certified by the Board as an EMS instructor shall be eligible to renew the EMS instructor certification if the person:

(a) Maintains state certification or licensure as a provider, which as a minimum is at the level at which they are certified to instruct;

(b) Presents written evidence of completion of current HIV/AIDS training and education required by KRS 311A.110;

(c) During the preceding two (2) years, obtains a minimum of fifty-two (52) contact hours, providing documented evidence of completion of each hour, in the following categories:

1. A minimum of four (4) contact hours on topics related to methods of instruction (MOI);

2. Conducts a minimum of twenty-four (24) hours, or one (1) hour per each full month of certification if a certificate has been in effect for less than twenty-four (24) months, of instruction on at least three (3) different topics that are within the training and education requirements and the scope of practice for a level at which they are authorized to instruct; and

3. Presents evidence of participatory involvement in a minimum of twenty-four (24) hours, or one (1) hour per each full month of certification if a certificate has been in effect for less than twenty-four (24) months, of patient care experience with an ambulance service or other organization having an EMS mission, fire department, rescue squad, mining or other industrial health setting providing emergency medical services to their employees or members of the general public in any of the following roles of participation:

a. Actual patient emergency responses;

b. Agency quality assurance activities related to EMS; or

c. Enrolled as a participant or instructor for continuing education or agency-specific in-service training and education sponsored by the agency. Any hours obtained by participation as the instructor of this in-service training and education shall be in addition to the twenty-four (24) hours of instruction referenced in this administrative regulation; or

(d) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense;

(e) Has not been disciplined pursuant to KRS Chapter 311A that would prevent renewal certification, or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States;

(f) Pays any fee required by 202 KAR 7:030; and

(g) Submits to the Board a completed application for EMS instructor recertification that shall:

1. Be signed by the EMS instructor; and

2. Include a statement in which the EMS instructor certifies the truth of the information supplied.

(2) An application for renewal of certification as an EMS instructor shall not be considered if:

(a) The application is postmarked to the Board after the certification expiration date of the applicant; or

(b) Prior to the certification expiration date, the EMS instructor applicant has not met the recertification requirements of this administrative regulation.

(3) Upon expiration of certification as an EMS instructor, the person may not perform any authorized function restricted by KRS or KAR to a Kentucky EMS instructor.

Section 16. ~~Transition for Currently-certified Instructors.~~ Instructors certified on the effective date of this administrative regulation shall be transitioned as follows:

(1) First responder instructors shall be certified as Level I EMS instructors;

(2) EMT instructors shall be certified as Level I and Level II EMS instructors; and

(3) Licensed paramedics, RNs or EMS medical directors who can provide documentation no later than December 31, 2004, from a Kentucky approved EMS-TEI of having served as a paramedic course coordinator or as an instructor for a Kentucky-approved paramedic program, during the period between January 1, 1999, and December 31, 2004 during which they can document instruction in a minimum of fifty (50) classroom hours in a minimum of five (5) different subject areas which shall include instruction in pharmacology, cardiac emergencies, and traumatic injuries shall be certified as Level III EMS instructors.

Section 17. ~~EMS Instructor Reciprocity.~~ A person certified in another state as an EMS instructor shall be eligible for Kentucky certification as an EMS instructor after the person meets the requirements established in this administrative regulation.

Section 18. ~~EMS Evaluator.~~ (1) An applicant for endorsement as an EMS evaluator shall:

(a) Be certified as a Level I, Level II or Level III EMS instructor; or

(b) Hold current unrestricted licensure in Kentucky as:

1. A registered nurse who has specific expertise for the discipline in which they are serving as an evaluator; or

2. A physician who has specific expertise for the discipline in which they are serving as an evaluator;

(c) Have completed a Board-approved evaluator training program;

(d) Have a minimum of two (2) years patient care experience prior to serving as an evaluator;

(e) Submit a completed "Application for EMS Evaluator";

(f) Not be an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and

(g) Not have been disciplined or subject to discipline pursuant to KRS Chapter 311A that would prevent endorsement, or have an action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.

(2) The endorsement of an EMS evaluator shall be commensurate with the expiration date of a certificate or license issued by the Board, the KBN or KBML.

(3) EMS evaluators shall be certified as:

(a) Level I, which qualifies the individual to evaluate first re-

spender courses;

(b) Level II, which certifies the individual to evaluate EMT and first responder courses; or

(c) Level III, which certifies the individual to evaluate paramedic, EMT, or first responder courses.

(4) An individual shall not be given an endorsement as an EMS evaluator at a level greater than the level at which the individual is certified or licensed.

Section 19. ~~Renewal of EMS Evaluator Endorsement.~~ (1) A person who holds an endorsement as an EMS evaluator shall be eligible to renew the EMS evaluator endorsement if the person:

(a) ~~Maintains state certification or licensure as a provider, which as a minimum is at the level at which they are certified to instruct. This includes certification or licensure by the Board, licensure as a RN by the KBN, or licensure as a physician by the KBME;~~

(b) ~~Attends Board-required update training;~~

(c) ~~Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense;~~

(d) ~~Has not been disciplined pursuant to KRS Chapter 311A that would prevent a renewal endorsement, or does not have an action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States; and~~

(e) ~~Submits to the Board a completed Application for Renewal of EMS Evaluator Endorsement that shall:~~

1. ~~Be signed by the EMS evaluator; and~~

2. ~~Include a statement in which the EMS evaluator certifies the truth of the information supplied.~~

(2) ~~An Application for Renewal of Endorsement as an EMS evaluator shall not be considered if:~~

(a) ~~The application is postmarked to the Board after the endorsement expiration date of the applicant; or~~

(b) ~~Prior to the endorsement expiration date, the EMS evaluator applicant has not met the recertification requirements of this administrative regulation.~~

(3) ~~Upon expiration of endorsement as an EMS evaluator, the person shall not function as a Kentucky EMS evaluator.~~

Section 20. ~~Instructor and Evaluator Oversight.~~ The Board may direct and assign the KBEMS office or other qualified individuals to conduct scheduled or unscheduled visits to an EMS instructor's classroom or to an EMS evaluator's testing site to verify compliance with the instructional or evaluation quality and performance outlined in the administrative regulation. KBEMS office staff conducting any visit shall be certified or licensed at or above the level of the training or education program being visited.

Section 21. ~~EMS-TA.~~ (1) An entity approved by the Board or an authorized EMS-TEI may conduct skills and practical examinations for certification or licensure.

(2) ~~An applicant shall file a completed application for certification as an EMS-TA.~~

(3) ~~A previously certified EMS-TA whose certification has been revoked may be eligible for certification as an EMS-TA after one (1) year from the date of revocation.~~

(4) ~~Each certified EMS-TA shall have a chief administrative officer who shall:~~

(a) ~~Be responsible for the planning, administration and oversight of the EMS-TA;~~

(b) ~~Assure the quality and credentials of students accepted into examination conducted by the EMS-TA;~~

(c) ~~Coordinate scheduling of examination dates and the need for appropriate proctors or representatives with the KBEMS office;~~

(d) ~~Assure the security of examination results and materials; and~~

(e) ~~Maintain records and documents and submit reports required by the Board.~~

(5) ~~A person shall not function as an examiner or proctor for certification or licensure examination if the person:~~

(a) ~~Served as the chief administrative officer, program coordi-~~

~~nator or lead instructor, or course instructor for more than ten (10) percent of the total scheduled hours of instruction for an educational program for which candidates are being tested as described in this administrative regulation;~~

(b) ~~Served as a clinical or field preceptor for the individual being tested;~~

(c) ~~Supervises or is supervised by the candidate;~~

(d) ~~Is a family member of the candidate; or~~

(e) ~~Has a conflict of interest that may potentially bias the examiner or examination representative of the practical skills portion of the certification examination toward or against the candidate.~~

(6) ~~The EMS-TA shall:~~

(a) ~~Prior to January 1, 2005, be responsible for securing examiners for the practical skill portion of the certification examination who shall:~~

1. ~~Have current certification or licensure from the Board to perform the skills at or above the level of training and education at which the candidate being tested or is a physician or RN that has specific expertise for the discipline in which they are serving as an evaluator;~~

2. ~~Have completed a Board-approved evaluator orientation program prior to serving as an evaluator;~~

3. ~~Meet other requirements of the NREMT; and~~

4. ~~Have a minimum of two (2) years patient care experience prior to serving as an examiner.~~

(b) ~~After January 1, 2005, be responsible for securing examiners for the practical skill portion of the certification examination who shall be certified pursuant to Section 18 of this administrative regulation;~~

(c) ~~Notify the KBEMS office at least forty-five (45) days prior to conducting a practical exam; and~~

(d) ~~Verify the eligibility of a candidate applying to initially test or retest for the practical skills portion of the certification examination. Eligibility for testing or retesting shall follow the guidelines of the National Registry of Emergency Medical Technicians.~~

(7) ~~A representative designated by the Board may attend practical test sites.~~

(8) ~~The KBEMS office shall schedule and conduct all written examinations and may conduct practical examinations at any level certified or licensed by the Board. The Board shall be exempt from maintaining certification as an EMS-TEI or EMS-TA in order to conduct written or practical testing.~~

(9) ~~The Board may require retesting of any candidate participating in an examination process if the examination site or examiners utilized are found to be noncompliant with administrative regulations.~~

Section 22. ~~EMS-TA Certification Periods.~~ (1) An EMS-TA certification shall be valid for a period of five (5) years, unless modified by a disciplinary action.

(2) ~~An EMS-TA may surrender certification prior to the end of a certification period by written notification, which shall include providing the intended effective date of such surrender.~~

Section 23. ~~Disciplinary Action Against an EMS-TA.~~ The Board may take disciplinary action against an EMS-TA, if:

(1) ~~An inspection or investigation by the KBEMS office determines the EMS-TA has not met the requirements of any section of this administrative regulation;~~

(2) ~~An EMS-TA is on probationary status and fails to meet requirements established by the Board;~~

(3) ~~An agent of EMS-TA reproduces or reconstructs, or attempts to reproduce or reconstruct, any portion of an examination for the purpose of assisting another to cheat on the examination;~~

(4) ~~An agent of EMS-TA disseminates information for purposes of reproduction or reconstruction of any portion of an examination in order to assist another to cheat on the examination;~~

(5) ~~An agent of EMS-TA cheats, or assists another to cheat, on an examination;~~

(6) ~~The EMS-TA or agent falsifies a record or document;~~

(7) ~~The EMS-TA or agent fails to pay a fee or issues a check for any fee required by administrative regulation on an invalid account or an account that does not have sufficient funds;~~

(8) ~~The EMS-TA or agent fails to file reports required by this~~

administrative regulation; or

(9) The EMS-TA or agent fails to meet the requirements of the "EMS-TA Affidavit".

Section 24. Incorporated by Reference. (1) The following documents are incorporated by reference:

- (a) The "EMS-TEI Affidavit" (June 2003);
- (b) The "EMS-TEI Annual Summary Report" (June 2003);
- (c) The "Application of End Tidal CO₂ Monitoring" (June 2003);
- (d) The "Use of an Automated Blood Glucose" (June 2003);
- (e) The "Application of Pulse Oximetry" (June 2003);
- (f) The "Application of Electrocardiogram Electrodes and Monitor" (June 2003);
- (g) The "Application of EMS Instructor Initial Certification" (June 2003);
- (h) The "Application for EMS Evaluator" (June 2003); and
- (i) The "Student Eligibility Form" (June 2003).

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2545 Lawrenceburg Road, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (30 Ky.R. 167; Am. 935; 1233; 1495; eff. 11-19-2003.)]

This is to certify that the Acting Executive Director for the Kentucky Board of Emergency Medical Services has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

LEWIS PREWITT, Acting Executive

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: June 15, 2012 at noon

CONTACT PERSON: Pamela Duncan, Legal Counsel, Kentucky Board of Emergency Medical Services, KCTCS, 300 North Main Street, Versailles, Kentucky 40383, phone (859) 256-3217, fax (859) 256-3127.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Pamela Duncan

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:601 sets the standards for Emergency Medical Services Personnel training and education. The regulation provides the requirements for certified Education and Training Institutions, Educators, and Evaluators. Additionally, it provides the curricula requirements for the programs and courses for each of the certification and licensure levels for EMS providers in Kentucky.

(b) The necessity of this administrative regulation: The regulation provides requirements for instruction and training of EMS personnel, thereby assuring quality education and quality provision of EMS in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with the authoritative statute because KRS 311A grants the Board jurisdiction over EMS in Kentucky, specifically the task of promulgating regulations that set the requirements for certification, licensure, training and education of all EMS providers and their instructors in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Without this regulation, KRS 311A's mandate to set standards for training and education of EMS personnel in Kentucky would have no specifics nor any ability to properly place parameters on what is necessary to train and educate EMS providers in the state.

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

(a) How the amendment will change this existing administrative regulation: The current amendment is revision made necessary due to the long lapse in intervening revisions. Because this regulation has not been amended in years, the standards of care in EMS have changed and the training requirements have not kept pace. This amendment essentially updates all the training requirements to reflect the best practices of today.

(b) The necessity of the amendment to this administrative

regulation: Without this amendment, the current regulation will reflect woefully out-of-date training standards.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute – KRS 311A – grants power to KBEMS to set the standards for education, certification, licensure, and training of all EMS providers in Kentucky. This regulation outlines all educational standards and requirements for EMS providers and their instructors.

(d) How the amendment will assist in the effective administration of the statutes: 202 KAR 7:601 provides the foundation for educating EMS providers and helping them move into certification and licensure status in order to provide Kentucky's residents and citizens quality EMS care.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

- a. All EMS Personnel in Kentucky
- b. All EMS Ambulance Providers in Kentucky
- c. Any EMS Training Institutions in Kentucky, including public and private colleges, universities, medical institutions, and other types of training providers
- d. County and City Governments who fund EMS within their governmental boundaries
- e. All residents and citizens who receive EMS 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: EMS Personnel, EMS Ambulance Providers, and EMS Training Institutions will all be required to ensure that they comply with the educational and training requirements in order to continue to provide the services for which they are certified or licensed.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities – personnel, services, and training institutions – shall all meet applicable educational standards or requirements to continue providing EMS in Kentucky.

(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 compliance should be essentially equal for personnel and services. For training institutions, because accreditation is now necessary for paramedic programs, an initial outlay to prepare for and receive accreditation will be necessary. However, the benefit to the training institute and to the students will far outweigh the initial cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Personnel will receive better quality training. Services will be able to hire better prepared personnel with a higher level, more current skill set. Counties and Cities will benefit by having better run EMS and therefore a reduction in potential liability (for those cities and counties that run their own services rather than rely on private ones). For the residents and citizens of Kentucky, this regulation will help improve the quality of care they receive in the pre-hospital setting.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: KBEMS will incur no additional costs in implementing this amendment. In fact, the cost of certifying EMS Educational and Training Institutions may actually decrease because the ones that are currently approved and not performing well will potentially drop out of being EMS-TEIs due to the increased standards necessary to continue to be in the business of training EMS professionals.

(a) Initially: The above paragraph is accurate for initial and continuing costs.

(b) On a continuing basis: The above paragraph is accurate for initial and continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBEMS is a state agency that receives its annual budget from the state government.

(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 funds will be necessary except that a reciprocity fee will need to be developed for instructors. Until this amendment, instructors, unlike other EMS personnel, have had no opportunity to seek reciprocity. However, for now, the language of the regulation would permit treating this as an "initial certification" for an instructor and to use the fee already associated with that certification.

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

(9) TIERING: Is tiering applied? Tiering was not used as all individuals involved shall meet mandatory requirements to safely provide emergency medical care to hurt or injured individuals. The curricula, the educational requirements, and the training standards cannot safely be changed based upon the impact it would have on different groups affected by the regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation may relate to County or City run Ambulance Services but only if those Ambulance Services also maintain and run Emergency Medical Services Training and Educational Institutions. Only a few county/city run EMS are in this situation. Any city or county run EMS Service that also runs an EMS-TEI will be affected. They will need to comply with the updated standards to ensure they may also train for certification and licensure purposes. These regulations will not affect their ability to provide continuing education for their personnel whether they run an EMS-TEI or they don't.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.020, 311A.030, 311A.110, 311A.115, 311A.120, 311A.125, 311A.1304. No federal statutes necessitate this amendment.

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. For the few county/city run EMS-TEIs in Kentucky who run paramedic programs, the cost will not increase since their programs are tuition based.

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

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

(c). How much will it cost to administer this program for the first year? In the first year, the amendment will not cost any revenues above and beyond what is currently being expended to ensure the regulatory requirements are being met.

(d). How much will it cost to administer this program for subsequent years? In subsequent years, the amendment will not cost any revenues above and beyond what is currently being expended to ensure the regulatory requirements are being met.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Kentucky Department of Fish and Wildlife Resources (Amended After Comments)

301 KAR 2:300. Black bears.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 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 to establish open seasons for the taking of wildlife, to regulate bag limits, to regulate any method of taking, and to make such requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or its administrative regulations. This administrative regulation establishes bear hunting and chasing seasons, bear hunting areas, legal methods of taking, and permitting, checking, and recording requirements.[150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. KRS 150.390(1) restricts the possession, taking, or pursuit of bears in any manner contrary to the provisions of KRS Chapter 150 or its administrative regulations.]

Section 1. Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(6) "Bear" means the species *Ursus americanus*.~~[americanus;]~~

(7) "Bear chase area" means a designated area within the Bear Zone where hunters may use dogs to chase bears.

(8) "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.

(9) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to take one (1) black bear of either sex.

(10) "Bear zone" means the following Kentucky counties: Bell, (8) "Bear zone" means the following Kentucky counties:] Harlan, Letcher, and Pike.

(11) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.

(12)[(9)] "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(13)[(40)] "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(14)[(44)] "Fully-automatic firearm" means a firearm which fires more than one (1) time with a single pull from the trigger.

(15) "Junior bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to chase a bear.

(16)[(45)][(42)] "License year" means the period from March 1 through the following last day of February.

(17)[(46)][(43)] "Modern gun" means a rifle, handgun, or shotgun which is loaded from the rear of the barrel.

(18)[(47)][(44)] "Muzzle-loading gun" means a rifle, shotgun, or handgun which is loaded from the discharging end of the barrel or discharging end of the receiver.

(19)[(48)][(45)] "Shotshell" means ammunition discharged from a shotgun.

(20)[(49)][(46)] "Youth" means a person under the age of sixteen (16) by the day of the hunt.

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Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.~~[and Pursuing Black Bears. A person shall not:~~

- ~~(1) Engage in any direct or indirect feeding of black bears; or~~
- ~~(2) Pursue or chase black bears with dogs.]~~

Section 3. Bear Chase Requirements. (1) A person shall:

(a) Only use dogs to chase bears during:

- 1. A bear chase season; or
- 2. The bear quota hunt with dogs season.

(b) First obtain the appropriate[a] bear chase permit from the department before chasing bears;

(2) A bear chase permit or junior bear chase permit may only be purchased by a resident of Kentucky.

(3) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid bear chase permit while using dogs to chase bears.

(4) Bear chase permits may be purchased on the department's Web site at fw.ky.gov from:

(a) The effective date of this regulation through August 31 in 2012; and

(b) July 1 through August 31 in subsequent years.

(5) A person shall not:

(a) Kill or intentionally injure a bear during a chase-only season;

(b) Chase a bear except during daylight hours when a chase season is open;

(c) Chase a bear from a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed; or[and]

(d) Disturb a bear in a den.

(6) Individual hunt groups shall include no more than five (5) people and eight (8) dogs.

(7) Any dog transported in a motorized vehicle by members of a hunt group shall be considered a member of that hunt group.

(8) The department shall supply a bear chase survey to each person purchasing a bear chase permit.

(9) A person who purchases a bear chase permit shall submit to the department a completed bear chase survey by the last day of January following each bear season.

(10) A person who fails to submit a bear chase survey shall be ineligible to purchase a bear chase permit for the following year's chase seasons.

(11) A person shall only use a dog to chase a bear in the following designated areas:

(a) Eastern chase area;

(b) Central chase area; and

(c) Western chase area.

Section 4. Chase-Only Season Dates. (1) A person shall not use a dog to chase a bear except during the following seasons:

(a) The early chase-only season shall be from:

1. The effective date of this regulation through August 31 in 2012; and

2. August 1 through August 31 for all subsequent years;

(b) The late chase-only season shall be from the Monday following the bear quota hunt with dogs season established in Section 8 of this administrative regulation for five (5) consecutive days.

(2) The bear quota hunt season pursuant to Section 8 of this administrative regulation shall be open as a chase-only season if the annual bear harvest quota specified in Section 9(1) of this administrative regulation is met during the regular bear hunt season.

Section 5. Bear Permit Requirements.~~[Section 3. License and Bear Permit Requirements.] (1)[A bear permit may] Only[be purchased by] a resident of Kentucky shall be allowed to purchase a bear permit.[; and]~~

(2) Unless exempted by KRS 150.170, a person hunting a bear shall possess proof of purchase of[have] a valid Kentucky hunting license and valid bear permit while hunting.

Section 6.[4.] Hunter Restrictions. (1) A person shall not:

(a) Harvest a bear except during daylight hours;

(b) Use dogs during the regular bear hunting season.[dogs;]

except leashed tracking dogs may be used to recover wounded bears;

(c) Hunt bear on a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed;

(d) Harvest:

1. A female bear that has a cub; or

2. A bear that weighs less than seventy-five (75) pounds;

(e) Harvest a bear that is swimming; and

(f) Harvest a bear if the person is in a vehicle, boat, or on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den; or

(h) Disturb a bear in a den for the purpose of taking the bear when it exits the dens.

(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

(3) A person shall use dogs to chase bears with the intent to harvest only during the quota hunt with dogs season.

Section 7.[Section 5.] Weapon Restrictions. (1) A person shall not use the following to take a bear:

(a) A device capable of taking a bear other than a firearm, crossbow, or archery equipment;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than twenty gauge;

(e) Rimfire ammunition;

(f) A fully automatic weapon;

(g) A firearm with a magazine capacity greater than ten (10) rounds;

(h) Steel-jacketed ammunition;

(i) Tracer bullet ammunition;

(j) A shotshell containing more than one (1) projectile;

(k) A broadhead smaller than seven-eighths (7/8) inch wide;

(l) A barbed broadhead;

(m) A crossbow without a working safety device;

(n) A chemically treated arrow; or [and]

(o) An arrow with a chemical attachment.

(2) A person shall not take a bear with a handgun that:

(a) Does not have a barrel length of at least six (6) inches;

(b) Does not have a bore diameter of at least 0.270 inches;

or[and]

(c) Does not fire a bullet that produces at least 550 ft/lbs of energy at 100 yards.

Section 8. Bear Season Dates and Bag Limits. (1) A legal bear hunter shall only kill a bear during the following seasons:

(a) The regular bear season shall be for three (3) consecutive days beginning on the second Saturday in December; and

(b) The quota hunt with dogs season shall be for five (5) consecutive days beginning on the Monday following the regular bear season.

(2) A person shall only hunt bears in the bear zone during the regular bear season.

(3) A person shall only use dogs to hunt bears in the bear chase areas during the quota hunt with dogs season.

(4) A person shall not take more than one (1) bear in a license year.

(5) A hunt party drawn for the quota hunt with dogs season shall not take more than one (1) bear in a license year.

Section 9. Bear Season Closure. (1) Any open hunting season for bears shall close after daylight hours on the day when the following annual quota has been reached:

(a) Ten (10) bears; or

(b) Five (5) female bears.

(2) A bear hunter shall call 800-858-1549 after 9 p.m. each day of any open bear season to determine if the annual quota has been reached.

Section 10. Quota Hunt with Dogs Requirements. (1) A person shall apply for the quota hunt on the department's Web site at

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fw.ky.gov from September 1 through September 30.

(2) An applicant shall possess a bear chase permit before applying.

(3) A person shall not:

(a) Apply more than one (1) time;

(b) Apply as a party of more than five (5) people; or [and]

(c) Be eligible to participate unless drawn by the department in the bear quota hunt lottery.

(4) If the annual bear quota specified in Section 9(1) of this administrative regulation is not met during the regular bear season, the following shall apply:

(a) A person or party drawn for the quota hunt shall be allowed to use dogs to hunt for bears;

(b) A bear shall only be harvested with the use of unleashed dogs;

(c) A person or each member of a hunt party selected for the quota hunt shall possess a bear permit in order to kill a bear.

(d) The season shall close after daylight hours on the day when the annual quota has been reached pursuant to Section 9(1) of this administrative regulation.

Section 11.[6:] Hunter Orange Clothing Requirements. (1) During any modern gun or muzzle-loading season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

(a) Waterfowl; or

(b) Furbearers at night during a legal furbearer season.

(2) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.[Section 7. Bear Zone Season Dates and Bag Limits. (1) A person shall only harvest a bear in the Bear Zone.

(2) The bear season shall be for two (2) consecutive days beginning on the second Saturday in December.

(3) A person shall not take more than one (1) bear in a license year.

Section 8. Bear Quota and Season Closure. (1) The bear season shall close after daylight hours on the day when the following quota has been reached:

(a) Ten (10) bears; or

(b) Five (5) female bears.

(2) A bear hunter shall call 800-858-1549 after 9 p.m. each day of the legal bear season to determine if the annual quota has been reached.]

Section 12[9:] Bear Sanctuaries. (1) The following areas within the Bear Zone shall be closed to bear hunting:

(a) Cumberland Gap National Historical Park;

(b) Hensley-Pine Mountain Wildlife Management Area; and

(c)[(b)] The area surrounding Hensley-Pine Mountain Wildlife Management Area: starting at the intersection of Sand Hill Bottom Road and North US Hwy 119 in Cumberland, the boundary proceeds northeast along North US Hwy 119 to the intersection of US Hwy 119 and Kentucky Hwy 2035. The boundary then proceeds west along Kentucky Hwy 2035 to the intersection of Kentucky Hwy 2035 and Kentucky Hwy 931. The boundary continues southwest along Kentucky Hwy 931 to the intersection of Kentucky Hwy 931 and Kentucky Hwy 160, then proceeds southwest along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Kentucky Hwy 463 in Gordon. The boundary then proceeds south and east along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Sand Hill Bottom Road in Cumberland, then south along Sand Hill Bottom Road to the intersection with North US Hwy 119, completing the boundary.

(2) Kentucky resident landowners, their spouses, and dependent children may hunt bears on their own property within the closed area referenced in subsection (1)(c)[subsection (1)(b)] of this section.

Section 13.[10:] Harvest Recording and Check-in Requirements. (1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

(a) Species taken;

(b) Date taken;

(c) County where taken; and

(d) Sex of the bear.

(2) A person who has harvested a bear during the regular bear season shall:

(a) Retain a completed hunter's log;[and possess a completed hunter's log when the person is in the field during the season;]

(b) Check[Register] a harvested bear at a department-operated check station immediately after leaving the field;

(c) Telecheck the bear before leaving the check station by:

1. Calling 800-245-4263 and completing the telecheck process; and

2. Recording the confirmation number on the hunter's log; and

(d) Attach to the carcass a department issued tag prior to leaving the check station.

(3) A person who has harvested a bear during the bear quota hunt with dogs season shall:

(a) Retain a completed hunter's log;

(b) Telecheck the bear before upon leaving the field by:

1. Calling 800-245-4263 and completing the telecheck process; and

2. Recording the confirmation number on the hunter's log;

(c) Arrange for department personnel to inspect the bear by:

1. Calling the department at 800-858-1549 or 800-252-5378 within twenty-four (24) hours of harvest; and

2. Presenting to department personnel the bear carcass or an

intact hide that contains the skull and proof of sex; and

(d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "East and Central Bear Chase Areas" map, 2012 edition; and

(b) "West Bear Chase Area" map, 2012 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern time.

BENJY KINMAN, Deputy Commissioner

for DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 12, 2012 at 4 p.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, 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 regulation establishes black bear chase and hunt seasons, chase and hunt requirements, bag limits, and legal methods of take.

(b) The necessity of this administrative regulation: To establish bear hunting season requirements and methods of take to provide reasonable hunting and chasing opportunity, while properly managing bear populations in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of Chapter 150 or its regulations.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining the seasons, bag limits, and methods of chase and take used to manage black bears in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will lengthen the gun/archery/crossbow season for bears from two (2) to three (3) days, and add Bell County to the bear zone when bears may be hunted. This amendment also establishes a chase-only season when dogs may be used to pursue bears without the intent to harvest; included is an early season throughout the month of August, and a late 5 day chase-only season in December. Lastly, this amendment establishes a 5-day quota hunt in which hunters may use dogs to harvest a bear in late December. Collectively, the annual quota for bears remains unchanged at ten (10) bears or five (5) female bears, whichever is reached first.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to improve hunter opportunity by lengthening the gun/archery/crossbow season for bears and increasing the area of the zone when bears may be hunted. Likewise, this amendment is necessary to provide a framework for a chase-only season for bears and a conservative take season when dogs may be used.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All hunters that pursue black bears will be affected by this regulatory amendment. In 2011, there were 551 licensed bear hunters in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who hunt bear must comply with the individual requirements and restrictions for respective hunt or chase-only seasons for bears, as listed in the fall hunting guide published by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for a bear chase permit is thirty dollars (\$30.00) and the cost for a youth bear chase permit is ten dollars (\$10.00) pursuant to 301 KAR 3:022. The application fee for the bear quota hunt is three (3) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Harvest success for bear hunters should improve by adding one (1) day to the season and including Bell County in the bear zone. Additionally, houndsmen will now have the opportunity to participate in a chase-only season for bears, and a 5-day chase season in which bears may be harvested.

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

(a) Initially: There will be a small administrative cost to the department to implement this regulation.

(b) On a continuing basis: There will be a small cost to the department on a continuing basis.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a three dollar (\$3) application

fee for the bear quota hunt with dogs.

(9) TIERING: Is tiering applied? No. Tiering was not used because all persons who hunt bear are required to abide by the same seasons, methods of take, bag limits, harvest recording procedures, and checking requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 and 150.390.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue generated by this administrative regulation for the first year is unknown.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue generated by this administrative regulation for subsequent years is unknown.

(c) How much will it cost to administer this program for the first year? There will be a small administrative cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small administrative cost incurred in subsequent years.

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

Revenues (+/-): None; see 4(a) and (b) above.

Expenditures (+/-): None; see 4(c) and (d) above.

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Kentucky Department of Fish and Wildlife Resources (Amended After Comments)

301 KAR 3:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, 150.175, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.620, 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year. (1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): twenty (20)

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dollars;

(b) Statewide annual fishing license (nonresident): fifty (50) dollars;

(c) Joint statewide fishing license (resident): thirty-six (36) dollars; and

(d) Trout permit (resident or nonresident): ten (10) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$150; and

(b) Commercial fishing license (nonresident) plus ten (10) non-resident commercial gear tags: \$600.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: \$100.

(4) Hunting licenses:

(a) Statewide hunting license (resident): twenty (20) dollars;

(b) Statewide hunting license (nonresident): \$130;

(c) Statewide junior hunting license (resident or nonresident): five (5) dollars;

(d) Shooting preserve hunting license (resident or nonresident): five (5) dollars;

(e) Statewide waterfowl permit (resident or nonresident): fifteen (15) dollars; and

(f) Migratory game bird permit (resident or nonresident): ten (10) dollars.

(5) Combination hunting and fishing license (resident): thirty (30) dollars.

(6) Senior/disabled combination hunting and fishing license (resident): five (5) dollars.

(7) Trapping licenses:

(a) Trapping license (resident): twenty (20) dollars;

(b) Trapping license (resident landowner/tenant): ten (10) dollars;

(c) Trapping license (nonresident): \$130; and

(d) Junior trapping license (resident): five (5) dollars.

(8) Game permits:

(a) Resident ~~Game permit, resident~~ bear: thirty (30) dollars;

(b) Resident bear chase: thirty (30) dollars;

(c) Resident junior bear chase: ten (10) dollars;

(d) Resident quota elk hunt permit: thirty (30) dollars;

(e) ~~Nonresident~~ quota elk hunt permit: \$365;

(f) ~~Resident~~ out-of-zone elk hunt permit: thirty (30) dollars;

(g) ~~Nonresident~~ out-of-zone elk hunt permit: \$365;

(h) ~~Game permit, resident~~ deer: thirty (30) dollars;

(i) ~~Game permit, nonresident~~ deer: sixty (60) dollars;

(j) ~~Junior game permit, deer~~ (resident or nonresident): ten (10) dollars;

(k) ~~Bonus antlerless deer permit~~ (two (2) tags per permit) (resident or nonresident): fifteen (15) dollars;

(l) ~~Bonus quota hunt deer permit~~ (resident or nonresident): thirty (30) dollars;

(m) ~~Game permit, resident~~ spring turkey: thirty (30) dollars;

(n) ~~Game permit, nonresident~~ spring turkey: sixty (60) dollars;

(o) ~~Game permit, resident~~ fall turkey: thirty (30) dollars;

(p) ~~Game permit, nonresident~~ fall turkey: sixty (60) dollars;

and

(q) ~~Junior game permit, turkey~~ (resident or nonresident): ten (10) dollars.

(9) Peabody individual permit: fifteen (15) dollars.

(10) Commercial mussel licenses:

(a) Musseling license (resident): \$400;

(b) Musseling license (nonresident): \$1,600;

(c) Mussel buyer's license (resident): \$600; and

(d) Mussel buyer's license (nonresident): \$1,600.

(11) Sportsman's licenses (resident) (includes resident hunting and fishing combination, spring turkey permit, fall turkey permit, trout permit, state waterfowl permit and game permit for deer): ninety-five (95) dollars.

(12) Junior sportsman's license (resident or nonresident) (includes junior hunting license, junior deer permit, junior turkey permit, trout permit and waterfowl permit): twenty-five (25) dollars.

(13) Land Between the Lakes hunting permit: twenty (20) dollars.

(14) Conservation permit: five (5) dollars.

Section 2. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued. (1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): fifty (50) dollars; and

(b) Live fish and bait dealer's license (nonresident): \$150.

(2) Commercial taxidermist license: \$150.

(3) Commercial guide licenses:

(a) Commercial guide license (resident): \$150; and

(b) Commercial guide license (nonresident): \$400.

(4) Shooting preserve permit: \$150.

(5) Dog training area permit: fifty (50) dollars.

(6) Collecting permits:

(a) Educational wildlife collecting permit: twenty-five (25) dollars; and

(b) Scientific wildlife collecting permit: \$100.

(7) Nuisance wildlife control operators (NWCO) permit: \$100;

(8) Pay lake license:

(a) First two (2) acres or less: \$150; and

(b) Per additional acre or part of acre: twenty (20) dollars.

(9) Commercial captive wildlife permit: \$150.

(10) Commercial fish propagation permit: fifty (50) dollars.

(11) Wildlife rehabilitator's permit: twenty-five (25) dollars.

(12) Annual wildlife transportation permit: \$250; and

(13) Peabody Wildlife Management Area annual event permit: \$250; and

(14) Fish transportation permit: twenty-five (25) dollars.

Section 3. Licenses, tags and permits listed in this section shall be valid for three (3) years from the date of issue. (1) Falconry permit: seventy-five (75) dollars.

(2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each. (1) Short-term licenses:

(a) One (1) day resident fishing license: seven (7) dollars;

(b) One (1) day nonresident fishing license: ten (10) dollars;

(c) Seven (7) day nonresident fishing license: thirty (30) dollars;

(d) Fifteen (15) day nonresident fishing license: forty (40) dollars.

(e) One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars.

(f) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): ten (10) dollars.

(g) Five (5) day nonresident hunting license (not valid for deer, elk, or turkey hunting): forty (40) dollars;

(h) Three (3) day fur bearer's license: fifty (50) dollars; and

(2) Individual wildlife transportation permit: twenty-five (25) dollars.

(3) Special resident commercial fishing permit: \$600.

(4) Special non-resident commercial fishing permit: \$900.

(5) Commercial waterfowl shooting area permit: \$150.

(6) Shoot to retrieve field trial permits:

(a) Per trial (maximum four (4) days): seventy-five (75) dollars; and

(b) Single day: twenty-five (25) dollars.

(7) Boat dock permit: \$100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.

(8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010 and shall contain three (3) tiers:

(a) Tier I: \$100;

(b) Tier II: \$200;

(c) Tier III: \$300; and

(d) The fees shall be pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year permit period.

(9) Peabody individual event permit: twenty-five (25) dollars.

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- (10) Commercial Roe-bearing Fish Buyer's permit:
 - (a) Commercial Roe-bearing Fish Buyer's permit (resident): \$500; and
 - (b) Commercial Roe-bearing Fish Buyer's permit (nonresident): \$1,000.
- (11) Commercial Roe-bearing Fish Harvester's permit:
 - (a) Commercial Roe-bearing Fish Harvester's permit (resident): \$500; and
 - (b) Commercial Roe-bearing Fish Harvester's permit (nonresident): \$1,500.
- (12) Otter Creek Outdoor Recreation Area:
 - (a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and
 - (b) Daily Special Activities Permit: seven (7) dollars.
- (13) Commercial foxhound training enclosure permit: \$150.

Section 5. Licenses, tags, and permits listed in this section shall be valid on a per unit basis as specified. (1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

- (2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.
- (3) Horse stall rental (per space, per day): two (2) dollars.
- (4) Dog kennel rental (per dog, per day): fifty (50) cents.
- (5) Pond stocking fee (per stocking):
 - (a) Ponds less than 1.5 surface acres: seventy-five (75) dollars;
 - (b) Ponds from 1.5 to 2.9 surface acres: \$200; and
 - (c) Ponds equal to or greater than 3.0 surface acres: \$200 plus \$150 for each additional surface acre of water over 3.0 acres proportioned on a 0.25 acre basis.
- (6) Commercial captive cervid permit (per facility, per year): \$150.
- (7) Noncommercial captive cervid permit (per facility; per three years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:

- (1) Fur processor's license (resident): \$150.
- (2) Fur buyer's license (resident): fifty (50) dollars.
- (3) Fur buyer's license (nonresident): \$300.

Section 7. The following Otter Creek Outdoor Recreation Act permits shall be valid from July 1 through June 30 of the following year:

- (1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and
- (2) Annual Special Activities Permit: seventy (70) dollars.

BENJY T. KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHEA SPARROW, Secretary

APPROVED BY AGENCY: June 12, 2012
FILED WITH LRC: June 12, 2012 at 4 p.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, 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 the fees, terms, and expiration dates for licenses, tags, and permits sold by the Department of Fish and Wildlife Resources.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary for the Department of Fish and Wildlife Resources to establish reasonable license fees, permit terms, and the expiration dates of licenses and permits.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.175 establishes the kinds of licenses, permits, and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing

the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires the Department to prescribe reasonable fees for licenses, permits, and registrations authorized by Chapter 150.

- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the requirements and purposes of the statutes identified in (1)(c) by establishing reasonable fees for licenses, permits, and tags issued by the Department.

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

- (a) How the amendment will change this existing administrative regulation: This amendment establishes a Bear Chase Permit for thirty (30) dollars, a Youth Bear Chase Permit for ten (10) dollars, and includes a clean-up item that re-establishes the commercial foxhound training enclosure permit that was issued in previous years.

- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish Bear Chase Permits in accordance with currently proposed amendments to 301 KAR 2:300 "Black bears" that establish a dog chase season for bears, and to re-establish the commercial foxhound training permit pursuant to 301 KAR 2:041.

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

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

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All hunters that pursue black bears will be affected by this regulatory amendment. In 2011, there were 551 licensed bear hunters in Kentucky.

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

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A person who pursues black bears with dogs during the chase season in designated chase areas will be required to purchase a Bear Chase Permit. A person under the age of sixteen (16) may purchase a Youth Bear Chase Permit.

- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for a Bear Chase Permit shall be thirty dollars (\$30.00) and the cost for a Youth Bear Chase Permit shall be ten dollars (\$10.00). An owner of a commercial foxhound training enclosure will be required to pay a \$150 permit fee, which is equivalent to the cost of a commercial captive wildlife permit.

- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters will now have the opportunity to participate in newly established chase-only seasons for bears using dogs. The proposed chase-only seasons include an early chase season from August 1 – 31 and a late chase season lasting for five (5) days during the third week in December.

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

- (a) Initially: There will be no additional cost to the department to implement this administrative regulation.

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

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

- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The newly established fees associated with Bear Chase Permits will be necessary to cover the costs of implementing an annual mandatory post-season survey for all persons that participate in this new season.

- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes new fees for persons that

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participate in dog chase seasons for bear and re-establishes the commercial foxhound training enclosure permit fee.

(9) TIERING: Is tiering applied? No. Tiering was not applied because all persons who hunt bear and operate commercial foxhound training enclosures are required to abide by the requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Rose Mack

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.175 establishes the kinds of licenses, permits, and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires the Department to prescribe reasonable fees for licenses, permits, and registrations authorized by Chapter 150.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is unknown how much revenue will be generated in the first year, but it is unlikely that it will be over \$5,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is unknown how much revenue will be generated in subsequent years.

(c) How much will it cost to administer this program for the first year? Administrative costs for the first year should not exceed revenue estimated in 4(a).

(d) How much will it cost to administer this program for subsequent years? Administrative costs in subsequent years will not likely exceed revenue.

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

Revenues (+/-): None; see 4 (a) and (b) above

Expenditures (+/-): None; see 4 (c) and (d) above.

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amended After Comments)

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", ~~June~~^{April} ~~2012~~²⁰¹²~~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~~^{48th} 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

DAVID KAREM, Chairperson

APPROVED BY AGENCY: June 14, 2012

FILED WITH LRC: June 14, 2012 at 2 p.m.

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 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 (Individualized Education Programs (IEPs), 504 Plans, and Program Services Plans for English learners), for students enrolled in particular programs (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 (to remove the use of the reader accommodation on reading tests; to provide a waiver to allow a reader for students with special circumstances; to remove the use of a calculator on the non-calculator portion of the state assessments; to redefine prompting and cueing to a cue to remain on task; to add a 3 x 5 notecard under manipulatives; for English learners, to 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 (e.g., 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 federal 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 the 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 costs 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 in the assessment and accountability system.

(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 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 amendment to the 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 schools and 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? Public schools and 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 federal 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 the amendment to 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 amendment to this administrative regulation will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment to this administrative 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

(Amended After Comments)

703 KAR 5:225. School and district accountability, recognition, support, and consequences.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 20 U.S.C. 7861

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 federal No Child Left Behind Act of 2001 pursuant to 20 U.S.C. 7861.

Section 1. Definitions. (1) "Annual measurable objective (AMO)" means the improvement goal for each school and district calculated from the Overall Score [~~student participation rate for the all students group and each subgroup, and graduation rate goal~~].

(2) "Comprehensive District Improvement Plan (CDIP)" means a plan developed by the local school district with the input of parents, faculty, staff, and representatives of school councils from each school in the district, based on a review of relevant data that includes targets, strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

(3) "Comprehensive School Improvement Plan (CSIP)" means a plan developed by the school council or 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 to eliminate achievement gaps among groups of students.

(4) "Districts of Distinction" mean Highest-Performing districts that:

(a) Meet their current year AMO, student participation rate and graduation rate goal;

(b) Have a graduation rate above sixty (60) percent;

(c) Do not have a school categorized as a Focus School or Priority School; and

(d) Score at the ninety-fifth (95th) percentile or higher on the Overall Score.

(5) "Focus Districts" mean districts that have a non-duplicated student gap group score in the bottom ten (10) percent of non-duplicated student gap group scores for all districts[and that have failed to meet the AMO for the last two (2) consecutive years].

(6) "Focus Schools" mean schools that have a non-duplicated student gap group score in the bottom of non-duplicated student gap groups scores for all elementary, middle, and high schools [that have failed to meet the AMO for the last two (2) consecutive years]; schools with an individual student subgroup[performance group] within assessment grades by level with a score in the third (3rd) standard deviation below the state average for all students; or high schools that have a graduation rate that has been less than sixty (60) percent for two (2) consecutive years.

(7) "Graduation rate goal" means the annual graduation rate goal set by the Department for each high school and district that measures progression toward the statewide goal of ninety-eight (98) percent by 2022 and is computed by dividing, by eleven (11), the difference between the 2011 baseline percent and ninety-eight (98) percent.

(8) "High-Progress Districts" mean districts that:

(a) Meet their current year AMO, student participation rate and graduation rate goal;

(b) Have a graduation rate above sixty (60) percent; and

(c) Have an improvement score indicating the districts are in the top ten (10) percent of improvement of all districts as determined by the difference in the two (2) most recent calculations of the Overall Score.

(9) "High-Progress Schools" means:

(a)[mean] Title I schools that:

1. Meet their current year AMO, student participation rate and graduation rate goal;

2. Have a graduation rate above sixty (60) percent; and

3. Have an improvement score indicating the schools are in the top ten (10) percent of improvement of all Title I elementary, middle, or high schools as determined by the difference in the two (2) most recent calculations of the Overall Score; and

(b) Non-Title I schools that:

1. Meet their current year AMO, student participation rate and graduation rate goal;

2. Have a graduation rate above sixty (60) percent; and

3. Have an improvement score indicating the schools are in the top ten (10) percent of improvement of all non-Title I elementary, middle, or high schools as determined by the difference in the two (2) most recent calculations of the Overall Score.

(10) "Highest-Performing Districts" mean districts that:

(a) Meet their current year AMO starting in 2012-2013; student participation rate and graduation rate goal;

(b) Have a graduation rate above sixty (60) percent; and

(c) Score at the ninetieth (90th) percentile or higher on the Overall Score except that districts shall not qualify as highest-performing if any schools in the district are categorized as Focus Schools or Priority Schools.

(11) "Highest-Performing Schools" mean elementary, middle, or high school levels that:

(a) Meet their current year AMO starting in 2012-2013; student participation rate and graduation rate goal;

(b) Have a graduation rate above sixty (60) percent; and

(c) Score at the ninetieth (90th) percentile or higher on the Overall Score.

(12) "Mean" means the sum of the values divided by the number of values.

(13) "Next-Generation Instructional Programs and Supports" is defined by 703 KAR 5:200.

(14) "Next-Generation Learners" is defined by 703 KAR

(15) "Next-Generation Professionals" is defined by 703 KAR

5:200.

(16) "Next-Generation Schools and Districts" is defined by 703 KAR 5:200.

(17) "Non-duplicated student gap group score" means an aggregate, non-duplicated count of achievement scores of student groups that include African/American, Hispanic, American Indian, Limited English proficiency, students in poverty based on qualification for free and reduced price lunch, and students with disabilities who have an Individualized Education Program (IEP).

(18) "Overall Score" means the score resulting from a compilation of accountability components listed in Section 2 of this administrative regulation that determines placement of a school or district in a classification for recognition, support, or consequences.

(19) "Participation rate" means the percent of all students and the student subgroups in the school or district that participate in annual statewide assessments[and the percent of all groups of students in the school or district that participate in annual statewide assessments], with a goal of ninety-five (95) percent [or higher for the total population and for all groups of students].

(20) "Percentile" means the value of a variable below which a certain percent of numbers fall.

(21) "Priority Districts" mean districts that have an Overall Score in the bottom five (5) percent of Overall Scores for all districts that have failed to meet the AMO for the last three (3) consecutive years.

(22) "Priority Schools" mean schools that have been identified as a "Persistently low-achieving" (PLA) school as defined by KRS 160.346.

(23) "Progressing" means a designation attached to a school or district's classification as proficient, distinguished, or needs improvement to indicate that the school has met its AMO student participation rate for the all students group and each subgroup, and graduation rate goal.

(24) "School level" means the standard configuration of grade levels that form elementary, middle, and high schools as defined in 703 KAR 5:240.

(25) "Schools of Distinction" mean Highest-Performing elementary, middle, or high schools that:

(a) Meet their current year AMO starting in 2012-2013; student participation rate and graduation rate goal;

(b) Have a graduation rate above sixty (60) percent; and

(c) Score at the ninety-fifth (95th) percentile or higher on the Overall Score.

(26) "Standard deviation" means a measure of the dispersion of a set of data from its average.

(27) "Student subgroup" means student groups that include African-American, American Indian, Asian, White, Hispanic, English language learners, students in poverty on qualification for free and reduced price lunch, or students with disabilities who have an Individualized Education Program (IEP).

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. The Overall Score shall be a compilation of the following accountability components:

(a) Next-Generation Learners, as established in 703 KAR 5:200;

(b) Next-Generation Instructional Programs and Support, as established in 703 KAR 5:230; and

(c) 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) The timeline and weighting of each component as a percentage of the Overall Score shall occur as follows:

Year	Component	Percentage of Overall Score
2011-2012	Next-Generation Learners	100 percent

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2012-2013	Next-Generation Learners	Seventy-seven (77) percent
	Next-Generation Instructional Programs and Support	Twenty-three (23) percent
2014-2015	Next-Generation Learners	Seventy (70) percent
	Next-Generation Instruction Programs and Support	Twenty (20) percent
	Next-Generation Professionals	Ten (10) percent

(2) If data cannot be calculated for any component, the weights shall be distributed equally to components that shall be reported for the school or district.

Section 4. Classifications, Annual Measurable Objectives, and Goals. (1) School levels and districts shall be classified based on the Overall Score in the following manner:

(a) 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;

(b) The Overall Score associated with specific percentiles shall classify school levels and districts as follows:

Percentile based on Overall Score	School and District Classification
At or above ninety (90)	Distinguished
At or above seventy (70)	Proficient
Below seventy (70)	Needs Improvement

(c) The Overall Score used to classify a school or district as Distinguished, Proficient, or Needs Improvement shall be recalculated as the components of the accountability system listed in Section 3 of this administrative regulation are added. When all components have been added, the Overall Score used to classify a school or district as Distinguished, Proficient, or Needs Improvement shall remain constant for a period of five (5) years before the process shall be repeated. Upon inclusion of all three (3) components to the Overall Score, the mean, standard deviation, and the AMO shall remain constant for a period of five (5) years before the process shall be repeated. Prior to the inclusion of all three (3) components, the mean, standard deviation, and the AMO shall be calculated when a new component is added.]

(2) The mean and standard deviation shall be recalculated and the AMO for each school and district shall be reset as the components of the Overall Score are added. When all three (3) components of the Overall Score have been included, the AMO for each school and district shall be set for a five (5) year period before the mean and standard deviation are recalculated.

(3) School levels and districts shall receive an AMO. The method for determining the AMO shall be as follows:

(a) Using the Overall Score, a mean and standard deviation shall be computed for the elementary, middle, and high school levels; and

(b) The mean and standard deviation shall be recalculated as the components of the accountability system are added and shall follow the timeline described in Section 3 of this administrative regulation.

(4) [(3)] The AMO goal for school levels and districts classified as Needs Improvement shall be to increase the Overall Score by seven-tenths (.07) of a standard deviation annually, and the AMO goal for school levels and districts classified as Proficient or Distinguished shall be to increase the Overall Score by .035 of a standard deviation annually.

(5) [(4)] Each school level or district classified as Distinguished, Proficient, or Needs Improvement that meets its AMO goal, student participation rate, and graduation rate goal shall be further classified as Progressing.

(6) [(5)] For school levels with a changed school service area as defined in 703 KAR 5:240, the AMO shall be recalculated based on current students. A school or district may submit a plan to recalculate the AMO as follows:

(a) A school or a district may request that individual students be tracked across schools or that the district AMO be used for the

school;

(b) The Department shall approve the plan and shall assure accurate calculations and the inclusion of all students;

(c) Upon approval, the plan shall be implemented and remain in effect until an additional change in school service area occurs;

(d) The granting of a request for a different method to recalculate an AMO shall include a requirement that each affected school and district waive in writing its right to make the request the basis of a subsequent appeal of a school's classification; and

(e) The intent to submit a plan to recalculate the AMO shall be received by the Department by June 30 of the year prior to which the AMO recalculation shall occur.

(7) [(6)] Focus Schools identified using the non-duplicated student gap group score method shall be determined in the following manner:

(a) The non-duplicated student gap group shall be ranked for all schools in the state.

(b) The schools in the lowest ten (10) percent of the non-duplicated student gap group scores by level shall be called Focus Schools.

(c) Additional Title I schools shall be added to the list as needed to ensure that the list includes at least ten (10) percent of the title I schools. number of Focus Schools shall be ten (10) percent of the total number of schools by level;

(b) The total number of Focus Schools shall be comprised of Title I schools and non-Title I schools, and shall include at least ten (10) percent of all Title I schools;

(c) After determining the Title I schools on the list, the remaining number of slots on the list shall be filled by non-Title I schools until the number of both Title I and non-Title I schools equals the total number of schools specified in paragraph (a) of this subsection; and]

(d) Non-duplicated student gap groups by school shall have at least ten (10) students in order for the calculation to occur.

(8) [(7)] Focus Schools identified using the third (3rd) standard deviation method shall be determined in the following manner:

(a) By level of elementary, middle, and high, the state average of proficient and distinguished students in each subject area of reading, mathematics, science, social studies, and writing shall be computed, and a standard deviation by subject area for all students shall be computed;

(b) Student subgroups shall number at least twenty-five (25) students in order for the calculation to occur; and

(c) An individual student subgroup by level and subject that falls [falling] below the third (3rd) standard deviation cut score shall identify the school [cause the school to be identified] as a Focus School.

Section 5. Recognition. (1) Recognition categories shall include Schools or Districts of Distinction, Highest-Performing Schools or Districts, and High-Progress Schools or Districts. Schools and districts in these categories shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data, identifying the category of recognition and the rewards for which they are eligible.

(2) Each recognized school or district shall be authorized to use a Department-approved web logo and other promotional materials as may be designated by the Department reflecting the category of recognition earned. Subject to availability of funds, financial rewards may be used in conjunction with other recognition activities, and may include 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. Highest-Performing and High-Progress Schools and Districts shall receive special recognition as determined by the Commissioner of Education.

(3) Schools and districts identified for recognition shall continue to meet eligibility criteria in order to retain their designation and receive recognition for that category.

(4) Schools and districts identified as Priority Schools or Districts or Focus Schools or Districts shall not be eligible for recognition as Highest-Performing Schools or Districts or Schools or Districts of Distinction, but may receive recognition as High-Progress Schools or Districts, if they meet the definitions set forth in Section

1 of this administrative regulation and the requirements of this section.

(5) Beginning in 2012-2013, schools and districts shall meet the AMO goal; graduation rate goal, and student participation rate.[goals] and each high school's graduation rate shall be above sixty (60) percent in order to qualify for recognition.

Section 6. Supports and Consequences. (1) Supports and consequences categories shall include Priority Schools and Districts and Focus Schools and Districts.

(2) Priority Schools and Districts shall undergo the education recovery processes outlined by KRS 160.346 and 703 KAR 5:180, in addition to the requirements and consequences outlined in this administrative regulation.

(3) Focus Schools and Districts shall be required to revise their CSIPs or CDIPs consistent with the requirements of this section and Section 9 of this administrative regulation.

(4) A school or district that is identified as a Priority or Focus School or District shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data, identifying its category and the required supports and consequences that shall apply.

(5) A school or district that is identified as a Priority or Focus School or District for the first time shall revise the CSIP or CDIP within ninety (90) days of receiving the notice from the Commissioner of Education. ~~[(6) A school that is identified in one (1) of these categories shall revise and submit its plan for collaboration and approval by the superintendent of the district within ninety (90) days of receiving notice from the Commissioner of Education.]~~

Section 7. Continuing Consequences for Schools and Districts that Remain in Priority and Focus Status for More Than One (1) Year. (1) To exit the Priority status, the school or district shall meet AMO/AYP goals for three (3) consecutive years and shall no longer be identified by the applicable percent calculation of being in the lowest five (5) percent.

(2) To exit the Focus status, the requirements of this subsection shall be met.

(a) Focus Schools in the nonduplicated student gap group category shall:

1. Be above the lowest ten (10) percent category;

2. Show improvement; and

3. Meet AMO for two (2) years in a row.

(b) Focus Schools in the Third Standard Deviation category shall have the individual subgroup that triggered the school's placement in the category to:

1. Rise above the third standard deviation cut score;

2. Show improvement; and

3. Meet AMO for two (2) years in a row.

(c) Focus Schools in the category due to graduation rate shall:

1. Have a graduation rate higher than seventy (70) percent;

and

2. Meet AMO for two (2) years in a row.

(d) Focus Districts in the non-duplicated student gap group category shall be above the lowest ten (10) percent category.

(3) A school or district that is identified as a Priority School or District for two or more consecutive times, or a school or district that remains in the Focus School or District category ~~[and does not meet the AMO]~~ for three (3) consecutive years ~~[compilations of the Overall Score]~~, shall revise the CSIP or CDIP as specified in Section 9 of this administrative regulation ~~[for submission to the Department for approval]~~ within ninety (90) days of receiving notice from the Commissioner of Education. The superintendent and the council shall review, revise and agree upon the CSIP. CSIPs and CDIPs shall be posted to the appropriate school or district Web site. [The CSIP shall be submitted for collaboration with and approval by the superintendent of the district prior to submission to the Department. Upon approval by the Department, the plan shall be posted to the school or district website.]

(4) ~~[(2)]~~ In addition to the requirements of this section, Priority Schools or Districts that are identified for three (3) or more consecutive times, or Focus Schools or Districts that are identified ~~[do not meet the AMO]~~ for four (4) or more consecutive years ~~[compilations of the Overall Score]~~ shall revise the CSIP or CDIP as specified in

Section 9 of this administrative regulation. The superintendent and the council shall review, revise and agree upon the CSIP, which shall then be electronically transmitted to KDE within ninety (90) days of receiving notice from the Commissioner of Education. The CSIP or CDIP shall be posted on the school or district Web site. They shall also engage in the following actions:

(a) Participate in a set of improvement strategies outlined by an accreditation process;

(b) If directed by the Department, receive the assignment of a high-achieving partner school or district of similar demographics for mentor activities as directed by the Department; and

(c) Accept ongoing assistance and resources throughout the year as assigned or approved by the Department.

Section 8. Monitoring. (1) The Department shall review and approve all submissions required by this regulation.

(2) The Department shall monitor implementation of CDIPs and CSIPs and shall provide 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 option of the district or school.

(3) In addition to the activities undertaken by the Department, school districts shall monitor compliance of individual schools within the district.

Section 9. 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) The structure of school and district comprehensive improvement plans shall include:

(a) Executive summary that shall include a vision and a mission;

(b) Needs assessment that shall include:

1. A description of the data reviewed and the process used to develop the needs assessment;

2. A review of the previous plan and its implementation to inform development of the new plan; and

3. Perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions;

(c) Process for development that shall include:

1. Analysis of data to determine causes and contributing factors;

2. Prioritization of needs; and

3. Development of goals, objectives, strategies, and activities based on the needs assessment and root cause analysis, that shall include targets or measures of success, timelines, persons responsible, a budget that includes resources needed and source of funding, and a process for meaningful stakeholder communications and input;

(d) 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 by the school or district.

(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 that shall include purpose and direction, governance and leadership, teaching and assessing for learning, resources and support systems, and 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.

(5) CSIPs shall also include the elements required of schools by KRS 158.649(5).

(6) CSIPs and CDIPs for Priority and Focus Schools and Districts shall also address the following:

(a) Curriculum alignment for schools within the district and within individual school(s), ensuring the instructional program is research-based, is rigorous, is aligned with the Kentucky Core Academic Standards as described in 704 KAR 3:303, and is based on student needs, if a Priority District, Priority School, Focus District, or Focus School;

(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, if a Priority or Focus School;

(c) Activities to target the underperforming areas of achievement, gap, growth, college and career readiness, or graduation rate, if a Priority District, Priority School, Focus District, or Focus School;

(d) Activities to target demonstrators of weakness in program reviews, if a Priority District, Priority School, Focus District, or Focus School;

(e) Activities to target areas of need identified in teacher and leader effectiveness measures, if a Priority District, Priority School, Focus District, or Focus School;

(f) School safety, discipline strategies, and other non-academic factors that impact student achievement, such as students' social, emotional, and health needs, if a Priority or Focus School;

(g) Design of the school day, week, or year to include additional time for student learning and teacher collaboration, if a Priority or Focus School;

(h) Specific strategies to address gaps in achievement and graduation rates between the highest-achieving student performance group and the lowest-achieving student performance group, if a Focus School or District; and

(i) Short-term, monthly plans for the first ninety (90) days of implementation, and the establishment of teacher turnaround teams with intensive year-round training focused on teacher effectiveness and school improvement in the professional development component of its plan, if a Priority School.

(7) 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. Districts containing Priority and Focus Schools shall assist those schools in using these data to inform the needs assessment required by the CSIP.

(8) The Commissioner's Raising Achievement and Closing Gaps Council and the Commissioner's Parents Advisory Council shall provide guidance to Focus Schools and Districts as they conduct their needs assessments and revise their CSIPs and CDIPs.

(9) Priority Schools shall document meaningful family and community involvement in selecting the intervention strategies that shall be included in the revised CSIP.

(10) The CDIPs for districts with Priority and Focus Schools shall include the support to be provided to Priority and Focus Schools by the district. The Priority and Focus Schools' CSIPs shall include the support that will be provided by the district to the schools.

(11) The CDIP for both Priority and Focus Districts shall be posted to the district website and [upon collaboration with and approval by the superintendent of the district,] the CSIPs for both Priority and Focus Schools shall be posted to the appropriate school website. [Section 10. Exit Criteria for Priority and Focus Schools and Districts. (1) In order to exit Priority School or District status, a school or district shall meet the AMO goals for three (3) consecutive years, shall no longer be identified by the applicable percent calculation, and shall score at or above a seventy (70) percent graduation rate for three (3) consecutive years.

(2) In order to exit Focus School or District status, a school or

district shall meet the AMO goal for two (2) consecutive years, shall no longer be identified by the applicable percent calculation, and the subgroup causing the identification shall show improvement. If a school's identification is due to graduation rate, in order to exit, the school shall have a graduation rate higher than seventy (70) percent and meet the AMO goals for two (2) consecutive years.]

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.

DAVID KAREM, Chairperson

APPROVED BY AGENCY: June 14, 2012

FILED WITH LRC: June 14, 2012 at 2 p.m.

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, support, and consequences as required by KRS 158.6455.

(b) The necessity of this administrative regulation: KRS 158.6455 requires the Kentucky Board of Education to promulgate regulations to identify successful schools and establish appropriate consequences for schools failing to meet their accountability measures.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes the elements of the above-referenced systems that the Kentucky Board of Education was statutorily directed to provide.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific standards and procedures to be used to identify schools and districts for recognition, supports, and consequences and outlines the activities schools and districts will 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. Upon identification in a specific accountability classification, lower-performing schools will be required to implement school improvement activities, such as: conducting needs assessments; increasing community and parent involvement; establishing short and long term plan-

ning processes; identifying activities to target identified areas of underperformance; creating teacher assistance teams to provide intensive, year-round training for teachers; and assuring the completion of activities targeted to address needs identified through the planning process.

(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 may have costs associated with activities needed to improve student achievement. Schools and districts that remain low-performing over time may 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 may 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 may 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: Department general funds and local district funds as may 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 new fees are required by this administrative regulation. Additional funding for full implementation of all Senate Bill 1 (2009) requirements has been requested by the Department. The provisions of this administrative regulation may implemented without additional funds at this time.

(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., U.S. Department of Education No Child Left Behind Act of 2001 approved waiver issued pursuant to 20 U.S.C. 7861.

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 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 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 may be needed for implementation are not known at this time.

(d) How much will it cost to administer this program for subsequent years? Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The proposed regulation results in additional staff costs to the 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 may be needed for implementation are not known at this time.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The 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 Department is required to monitor implementation and provide guidance. Undertaking the activities in the new system may require additional expenditures by the Department, schools, and districts that are as yet unknown.

PROPOSED AMENDMENTS

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 2:120. Emergency certification and out-of-field teaching.

RELATES TO: KRS 157.390, 161.020, 161.028, 161.030, 161.100, 161.1211, 161.1221, 334A.030, 334A.033, 334A.035, 334A.050, 334A.060

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(1), 161.100, 161.1221(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.100 authorizes the Education Professional Standards Board to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions. KRS 161.1221(1) requires the Education Professional Standards Board to establish a definition for out-of-field teaching. This administrative regulation establishes the qualifications and procedures for emergency certifications and establishes the definition for out-of-field teaching.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification for the position unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. (1) In order to comply with KRS 161.100 in establishing the need for employing emergency teaching personnel, the superintendent of the local school district and the board of education shall make the following declaration to the Education Professional Standards Board on Form TC-4F:

(a) Qualified teachers have not applied for the vacant position and qualified teachers are not available for the position;

(b) Diligent efforts have been made to recruit a qualified teacher for the vacant position, and furthermore, this vacancy has been made known locally by appropriate means;

(c) The local school district has been unsuccessful in recruiting qualified teachers for the vacant position from the listings of teachers supplied by the placement services of the teacher education institutions;

(d) The position shall be filled by the most suitable applicant available, giving preference to the factors of academic preparation, prior teaching experience or related educational work, and personal attributes compatible with the demands of the teaching profession; and

(e) The local school district has conducted a criminal records check as required by KRS 160.380 for each applicant prior to applying for the emergency certificate.

(2)(a) The Education Professional Standards Board, depending upon the assessment of need for the position and the availability or anticipated availability of qualified teachers, shall approve or disapprove a request for the employment of emergency teachers.

1. The term of validity of an emergency certificate may be limited to a period less than the full school year.

2. The beginning date shall be no earlier than the date the request form is received by the Education Professional Standards Board.

3. In accordance with the licensure requirements of KRS 334A.030, 334A.033, 334A.035, 334A.050, and 334A.060, the Education Professional Standards Board shall not issue an emergency certificate for teaching exceptional children with communication disorders.

(b) Until June 30, 2011, the issuance of an emergency certificate for a full-time assignment for each subsequent year shall require completion of six (6) hours of credit from the preparation program leading to the required certification for the position.

(c) Beginning July 1, 2011, an emergency certificate shall not be issued to the same person in any subsequent year unless the original emergency certificate was issued under the following conditions:

1. The emergency certificate was issued after February 15 of a school year; or

2. The emergency certificate was issued for less than fifty (50) percent of the person's class schedule.

(d) If an emergency certificate is issued to a person pursuant to paragraph (c) of this subsection, there shall be no more than one (1) subsequent issuance of an emergency certificate to the same person.

(3)(a) Emergency certification for an assignment as teacher of exceptional children shall be issued with the condition that the applicant shall receive intensive training on special education topics, including IEP, assessment, evaluation, individualized instruction, methods, and management. This training shall be accomplished as follows:

1. The applicant shall complete twelve (12) clock hours of training as required by the Office of Special Instructional Services of the Kentucky Department of Education;

2.a. The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Division of Exceptional Children Services of the Kentucky Department of Education. Teachers employed after the fall conference shall complete these six (6) clock hours of training during the spring conference of the Council for Exceptional Children; or

b. If the applicant is unable to attend either the fall conference or the spring conference, the applicant shall complete an additional six (6) clock hours of training offered through one (1) of the state's eleven (11) special education cooperatives. The training shall be similar to the topics covered at the conferences; and

3. The applicant shall participate in at least one (1) day of flexible in-service training, relevant specifically to special education. The training shall be limited to visitation in a classroom of an exemplary special education teacher, special education training relevant to the identified needs of the teacher, or other training provided by the Office of Special Instructional Services.

(b) The Kentucky Department of Education shall report to the Education Professional Standards Board those emergency certified teachers of exceptional children who have not completed the training requirements established in this subsection by June 30 of each year for the preceding school year.

(4)[(a)] The superintendent of the local school district and the board of education may establish the need for emergency substitute teachers on the basis of anticipated shortages of regularly certified teachers and in accordance with district policies and procedures established for the selection and employment of substitute teachers. ~~[Emergency certificates for substitute teaching may then be issued by the local school district subject to the priority schedule for the employment of substitute teachers as established by 16 KAR 2:030.(b) Each local school district shall report by June 30 of each year the number of days of substitute teaching performed by each emergency teacher.]~~

(5) The Education Professional Standards Board shall periodically review the numbers of emergency certificates issued for full-time, part-time, and substitute teaching by school district, by position, and by academic preparation.

(6)(a)1. An emergency certificate for full-time or part-time employment shall be issued only to individuals who:

a. Have completed a minimum of a bachelor's degree from a regionally accredited college; and

b.(i) Have a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

(ii) Have a minimum grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework.

2. An emergency certificate for full-time or part-time employment shall not be issued to individuals who have been judged to be unsatisfactory in the beginning teacher internship established in 16 KAR 7:010.

(b)[4-] An emergency certificate for substitute teaching shall be issued to individuals who:

1. [a-] Have completed a minimum of sixty-four (64) semester hours of credit from a regionally accredited institution; and

2.a.[b-(i)] Have a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

b. [(iii)] Have a minimum grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework.~~[2. An emergency certificate for substitute teaching issued for the 1992-93 school year may be re-issued for 1993-94 and for succeeding consecutive years.]~~

(c) An emergency certificate for substitute teaching in any career and technical education or occupation-based position may be issued to persons who have a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of a passing score on the General Education Development Test.

(7)(a) A Form TC-4F signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.

(b) A TC-4Ve signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated career and technical or occupation-based emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts and certification of all educational attainment and work experience earned by the prospective emergency teacher.

(c) Local school districts shall review the qualifications and transcripts for all applicants for~~[issue]~~ emergency certificates for substitute teaching pursuant to the requirements of this administrative regulation and other pertinent Kentucky statutes and administrative regulations regarding school personnel.

1. a. A local school district shall initiate the online application process for~~[require]~~ candidates for an emergency certificate for substitute teaching using the EPSB On-line TC-4 Application System; and~~[to complete a Form TC-4.]~~

b. A candidate for an emergency certificate for substitute teaching shall complete the application process using the EPSB On-line TC-4 Application System.

2. A local school district shall require candidates for an emergency certificate for substitute teaching for career and technical education or occupation-based emergency positions to complete a Form TC-4VE.

3. A local school district shall submit any~~[TC-4 or]~~ TC-4VE application on which the candidate has provided an affirmative answer to any question in the application's Section IV. Character and Fitness, to the Education Professional Standards Board for approval prior to employing the candidate in a substitute teaching position.

Section 3. Rank and Salary Provisions. (1) The Education Professional Standards Board shall issue the emergency certificate for full-time or part-time employment established in Section 2 of this administrative regulation with a rank designation based upon the criteria established in this subsection:

(a) A teacher holding a valid Kentucky teaching certificate shall be issued an emergency certificate for full-time or part-time employment at the rank designated on the teacher's regular certificate.

(b)1. A new teacher holding a valid one (1) year provisional certificate issued upon enrollment in the Kentucky Teacher Internship Program established in 16 KAR 7:010 shall be issued an emergency certificate for part-time employment at the rank designated on the teacher's one (1) year provisional certificate.

2. The teacher shall maintain a half-time enrollment in the internship as defined in 16 KAR 7:010 to remain eligible for the higher rank established in this paragraph.

3. If the teacher terminates or otherwise fails to continue enrollment in the internship prior to its successful completion, the teacher shall be reclassified at Rank IV until the teacher is properly reenrolled in the internship program.

(c) A new teacher holding a valid Kentucky Statement of Eligibility shall be issued an emergency certificate for full-time or part-time employment at Rank IV until the teacher:

1. Is properly enrolled in the Kentucky Teacher Internship Program on at least a half-time basis as established in 16 KAR 7:010; and

2. Possesses the one (1) year provisional certificate referenced in paragraph (b)1 of this subsection.

(d) An applicant for the emergency certificate for full-time or part-time employment who does not hold a valid Kentucky teaching certificate shall be issued the emergency certificate at Rank IV.

(2) Local school districts issuing the emergency certificate for substitute teaching established in Section 2 of this administrative regulation shall adhere to the Rank classifications established in KRS 161.1211.

Section 4. Out-of-field Teaching. (1) Pursuant to KRS 161.1221(1), out-of-field teaching shall be classified in the following four (4) categories:

(a) The number of emergency certificates issued by grade range, subject field, and district;

(b) The number of probationary certificates issued by grade range, subject field, and district;

(c) The number of temporary provisional certificates issued by grade range, subject field, and district; and

(d) The number of teachers who do not possess a certificate of legal qualifications for the professional position they hold in the public schools, including a breakout of:

1. The number of teachers who hold no certificate;

2. The number of teachers who hold an expired certificate;

3. The number of certified teachers who are teaching outside of the subject field or fields indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection; and

4. The number of certified teachers who are teaching outside the grade range indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection.

(2) If data is available, reports on out-of-field teaching in the four categories established in subsection (1) of this section shall differentiate between teachers who possess the equivalent of a college major, minor or area of concentration in the subject area they are teaching.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a)~~[Form TC-4, 10/2009;~~(b)] Form TC-4F, revised 10/2009;~~and~~

~~(b)[(e)]~~ Form TC-4VE, 10/2009; and

(c) On-line TC-4 Implementation Guide for Kentucky School Districts, May 2012.

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

CATHY GUNN, Chairperson

APPROVED BY AGENCY: May 22, 2012

FILED WITH LRC: June 5, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on July 31, 2012 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the emergency certification procedures for public school teaching positions and the definition of out-of-field teaching.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to certification candidates and school districts of the requirements for obtaining an emergency teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.100 authorizes the Education Professional Standards Board to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions. KRS 161.1221(1) requires the Education Professional Standards Board to establish a definition for out-of-field teaching.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the requirements for obtaining an emergency teaching certificate in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires all applicants for emergency substitute teaching certificates to apply for certification through the Education Professional Standards Board.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that emergency substitute teaching certificate holders are reviewed for character and fitness issues by the Education Professional Standards Board. In addition, the Education Professional Standards Board will be able to maintain records of all individuals who are serving as substitutes for certified school positions.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the new procedures for obtaining an emergency substitute teaching certificate.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will establish an efficient and timely system for certifying emergency substitute teachers for school districts while also ensuring the applicants for emergency substitute certification meet the ethical and educational requirements established by the Education Professional Standards Board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts and candidates for teacher certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will need to be trained on using the new online application system. Applicants will need to establish an electronic mail address and an account with the Education Professional Standards Board.

(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 any of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): School districts will benefit from having a substitute staff that is vetted not only by their own personnel departments, but also by the Education Professional Standards Board.

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

body to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for certification will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts and the Education Professional Standards Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.100 and KRS 161.1221(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 be none.

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

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

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

(d) How much will it cost to administer this program for subsequent years? There should be no cost to administer this program in the future.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a revenue costing regulation, but merely establishes the certification requirements for teacher candidates to obtain certification.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)**

105 KAR 1:400. Federal taxation limitation year.

RELATES TO: KRS 61.645(9)(g)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.510 to 61.705, 16.510 to 16.652, and 78.510 to 78.852. This administrative regulation concerns the administration of testing contribution and benefit limits in accordance with 26 U.S.C. Section

415.

Section 1. Definitions. (1) "Fiscal year" is defined by KRS 16.505(32), 61.510(19), and 78.510(19).

(2) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(3) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

Section 2. The "fiscal year" shall be the limitation year as set out in 26 U.S.C. Section 415 for determining contribution and benefit limits in the plans administered by the Kentucky Retirement Systems.

Section 3. This administrative regulation shall apply to all plans administered by Kentucky Retirement Systems. Subject to the provisions of this administrative regulation, benefits paid from, and employee contributions made to, these plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under 26 U.S.C. 415.

Section 4. Participation in Other Qualified Plans: Aggregation of Limits. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in 26 U.S.C. 414(j) maintained by the member's employer in a KRS plan shall apply as if the total benefits payable under all those defined benefit plans in which the member has been a member were payable from one (1) plan.

Section 5. The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in 26 U.S.C. 414(i) maintained by the member's employer in a KRS plan shall apply as if the total annual additions under all those defined contribution plans in which the member has been a member were payable from one (1) plan.

Section 6. Basic 415(b) Limitation. Before January 1, 1995, a member shall not receive an annual benefit that exceeds the limits specified in 26 U.S.C. 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in 26 U.S.C. 415(b) and subject to any additional limits that are specified in this section. A member's annual benefit payable in any limitation year from a KRS plan shall not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to 26 U.S.C. 415(d) and the Treasury Regulations under that section.

Section 7. Definition of Annual Benefit. For purposes of 26 U.S.C. 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

Section 8. Adjustments to Basic 415(b) Limitation for Form of Benefit. (1) If the benefit under a KRS plan is other than the form specified in Section 6 of this administrative regulation, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(2) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence shall be applied by either reducing the section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii) that takes into account the additional benefits under the form of benefit as follows:

(a) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) does not apply a monthly benefit, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit

applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity (if any) payable to the member under the KRS plan commencing at the same annuity starting date as the form of benefit to the member; or

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five (5) percent interest assumption (or the applicable statutory interest assumption), and;

a. On or before December 31, 2008, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62);

b. On or after January 1, 2009, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B), (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 26 U.S.C. 417(e)(3)(B)); or

(b) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) applies a lump sum benefit, the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions:

1. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the KRS plan for actuarial experience;

2. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption), and;

a. On or before December 31, 2008, the applicable mortality tables [table] for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62);

b. On or after January 1, 2009, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B), (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 26 U.S.C. 417(e)(3)(B)); or

3. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the thirty (30) year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate [the] in effect for the first day of the plan year with a one (1) year stabilization period)); and;

a. On or before December 31, 2008, the applicable mortality tables [rate] for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality [mortality] table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05;[-]

b. On or after January 1, 2009, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B), (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 26 U.S.C. 417(e)(3)(B)) divided by 1.05.

Section 9. Benefits Not Taken into Account for 415(b) Limit. (1) For purposes of this administrative regulation, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity and that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under 26 U.S.C. 415(b)(2) and Treasury Regulations thereunder to be taken into account for purposes of the limitation of 26 U.S.C. 415(b)(1).

Section 10. Other Adjustments in 415(b) Limitation. (1) If the

member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of 26 U.S.C. 415(b), so that the limit (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to a \$160,000 (as adjusted) annual benefit beginning at age sixty-two (62).

(2) If the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for subsection (1) of this section shall not apply.

(3) The reductions provided for in subsection (1) of this section shall not be applicable to preretirement disability benefits or preretirement death benefits.

Section 11. Less than Ten (10) Years of Participation~~[Service Adjustment for 415(b) Limitations]~~. The maximum retirement benefits payable to any member who has completed less than ten (10) years of participation~~[service]~~ shall be the amount determined under Section 6 of this administrative regulation as adjusted under Sections 8 or 10 of this administrative regulation~~[(2)]~~ multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this section shall not reduce the maximum benefit below ten (10) percent of the limit determined without regard to this section. The reduction provided by this section shall not be applicable to preretirement disability benefits or preretirement death benefits.

Section 12. \$10,000 Limit Less than Ten (10) Years of Service. Notwithstanding anything in this administrative regulation to the contrary, the retirement benefit payable with respect to a member shall be deemed not to exceed the [415(b)]limit set forth in this section if the benefits payable, with respect to the member under a KRS plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed \$10,000 for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated. If the member has completed less than ten (10) years of service with the employer, the limit under this section shall be a reduced limit equal to \$10,000 multiplied by a fraction, the numerator of which is the number of years of service the member has and the denominator of which is ten (10).

Section 13. Effect of COLA without a Lump Sum Component on 415(b) Testing. Effective on and after January 1, 2003, for purposes of applying the 415(b) limit to a member with no lump sum benefit, the following will apply:

(1) A member's applicable 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments;

(2) To the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases from the funds created by KRS 16.510, 61.515, 78.520, until the time that the benefit plus the accumulated increases are less than the 415(b) limit; and

(3) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit under 26 U.S.C. 415(d), and the Treasury Regulations thereunder. Nothing in this section shall prevent the member receiving benefits from the funds created by KRS 16.568, 61.663, and 78.652.

Section 14. Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit shall be applied taking into consideration cost of living increases as required by 26 U.S.C. 415(b) and applicable Treasury Regulations.

Section 15. 415(c) Limit. After-tax member contributions or other annual additions with respect to a member shall not exceed

the lesser of \$40,000 (as adjusted pursuant to 26 U.S.C. 415(d)) or 100 percent of the member's compensation. (1) Annual additions shall mean the sum (for any year) of employer contributions to a defined contribution plan, post-tax member contributions, and forfeitures credited to a member's individual account. Member contributions shall be determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying the 415(c) limits only and for no other purpose, the definition of compensation if applicable shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; except that member contributions picked up under 26 U.S.C. 414(h) shall not be treated as compensation.

(3) Unless another definition of compensation that is permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation, is specified by a KRS plan, compensation shall be defined as wages within the meaning of 26 U.S.C. 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under 26 U.S.C. 6041(d), 6051(a)(3), and 6052 and shall be determined without regard to any rules under 26 U.S.C. 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).

(a) However, for limitation years beginning on and after January 1, 1998, compensation shall also include amounts that would otherwise be included in compensation but for an election under 26 U.S.C. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of 26 U.S.C. 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of two and one-half (2 1/2) months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is:

a. Regular compensation for services during the employee's regular working hours;

b. Compensation for services outside the employee's regular working hours, such as overtime or shift differential; or

c. Commissions, bonuses, or other similar payments; and

2. Absent a severance from employment, the ~~payments would have been paid to the~~ employee would have been able to use the payments (including unused accrued bona fide sick, vacation or other leave) if employment had continued.

(c) Any payments not described in paragraph (b) of this subsection are not considered compensation if paid after severance from employment, even if they are paid within two and one half (2 1/2) months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of 26 U.S.C. 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service. An employee who is in qualified military service (within the meaning of 26 U.S.C. 414(u)(1)) shall be treated as receiving compensation from the employer during such period of qualified military service equal to:

(i) The compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or

(ii) If the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

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(d)[(e)] Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

Section 16. Service Purchases Under Section 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under a KRS plan, then the requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit;

(2) For purposes of applying this section, a KRS plan shall not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation under 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3)(a) For purposes of this section the term "permissive service credit" shall mean service credit:

1. Recognized by a KRS plan for purposes of calculating a member's benefit under a KRS plan;

2. Which the member has not received under a KRS plan; and

3. Which the member may receive only by making a voluntary additional contribution, in an amount determined under a KRS plan, which does not exceed the amount necessary to fund the benefit attributable to the service credit;

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (a)2 of this subsection of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under a KRS plan.

(4) The KRS plan shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this section; or

(b) Any nonqualified service credit is taken into account under this section before the member has at least five (5) years of participation under a KRS plan.

(5) For purposes of subsection (4) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" shall mean permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3));

(b) Service as an employee (other than as an employee described paragraph (a) of this subsection of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or

(d) Military service (other than qualified military service under 26 U.S.C. 414(u)) recognized by the KRS plan.

(6) In the case of service described in subsection (5)(a), (b), or (c) of this section, the service will be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between

plans maintained by the same employer):

(a) The limitations of subsection (4) shall of this section will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable under federal law to a KRS plan shall apply to these amounts and any benefits attributable to these amounts.

(8) For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a KRS plan as in effect on August 5, 1997. For purposes of this subsection an eligible member shall be an individual who first became a member in a KRS plan before January 1, 1998.

Section 17. Modification of Contributions for 415(c) and 415(n) Purposes. The department may modify a request by a member to make a contribution to a KRS plan if the amount of the contribution would exceed the limits provided in Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, Kentucky Retirement Systems may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to subsection (1) of this section will not avoid a contribution in excess of the limits imposed by 26 U.S.C. 415(c) or 415(n), Kentucky Retirement Systems may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section 18. Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the KRS plan with respect to an amount previously refunded upon a forfeiture of service credit under the KRS plan or another governmental plan maintained by the State or a local government within the state shall not be taken into account for purposes of the 415(b) or (c) limits.

THOMAS ELLIOTT, CHAIR

APPROVED BY AGENCY: May 17, 2012

FILED WITH LRC: May 30, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2012 at 9:00 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clearly identifies a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax law.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly identify a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal

tax law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by clearly identifying a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax 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 establishes the applicable morality tables to be used, the limitations regarding members with less than ten years of participation, and compliance with the HEART Act, Pub.L. 110-245 regarding rights of reemployed veterans.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with federal law.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes the applicable morality tables to be used, the limitations regarding members with less than ten years of participation, and compliance with the HEART Act, Pub.L. 110-245 regarding rights of reemployed veterans.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes because it establishes the applicable morality tables to be used, the limitations regarding members with less than ten years of participation, and compliance with the HEART Act, Pub.L. 110-245 regarding rights of reemployed veterans for compliance with federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None.

(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: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A.

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

(a) Initially: \$0.00

(b) On a continuing basis: \$0.00

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the amendment is applied the same to every plan.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

cities, counties, fire departments, or school districts)? Yes.

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Worker, Retiree, and Employer Recovery Act, Pub.L. 110-458, which made a corrective amendment to the Pension Protection Act, P. L. 109-280, 26 U.S.C. 415, and HEART Act, Pub. L. 110-245.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Worker, Retiree, and Employer Recovery Act, Pub.L. 110-458, which made a corrective amendment to the Pension Protection Act, Pub.L. 109-280, and 26 U.S.C. 415.

2. State compliance standards. KRS 61.645(9)(g) requires Kentucky Retirement Systems to comply with federal statutes and administrative regulations.

3. Minimum or uniform standards contained in the federal mandate. the applicable morality tables to be used, the limitations regarding members with less than ten years of participation, and compliance with the HEART Act, Pub.L. 110-245 regarding rights of reemployed veterans.

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.

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

105 KAR 1:420. 401(h) account established under 26 U.S.C. 401(h).

RELATES TO: KRS 61.701, 61.702, 61.645(9)(g)

STATUTORY AUTHORITY: KRS 61.702, 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. Pursuant to the provisions of KRS 61.702(b)(5), as amended by HB 1 of the 2008 Special Session and of KRS 61.645, this administrative regulation establishes, effective September 1, 2008, a separate 401(h) account under 26 U.S.C. 401(h) within each of the following: the Kentucky Employees Retirement System Trust Fund, the State Police Retirement System Trust Fund, and the County Employees Re-

tirement Trust Fund.

Section 1. Definitions. (1) "Dependent" is defined by the Internal Revenue Code, 26 U.S.C. 152, excluding subsections (b)(1), (b)(2), and (d)(1)(B).

(2) "Medical expense" means expense for medical care as defined by 26 U.S.C. Section 213(e)(1) of the Internal Revenue Code.

(3) "Retired", for purposes of eligibility to receive the medical benefits described in 26 U.S.C. 401(h), means:

(a) An employee is eligible to receive benefits under the Kentucky Retirement Systems;

(b) The employee is not still employed by the employer; and

(c) A separation from employment has occurred.

(4) "Systems" means the retirement systems administered by Kentucky Retirement Systems.

Section 2. The purpose of the 401(h) account established under 26 U.S.C. 401(h) in each of the systems shall be to pay part of the subsidy for health benefits that are otherwise payable from the health insurance fund. The 401(h) account shall be used only to the extent that funds are not available from the health insurance fund.

Section 3. The one (1) percent mandatory contribution established by KRS 61.702(2)(b) shall be deposited in the separate account of each system trust fund, respectively. These contributions are reasonable to pay medical expenses.

Section 4. The health benefits shall be subordinate to the retirement benefits provided by the systems. (No life insurance protection is provided by any system.) This requirement shall not be satisfied unless the actual contributions to the 401(h) accounts established under 26 U.S.C. 401(h) do not exceed twenty-five (25) percent of the total actual contributions to the systems (other than contributions to fund past service credits), determined on an aggregate basis since the inception of the 401(h) accounts established under 26 U.S.C. 401(h).

Section 5. Amounts in the 401(h) accounts established under 26 U.S.C. 401(h) shall be for the exclusive purpose of paying medical expenses for retirees, their spouses, and dependents. Amounts in the 401(h) accounts established under 26 U.S.C. shall not be diverted for other purposes.

Section 6. Any amounts in the 401(h) accounts established under 26 U.S.C. 401(h) shall revert to the employers upon satisfaction of all liabilities for medical benefits.

Section 7. Employees shall not have an individual interest in the 401(h) accounts established under 26 U.S.C. 401(h).

Section 8. The 401(h) accounts established under 26 U.S.C. 401(h) may be commingled with the pension assets of the trust funds for investment purposes. Investment earnings shall be credited to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

Section 9. Administrative and other expenses shall be charged to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

THOMAS ELLIOTT, Chair

APPROVED BY AGENCY: May 17, 2012

FILED WITH LRC: May 30, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2012 at 9:00 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be

given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation established a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the 1% mandatory employee contribution to be made by members of all of the systems administered by Kentucky Retirement Systems who are hired after September 1, 2008.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the 1% mandatory employee contribution to be made by members of all of the systems administered by Kentucky Retirement Systems who are hired after September 1, 2008.

(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 a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the 1% mandatory employee contribution to be made by members of all of the systems administered by Kentucky Retirement Systems who are hired after September 1, 2008.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the 1% mandatory employee contribution to be made by members of all of the systems administered by Kentucky Retirement Systems who are hired after September 1, 2008.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the priority of payments for health benefits to be made first from the Kentucky Retirement Systems Health Insurance Trust then from the 401(h) accounts and that the contributions are reasonable to pay medical expenses.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the priority of payments for health benefits to be made first from the Kentucky Retirement Systems Health Insurance Trust then from the 401(h) accounts and that the contributions are reasonable to pay medical expenses.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes because it establishes the priority of payments for health benefits to be made first from the Kentucky Retirement Systems Health Insurance Trust then from the 401(h) accounts that the contributions are reasonable to pay medical expenses.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing the priority of payments for health benefits to be made first from the Kentucky Retirement Systems Health Insurance Trust then from the 401(h) accounts that the contributions are reasonable to pay medical expenses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None.

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

including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No entities are affected. N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

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

(a) Initially: \$0.00

(b) On a continuing basis: \$0.00

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because all accounts are the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 26 U.S.C. Section 401(h); C.F.R. 1.401-14(c)(1) and (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.

(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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. Section 401(h); C.F.R. 1.401-14(c)(1) and (3).

2. State compliance standards. KRS 61.645(9)(g) requires Kentucky Retirement Systems to comply with federal statutes and administrative regulations.

3. Minimum or uniform standards contained in the federal mandate. This amendment establishes the priority of payments for health benefits to be made first from the Kentucky Retirement Systems Health Insurance Trust then from the 401(h) accounts and that the contributions are reasonable to pay medical expenses.

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

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

105 KAR 1:430. General compliance with federal tax laws.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, 26 U.S.C. 401(a)(7), (8), (25), 414(d),(p),(u), 503(b), Pub.L. 110-245

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 and to conform with federal statute. This administrative regulation establishes Kentucky Retirement Systems' compliance with 26 U.S.C. 401(a), 26 U.S.C. 414, P. L. No. 110-245, and; 26 U.S.C. 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefits plans.

Section 1. Compliance with 26 U.S.C. 401(a)(7) and 401(a)(8) for Vesting and Forfeitures. (1) A plan member shall be 100 percent vested in the member's accumulated contributions at all times.

(2) In conformity with 26 U.S.C. 401(a)(8), any forfeitures of benefits by members or former members of the plan shall not be used to pay benefit increases. However, these forfeitures shall be used to reduce employer contributions.

(3) Upon termination or partial termination of an affected retirement system, or the complete discontinuance of contributions, a member shall have a nonforfeitable interest in his accrued benefit to the extent funded.

Section 2. Compliance with 26 U.S.C. 414(p) for Qualified Domestic Relations Orders. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in 26 U.S.C. 414(p), then the applicable requirements of 26 U.S.C. 414(p) shall be followed by the retirement system.

Section 3. Compliance with 26 U.S.C. 414(u), 26 U.S.C. 401(a)(37), and P. L. No. 110-245 for Reemployed Veterans.

(1) Effective December 12, 1994, notwithstanding any other provision of the retirement system law; contributions, benefits, and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

(2) For deaths occurring on or after January 1, 2007, that occur while a member is performing qualified military service (as defined in 38 U.S.C. 43), to the extent required by 26 U.S.C. 401(a)(37), survivors of a member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service shall be counted for vesting purposes.

(3) Beginning January 1, 2009, to the extent required by 26 U.S.C. 414(u)(12), an individual receiving differential wage payments as defined in 26 U.S.C. 3401(h)(2) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under 26 U.S.C. 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

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Section 4. Compliance with 26 U.S.C. 503(b) for Prohibited Transactions. Effective as of July 1, 1989, the board shall not engage in a transaction prohibited by 26 U.S.C. 503(b).

Section 5. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. Kentucky Retirement Systems shall determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by rule; these benefits shall not be subject to employer discretion.

Section 6. (1) In addition to any other vesting provisions under state law, except as provided in KRS 61.535, the normal retirement benefit of a member with non-hazardous service in the Kentucky Employees Retirement System or the County Employees Retirement System shall be nonforfeitable upon the later of:

(a) The attainment of age 65, which is the normal retirement age;

(b) For a member whose membership date is on or before August 31, 2008, the completion of four (4) years of service; or

(c) For a member whose membership date is on or after September 1, 2008, five (5) years of service earned pursuant to KRS 16.543(1), 61.543(1), or 78.615(1).

(2) In addition to any other vesting provisions under state law, except as provided in KRS 61.535, the normal retirement benefit of a member of the State Police Retirement System and a member with hazardous service in the Kentucky Employees Retirement System or the County Employees Retirement System shall be nonforfeitable upon the later of:

(a) For a member whose membership date is on or before August 31, 2008:

1. Attainment of age 55, which is the normal retirement age; or

2. The completion of five (5) years of service.

(b) For a member whose membership date is on or after September 1, 2008:

1. Attainment of age 60, which is the normal retirement age; or

2. The completion of five (5) years of service earned pursuant to KRS 16.543(1), 61.543(1), or 78.615(1).

THOMAS ELLIOTT, Chair

APPROVED BY AGENCY: May 17, 2012

FILED WITH LRC: May 30, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2012 at 9:00 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Retirement Systems' compliance with 26 U.S.C. Section 401(a)(7),(8), (25); 26 U.S.C. Section 414(d),(p),(u); 26 U.S.C. Section 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. Section

401(a).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Kentucky Retirement Systems' compliance with 26 U.S.C. Section 401(a)(7),(8), (25); 26 U.S.C. Section 414(d),(p),(u); 26 U.S.C. Section 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. Section 401(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes because it establishes Kentucky Retirement Systems' compliance with 26 U.S.C. Section 401(a)(7),(8), (25); 26 U.S.C. Section 414(d),(p),(u); 26 U.S.C. Section 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. Section 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing Kentucky Retirement Systems' compliance with 26 U.S.C. Section 401(a)(7),(8), (25); 26 U.S.C. Section 414(d),(p),(u); 26 U.S.C. Section 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. Section 401(a).

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation to establish the circumstances under which benefits are nonforfeitable pursuant to 26 U.S.C. Section 411 and compliance pursuant to the Heroes Earning Assistance and Relief Tax Act, P. L. 110-245 with regarding rights of reemployed veterans.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish the circumstances under which benefits are nonforfeitable pursuant to 26 U.S.C. Section 411 and compliance pursuant to the Heroes Earning Assistance and Relief Tax Act, P. L. 110-245 with regarding rights of reemployed veterans.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes to establish the circumstances under which are nonforfeitable pursuant to 26 U.S.C. Section 411 and compliance pursuant to the Heroes Earning Assistance and Relief Tax Act, P. L. 110-245 with regarding rights of reemployed veterans.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by establishing the circumstances under which are nonforfeitable pursuant to 26 U.S.C. Section 411 and compliance pursuant to the Heroes Earning Assistance and Relief Tax Act, P. L. 110-245 with regarding rights of reemployed veterans.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None.

(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: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

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

(a) Initially: \$0.00

(b) On a continuing basis: \$0.00

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The provisions of the amendment affect all systems the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 26 U.S.C Section 401(a)(7),(8), (25); 26 U.S.C. 411, 26 U.S.C. Section 414(d),(p),(u); 26 U.S.C. Section 503(b), 26 U.S.C. Section 401(a) and P. L. No. 110-245.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C Section 401(a)(7),(8), (25); 26 U.S.C. 411, 26 U.S.C. Section 414(d),(p),(u); 26 U.S.C. Section 503(b), 26 U.S.C. Section 401(a) and P. L. No. 110-245.

2. State compliance standards. KRS 61.645(9)(g) requires Kentucky Retirement Systems to comply with federal statutes and administrative regulations.

3. Minimum or uniform standards contained in the federal mandate. The federal law requires that circumstances under which benefits are nonforfeitable pursuant to 26 U.S.C. Section 411 and the compliance pursuant to the Heroes Earning Assistance and Relief Tax Act, P. L. 110-245 with regarding rights of reemployed veterans be established.

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.

GENERAL GOVERNMENT CABINET Board of Physical Therapy (Amendment)

201 KAR 22:001. Definitions for 201 KAR Chapter 22.

RELATES TO: KRS 327.010

STATUTORY AUTHORITY: KRS 327.040(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) requires the Kentucky Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327 pertaining to the practice and credentialing of physical therapists and physical therapist assistants. This administrative regulation sets forth the definitions for 201 KAR Chapter 22.

Section 1. Definitions. (1) "Board" is defined by KRS 327.010(3).

(2) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(3) "Credential" means the license or certificate issued by the board authorizing a person to practice physical therapy.

(4) "Credential holder" means a licensed physical therapist or certified physical therapist assistant who has met all requirements for credentialing in 201 KAR 22:020 and has been credentialed by the board.

(5) "Credentialing" means the process of licensing or certifying an applicant by the board.

(6) "Direct Supervision" means:

(a) The physical therapist or physical therapist assistant shall:

1. Be immediately available to direct and supervise tasks that are related to direct patient care; and

2. Provide line of sight direction and supervision the majority of the time for each patient when these tasks are performed; and

(b) Supervision not provided by telecommunications.

(7) "Endorsement" means an applicant credentialed by another jurisdiction.

(8)[(7)] "Examination" means a board-approved examination that an applicant shall successfully pass as a requirement for credentialing.

(9)[(8)] "Full time" means employment for forty (40) hours a week.

(10)[(9)] "Inactive status" means a credential that is inactive and the credential holder shall not engage in the practice of physical therapy.

(11)[(40)] "Jurisdiction" means a licensing authority in a state or territory of the U.S.

(12)[(44)] "NPTE" means the National Physical Therapy Examination for physical therapists and physical therapist assistants.

(13)[(42)] "On-site supervision" means immediate physical accessibility within the same building.

(14) "Patient" means any person for whom physical therapy, as defined in KRS 327.010(1), is provided.

(15) [(43)] "Physical therapist assistant" means a skilled health care worker certified by the board who performs physical therapy and related duties as assigned by the supervising physical therapist.

(16) "Physical Therapist Student" or "Physical Therapist Assistant Student" means a person who meets KRS 327.050(10)(a).

(17) "Physical Therapy Student Services" means services provided by a physical therapist student or physical therapist assistant student, as part of the student's educational program, and are considered provided by the supervising physical therapist.

(18)[(44)] "Reinstatement of a credential" means a renewal of a license that has lapsed.

(19)[(45)] "Supervising physical therapist" means the physical therapist who is supervising the care of a patient who is being treated by a physical therapist assistant or supportive personnel.

(20)[(46)] "Supportive personnel" means a person assisting in the provision of direct physical therapy patient care who is not credentialed by the board and is not a physical therapist student or physical therapist assistant student.

(21)[(47)] "Verification" means the process of verifying a lawful credential.

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: May 17, 2012

FILED WITH LRC: June 15, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2012, at 6:00 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 July 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 and 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 forth the definitions for 201 KAR Chapter 22.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to define terms used in 201 KAR Chapter 22.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the definitions to promulgate administrative regulations as required by KRS 327.040.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It defines terms used for 201 KAR Chapter 22.

(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 the definition of "Direct Supervision" and "Patient".

(b) The necessity of the amendment to this administrative regulation: To differentiate between onsite supervision and direct supervision.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for the practice of physical therapy including the use of supportive personnel.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the supervision of certified physical therapist assistants and supportive personnel.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4,800 physical therapists and physical therapist assistants, hospitals, physical therapy clinics and other entities that provide physical therapy services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities in (3) will be required to provide direct supervision of supportive personnel as that term is defined in the amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be minimal cost to the entities in questions (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Protect the health and welfare of

the public.

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

(a) Initially: No costs to the board.

(b) On a continuing basis: No 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 to 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 be 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. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Physical therapists and physical therapist assistants credentialed by the Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant.

RELATES TO: KRS 164.772, 214.610(1), 327.050(8), (9), 327.070

STATUTORY AUTHORITY: KRS 327.040(10), (11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate administrative regulations for the effectuation of the purposes of KRS Chapter 327, and 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

Section 1. A credential shall be renewed upon:

(1) Payment of the renewal fee established in 201 KAR 22:135 on or before March 31st of each uneven numbered year. The fee shall be waived for renewal of license or certificate held by active duty member of Armed Forces as set forth in KRS 12.355;

(2) Submission of the completed Renewal or Reinstatement Application;

(3) Verification of continued competence as set forth in 201 KAR 22:045;

(4) In accordance with the course requirement in KRS 327.050(8), verification of completion of a Cabinet for Health Services (CHS) approved two (2) hour course on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS, pursuant to KRS 214.610(1) but not more than every ten (10) years. The course shall be completed within the renewal biennial period that it is due; and

(5) Verification that, since the last renewal period, the credential holder has not:

(a) Been in violation of KRS 327.070;

(b) Had a professional license or credential disciplined or under current disciplinary review in this state or another jurisdiction;

(c) Had a civil claim made against the credential holder which related to the credential holder's practice of physical therapy; or

(d) Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) per KRS 164.772.

Section 2. Credentials not renewed by the board by March 31 of each uneven numbered year shall lapse.

Section 3. A credential holder who has a credential that has lapsed less than three (3) years may reinstate upon:

(1) Meeting the requirements of Section 1(2) through (5) of this administrative regulation for the current renewal period; and

(2) Submission of payment of the reinstatement fee established in 201 KAR 22:135.

Section 4. A credential holder who has a credential that has lapsed greater than three (3) years may reinstate upon:

(1) Meeting the requirements of Section 3;

(2) Submission of all credentials from other jurisdictions since last renewal; and

(3) If not holding a current credential, the board shall require the following:

(a) Submission of evidence of professional competency;

(b) An agreement to practice physical therapy under supervision not to exceed six (6) months;

(c) Successful completion of the board-approved examination; or

(d) Any combination of paragraphs (a) through (c) of this subsection.

Section 5. (1) "Renewal or Reinstatement Application", June 2012~~February 2009~~, is incorporated by reference.

(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: June 14, 2012

FILED WITH LRC: June 15, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2012, at 6:00 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 ad-

ministrative regulation. Written comments shall be accepted until July 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 and 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 renewal and reinstatement 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 procedures for renewal of a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for renewal requirements for credential holders.

(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: To protect the public by incorporating a new form with additional questions for the licensee. It also conforms to KRS 12.355.

(b) The necessity of the amendment to this administrative regulation: Protection of the public.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of reinstatement or renewal of a credential holder 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 4700 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: There will be no change to regulated entities identified in question (3), only a revised renewal application.

(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 entities in questions (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The renewal application is being revised to clarify the term "conviction" as defined in KRS 327.040.

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

(a) Initially: There will be no cost to the board.

(b) On a continuing basis: No cost to the board.

(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 be 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 therapists and physical therapists assistants credentialed by the Board.

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 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 12.355, 327.010(1), (2), 327.070

STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means a credit earned based on sixty (60) minutes of participation in a physical therapy-related activity.

(2) "Continued competency" means a planned learning experience relating to the scope of "physical therapy" practice as defined by KRS 327.010(1) if the subject is intervention, examination, research, documentation, education, or management of a health care delivery system.

(3) "Jurisprudence Examination" means an open book tutorial provided by the board on current physical therapy laws and 201 KAR Chapter 22.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least eighteen (18) hours shall be earned from Category 1 as established in subsection (2) of this section; and

3. Hours may be earned from Category 2 as established in subsection (3) of this section. Hours earned from Category 2 over ten (10) hours shall not be awarded.

(b) For a Physical Therapist Assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least ten (10) hours shall be earned from Category 1 as established in subsection (2) of this section; and

3. Hours may be earned from Category 2 as established in subsection (3) of this section. Hours earned from Category 2 over eight (8) hours shall not be awarded.

(c) A participant shall not be awarded contact hours for a course that is repeated more than once in the same biennium;

(2) Category 1 continued competency shall be any of the following:

(a) Completion of courses, seminars, workshops, symposia, or home study courses consisting of at least three (3) contact hours that have been approved by the board, the board's designee, Federation of State Boards of Physical Therapy (FSBPT), the American Physical Therapy Association (APTA) or its components, or another physical therapy licensing agency;

(b) Completion or auditing of an accredited postsecondary educational institution credit course.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(c) Presentation of a continuing education course, workshop, seminar, or symposium that has been approved by the board or its designee. Contact hours shall be awarded equal to contact hours awarded to a participant with a maximum of two (2) events of the same course per biennium;

(d) Authorship of a research article, manuscript, or scientific paper, published in the biennium and related to physical therapy. Fifteen (15) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(e) A presented scientific poster or scientific platform presentation related to physical therapy. Ten (10) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(f) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder. A maximum of twenty (20) contact hours per biennium shall be awarded;

(g) Certification or recertification of clinical specialization within the scope of physical therapy practice. Twenty-eight (28) contact hours shall be awarded per biennium;

(h) Completion of a clinical residency program, or clinical fellowship program. Not more than five (5) contact hours shall be awarded for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(i) Engaging in the practice of "physical therapy" as defined by KRS 327.010(2) at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(j) Engaging in the instruction in a CAPTE-accredited physical therapy or physical therapist assistant program at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(k) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(l) Election or appointment to a position of the Kentucky Physical Therapy Association, APTA or FSBPT as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; or

(m) Member of a committee or task force for one (1) of the organizations in paragraph (k) or (l) of this subsection. One (1) contact hour shall be awarded per biennium.

(3) Category 2 continued competency shall be any of the following:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

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(b) Attendance at a scientific poster session, lecture, panel, or symposium. One (1) contact hour shall be awarded for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE-approved educational program or an APTA credentialed residency or fellowship program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy in-service or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Completion of other unapproved applicable courses. One (1) contact hour for each hour of credit shall be awarded up to a maximum of three (3) hours per course;

(f) Participation in community service related to health care. One (1) contact hour for each hour of participation shall be awarded up to a maximum of two (2) hours per biennium;

(g) Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium;

(h) Completion of cardiopulmonary resuscitation initial certification or re-certification. A maximum of two (2) contact hours shall be awarded per biennium; or

(i) Completion of a HIV/AIDS course. A maximum of two (2) contact hours shall be awarded per biennium.

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of three (3) years from the end of the biennium;

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities to the board; and

(c) A licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities shall be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee shall be granted a temporary hardship extension for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Exemption or Extension[of Time] for Completion of Continued[Continuing] Competency Form, including a plan describing how the required credits will be met; and

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:

- a. Age;
- b. Disability;
- c. Medical condition;
- d. Financial condition; or
- e. Other clearly mitigating circumstance.

(b) A licensee shall be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Exemption or Extension[of Time] for Completion of Continued[Continuing] Competency Form, including a plan describing how the required credits will be met, by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

2. Pays a fee of \$250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

4. Files proof of compliance with the continued[continuing] competency requirements by the following July 1.

(c) A licensee on active military duty shall be granted an exemption from continuing competency requirements as established in KRS 12.355.

Section 3. Incorporation by Reference.

(1) "Extension of Time and Exemption for Completion of Continued Competency Form", June 2012[April 2012], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky 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: June 14, 2012

FILED WITH LRC: June 15, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2012, at 6:00 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 July 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 and 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 assist in assuring safe and effective practices for the safety and welfare of the public by implementing continued competency.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040 (10).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for continued competency requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for renewal requirements for credential holders.

((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: To incorporate a new form for Active Military Exemption of continuing competency.

(b) The necessity of the amendment to this administrative regulation. To incorporate a new form for Active Military Exemption of continuing competency.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 12.355

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of continued competency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4800.

(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 credential holders are required to show competency during the biennial renewal period and the amendment clarifies those requirements.

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

(c). As a result of compliance, what benefits will accrue to the entities identified in question three: To add more approval courses.

(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: Costs are minimal for implementing and enforcing this amendment and will be funded by licensure fees paid by licensees.

(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 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(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. 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

Board of Physical Therapy (Amendment)

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

RELATES TO: KRS 327.040, 327.070

STATUTORY AUTHORITY: KRS 327.040(11), (12), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040 (12) and (13) authorize the Board of Physical Therapy to establish by administrative regulation a code of ethical standards and standards of practice for physical therapists and physical therapist assistants. This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS

327.070.

Section 1. Code of Ethical Standards. (1) Physical therapists and physical therapist assistants shall:

(a) Respect the rights and dignity of all patients;

(b) Practice within the scope of the credential holder's training, expertise and experience;

(c) Ensure that all personnel involved in the delivery of physical therapy services are identified to the patient by name and title;

(d) Report to the board any reasonably suspected violation of KRS Chapter 327 or 201 KAR Chapter 22 by another credential holder or applicant within thirty (30) days; and

(e) [(d)] Report to the board any civil judgment, settlement, or civil claim involving the credential holder's practice of physical therapy made against the credential holder relating to the credential holder's own physical therapy practice within thirty (30) days.

(2) Physical therapists and physical therapist assistants shall not:

(a) Verbally or physically abuse a client; or

(b) Continue physical therapy services beyond the point of reasonable benefit to the patient, unless the patient consents in writing.

Section 2. Standards of Practice for the Physical Therapist. While engaged in the practice of physical therapy, a physical therapist shall:

(1) Perform screenings in order to:

(a) Provide information on a person's health status relating to physical therapy;

(b) Determine the need for physical therapy evaluation and treatment;

(c) Make a recommendation regarding a person's ability to return to work or physical activity; and

(d) Provide physical therapy services;

(2) Evaluate each patient prior to initiation of treatment;

(3) Upon receipt of a patient under an active plan of care from another physical therapy service, the receiving physical therapist shall:

(a) Complete an initial evaluation in compliance with Sections 2(2) and 5(1)(a)-(e) of this administrative regulation; or

(b) Ensure the evaluation and plan of care from the other physical therapy service are current and appropriate;

(c) Retain the evaluation and plan of care from the other physical therapy service in the medical record;

(d) Document the patient transfer of care in the medical record; and

(e) Comply with reassessment requirements based on the date of the most recent evaluation.

(4) Reassess each patient in accordance with the following:

(a) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;

(b) Reassessing every ninety (90) days, with the physical therapist assistant present, patients in:

1. A facility defined in 902 KAR 20:086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or

2. A school system.

a. [(e)] A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year;

b. [(d)] During this grace period treatment may continue based upon the previous reassessment or initial evaluation;

(c) [(e)] Reassessing each patient not otherwise noted every thirty (30) days following the initial evaluation or subsequent reassessment;

(d) [(f)] Reassessing a patient whose medical condition has changed;

(5) Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;

(6) Be responsible for the physical therapy record of each patient;

(7) Provide services that meet or exceed the generally accepted practice of the profession;

(8) Explain the plan of care to the patient, to others designated by the patient, and to appropriate professionals;

(9) Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supplier if the physical therapist makes recommendations for those; and

(10) Disclose in writing to each patient any financial interest, compensation, or other value to be received by the referral source:

(a) For services provided by the physical therapist;

(b) For equipment rental or purchase; or

(c) For other services the physical therapist may recommend for the patient.

(11) Unless prohibited by law, all members of a business entity shall be allowed to pool or apportion fees received in accordance with a business agreement.

Section 3. Standards of Practice for the Physical Therapist Assistant. While engaged in the practice of physical therapy, the physical therapist assistant shall:

(1) Provide services only under the supervision and direction of a physical therapist;

(2) Refuse to carry out procedures that the assistant believes are not in the best interest of the patient or that the assistant is not competent to provide by training or skill level;

(3) Initiate treatment only after evaluation by the physical therapist;

(4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not determine the significance of the data as it pertains to the development of the plan of care;

(5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;

(6) Comply with the plan of supervision established by the physical therapist;

(7) Communicate with the physical therapist any change or lack of change that occurs in the patient's condition that may indicate the need for reassessment; and

(8) Discontinue physical therapy services if reassessments are not done in compliance with Section 2(4) of this administrative regulation, and communicate to the appropriate parties.

Section 4. Standards for Supervision. While supervising the physical therapist assistant, and supportive personnel, the physical therapist shall:

(1)(a) At all times, including all work locations in all jurisdictions, be limited to:

4-] supervising not more than four (4)[full-time] physical therapist assistants or supportive personnel;[or 2. The number of those persons providing part-time patient care for a period equivalent to that provided by four (4) full-time providers of patient care.]

(b) Temporary failure to abide by the maximum staffing ratio of physical therapists to physical therapist assistants, or supportive personnel required in this section[for a period] not to exceed a cumulative of seven (7)[consecutive] work days in a sixty (60) consecutive day period shall not constitute a violation of this standard;

(2) Provide direct supervision when supervising supportive personnel as defined by 201 KAR 22:001, Section 1(6), effective January 1, 2013;

(3) Not delegate procedures or techniques to the physical therapist assistant that are[or supportive personnel if it is] outside his or her scope of training, education or expertise;[-]

(4) Not delegate procedures or techniques to supportive personnel that are outside his or her scope of training, education or expertise.

(a) Scope of training and competency for supportive personnel shall be documented and verified at least annually; and

(b) Documentation of training and competency shall be immediately available for review;

(5)[(3)] Be responsible for:

(a) Interpreting any referral;

(b) Conducting the initial physical therapy evaluation;

(c) Establishing reporting procedures to be followed by the physical therapist assistant and supportive personnel;

(d) Evaluating the competency of the physical therapist assistant and supportive personnel;

(e) Supervising the physical therapist assistant by being avail-

able and accessible by telecommunications during the working hours of the physical therapist assistant;

(f) Ensuring that if supportive personnel provide direct patient care that there is direct supervision as defined by 201 KAR 22:001, Section 1(6), effective January 1, 2013[on-site supervision] by a physical therapist or physical therapist assistant;

(g) Ensuring that a physical therapy student fulfilling clinical education requirements shall receive on-site supervision by a physical therapist;

(h) Ensuring that a physical therapist assistant student fulfilling clinical education requirements shall receive on-site supervision of which eighty (80) percent may be by a credentialed physical therapist assistant; and

(i) Establishing discharge planning for patients who require continued physical therapy.

(6) The physical therapist shall be responsible for and direct physical therapy student services including documentation requirements in Section 5 of this administrative regulation.

Section 5. Standards for Documentation. The physical therapist shall be responsible for the physical therapy record of a patient. The physical therapy record shall consist of:

(1) The initial evaluation, a written or typed report signed and dated by the physical therapist performing the evaluation that shall include:

(a) Pertinent medical and social history;

(b) Subjective information;

(c) Appropriate objective testing;

(d) Assessment, which may include problems, interpretation, and a physical therapy diagnosis identifying the nature and extent of the patient's impairment; and

(e) Plan of care, including:

1. Treatment to be rendered;

2. Frequency and duration of treatment; and

3. Measurable goals;

(2) Progress notes,[which] shall be written or typed, signed, and dated by the person rendering treatment, unless rendered by a physical therapist student or physical therapist assistant student, and countersigned and dated by the physical therapist if written by supportive personnel[~~physical therapist students, physical therapist assistant students, or examination candidates~~]. The progress notes shall include:

(a) A current record of treatment;

(b) Patient's adverse response to treatment;

(c) Any factors affecting treatment; and

(d) Data obtained by all objective tests performed;

(3) Reassessment, which shall be written or typed, signed, and dated by a physical therapist. This reassessment shall be in compliance with Section 2(4) of this administrative regulation:

(a) If the physical therapist is treating the patient, these reports may be incorporated into the progress notes.

(b) If a physical therapist assistant or supportive personnel are treating the patient, the report shall be a separate entry into the record.

(c) A reassessment shall include directly observed objective, subjective, and medical information completed by the physical therapist, or physical therapist student, that is necessary for the revision or reaffirmation of the plan of care and measurable goals;

(4) Discharge summary, which shall be a written or typed, signed, and dated statement.

(a) A physical therapist assistant, physical therapist student, or physical therapist assistant student, may write the discharge summary, which shall be signed[countersigned] by the responsible physical therapist.

(b) The discharge summary shall include:

1. The date of discharge;

2. The reason for discharge;

3. The physical therapy status upon discharge; and

4. A discharge plan, which shall include recommendations the physical therapist has regarding the need for continuing physical therapy.

5. A discharge summary shall be written within thirty (30) days of the termination of the current plan of care if a subsequent plan of care has not been established; and

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(5) The correct designation following the signature of the person who has entered a statement into the patient record shall be as follows:

(a) If written by a physical therapist: "PT". Appropriate designations for advanced physical therapy degrees may follow "PT";

(b) If written by a physical ~~therapist~~^{therapist[s]} assistant: "PTA";

(c) If written by supportive personnel: "PT Aide", or "Physical Therapy Aide", or "PT Tech"; and

(d) If written by a student: "Physical Therapist Student" or "PT Student"; "Physical Therapist Assistant Student" or "PTA Student".

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: May 17, 2012

FILED WITH LRC: June 15, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2012, at 6:00 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 July 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, (502) 429-7140 and 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 code of ethical standards and standards of practice for Physical Therapists and Physical Therapist Assistants.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 327.040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the standards of practice for credential holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It outlines the ethical conduct and standards of practice for credential holders.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the delivery of physical therapy services to help ensure the safety and health of the public.

(b) The necessity of the amendment to this administrative regulation: To clarify the supervision of supportive personnel.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for the practice of physical therapy including the use of supportive personnel.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements for the supervision and use of supportive personnel.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4,800 physical therapists and physical therapist assistants, hospitals, physical therapy clinics and other entities that provide physical therapy services.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative

regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities in (3) will be required to provide direct supervision of supportive personnel as that term is defined in the amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be minimal cost to the entities in questions (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Protect the health and welfare of the public.

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

(a) Initially: No costs to the board.

(b) On a continuing basis: No 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 to 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 be 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. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Physical therapists and physical therapists assistants credentialed by the Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040.

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

201 KAR 30:030. Types of appraisers required in federally-related transactions; certification and licensure.

RELATES TO: KRS 324A.010, 324A.030, 324A.035(1), (3), 324A.040(2), 324A.052

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STATUTORY AUTHORITY: KRS 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 3351). KRS 324A.035(1) and (3) require the board to promulgate administrative regulations for certification and licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the: types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure.

Section 1. Types of Appraisers. An appraiser for a federally related transaction shall be a:

- (1) Certified general real property appraiser;
- (2) Certified residential real property appraiser;
- (3) Licensed real property appraiser; or
- (4) Associate real property appraiser.

Section 2. Scope of Practice. (1) Certified general real property appraiser. A certified general real property appraiser may perform appraisals of all types of real property.

(2) Certified residential real property appraiser. A certified residential real property appraiser may perform residential appraisals of one (1) to four (4) units.

(3) Licensed real property appraiser. A licensed real property appraiser may perform appraisals of:

- (a) Noncomplex, one (1) to four (4) residential units with a transaction value less than \$1,000,000; and
- (b) Complex, one (1) to (4) residential units with a transaction value less than \$250,000.

(4)(a) Associate. An associate real property appraiser:

1. May perform an appraisal of property that the supervising appraiser of the associate is permitted to appraise; and
2. Shall be subject to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

(b) A separate appraisal log shall be maintained for each supervising appraiser.

(c) The associate shall record in the log for each appraisal the following:

1. Type of property;
2. Client name and address;
3. Address of appraised property;
4. Description of work performed by the associate;
5. Scope of the review;
6. Scope of the supervision by the supervising appraiser;
7. Number of actual hours worked by the associate on the assignment; and
8. Signature and state certification number of the supervising appraiser.

(d) The associate shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

(e) The supervising appraiser shall:

1. Have been licensed or certified by the board for a period of three (3) years~~one (1) year~~;
2. Be in good standing with the board;
3. Be responsible for the training and supervision of the associate;
4. Only a Certified Residential Real Property Appraiser or a Certified General Property Appraiser who has been certified by the board for a period of one (1) year is eligible to be a supervising appraiser; and

5. Only a Certified General Real Property Appraiser shall provide supervision for a person acquiring experience toward a Certified General Real Property Appraiser certificate.

(f) The supervising appraiser shall:

1. Accept responsibility for an associate's appraisal report by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040;
2. Review reports by the associate;

3. Personally inspect each appraised property and the comparable sales with the associate on the associate's first fifty (50) real property appraisal assignments, to insure that the associate is competent and is acting in accordance with the competency provision of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040, for the property type;

4. Allow an associate who has completed the fifty (50) appraisal assignments required by subparagraph 3 of this paragraph to inspect properties located within fifty (50) miles of the supervisor's office without being accompanied by the supervisor, if the supervisor has determined that the associate is competent to perform an appraisal;

5. For the twelve (12) months following the date of issuance of an associate license, accompany the associate and inspect each appraised property and the comparable sales on each appraisal assignment located more than fifty (50) miles from the supervisor's office;

6. Be limited to a maximum of three (3) real property associates at a time; and

7. Notify the board immediately when the supervision of a real property associate has terminated; and

8. Not be employed by an associate or by a company, firm, or partnership in which the associate has a controlling interest.

(g) A person otherwise qualified for supervising appraiser who has been disciplined by the board under KRS 324A.050 shall be subject to one (1) or more of the following, according to the severity of the prior violation:

1. Prohibited from supervising associates;
 2. Limited to the number of associates to supervise; or
 3. Be required to take additional courses approved by the board before being permitted to supervise an associate.
- (h) An associate shall submit to the board two (2) complete summary appraisal reports.

1. The first report shall be submitted to the board six (6) months following the date of issuance of the associate license. The second report shall be submitted to the board twelve (12) months following the date of issuance of the associate license.

2. If necessary to determine the competency of the associate, the board shall request additional reports from the associate.

(5)(a) A first time supervisor and a new associate shall attend the board-approved course in supervision practices within six (6) months of beginning supervision.

(b) All current supervisors and all current associates shall have completed the board-approved supervisor training course prior to July 1, 2009.

(c) To be eligible to provide supervision, a supervisor shall attend the board-approved course in supervision practices every three (3) years.

Section 3. General Requirements for Certification or Licensure. Certification or licensure, as appropriate, of the types of appraisers specified in Section 1 of this administrative regulation, shall be granted if an applicant:

- (1) Has met the examination, education, experience, and fee requirements established by 201 KAR 30:050 and 060; and
- (2) Applies to the board on the "Appraiser Licensure/Certification Application".

Section 4. Incorporation by Reference. (1) "Appraiser Licensure/Certification Application KREAB Form APP100 - Revised 1/09", 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 BRANTLEY, Chair

APPROVED BY AGENCY: May 25, 2012

FILED WITH LRC: June 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2012 at 1:00 p.m., in the office of the Kentucky Board of

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Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on July 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the types of appraisers required in federally related transactions, the scope of practice, and general requirements for certification or licensure.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the scope of practice and criteria for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by setting the scope of practice and the general requirements that applicants must meet for certification.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes the requirements for a person to qualify as a supervisor.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to require supervisors have sufficient experience prior to supervising.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations for qualifying experience.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will enable the board to ensure appraisers that are familiar the board's requirements for experience are providing supervision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1800 certified and licensed appraisers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A supervisor will be required to have three years of licensure before supervision.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The supervisees will be better

supervised by a experienced person.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all supervisors providing supervision.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. This administrative regulation establishes the types of appraisers required in federally related transactions, the scope of practice, and general requirements for certification or licensure.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the minimum criteria for certification and licensure of real estate appraisers as promulgated by the Appraisal Qualification Board of the appraisal Foundation.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

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

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

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

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

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Amendment)**

201 KAR 30:125. Continuing education for appraisers.

RELATES TO: KRS 324A.035(3), 324A.045(2), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3) requires the board to establish by administrative regulation requirements for continuing education for appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for the renewal of certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the continuing education requirements for appraisers.

Section 1. Continuing Education: Number of Hours Required. Certified general real property appraisers, certified residential real property appraisers, licensed real property appraisers, and associate real property appraisers shall:

- (1) Complete fourteen (14) hours of approved continuing education each license year; and
- (2) Furnish the board with proof of compliance.

Section 2. Continuing Education. (1) Continuing education credit may be granted for:

- (a) Approved continuing education courses; or
- (b) Participation, other than as a student, in appraisal educational programs and processes not to exceed seven (7) hours of the required fourteen (14) hours of continuing education for each licensure year.
- (2) Appraisal educational programs and processes shall include:
 - (a) Teaching a course, however credit for instructing any given course shall only be awarded one time during a continuing education cycle;
 - (b) Program development;
 - (c) Authorship of textbooks; or
 - (d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.
- (3) Continuing education credit shall be granted if a course:
 - (a) Is at least two (2) hours in duration;
 - (b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and
 - (c) Has been approved by the board.
- (4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.
- (5) To be approved for continuing education credit, a course shall be consistent with the purpose of continuing education and cover those real property related appraisal topics, including:
 - (a) Ad valorem taxation;
 - (b) Arbitration, dispute resolution;
 - (c) Courses related to the practice of real estate appraisal or consulting;
 - (d) Development cost estimating;
 - (e) Ethics and standards of professional practice, USPAP;
 - (f) Land use planning, zoning;
 - (g) Management, leasing, timesharing;
 - (h) Property development, partial interests;
 - (i) Real estate law, easements, and legal
 - (j) Real estate litigation, damages, condemnation;
 - (k) Real estate financing and investment;
 - (l) Real estate appraisal related computer applications; [er]
 - (m) Real estate securities and syndication;
 - (n) Green building construction;

(o) Impact of seller concessions;

(p) Appraising personal property as a component of real property value; or

(q) Appraising business value as a component of real property value.

(6) Real estate appraisal related field trips may be acceptable for credit toward the continuing education requirements. However, transit time to or from the field trip shall not be included when awarding credit unless instruction occurs during the transit time.

(7)(a) All credential holders shall successfully complete the seven (7) hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, between January 1 and June 30 of each even numbered year.

(b) Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board.

(c) USPAP continuing education credit shall only be awarded when the class is instructed by an AQB Certified Instructor who is also a State Certified General Real Property Appraiser or a State Certified Residential Real Property Appraiser.

(8) The board shall defer continuing education requirements for up to 180 days for credential holders returning from active military duty.

(9) Credit for repeating the same course title and content within a twenty-four month (24) period shall not be granted.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: May 25, 2012

FILED WITH LRC: June 15, 2012 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 23, 2012 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on July 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements for certified and licensed appraisers.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the continuing education requirements for certified and licensed appraisers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by setting forth continuing education requirements for certificate holders.

(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 amendment allows the board to recognize continuing education in specific areas of learning.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation sets forth recognized topics for continuing education.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding continuing education.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation allows the board to identify new emerging areas for continuing education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately one thousand eight hundred persons certified by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensee will be required to obtain continuing education for renewal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will be up to date in the profession.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339, and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. This administrative regulation requires compliance with the educational requirements promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the educational requirements promulgated by the Appraisal Qualification Board of the Appraisal Foundation.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (Amendment)

201 KAR 30:180. Distance education standards.

RELATES TO: 324A.035(3)(d), (f)

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)(d), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval of distance education courses for real estate appraisers.

Section 1. Definitions. (1) "Distance education course" means an organized instructional program presented through the use of computer technology, satellite transmission, or optical fiber transmission.

(2) "Instructor" means the individual responsible for the dissemination of the educational information in a distance education course.

(3) "Provider" means an organization or individual offering an education course via computer technology, satellite transmission, or optical fiber transmission.

Section 2. Limitations on Distance Education Courses. A distance education course that involves less than two (2) hours of credit shall not be approved.

Section 3. Standards for Distance Education Course Approval.

(1) To qualify for education credit, each distance education course, with information that specifically outlines the content of the course, shall be submitted for approval by the board in advance of the presentation of the course in accordance with this administrative regulation.

(2) The education provider applying for approval shall complete and submit the following:

VOLUME 39, NUMBER 1 – JULY 1, 2012

- (a) The "Distance Education Course Approval Application"; and
- (b) The "Distance Education Instructor Application".

(3) Board approval shall be given to a distance education course which provides competent instruction in real estate appraisal to establish, maintain, and increase the student's skill, knowledge, and competency in real estate appraising.

(4) The content of a distance education course shall be reviewed to ensure that the course contributes to the licensee's professional knowledge and competence and for compliance with this administrative regulation.

(5) Course reviewers.

(a) The course shall be reviewed by a distance education course delivery consultant and two (2) appraisal content reviewers appointed by the board.

1. The distance education course delivery consultant appointed shall be an academic educator with demonstrated competency in the distance education field.

2. The appraisal content reviewer[reviewers] shall be ~~an[consist of one (1)]~~ educator who is academically qualified in appraisal subjects who holds a certified general real property appraisal certification.

(b) A report of findings and of the reviewers shall be consolidated into a recommendation for approval or disapproval and delivered to the board within forty-five (45) days of receipt of a complete edition of the course.

(6) Each applicant who submits a distance education course for approval shall submit a letter of approval, to the board from the International Distance Education Certification Center (IDECC) and the Appraiser Qualifications Board of the Appraiser Foundation, for each education course being applied for approval.

(7) Every distance education course shall include a final examination with a comprehensive assessment of the student's overall mastery of the materials presented in the course which[that] shall be administered after the completion of the course by:

~~(a)[Administered after the completion of the course by]~~ A proctor approved by the board in accordance with Section 5 of this administrative regulation; ~~or[and]~~

~~(b) Electronically on a computer workstation or other device[A comprehensive assessment of the student's overall mastery of the materials presented in the course].~~

Section 4. Provider Approval. (1) Credit for the classroom hour requirement for education courses delivered via distance education may be obtained from the following:

- (a) A college or university;
- (b) A community or junior college;
- (c) A real estate appraisal or real estate related organization;
- (d) A state or federal agency or commission;
- (e) A proprietary school; or
- (f) An education provider approved by the board in accordance with 201 KAR 30:150.

(2) Credit shall be granted for continuing education distance education courses that are consistent with the purposes of continuing education and that cover real estate appraisal related topics including:

- (a) Ad valorem taxation;
- (b) Arbitration;
- (c) Business courses related to the practice of real estate appraisal;
- (d) Development cost estimating;
- (e) Ethics and standards of professional practice;
- (f) Land use planning, zoning, and taxation;
- (g) Management, leasing, brokerage, and timesharing;
- (h) Property development;
- (i) Real estate appraisal;
- (j) Real estate financing and investment;
- (k) Real estate law;
- (l) Real estate litigation;
- (m) Real estate related computer applications;
- (n) Real estate securities and syndication; ~~or~~
- (o) Real property exchange;
- (p) Valuation of green buildings;
- (q) Impact of seller concessions;
- (r) The impact of personal property on the value of real proper-

ty; or

(s) The impact of business value on real property value.

(3) Credit shall be granted for qualifying education distance education courses that cover Required Core Curriculum topics listed in 201 KAR 30:190, Section 8.

Section 5. Instructors and Proctors. (1) An instructor of a distance education course shall:

(a) Hold a Certified General Real Property Appraiser Certification or Certified Residential Real Property Appraiser Certification with a minimum of five (5) years of experience and competency in the specific area of appraisal subject being taught;

(b) Hold a Certified Distance Education Instructor certification from the International Distance Education Certification Center;

(c) Not have been found by the board to have violated the requirements of KRS 324A.050 or 201 KAR Chapter 30; and

(d) Submit a copy of the instructor's curriculum vitae and appraisal certification.

(2) If an instructor is replaced or added, the credentials of the new instructor shall be submitted for approval before that instructor may teach a course.

(3)(a) A proctor shall be the board approved individual responsible for supervising the distance education course examination.

(b) Proctors shall not be subject to the same requirements as those for distance instructors specified in subsections (1) and (2) of this section.

(c) A proctor shall not be:

- 1. A licensed real estate salesperson or broker;
 - 2. A licensed or certified real property appraiser;
 - 3. Professionally affiliated with a real estate sales or real property appraisal office or business;
 - 4. A member of the student's family; and
 - 5. Professionally or personally associated with the student.
- (d) A proctor may be selected from different professions, including:

- 1. A university, college, or community college professor or instructor;
- 2. A registered public librarian;
- 3. A public school administrator;
- 4. A Notary Public;
- 5. An attorney; or
- 6. A nominee of the provider approved by the board.

(e) The proctor shall:

- 1. Verify that the person taking the examination is the person registered for the course by confirmation:
 - a. With a picture ID;
 - b. With another identification document, including driver's license or student ID card; or
 - c. By familiarity;
- 2. Observe the student taking the exam;
- 3. Assure that the student does all the work alone without aids of any kind, including books, notes, conversation with others, or any other external resource;
- 4. Verify that the calculator used during the exam shall be a nonprogrammable, hand-held calculator;
- 5. Provide for the administration of a printed (hard copy) or CD-ROM based final examination;
- 6. Provide the student with the URL for the course examination which shall be supplied by the provider if a request for the examination is received from the student;
- 7. Assure that the student adheres to the time limit requirement specified for the examination;
- 8. Assure that the examination shall be completed in one (1) sitting;
- 9.a. Assure that, if there is an interruption, the board shall be notified that the examination was interrupted and the reason for the interruption; and
 - b. The board, or its designee, shall approve the request to resume; and
- 10. Upon completion of the examination, submit a certificate which confirms that the proctor verified the identity of the student, that the examination was completed on the date assigned during the time permitted, and that the student has done all the work alone without aids of any kind, including books, notes, conversa-

tion with others, or any other external resource while taking the examination, including access to Internet search engines or Web sites other than the examination.

Section 6. Course Delivery Medium. (1) A course delivery system shall contain provisions for interactivity including:

(a) Instructor feedback with a response time of no more than two (2) business days from student lesson assignment, quiz submissions, and inquiries;

(b) Readily available opportunity for student inquiry and general questions concerning the course;

(c) Timely clarification of confusing points or errors in the study text; and

(d) Instructor's review of a student's activity in the course at least every thirty (30) days to assess progress determine the cause of potential delays in the student's completion of the course.

(2) The provider shall provide the board's course reviewers with:

(a) Two (2) full copies of the courseware with free access to the course text, assignments, quizzes, and final examination; and

(b) The URL and any username or password required for free access, if Internet course delivery shall be used.

Section 7. Record Keeping and Reports. (1) The provider shall furnish to the board notification identifying the student, along with the name of the course in which the student is enrolled, as each enrollment is received by the provider.

(2) At the conclusion of the course, the student shall submit a Distance Education Student Independent Work Certification for the course.

(3) Upon the completion of the final examination, the proctor shall submit a Distance Education Proctor's Examination Certification.

(4) A Distance Education Course Evaluation of the student's on-line experience during the course shall be submitted at the conclusion of the course.

(5) A Certificate of Completion shall be delivered to the board and the student upon successful completion of the course and a satisfactory score on the final examination containing, at a minimum, the information on the Real Estate Appraisers Board form.

Section 8. Fees. A provider shall pay a \$100 nonrefundable fee in connection with each distance education course submitted for approval by the board for the review of the distance education delivery system and the course content.

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

(a) "Distance Education Course Approval Application", 2005;

(b) "Distance Education Student Independent Work Certification", 2005;

(c) "Distance Education Proctor's Examination Certification", 2005;

(d) "Distance Education Course Evaluation", 2005; and

(e) "Distance Education Instructor Application", 2007.

(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 BRANTLEY, Chair

APPROVED BY AGENCY: May 25, 2012

FILED WITH LRC: June 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2012 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the pro-

posed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on July 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the education requirements for distance education for certification for certificate holders acquiring continuing education.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the continuing education requirements for certificate holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing educational requirements for certificate holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the requirements for distance continuing education providers.

(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 delineates the requirements for distance education.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to identify the requirements for distance education courses to qualify.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing educational requirements for certificate holders.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will broaden the courses that are available to licensees and lowers the costs to providers of courses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately eighteen hundred persons certified by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensee will be have more choices for continuing education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will be up to date in the profession.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. This administrative regulation establishes the general requirements for distance education courses.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the minimum criteria for certification and licensure of real estate appraisers as promulgated by the Appraisal Qualification Board of the appraisal Foundation.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (Amendment)

201 KAR 30:190. Educational requirements for certification.

RELATES TO: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C.

3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d) requires the board to establish by administrative regulations requirements for education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions including the education requirements promulgated by the Appraisers Qualifications Board. This administrative regulation establishes the education requirements for appraisers of real property in federally-related transactions that will be effective after December 31, 2007.

Section 1. Definitions. (1) "AQB" means the Appraiser Qualification Board of the Appraisal Foundation.

(2) "ASB" means the Appraiser Standards Board of the Appraisal Foundation.

(3) "Class hour" means sixty (60) minutes, of which at least fifty (50) minutes are instruction attended by the student, including time for examinations.

(4) "Required Core Curriculum" means the list of course topics identified in Section 7 of this administrative regulation.

Section 2. (1) Credit for the qualifying education requirements set out in this administrative regulation may be obtained only from the following providers:

(a) Colleges or universities;

(b) Community or junior colleges;

(c) Real estate appraisal or real estate related organizations;

(d) State or federal agencies or commissions;

(e) Proprietary schools;

(f) Providers approved by the board in accordance with 201 KAR 30:150; and

(g) The Appraisal Foundation or its boards.

(2) Experience may not be substituted for education.

Section 3. Criteria Specific to Qualifying Education. (1) A class hour shall be credited only for educational offerings with content that follows the Required Core Curriculum in Section 7 of this administrative regulation for each respective credential.

(2) The course content requirement may be general or it may be specific to a property type.

(3) A class hour may be obtained only if:

(a) The minimum length of the educational offering is at least fifteen (15) hours; and

(b) The student successfully completes an approved closed-book examination pertinent to that educational offering.

(4) If an individual qualifying education course covers multiple topics identified within the Required Core Curriculum, there shall be appropriate testing of each component.

(5) Courses taken to satisfy the qualifying education requirements shall not be repetitive.

(6) Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.

(7) USPAP courses.

(a) An applicant shall take the 15-Hour National USPAP Course, or its equivalent, and pass the associated 15-Hour National USPAP Course Examination as approved by the AQB.

(b) At least one (1) of the course instructors shall be an AQB Certified USPAP Instructor who is also a state certified appraiser.

(c) USPAP course content equivalency shall be determined by the AQB or by an alternate method established by the AQB.

Section 4. Qualifying Education for Associate Real Property Appraiser Effective January 1, 2008. (1) Regardless of the applicant's accrual of education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained his or her certification as a associate real property appraiser shall be required to fulfill the requirements of this sec-

tion if the certification was not issued on or before December 31, 2007.

(2) Prior to applying for an associate real property appraiser certification, an applicant shall have completed ninety (90) class hours as specified in the Required Core Curriculum Section 7 of this administrative regulation, which shall include at least fifteen (15) hours related to market analysis and highest and best use.

(3) An applicant shall pass:

(a) The Required Core Curriculum examination for each course taken; and

(b) The 15-Hour National USPAP Course or its equivalent and examination as stated in Section 3(7) of this administrative regulation.

(4) All qualifying education shall be completed within the five (5) year period prior to the submission of an application for an Associate Real Property Appraiser credential.

Section 5. Qualifying Education for Licensed Real Property Appraisers Effective January 1, 2008. (1) Regardless of the applicant's accrual of education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained licensure shall be required to fulfill the requirements of this section if the license was not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be successful completion of 180 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and examination required by Section 3(7) of this administrative regulation. There is no alternative to successful completion of the examination.

(4) Beginning January 1, 2015, an applicant for the licensed real property certificate shall hold an associate degree, or higher, from an accredited college, junior college, community college, or university, unless the requirements of subsection (5) of this section are satisfied.

(5)(a) In lieu of the associate degree, prior to January 1, 2015, an applicant for the certified residential real property certification shall successfully pass twenty-one (21) semester credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college, or university:

1. English Composition;
2. Principles of Economics (Micro or Macro);
3. Finance;
4. Algebra, Geometry, or higher mathematics;
5. Statistics;
6. Introduction to Computers-Word processing/spreadsheets;

and

7. Business or Real Estate Law.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program (CLEP) examinations and issues a transcript for the examination, showing its approval, it shall be accepted as credit for the college course.

Section 6. Qualifying Education for Certified Residential Real Property Appraisers Certification Effective January 1, 2008. (1) Regardless of the applicant's accrual of education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained certification as a certified residential real property appraiser shall be required to fulfill the requirements of this section if the certification was not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be completion of 200 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and the examination required by Section 3(7) of this administrative regulation.

(4) Beginning January 1, 2015, an applicant for the certified residential real property certificate shall hold an associate degree, or higher, from an accredited college, junior college, community college, or university, unless the requirements of subsection 5 of this section are satisfied.

(5)(a) In lieu of the associate degree, prior to January 1, 2015, an applicant for the certified residential real property certification shall successfully pass twenty-one (21) semester credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college, or university:

1. English Composition;
2. Principles of Economics (Micro or Macro);
3. Finance;
4. Algebra, Geometry, or higher mathematics;
5. Statistics;
6. Introduction to Computers-Word processing/spreadsheets;

and

7. Business or Real Estate Law.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program® (CLEP) examinations and issues a transcript for the examination, showing its approval, it shall be accepted as credit for the college course.

Section 7. Qualifying Education for Certified General Real Property Appraiser Certification Effective January 1, 2008. (1) Regardless of the applicant's accrual of education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained certification as a certified general real property appraiser shall be required to fulfill the requirements of this section if the certification was not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be completion of 300 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall complete the 15-Hour National USPAP Course and examination.

(4) An applicant shall demonstrate that his or her education includes the core courses listed in these criteria, with particular emphasis on nonresidential properties.

(5) An applicant for the certified general real property certificate shall hold a bachelors degree or higher from an accredited college or university, unless the requirements of the subsection (6) of this section are satisfied.

(6)(a) In lieu of the bachelor's degree, prior to January 1, 2015, an applicant for the certified general real property appraiser credential shall successfully pass thirty (30) semester credit hours or its equivalent in the following collegiate level subject matter courses from an accredited college, junior college, community college or university:

1. English Composition;
2. Micro Economics;
3. Macro Economics;
4. Finance;
5. Algebra, Geometry, or higher mathematics;
6. Statistics;
7. Introduction to Computers-Word processing/spreadsheets;
8. Business or Real Estate Law; and
9. Two (2) elective courses in accounting, geography, ageconomics, business management, or real estate.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program® (CLEP) examinations and issues a transcript for the examination showing its approval, it shall be accepted as credit for the college course.

Section 8. The required core curriculum and class hours for each of the types or classification of licensees or certificate holders shall be as follows:

(1) Associate Real Property Appraiser consisting of ninety (90) class hours.

(a) Basic appraisal principles-thirty (30) class hours.

(b) Basic appraisal procedures-thirty (30) class hours.

(c) Market analysis and highest and best use -fifteen (15) class hours.

(d) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) hours.

(2) Licensed real estate appraiser consisting of 180 class

hours.

- (a) Basic appraisal principles- thirty (30) class hours.
- (b) Basic appraisal procedures-thirty (30) class hours.
- (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.
- (d) Residential market analysis and highest and best use-fifteen (15) class hours.
- (e) Residential appraiser site valuation and cost approach-fifteen (15) class hours.
- (f) Residential sales comparison and income approaches-thirty (30) class hours.
- (g) Residential report writing and case studies-fifteen (15) class hours.
- (h) Statistics, modeling and finance-fifteen (15) class hours.
- (i) Advanced residential applications and case studies-fifteen (15) class hours.
- (3) Certified residential real estate appraiser consisting of 200 class hours.
 - (a) Basic appraisal principles-thirty (30) class hours.
 - (b) Basic appraisal procedures-thirty (30) class hours.
 - (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.
 - (d) Residential market analysis and highest and best use-fifteen (15) class hours.
 - (e) Residential appraiser site valuation and cost approach-fifteen (15) class hours.
 - (f) Residential sales comparison and income approaches-thirty (30) class hours.
 - (g) Residential report writing and case studies-fifteen (15) class hours.
 - (h) Statistics, modeling and finance-fifteen (15) class hours.
 - (i) Advanced residential applications and case studies-fifteen (15) class hours.
 - (j) Appraisal subject matter electives-twenty (20) class hours.
- (4) Certified general real estate appraiser consisting of 300 class hours.
 - (a) Basic appraisal principles-thirty (30) class hours.
 - (b) Basic appraisal procedures-thirty (30) class hours.
 - (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.
 - (d) General appraiser market analysis and highest and best use-thirty (30) class hours.
 - (e) Statistics, modeling and finance-fifteen (15) class hours.
 - (f) General appraiser site valuation and cost approach-thirty (30) class hours.
 - (g) General appraiser sales comparison approach-thirty (30) class hours.
 - (h) General appraiser income approach-sixty (60) class hours.
 - (i) General appraiser report writing and case studies-thirty (30) class hours.
 - (j) Appraisal subject matter electives-thirty (30) class hours.
- (5) The required core curriculum classes shall cover the topics set out in this subsection.
 - (a) Basic appraisal principles.
 1. Real property concepts and characteristics, including basic real property concepts, real property characteristics, and legal description.
 2. Legal consideration including forms of ownership, public and private controls, real estate contracts, and leases.
 3. Influences on real estate values, including governmental influences, economic influences, social influences, environmental, geographic and physical influences.
 4. Types of value including market value and other value types.
 5. Economic principles including classical economic principles and application and illustrations of the economic principles.
 6. Overview of real estate markets and analysis including market fundamentals, characteristics, and definitions, supply analysis, demand analysis, use of market analysis.
 7. Ethics and how they apply in appraisal theory and practice.
 - (b) Basic appraisal procedures.
 1. Overview of approaches to value.
 2. Valuation procedures.
 - a. Defining the problem;
 - b. Collecting and selecting data;

- c. Analyzing;
- d. Reconciling and final value opinion; [and]
- e. Communicating the appraisal;
- f. Valuation of green buildings; and
- g. Impact of seller concessions.
3. Property description.
 - a. Geographic characteristics of the Land or Site;
 - b. Geologic characteristics of the Land or Site;
 - c. Location and neighborhood characteristics;
 - d. Land/site considerations for highest and best use; and
 - e. Improvements-architectural styles and types of construction.
4. Residential applications.
 - (c) The 15-Hour National USPAP Course or its equivalent.
 1. Preamble and ethics rules.
 2. Standard 1.
 3. Standard 2.
 4. Standards 3 to 10.
 5. Statements and advisory opinions.
 - (d) Residential market analysis and highest and best use.
 1. Residential markets and analysis.
 - a. Market fundamentals, characteristics and definitions;
 - b. Supply analysis;
 - c. Demand analysis; and
 - d. Use of market analysis.
 2. Highest and best use.
 - a. Test constraints;
 - b. Application of highest and best use;
 - c. Special considerations;
 - d. Market analysis; and
 - e. Case studies.
 - (e) Residential appraiser site valuation and cost approach.
 1. Site valuation.
 - a. Methods; and
 - b. Case studies.
 2. Cost approach.
 - a. Concepts and definitions;
 - b. Replacement or Reproduction cost new;
 - c. Accrued depreciation;
 - d. Methods of estimating accrued depreciation; and
 - e. Case studies.
 - (f) Residential sales comparison and income approaches.
 1. Valuation principles & procedures-sales comparison approach.
 2. Valuation principles & procedures-income approach.
 3. Finance and cash equivalency.
 4. Financial calculator introduction.
 5. Identification, derivation and measurement of adjustments.
 6. Gross rent multipliers.
 7. Partial interests.
 8. Reconciliation.
 9. Case studies and applications.
- (g) Residential report writing and case studies.
 1. Writing and reasoning skills.
 2. Common writing problems.
 3. Form reports.
 4. Report options and USPAP compliance.
 5. Case studies.
- (h) Statistics, modeling and finance.
 1. Statistics.
 2. Valuation models (AVM's and mass appraisal).
 3. Real estate finance.
- (i) Advanced residential applications and case studies.
 1. Complex property, ownership and market conditions.
 2. Deriving and supporting adjustments.
 3. Residential market analysis.
 4. Advanced case studies.
- (j) General appraiser market analysis and highest and best use.
 1. Real estate markets and analysis.
 - a. Market fundamentals, characteristics and definitions;
 - b. Supply analysis; and
 - c. Demand analysis.
 - d. Use of market analysis.
 2. Highest and best use.

- a. Test constraints;
- b. Application of highest and best use;
- c. Special considerations;
- d. Market analysis; and
- e. Case studies.
- (k) General appraiser sales comparison approach.
 1. Value principles.
 2. Procedures.
 3. Identification and measurement of adjustments.
 4. Reconciliation.
 5. Case studies.
- (l) General appraiser site valuation and cost approach.
 1. Site valuation.
 - a. Methods; and
 - b. Case studies;
 2. Cost approach.
 - a. Concepts and definitions;
 - b. Replacement or Reproduction cost new;
 - c. Accrued depreciation;
 - d. Methods of estimating accrued depreciation; and
 - e. Case studies;
- (m) General appraiser income approach.
 1. Overview.
 2. Compound interest.
 3. Lease analysis.
 4. Income analysis.
 5. Vacancy and collection loss.
 6. Estimating operating expenses and reserves.
 7. Reconstructed income and expense statement.
 8. Stabilized net operating income estimate.
 9. Direct capitalization.
 10. Discounted cash flow.
 11. Yield capitalization.
 12. Partial interests.
 13. Case studies.
- (n) General appraiser report writing and case studies.
 1. Writing and reasoning skills.
 2. Common writing problems.
 3. Report options and USPAP compliance.
 4. Case studies.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: May 25, 2012

FILED WITH LRC: June 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2012 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on July 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the education requirements for certification for persons seeking certification.
 - (b) The necessity of this administrative regulation: This regula-

tion is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the education requirements of certified and licensed appraisers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the educational requirements for certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the educational requirements for applicants.

(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 sets out the educational requirements that have been instituted for 2015 by the Appraisers Qualification Board.

(b) The necessity of the amendment to this administrative regulation: The amendment sets out the educational requirements that have been instituted for 2015 by the Appraisers Qualification Board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: The educational standards will assist by identifying the qualifications to acquire a certificate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons currently involved in obtaining education for licensure or certification by the board, but estimates the number to be under 100.

(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 applicants will have to obtain the specified education for certification after January 1, 2015.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Persons seeking licensure will know the required education.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3345

(2) State compliance standards. This administrative regulation requires compliance with the Real Property Appraiser Qualification Criteria and Interpretations which will be effective January 1, 2008

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as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires that persons who are certified by the state must meet the criteria for certification as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 324A.020, 324A.035(3)(b) and 12 U.S.C. 3345.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Department of Agriculture Division of Regulation and Inspection (Amendment)

302 KAR 16:091. Rides and attractions not included in the definition of amusement ride or attraction.

RELATES TO: KRS 247.232

STATUTORY AUTHORITY: KRS 247.232

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.232(1)(b) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations to designate other rides and attractions that are not included in the definition of "amusement ride or attraction". This administrative regulation establishes the list of rides or attractions not specifically mentioned in the statute that are not included in the definition.

Section 1. Amusement ride or attraction shall not include:

- (1) Dinner trains;
- (2) Any amusement ride or attraction utilizing animals;
- (3) Structures holding slides less than fifteen (15) feet above the ground at the base of the slide;
- (4) Items, devices, and contrivances used[strictly] for educa-

tional purposes as part of a structured class or program, including team building and challenge courses;

- (5) All terrain vehicles, paddleboats, canoes, or rafts;
- (6) Haunted houses;
- (7) Hay rides;
- (8) Corn Mazes or any other noninflatable obstacle course;
- (9) Mechanical bulls;
- (10) Ski lifts, aerial lifts, or aerial tramways;
- (11) Bicycles or bicycle courses;
- (12) Children's toys;
- (13) Watercraft other than bumper boats;
- (14) Swamp buggies;
- (15) Ice skating facilities;
- (16) Roller skating facilities;
- (17) Base jumping equipment;
- (18) Paintball equipment or courses;
- (19) Lazy rivers;
- (20) Wave pools;
- (21) Trampolines not requiring an assistive device;
- (22) Self or manual belayed rappelling equipment and facilities;and
- (23) Privately owned, not open to the public, facilities;[-]
- (24) Mobile and permanent ziplines;
- (25) Rope courses;
- (26) Tree swings;
- (27) Platform swings;
- (28) Canopy tours;
- (29) Tree platforms;
- (30) Balloons;
- (31) Pools and pool items;
- (32) Swinging bridges; and
- (33) Obstacle courses.

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: June 5, 2012

FILED WITH LRC: June 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2012 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2012 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines amusement rides and attractions that are not included in the definition of amusement rides and attractions for regulatory purposes.

(b) The necessity of this administrative regulation: This regulation creates a list of items that are not to be included in the definition of amusement ride or attraction. Items lists in the section will not require business identification numbers or a safety inspection.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.232 gives the Commissioner of Agriculture the authority to designate other rides and attractions that are not included in the definition of amusement ride or attraction.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This regulation further defines items that are not to be regulated by the Commonwealth. This list of items narrows the scope of the statute and the regulatory workload required of amusement ride inspectors.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation adds to the list of devices and things not included in the definition of an amusement ride or attraction.

(b) The necessity of the amendment to the administrative regulation: This is necessary to provide consistency in inspections. This amendment lists items the KDA has found to be educational or classroom in nature, and thus do not meet the definition of an amusement ride or attraction.

(c) How this amendment conforms to the content of the authorizing statutes: KRS 247.232 gives the Commissioner of Agriculture the authority to designate other rides and attractions that are not included in the definition of amusement ride or attraction.

(d) How will this amendment assist in the effective administration of the statutes: This regulation further defines items that are not to be regulated by the Commonwealth. This list of items narrows the scope of the statute and the regulatory workload required of amusement ride inspectors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately four hundred and sixty (460) amusement businesses in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation creates a list of things that will not be regulated. The businesses will need to do nothing.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: No cost or reduced operational costs.

(b) On a continuing basis: No cost or reduced operational costs.

(6) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Division of Regulation and Inspection.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.232

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 fiscal changes will occur.

(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 fiscal changes will occur.

(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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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 Department of Agriculture Office of Consumer and Environmental Protection Division of Environmental Services (Amendment)

302 KAR 27:050. Certification.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Applicability. (1) A person shall not be licensed to sell or apply pesticides unless he is certified in a category consistent with the sale or application. A person shall not purchase restricted use pesticides unless he is licensed or certified in a category consistent with the purchase.

(2) A pesticide operator, pesticide applicator, noncommercial applicator, or private applicator shall not apply any pesticide unless he is certified in a category consistent with the application, as provided in this administrative regulation, with the exception of a registered trainee acting under the direct on the job supervision of a certified person.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a license to any person who holds a valid license in another state if the person is employed by a dealer registered in Kentucky and if, in the opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

Section 2. Certification. Certification under this administrative regulation may be obtained from the department as a private applicator pursuant to Section 7 of this administrative regulation; category-specific certification may be obtained in the following categories of pesticide use or application:

(1) Category 1. Agricultural pest control. This category shall include:

(a) Plant and animal. This category shall include persons applying or supervising the application of pesticides in production of agricultural commodities including, but not limited to, tobacco, peanuts, cotton, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, and on grasslands, noncrop agricultural lands, and greenhouses, and the application of pesticides on animals including, but not limited to, beef cattle, dairy cattle, swine,

sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators or engaged in large-scale application of pesticides, shall be included in this category.

(b) Agricultural fumigation. This category shall include the application of pesticide gases or fumigants in an enclosed area used for the production, storage, or transportation of agricultural commodities or to the contents of any structure used for the production, storage, or transportation of agricultural commodities; and any other application of a pesticide gas or fumigant in preparing land for production or in controlling~~controllings~~ pests in growing agricultural commodities, whether the agricultural commodities are indoors or outdoors.

(2) Category 2. Forest pest control. This category shall include persons applying or supervising the application of restricted use pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Category 4. Seed treatment. This category shall include persons applying or supervising the application of pesticides on seeds.

(4) Category 5. Aquatic pest control. This category shall include persons applying or supervising the application of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health-related activities included in 302 KAR 29:060, Section 1(2).

(5) Category 6. Right-of-way pest control. This category shall include persons applying or supervising the application of pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.

(6) Category 8. Public health pest control. This category shall include state, federal, or other governmental employees using or supervising the use of pesticides in management and control of pests in public health programs.

~~(7)~~~~(6)~~ Category 9. Regulatory pest control. This category shall include state, federal, or other governmental employees who apply or supervise the application of pesticides in the control of regulated pests.

~~(8)~~~~(7)~~ Category 10. Demonstration and research pest control. This category shall include individuals who demonstrate to the public the proper uses and techniques of applying pesticides or supervise the demonstration. Included in this group shall be persons such as extension specialists and county agents, individuals demonstrating methods used in public programs, and persons conducting field research with pesticides, and in so doing, apply or supervise the application of pesticides. This group shall include state and federal employees and other persons conducting field research on pesticides.

~~(9)~~~~(8)~~ Category 11. Aerial. This category shall include persons applying pesticides to lands of another using aircraft.

~~(10)~~~~(9)~~ Category 12. Pesticide sales agent. This category shall include any individual who sells or distributes restricted use pesticides or any individual who sells and makes recommendations for the use and application of pesticides to the final user. Category 12 certification as a pesticide sales agent under this regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 28 and 29. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification, if the person selling or distributing pesticides is licensed as a pesticide sales agent.

~~(11)~~~~(10)~~ Category 13. Antifouling marine paint. This category shall include persons who apply paint mixed with a pesticide to prevent the growth of pests, both plant and animal, to a product to be used in lakes, rivers, and waterways.

~~(12)~~~~(11)~~ Category 14. Pest control consultant. This category shall include persons, who for a fee, offer or supply technical advice, supervision, or aid, or recommend the use of specific pesticides for the purpose of controlling insect pests, plant diseases, weeds, and other pests.

~~(13)~~~~(12)~~ Category 15. Antimicrobial pest control. This category shall include persons who apply pesticides to control bacteria, mold, or fungi to or through any medium. Water and wastewater treatment plant operators shall be included in this category. Home-

owners applying pesticides to personal swimming pools and persons certified in Category 1 of this chapter shall be excluded from this category.

~~(14)~~~~(13)~~ Category 16. Sewer root control. This category shall include persons who apply pesticides into a sewer or sewer system to control the ingress of roots or any other blockage of the system.

~~(15)~~~~(14)~~ Category 17. Wood preservatives. This category shall include persons who apply pesticides to wood and wood products to protect from wood-destroying organisms. Excluded from this category shall be persons engaged in structural pest control pursuant to 302 KAR Chapter 29.

Section 3. General Requirements. (1) To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. Competency in the use and handling of pesticides shall be determined and based upon standards established in Sections 4 and 5 of this administrative regulation. The examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination. Upon successfully passing an examination, a person shall have ninety (90) days from the date of testing to activate the licenses requested. After ninety (90) days have expired, a person shall have to retake and pass the examination before activation of a license may occur.

(2) If an applicant provides a copy of a valid Kentucky-certified crop advisor certification to the department, the examination for a consultant license shall be waived.

(3) Any applicant that willfully engages in fraud or deceit in the making of an application or the taking of an examination will be in violation of this administrative regulation and may be denied certification and may be subject to the penalties set forth in KRS 217B.990.

Section 4. General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

- (1) Label and labeling comprehension:
 - (a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;
 - (b) Classification of the product, general or restricted; and
 - (c) Necessity for use consistent with the labeling.
- (2) Safety factors, including:
 - (a) Pesticide toxicity, hazard to man and common exposure routes;
 - (b) Common types and causes of pesticide accidents;
 - (c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;
 - (d) Symptoms of pesticide poisoning;
 - (e) First aid and other procedures to be followed if a pesticide accident occurs;
 - (f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers;
 - (g) Practical application of the Worker Protection Standards, 40 C.F.R. 156 and 170, FIFRA; and
 - (h) The proper selection and use of personal protective equipment for handling and application of pesticides.
- (3) The potential environmental consequences of use and misuse of pesticides as may be influenced by factors such as:
 - (a) Weather and other climatic conditions;
 - (b) Types of terrain, soil, or other substrata;
 - (c) Presence of fish, wildlife, and other nontarget organisms;
 - (d) Drainage patterns;
 - (e) Storage or use of pesticides and fertilizer including bulk

fertilizer or pesticide;

(f) Other nonchemical controls including, but not limited to, sanitation.

(4) Pest identification, including consideration of the following factors:

(a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and

(b) Pest maturation and development as it may relate to the problem of identification and control.

(5) Pesticides, including consideration of the following factors:

(a) Types of pesticides;

(b) Types of pesticide formulations;

(c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulation;

(d) Hazards and residues associated with use;

(e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and

(f) Dilution procedures.

(6) Equipment, including consideration of the following factors:

(a) Types of pesticide application equipment and advantages and limitations of each; and

(b) Uses, maintenance, and calibration of equipment.

(7) Application techniques, factors including:

(a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;

(b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

(c) Prevention of drift and pesticide loss into the environment.

(8) Laws and regulations. Knowledge of pertinent aspects of the Federal Environmental Pesticides Control Act, 7 U.S.C. 136, and KRS Chapter 217B.

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:

(1) Category 1. Agricultural. This category shall be subdivided as follows:

(a) Plant and animal. Persons requesting agricultural plant and animal certification shall demonstrate practical knowledge of crops and specific pests of those crops for which they may be using pesticides. Practical knowledge shall be required concerning soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, nontarget injury, and community problems resulting from the use of pesticides in agricultural areas. They shall demonstrate practical knowledge of agricultural animals and their associated pests. A practical knowledge shall also be required concerning specific pesticide toxicities and residue potentials since host animals will frequently be used for food. Further, the person shall know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

(b) Agricultural fumigation. This category shall include persons requesting agricultural fumigation certification. They shall demonstrate practical knowledge of the use of pesticide gases and fumigants in the treatment of enclosed areas used for the production, storage, or transportation of agricultural commodities and the use of pesticide gases and fumigants in preparing land for the production of agricultural commodities and for the control of pests in growing agricultural commodities.

(2) Category 2. Forestry. Persons requesting forest certification shall demonstrate practical knowledge of types of forests, forest nurseries, seed production in the Commonwealth, and the pests involved therein. They shall possess practical knowledge of the cyclic occurrence of certain pests and their specific population dynamics as a basis for programming pesticide applications. A practical knowledge shall be required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitation and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator shall, therefore, demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintentional effects

on wildlife. Proper use of specialized equipment shall be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

(3) Category 4. Seed treatment. Persons requesting seed treatment certification shall demonstrate practical knowledge of the types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They shall demonstrate practical knowledge of the hazards associated with handling, sorting, mixing, misuse of treated seed such as introduction of treated seed into food and feed channels, and proper disposal of unused treated seeds.

(4) Category 5. Aquatic. Persons requesting aquatic certification shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this category. They shall demonstrate practical knowledge of various water-use situations and potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. They shall also demonstrate practical knowledge of the principles of limited-area application.

(5) Category 6. Right-of-way. Persons requesting right-of-way certification shall demonstrate practical knowledge of a wide variety of environments since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems of run-off, drift, excessive foliage destruction, and the ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides, the need for containment of these pesticides within the right-of-way area, and the impact of their application activities upon the adjacent areas and communities.

(6) Category 8. Public Health. Persons requesting public health certification shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences pesticide application programs. A wide variety of pests are involved and they shall be known and recognized; and appropriate life cycles and habitats shall be understood as a basis for control strategy. These applicants shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They shall also have practical knowledge of the importance and employment of such nonchemical control methods such as sanitation, waste disposal and drainage.

~~(7)~~~~(6)~~ Category 9. Regulatory. Persons applying for certification in this category shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made.

~~(8)~~~~(7)~~ Category 10. Demonstration and research. Persons demonstrating the safe and effective use of pesticides to other persons and the public shall meet comprehensive standards reflecting a broad spectrum of pesticide use. Practical knowledge of problems, pests, and population levels occurring in each demonstration situation shall be required. Further, they shall demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. In general, persons conducting demonstration pest control work shall possess a practical knowledge of all of the standards detailed in this administrative regulation.

~~(9)~~~~(8)~~ Category 11. Aerial certification. Persons applying pesticides using aircraft shall obtain aerial certification. Aerial applicators shall possess knowledge of aerial application equipment and calibration of that equipment, spray efficiency testing, field flight patterns, swath markings, turning procedures and subsequent considerations, awareness of obstacles and obstructions, personal safety of pilot, flagman, and ground crew, and preflight checklists of spray personnel. Persons obtaining certification in this category shall also be certified in at least one (1) other category of pesticide use as appropriate for their business.

~~(10)~~~~(9)~~ Category 12. Pesticide sales agent. Persons desiring certification in this category shall demonstrate practical knowledge of pesticide labels and label comprehension including environmental hazards, rates of application, proper application techniques, storage, shipping, handling, worker protection safety issues, and the different types of pesticides.

~~(11)~~~~(10)~~ Category 13. Antifouling marine paint. Persons desiring certification in this category shall demonstrate practical knowledge of the principles and practices of using antifouling paints, including toxicity to humans and nontarget organisms via common exposure routes; proper cleaning, disposal and containment techniques; climatic factors that may influence environmental hazards; common types and features of target and nontarget aquatic/marine organisms; proper handling, mixing and application procedures; and the laws and regulations governing pesticides and antifouling paints.

~~(12)~~~~(11)~~ Category 14. Pest control consultant. Persons desiring certification in this category shall demonstrate practical knowledge of soils, plant identification, pest identification, and soil fertility and have knowledge of pesticides for the purpose of controlling insect pests, plant diseases, weeds, and other pests.

~~(13)~~~~(12)~~ Category 15. Antimicrobial pest control. Persons desiring certification in this category shall demonstrate practical knowledge of disinfecting, sanitation, reduction or mitigation of growth or development of microbiological organisms; protection of inanimate objects, industrial processes, systems or services, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, virus, fungi, protozoa, algae, or slime. Water and wastewater treatment plant operators shall be included in this category. This category shall not include homeowners maintaining personal swimming pools.

~~(14)~~~~(13)~~ Category 16. Sewer root control. Persons desiring certification in this category shall demonstrate practical knowledge of the safe handling and proper application of sewer root control chemicals, including practical knowledge of root growth and biology, equipment type and calibration procedures, proper pesticide handling, mixing and application procedures, proper use and maintenance of personal protective equipment, toxicity of root control pesticides to human and nontarget organisms via common exposure routes, proper cleaning, disposal and containment techniques, effects of root control pesticides on ground water, sewage treatment plants, septic tanks, holding tanks, lift stations, and other sewage treating, conveying, or handling equipment, environmental effects, factors that may lead to a hazardous condition, and the laws and regulations that cover pesticide use.

~~(15)~~~~(14)~~ Category 17. Wood preservative. Persons desiring certification in this category shall demonstrate practical knowledge in the use of wood preservatives, air monitoring procedures, personal protective clothing and equipment, hygiene, related health and safety measures, emergency procedures, and practices necessary to prevent environmental contamination.

Section 6. Certification Maintenance. To maintain certification, each person certified under this administrative regulation, other than a private applicator, shall in a ~~any~~ three (3) year period, attend at least twelve (12) continuing education units of training for a single category, approved by the department, in the use and application of pesticides. The training shall consist of nine (9) continuing education units of training based on Section 4 of this administrative regulation, and three (3) continuing education units of training based on Section 5 of this administrative regulation. For each additional category, in addition to the single category held by the person, an additional three (3) continuing education units based on Section 5 of this administrative regulation, shall be required. Nine (9) continuing education units of training based on Section 4 of this administrative regulation, shall be required to maintain certification regardless of how many additional categories a person may hold. Credit shall be given in full continuing education units only. ~~[All persons holding certification in any category on the effective date of this administrative regulation shall begin a new three (3) year training period beginning January 1 after the effective date of this administrative regulation. All certifications in effect on the effective date of this administrative regulation shall be renewed with an expiration date of December 31, 2005.]~~

Section 7. Private Applicators. (1) Standards of certification of private applicators. Compliance with the following standards shall qualify a person for certification as a private applicator. A private applicator may purchase, use, or apply pesticides in his capacity as a private applicator. As a minimum requirement for certification, a person who desires certification as a private applicator shall show that he possesses a practical knowledge of the pest problems and pest control practices associated with his agricultural operations, including but not limited to, proper storage, use, handling, and disposal of the pesticides and containers. This practical knowledge shall include the ability to:

(a) Recognize common pests to be controlled and damage caused by them;

(b) Read and understand the label and labeling information, including the common names of the pesticides, pests to be controlled, timing and methods of application, safety precautions, any preharvest and reentry restrictions, and specific disposal procedures;

(c) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) Recognize local environmental situations that shall be considered during application to avoid contamination;

(e) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident;

(f) Demonstrate knowledge of the standards for the supervision of noncertified persons established by 40 C.F.R. 171;

(g) Understand the practical application of the Worker Protection Standards, 40 C.F.R. 156 and 170, FIFRA;

(h) Properly select and use personal protective equipment for handling and application of pesticides; and

(i) Know and understand the standards and regulations for the storage of pesticides and fertilizer, including bulk fertilizer or pesticide.

(2) Verification of competence. Competence of private applicators shall be verified by means of a training program administered by county extension agents. Audio-visual training shall be given accompanied by study of the private applicator training pamphlet. Included in the pamphlet shall be self-quizzes with answers to be used by the applicators to assess their own progress. Following completion of training, a certification competency statement shall be signed by the instructor and forwarded to the department or its designated representative. Certification credentials shall then be transmitted to the applicator by the department or its designated representative. Training shall be based on the "Core Manual" published by the United States Environmental Protection Agency. Private applicators may request a written competency test as an alternate means of certification. Private applicators shall be required to be recertified every three (3) years.

Section 8. Credentials. If a person meets all the requirements to obtain a category-specific license under KRS Chapter 217B and this administrative regulation, the department shall issue a document signifying that he is licensed and certified in the category for which he qualifies.

(1) Inactive status. If an applicator or operator, for any reason, changes status and is no longer employed by a dealer but elects to maintain his license, he may do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall be required to maintain certification and pay the annual renewal fee. The licensee shall not be required to register as a dealer or be permitted to perform any type of regulated activity until the license is reactivated and properly assigned to a dealer.

(2) Employee license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any pesticide license or certification other than a noncommercial license or private applicator certification during the term of his em-

ployment with the department unless required by the department in the performance of his official duties. Any pesticide license other than a noncommercial license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the department unless required by the department in the performance of his official duties. ~~[Section 9. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.]~~

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: June 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2012 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2012 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing requirements for the Agricultural Pest Control industry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by establishing licensure requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 217B.050 by clearly stating the requirements for Agricultural Pest Control licensure.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation re-establishes the category eight Public Health Pest Control.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements. This administrative regulation re-establishes the category eight Public Health Pest Control, which had been removed from Chapter 29 in previous filings.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation amendment will make the requirements for category eight Public Health Pest Control entities easier to locate and follow.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 87 Public Health Pest Control

licenses are currently issued.

(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 individuals will need to take no action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities that wish to employ person to perform public health pest control will be able to do so without the necessity of hiring out the work.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal EPA funds 51% of the program, and pesticide product registration fees fund 49%.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Division of Regulation and Inspection.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B.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 fiscal changes will occur.

(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 fiscal changes will occur.

(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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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
Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services
(Amendment)**

302 KAR 28:020. General provisions.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements for recordkeeping, the storage and handling of pesticides, trainee supervision, and certification denial, suspension, modification or revocation.

~~Section 1. [Pesticide Sales Agents. There shall be two (2) classifications of pesticide sales agent licenses: resident pesticide sales agent and remote pesticide sales agent.~~

~~(1) A person located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user shall be licensed as a resident pesticide sales agent.~~

~~(2) A person located outside the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky shall be licensed as a remote pesticide sales agent.~~

~~(3) A person located outside the Commonwealth of Kentucky and employed by a dealer registered in Kentucky may be licensed as a resident pesticide sales agent.~~

~~(4) A resident pesticide sales agent license or remote pesticide sales agent license shall not be issued unless the applicant holds a valid Category 12 certification as provided in 302 KAR 28:050.~~

~~(5) An employee or agent of a manufacturer who sells pesticides solely to a dealer for redistribution or resale shall be exempt from licensure under this regulation.]~~

~~Section 2]. Recordkeeping Requirements. (1)[Pesticide sales agents. A remote pesticide sales agent shall provide his license number to the purchaser at the commencement of the transaction and upon delivery of the pesticides, and shall have and maintain a system to ensure restricted use pesticides are delivered only to properly certified individuals. A resident pesticide sales agent or remote pesticide sales agent who is not employed by a dealer shall maintain the following records with respect to each sale of restricted use pesticides, with copies submitted monthly to the Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601:~~

- ~~(a) Brand, amount, and type of restricted use pesticide sold;~~
- ~~(b) Buyer's name and address;~~
- ~~(c) Certification number of the purchaser; and~~
- ~~(d) Intended use: target pest or resale.~~

~~(2)] Dealers. Each dealer or branch office, in the location where the pesticides are sold, shall maintain the following records with respect to each sale of restricted use pesticides:~~

- ~~(a) Brand, amount, and type of restricted use pesticide sold;~~
- ~~(b) Buyer's name and address;~~
- ~~(c) Certification number of the purchaser; and~~
- ~~(d) Intended use: target pest or resale.~~

~~(2)](3)] Noncommercial applicators, pesticide operators, and pesticide applicators. Unless regulated by KRS 217B.300 or 217B.320, all noncommercial applicators, pesticide operators, and pesticide applicators who apply pesticides shall maintain the following records:~~

- ~~(a) Name and address of person receiving services;~~
- ~~(b) Brand or product name of pesticide applied;~~
- ~~(c) Date of application;~~
- ~~(d) Purpose of application;~~
- ~~(e) Size of area treated;~~
- ~~(f) Crop, commodity, stored product, or type of area treated;~~

- ~~(g) Name and certification number of applicator;~~
- ~~(h) EPA registration number;~~
- ~~(i) Location of application; and~~
- ~~(j) Total amount of each pesticide applied.~~

~~(3)](4)] Retention. All persons required to maintain records under subsections (1) and (2) of this section shall retain the records for a period of two (2) years from the date of sale. All persons required to maintain records under subsection (3) of this section shall retain the records for a period of three (3) years from the date of use or application. Maintenance of duplicate records shall not be required. If a use or application of a restricted use pesticide is made in the name of a person or business entity, then maintenance of only one (1) set of records for each job or use shall be required by that person or business entity, even though one (1) or more persons may have used or applied pesticides.~~

~~(4)](5)] Availability. Records required under this section shall be made available to the department upon request or for dealers and branch offices, as prescribed in KRS 217B.105(7).~~

Section 2[3]. Storage and Handling of Pesticides. (1) Applicability. This administrative regulation shall apply to all persons who have occasion to store restricted use pesticides or persons who have occasion to store any pesticides for the purpose of redistribution or direct resale.

(2) Standards for storage of pesticides:

(a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas;

(b) Storage sites shall be cool, dry, and airy or have a ventilation system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If a ventilation system is installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people;

(c) Storage sites shall be adequately lighted so that labels and label information can be easily read;

(d) Storage sites shall comply with applicable fire codes;

(e) Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks. The contaminated material shall be disposed of per label directions.

(f) Restricted use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked when authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words "pesticide storage area" and "danger" or "poison".

(3) Standards for storage of bulk fertilizer or bulk pesticides. Any person who has cause to store bulk fertilizer or bulk pesticides shall meet the standards and requirements set out in 302 KAR 31:040.

(4) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by dealers, pesticide operators, pesticide applicators, or noncommercial applicators shall be transported consistent with 49 U.S.C. 51.

Section 3[4]. Supervisory Requirements. A trainee who applies pesticides shall have direct on the job supervision as defined in KRS 217B.040(28).

Section 4[5]. Denial, Suspension, or Revocation of Pesticide Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 14.

Section 5[6]. Registered Pesticide Equipment Identification. The equipment owner shall notify the department if equipment registered under KRS 217B.170 is permanently transferred from the original registering location or is permanently removed from active pesticide application service. The owner shall be responsible for removing the decal when the equipment is permanently removed from active pesticide application or is permanently

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transferred out of the state. [Section 7. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.]

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: June 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2012 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2012 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing requirements for the Ornamental Turf Lawn and Interior Plantscape Pest Control industry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by establishing licensure requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 217B.050 by clearly stating the requirements for Ornamental Turf Lawn and Interior Plantscape Pest Control licensure.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation removes the category of pesticide sales agent.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements. The amendment allows the requirements for a pesticide sales agent to be found in only one place in the administrative regulations.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements. The amendment allows the requirements for a pesticide sales agent to be found in only one place in the administrative regulations.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation amendment will make the requirements for a pesticide sales agent easier to locate and follow.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 975 pesticide sales agents in the Commonwealth.

(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 individuals will need to take no action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individual will be able to find the requirements for a pesticide sales agent in a single location within the regulations. The change makes the requirements easier to understand.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal EPA funds 51% of the program, and pesticide product registration fees fund 49%.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Division of Regulation and Inspection.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B.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 fiscal changes will occur.

(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 fiscal changes will occur.

(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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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
Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services
(Amendment)**

302 KAR 28:050. Certification.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Applicability. (1) A person shall not be licensed to sell or apply pesticides unless he is certified in a category consistent with the sale or application. A person shall not purchase restricted use pesticides unless he is licensed or certified in a category consistent with the purchase.

(2) A pesticide operator, pesticide applicator, noncommercial applicator, or private applicator shall not apply any pesticide unless he is certified in a category consistent with the application, as provided in this administrative regulation, with the exception of a registered trainee acting under the direct on the job supervision of a certified person.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a license to any person who holds a valid license in another state if the person is employed by a dealer registered in Kentucky and if, in the opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

Section 2. Certification. (1) Certification may be obtained from the department as a pesticide operator, noncommercial applicator, pesticide applicator, or pesticide sales agent pursuant to Section 3 of this administrative regulation, in the following categories of pesticide use or application:

(2) Category 3. Ornamental and lawn care. This category shall include persons applying pesticides or fertilizer to control insects, weeds, and diseases in residential and commercial lawns, and maintenance of ornamental trees, shrubs and flowers, including the control of pests that do not normally invade structures, such as bagworms, grubs, and moles. Certification in this category shall not qualify an applicator to make applications to sports turf or golf courses. ~~[(3) Category 12. Pesticide sales agent. This category shall include any individual who sells or distributes restricted use pesticides or any individual who sells and makes recommendations for the use and application of pesticides to the final user. Category 12 certification as a pesticide sales agent under this administrative regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 27 and 29. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification, if the person selling or distributing pesticides is licensed as a pesticide sales agent.]~~

~~[(3)]~~[(4)] Category 18. Golf course. This category shall include persons who apply pesticides or fertilizer to land on which turf and ornamental care is done for the purpose of preparing the land for use in the game of golf.

~~[(4)]~~[(5)] Category 19. Interior Plantscapes. This category shall include persons using pesticides to control insects, weeds, and diseases in or on interior plantscapes, regardless of who owns the plants.

~~[(5)]~~[(6)] Category 20. Sports turf. This category shall include persons applying pesticides to control insects, weeds, and diseases to or on turf on which sports activities occur. Certification in this category shall not qualify an applicator to make applications to golf courses.

Section 3. General Requirements. (1) To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. Competency in the use and handling of pesticides shall be determined and based upon standards established in Sections 4 and 5 of this administrative regulation. The examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination. Upon successfully passing an exam, a person will have ninety (90) days from the date of testing to activate the licenses and certification requested. After ninety (90) days have expired, a person shall have to retake and pass the examination before activation of a license and certification may occur.

(2) Any applicant that willfully engages in fraud or deceit in the making of an application or the taking of an examination will be in violation of this administrative regulation and may be denied certification and may be subject to the penalties set forth in KRS 217B.990.

Section 4. General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

- (1) Label and labeling comprehension:
 - (a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;
 - (b) Classification of the product, general or restricted; and
 - (c) Necessity for use consistent with the labeling.
- (2) Safety factors, including:
 - (a) Pesticide toxicity, hazard to man, and common exposure routes;
 - (b) Common types and causes of pesticide accidents;
 - (c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;
 - (d) Symptoms of pesticide poisoning;
 - (e) First aid and other procedures to be followed if a pesticide accident occurs;
 - (f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers;
 - (g) Practical application of the Worker Protection Standards, 40 C.F.R. 156 and 170, FIFRA; and
 - (h) The proper selection and use of personal protective equipment for handling and application of pesticides.
- (3) The potential environmental consequences of use and misuse of pesticides as may be influenced by factors such as:
 - (a) Weather and other climatic conditions;
 - (b) Types of terrain, soil, or other substrata;
 - (c) Presence of fish, wildlife, and other nontarget organisms;
 - (d) Drainage patterns;
 - (e) Storage or use of pesticides and fertilizer including bulk fertilizer or pesticide; and
 - (f) Other nonchemical controls including, but not limited to, sanitation.
- (4) Pest identification, including consideration of the following factors:
 - (a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and
 - (b) Pest maturation and development as it may relate to the problem of identification and control.
- (5) Pesticides, including consideration of the following factors:
 - (a) Types of pesticides;
 - (b) Types of pesticide formulations;
 - (c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulation;
 - (d) Hazards and residues associated with use;

- (e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
- (f) Dilution procedures.
- (6) Equipment, including consideration of the following factors:
 - (a) Types of pesticide application equipment and advantages and limitations of each; and
 - (b) Uses, maintenance, and calibration of equipment.
- (7) Application techniques; factors including:
 - (a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;
 - (b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
 - (c) Prevention of drift and pesticide loss into the environment.
- (8) Laws and regulations. Knowledge of pertinent aspects of the Federal Environmental Pesticides Control Act, 7 U.S.C. 136, and KRS Chapter 217B.

Section 5. Specific Standards of Competency. (1) In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:

(2) Category 3. Ornamentals and lawn care. Persons requesting ornamental and lawn care certification shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and lawns, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category shall demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals. ~~[(3) Category 12. Pesticide sales agent. Persons requesting certification in this category shall demonstrate practical knowledge of the different types of pesticides, pesticide labels and label comprehension including environmental hazards, rates of application, proper application techniques, storage, shipping, handling, and worker protection safety issues.]~~

~~[(4)]~~ (4) Category 18. Golf courses. Persons requesting certification in this category shall demonstrate practical knowledge of the safe handling and proper application of pesticides and fertilizers; practical knowledge of fungi, weeds, insect infestation, disease control, and fertility; proper use and maintenance of personal protective equipment; toxicity of pesticides to human and nontarget organisms; proper cleaning, disposal and containment techniques; effects of control pesticides on ground water; conveying or handling equipment; environmental effects; factors that may lead to hazardous conditions; and the laws and regulations that cover pesticide use.

~~[(4)]~~ (5) Category 19. Interior landscapes. Persons requesting certification in this category shall demonstrate practical knowledge of the safe handling and proper application of pesticides; practical knowledge of fungi, weeds, insect infestation, and disease control; proper use and maintenance of personal protective equipment; toxicity of pesticides to human and nontarget organisms; proper cleaning and disposal techniques; effects of pesticides on conveying and handling equipment; environmental effects; factors that may lead to hazardous conditions; and the laws and regulations that cover pesticide use.

~~[(5)]~~ (6) Category 20. Sports turf. Persons requesting certification in this category shall demonstrate practical knowledge of the safe handling and proper application of pesticides; practical knowledge of fungi, weeds, insect infestation, and disease control; proper use and maintenance of personal protective equipment; toxicity of pesticides to human and nontarget organisms; proper cleaning and disposal techniques; effects of pesticides on conveying or handling equipment; environmental effects; factors that may lead to hazardous conditions; and the laws and regulations that cover pesticide use.

Section 6. Certification Maintenance. To maintain certification, each person certified under this administrative regulation shall in a [any] three (3) year period, attend at least twelve (12) continuing education units of training for a single category approved by the

department in the use and application of pesticides. The training shall consist of nine (9) continuing education units of training based on Section 4 of this administrative regulation, and three (3) continuing education units of training based on Section 5 of this administrative regulation. For each additional category in addition to the single category held by the person, an additional three (3) continuing education units based on Section 5 of this administrative regulation, shall be required. Nine (9) continuing education units of training based on Section 4 of this administrative regulation, shall be required to maintain certification regardless of how many additional categories a person may hold. Credit shall be given in full continuing education units only. ~~[All persons holding certification in any category on the effective date of this administrative regulation shall begin a new three (3) year training period beginning January 1 after the effective date of this administrative regulation. All certifications in effect on the effective date of this administrative regulation shall be renewed with an expiration date of December 31, 2005.]~~

Section 7. Credentials. If a person meets all the requirements to obtain a category-specific license under KRS Chapter 217B and this administrative regulation, the department shall issue a document signifying that he is licensed and certified in the category for which he qualifies. (1) Inactive status. If an applicator or operator, for any reason, changes status and is no longer employed by a dealer but elects to maintain his license, he may do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall be required to maintain certification and pay the annual renewal fee. The licensee shall not be required to register as a dealer or be permitted to perform any type of regulated activity until the license is reactivated and properly assigned to a dealer.

(2) Employee license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any pesticide license or certification other than a noncommercial license or private applicator certification during the term of his employment with the department unless required by the department in the performance of his official duties. Any pesticide license other than a noncommercial license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the department unless required by the department in the performance of his official duties. ~~[Section 8. Effective Date. The effective date of this administrative regulation shall be July 1, 2002]~~

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: June 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2012 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2012 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing requirements for the Ornamental Turf Lawn and Interior Plantscape Pest Control industry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by establishing licensure requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 217B.050 by clearly stating the requirements for Ornamental Turf Lawn and Interior Plantscape Pest Control

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation removes the category of pesticide sales agent.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements. The amendment allows the requirements for a pesticide sales agent to be found in only one place in the administrative regulations.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements. The amendment allows the requirements for a pesticide sales agent to be found in only one place in the administrative regulations.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation amendment will make the requirements for a pesticide sales agent easier to locate and follow.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 975 pesticide sales agents in the Commonwealth.

(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 individuals will need to take no action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individual will be able to find the requirements for a pesticide sales agent in a single location within the regulations. The change makes the requirements easier to understand.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal EPA funds 51% of the program, and pesticide product registration fees fund 49%.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Division of Regulation and Inspection.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B.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 fiscal changes will occur.

(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 fiscal changes will occur.

(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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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 Department of Agriculture Office of Consumer and Environmental Protection Division of Environmental Services (Amendment)

302 KAR 29:020. General provisions.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements for record-keeping, the storage and handling of restricted-use pesticides, trainee supervision, and certification denial, suspension, modification, or revocation.

~~Section 1. [Pesticide Sales Agents. There shall be two (2) classifications of pesticide sales agent licenses: resident pesticide sales agent and remote pesticide sales agent.~~

~~(1) An individual located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user shall be licensed as a resident pesticide sales agent.~~

~~(2) An individual located outside the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky shall be licensed as a remote pesticide sales agent.~~

~~(3) An individual located outside the Commonwealth of Kentucky and employed by a dealer registered in Kentucky may be licensed as a resident pesticide sales agent.~~

~~(4) A resident pesticide sales agent license or remote pesticide sales agent license shall not be issued unless the applicant holds a valid Category 12 certification as provided in 302 KAR 28:050.~~

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(5) An employee or agent of a manufacturer who sells pesticides solely to a dealer for redistribution or resale shall be exempt from licensure under this administrative regulation.]

Section 2]. Recordkeeping Requirements. (1) [Pesticide sales agents. A remote pesticide sales agent shall provide his license number to the purchaser at the commencement of the transaction and upon delivery of the pesticides, and shall have and maintain a system to ensure restricted use pesticides are delivered only to properly certified individuals. A resident pesticide sales agent or remote pesticide sales agent who is not employed by a dealer shall maintain the following records with respect to each sale of restricted use pesticides;

- (a) Brand, amount, and type of restricted use pesticide sold;
- (b) Buyer's name and address;
- (c) Certification number of the purchaser; and
- (d) Intended use: target pest or resale.

(2) Commercial and noncommercial structural applicators. All commercial and noncommercial structural applicators who apply pesticides or any termiticides shall maintain the following records:

- (a) Name and address of person receiving services and location of performance of services;
- (b) Brand or product name of pesticides applied;
- (c) Date of application;
- (d) Type of area treated;
- (e) Name of applicator; and
- (f) Total amount of each pesticide applied, excluding paste baits.

(3) Retention. All persons required to maintain records under subsection (1) of this section shall retain the records for a period of two (2) years from the date of the sale and shall submit copies monthly to the Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601. All persons required to maintain records under subsection (2) of this section shall retain the records for a period of three (3) years from the date of use or application. Maintenance of duplicate records shall not be required. If a use or application of a pesticide is made in the name of a person or business entity, maintenance of only one (1) set of records for each job or use shall be required by that person or business entity, even though one or more persons may have used or applied pesticides.

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

Section 3]. Storage and Handling of Pesticides. (1) Applicability. This administrative regulation applies to all persons who have occasion to store pesticides.

(2) Standards for storage:

- (a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas;
- (b) Storage sites shall be cool, dry, and airy or have an exhaust system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If an exhaust system is installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people;
- (c) Storage sites shall be adequately lighted so that labels and label information can be easily read;
- (d) Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks. The contaminated material shall be disposed of per label directions; and
- (e) Restricted-use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked when authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words "pesticide storage area" and "danger" or "poison."

(3) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by commercial structural applicators shall be transported consistent with 49 U.S.C. 51.

Section 4]. Denial, Suspension, or Revocation of Pesticide

Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 14.

Section 5]. Pesticide Application by Structural Commercial and Noncommercial Applicators. Any person governed by this administrative regulation shall be certified in Category 7(a), Structural Pest Control, pursuant to 302 KAR 29:060, before making application of pesticides to a structure, except new employees being trained pursuant to KRS 217B.560.

Section 6]. Registered Pesticide Equipment Identification. (1) Each branch or pesticide applicator shall at all times have its vehicles, which are actively and regularly engaged in service work, marked for easy identification. The identification shall consist of the letters "L.P.C.O." two (2) inches high and followed by the company number of the business, as assigned by the department. The identification shall be placed in a highly visible location.

(2) The vehicle owner shall notify the department if a vehicle registered under KRS 217B.565 is permanently transferred from the original registering location or is permanently removed from active pesticide application service. The owner shall be responsible for removing the identification if the vehicle is permanently removed from active pesticide application or is permanently transferred out of the state. [Section 7. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.]

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: June 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2012 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2012 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing requirements for the structural pest control industry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by establishing licensure requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 217B.050 by clearly stating the requirements for structural pest control licensure.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation removes the category of

pesticide sales agent.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements. The amendment allows the requirements for a pesticide sales agent to be found in only one place in the administrative regulations.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements. The amendment allows the requirements for a pesticide sales agent to be found in only one place in the administrative regulations.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation amendment will make the requirements for a pesticide sales agent easier to locate and follow.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 975 pesticide sales agents in the Commonwealth.

(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 individuals will need to take no action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individual will be able to find the requirements for a pesticide sales agent in a single location within the regulations. The change makes the requirements easier to understand.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal EPA funds 51% of the program, and pesticide product registration fees fund 49%.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Division of Regulation and Inspection.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B.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 fiscal changes will occur.

(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 fiscal changes will occur.

(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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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 Department of Agriculture Office of Consumer and Environmental Protection Division of Environmental Services (Amendment)

302 KAR 29:050. Commercial structural pest control and fumigation.

RELATES TO: KRS 217B.190, 217B.515, 217B.520, 217B.525, 217B.545

STATUTORY AUTHORITY: KRS 217B.050, 217B.530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.515 requires that any person engaging in structural pest control be licensed. This administrative regulation establishes requirements applicable to the licensure and practice of commercial structural pest control and fumigation.

Section 1. Applicability. A person shall not engage in commercial structural pest control or fumigation without first obtaining a license from the department. A person may apply for a license in one (1) or more of the following categories:

- (1) Commercial structural pest control applicator;
- (2) Commercial structural pest control manager;
- (3) Commercial structural fumigation applicator;
- (4) Commercial structural fumigation manager; ~~or (5) Pesticide sales agent.~~

Section 2. License Application. (1) All applicants for applicator or manager licenses shall provide the following:

- (a) A completed "Commercial Structural Pest Control Examination Application";
- (b) A statement from a statewide law enforcement agency that the applicant has never been convicted of fraud, misrepresentation, or a felony;
- (c) College transcripts if applicable; and
- (d) Written verification of pesticide work experience, pursuant to KRS 217B.520.

(2) All applications for applicator or manager examinations shall be sworn to and notarized.

(3) Pursuant to KRS 217B.525(1), all applications for applicator or manager licenses shall be postmarked thirty (30) days prior to the next scheduled testing date. Any application received after the thirty (30) day deadline shall be returned.

(4) Any applicant failing to submit a complete application thirty (30) days prior to the scheduled testing date shall not be allowed to test.

(5) Any false or misleading statements made in a license application shall be grounds to deny or revoke the license.

(6) The application of any applicant convicted of a felony shall require approval by the board.

(7) The manager's license examinations shall be given the second Tuesday of each month at a location specified by the department.

partment. If the second Tuesday falls on a holiday, the examination shall be given on the following Tuesday.

(8) The manager's license examination shall be timed and shall be completed within two (2) hours.

(9) An applicant for an applicator's or manager's license shall pass both parts of the examination in a single testing session pursuant to KRS 217B.530(7).

Section 3. License Renewal. (1) Each license shall expire on June 30 of each year.

(2) Failure to submit, by July 1 of each year, a completed "Structural Pest Control Renewal" form with a fee of \$100 for each place of business maintained in Kentucky, shall result in the license holder having his license suspended until the renewal registration has been received and the fee and any associated fines are paid.

(3) At the time of license renewal, each company shall submit to the department a list with the following information on each employee:

- (a) Name, address, and home telephone number;
- (b) Social Security number; and
- (c) Job title.

(4) Within thirty (30) days of the addition or termination of an employee, the company shall submit to the department the information required in subsection (4) of this section for each new or terminated employee.

Section 4. Change of Address Notices. Each license holder shall notify the department of any change of address within ten (10) days after the change has been made.

Section 5. Treatment for Wood-destroying Organisms. Unless the structure is substandard, the following standards shall apply:

(1) Treatment measures taken for the prevention or control of wood-destroying organisms shall be based upon an inspection of the structure.

(2) Termite treatment measures. The following standards shall apply to the treatment of all structures for the control or prevention of subterranean termite infestations.

(a) The selection and use of soil-applied liquid termiticides, termite bait systems, wood treatments, or any other product used for control of wood-destroying organisms shall be in accordance with directions on the product label.

1. Loose cellulose debris that can be raked from beneath structures shall be removed.

2. Except for a component of a termite baiting system that is affixed to termite tubes, all accessible termite tubes shall be removed.

(b) Termite pretreatments shall be carried out in accordance with label directions of the product used and shall not be applied at less than label rates.

(c) Any alternative termite treatment measures or new technology in termite control with less than five (5) years efficacy data shall receive prior written approval from the department before the measures and technology may be registered and used. All alternative termite treatment measures or new technology in termite treatments shall be applied in accordance with label directions.

(3) Powderpost beetle and old house borer treatment measures:

(a) Treatment for the control of powderpost beetle or old house borer infestations may be performed by spraying or painting infested and adjacent areas with a pesticide labeled for their control; and

(b) Fumigation by licensed fumigators may be used to control powderpost beetle or old house borer infestations if other control measures have failed or are inappropriate.

(4) Requirements for prevention and control of wood-destroying fungi. The following shall be the minimum requirements for control of wood-destroying fungi in crawl space areas or other areas of buildings after the buildings have been constructed:

(a) The applicator shall determine the moisture content of joists, sills, and subfloor in the building. If excess dampness from the soil under a building contributes to moisture readings above twenty (20) percent, the applicator shall:

- 1. Install a vapor barrier over approximately seventy (70) per-

cent of the soil;

2. Install additional ventilation so there is at least one (1) square foot of vent space per 150 square feet of crawl space area without a vapor barrier;

3. Install vents to give cross ventilation with a vapor barrier;

4. Improve drainage;

5. Waterproof the foundation; or

6. Perform any combination of the items specified in subparagraphs 1 to 5 of this paragraph.

(b) The application of fungicides under the structure may be used in the control of existing decay problems under the following circumstances:

1. Spot treatment may be performed for areas with twenty (20) percent or above moisture readings.

2. Complete liquid treatment may only be performed in conjunction with paragraph (a) of this subsection if moisture readings are above twenty (20) percent in four (4) separate areas of a structure. a. The separate areas of a structure shall be:

- (i) Left front;
- (ii) Right front;
- (iii) Left rear;
- (iv) Right rear;
- (v) Left center; and
- (vi) Right center.

b. Moisture readings shall be recorded on a graph at the time of original sale of treatment.

c. If a structure qualifies with four (4) moisture readings, a moisture control treatment shall be performed.

Section 6. Wood-destroying Organism Reports. (1) A person holding a commercial structural pest control applicator's license shall submit to the department a monthly report of all work done for control or prevention of wood-destroying organisms. Each office or branch office shall file a separate report.

(2) Reports shall be made on the "Monthly Report of Wood-Destroying Organism Treatments" form and received by the department no later than the 15th of the month following treatment.

(3) All reports shall be signed by the licensed applicator or authorized agent for that company.

(4) Upon performance of treatment for control or prevention of wood-destroying organisms, a contract shall be made between the company and the property owner. This shall be, at minimum, a duplicate contract, one (1) copy being issued to the property owner and one (1) copy retained by the company.

Section 7. Consumer Disclosure. All contracts issued except those for preconstruction treatments shall be accompanied by a consumer disclosure signed by the consumer or an individual authorized by the consumer and a graph. If a signature cannot be obtained, a detailed explanation for the absence of the signature shall be included on the form.

Section 8. Inspections by the Department. (1) The commissioner or his authorized representative may examine properties treated for the purpose of determining compliance with the treatment standards established in Section 5 of this administrative regulation.

2. The pest control operator shall not accompany the inspector on the initial inspection unless requested by the department.

3. If violations are found, the license holder shall be notified and given a reasonable length of time in which to abate the violations.

4. If the license holder neglects or refuses to abate the violations, the license shall be suspended, as provided by KRS 217B.545, except for good cause shown.

(5) If a license is suspended, the license holder shall:

- (a) Retreat all properties on which a violation has been found;
- (b) not otherwise service any current contracts or solicit any new business; and

(c) notify the department of the dates of all reexaminations and retreatments.

(6) When all properties previously reported in an unsatisfactory condition have been reexamined and retreated, the department shall make the reinspections at its earliest convenience.

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(7) If the department, on reinspection, finds all the properties in satisfactory condition, the suspension shall be removed. Otherwise, the license shall be permanently revoked.

Section 9. Rodent Control. Since most rodenticides are toxic to humans and domestic animals, care shall be exercised and precautionary steps taken to avoid accidental poisoning of human beings and domestic animals. Rodenticides shall be used only according to label directions.

Section 10. Fumigation. (1) Fumigation crews. For purposes of safety, at least two (2) individuals shall compose a crew for the release of any fumigant or fumigants operation shall not be conducted unless at least two (2) individuals work jointly and concurrently in the release of a fumigant or fumigants. This subsection shall not apply to spot fumigation.

(2) Official notice of fumigation.

(a) Before performing general fumigation in a structure or enclosed space, a license or certification holder shall notify in writing the fire department and the police department having jurisdiction over the location where the fumigation operation is to be performed.

(b) 1. Except as provided in subparagraph 2 of this paragraph, the written notification shall be given to each fire department and police department at least three (3) hours prior to the time stated in the notice for the release of the fumigant.

2. Notification shall be provided in advance of the fumigating operation, without the time limit established by subparagraph 1 of this paragraph, for fumigation of vessels, aircraft, boxcars, trucks, or common carriers.

(c) The notice shall give the following information:

1. Location of structure or enclosed space to be fumigated as well as its character and use;

2. The fumigant to be used;

3. The date and time of release of fumigant and approximate exposure period; and

4. The name and day and night telephone numbers of the operator in charge.

(3) If trucks, boxcars, or other common carriers are in transit during the fumigation operation, the carrier and the receiver shall be notified that fumigation has taken place. Other than trucks, boxcars, or other common carriers, this subsection shall not apply to spot fumigation.

(4) Structures to be vacant.

(a) Human beings or domestic animals shall not occupy the structure to be fumigated, or any part or parts thereof, during the period of fumigation. In addition, structures or enclosed spaces which are physically joined to or in contact with the structure to be fumigated shall not be occupied by human beings or domestic animals during the period of fumigation.

(b) The operator in charge shall make a careful examination of all parts of the structure to be fumigated and structures or enclosed spaces physically joined to or in contact with the structure, to verify that no human beings or domestic animals are remaining in the structure and that all necessary precautions have been taken to safeguard the lives and health of all persons.

(5) Notice of warning shall be served upon the occupants of the structure or enclosed space to be fumigated no later than three (3) hours in advance of any fumigation operation by leaving the notice with a responsible adult person or by attaching the notice in a conspicuous manner on the entrance or entrances of the structures or enclosed spaces occupied by human beings.

(6) The operator in charge shall make a personal inspection and examination of the structure or enclosed space to be fumigated.

(7) Danger signs.

(a) Prior to releasing the fumigant, warning signs shall be posted at the ground level on all doors or entrances as follows:

(Skull and Crossbones)	Danger Fumigation with (Name of Fumigant) Deadly Poison All persons are warned to keep away	(Skull and Crossbones)
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Name of Fumigator:

Address:

Telephone:

Operator in Charge:

Day Phone:

Night Phone:

(b) The signs shall be printed in indelible red ink or insoluble paint on a white background. The words "danger" and "deadly poison" shall be in block letters two (2) inches high and all other letters shall be in proportion.

(8) Final prefumigation inspection. Immediately before the fumigant is to be released, the operator in charge shall make a final inspection and shall ascertain the following:

(a) That all preparations have been completed;

(b) That no human beings or domestic animals are present within the structure or enclosed space to be fumigated, or in any adjacent structures or enclosed spaces that were to be vacated because of danger from the fumigation operation;

(c) That no open fires or open flames, pilot lights or oil lamps are burning;

(d) That all personnel engaged in the fumigation operation are outside the structure or enclosed space to be fumigated unless proper application of the fumigant requires personnel to be within the enclosed space at the time of application; and

(e) That all doors, windows, and all other means of access have been locked, barred, or guarded. All doors or other entrances which can be opened from the outside shall be locked.

(9) Guards and watchmen.

(a) During the period of fumigation, and until the structure has been ventilated and declared safe, at least one (1) capable, alert watchman or guard, shall remain on duty at the structure or enclosed space being fumigated. One (1) guard or watchman shall be considered sufficient for each fumigation operation unless, in the judgment of the operator in charge, the conditions and circumstances necessitate additional guards or watchmen.

(b) The guard or watchman shall prevent the entrance of unauthorized personnel into the structure or enclosed space during the exposure period and while the structure or enclosed space is being ventilated after the exposure period.

(c) Spot fumigation shall not require a guard or watchman, unless deemed necessary in the judgment of the operator in charge. (d) If a warning agent is used, the requirements established in this subsection shall not apply unless specified by the label.

(10) Declaring structure or enclosed space fumigated safe for reoccupancy. The operator in charge shall not permit or allow any unauthorized person to enter the structure or enclosed space fumigated until he has ascertained that it is safe for human occupancy.

(11) Spot fumigation. Spot fumigation may be performed by persons under the full-time supervision of a person certified to apply fumigants. Spot fumigation may be performed without the posting of guards as required for general fumigation. This shall not relieve the operator in charge of the duty to comply with all other safety precautions and requirements.

(12) The following procedures shall not be considered fumigation operations if nonrestricted use pesticides are used according to label directions:

(a) Aerosol dispersions; and

(b) Any equipment or device which produces a fog, smoke, or mist.

Section 11. Structural Pest Control and Fumigation Licenses.

(1) A person holding a general pest and wood-destroying organism or fumigation license may continue to do business in those categories of pest control for which the person is licensed under KRS 217B.515(1)(b). A general pest and wood-destroying organism or fumigation certification shall not be a manager's or applicator's license and shall not entitle the holder to engage in business in all the categories that a manager or applicator may engage.

(2) Commercial structural pest control or fumigation licenses shall be renewed by June 30 of each year and shall be subject to all the terms and conditions of other licenses issued under this administrative regulation. These licenses may be modified, suspended, or revoked for the same reasons, and using the same

procedures, that a manager's or applicator's license may be modified, suspended, or revoked. These license holders shall meet the application standards and obey the requirements for contracting, recordkeeping, and reporting, established by KRS 217B.150 and by 302 KAR 29:020.

(3) A person holding a general pest and wood-destroying organism or fumigation license shall be, by reason of KRS 217B.180(3), certified to purchase or use restricted-use pesticides. This shall not relieve them from obtaining certification under the federal law as contained in the Federal Insecticides, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 136 et seq. The certification of persons certified under KRS 217B.180(3) may be modified, suspended, or revoked pursuant to 302 KAR 29:020. To maintain certification, persons certified pursuant to KRS 217B.180(3) shall meet the requirements of 302 KAR 29:060.

Section 12. Pesticide Application in Schools. Each school district shall implement an integrated pest management program with a primary goal of controlling dangerous and destructive pests with the judicious use of pesticides. An integrated pest management program shall include the items specified in this section:

(1) Advance notification of pesticide use.

(a) If a pesticide is to be applied in or around a school, an advance notification of pesticide use shall be given or sent by the school at least twenty-four (24) hours prior to the pesticide application to all staff members, health professionals assigned to provide services at the school and parents or guardians of students enrolled in the school as determined by the contact information maintained on file. Notice shall not be required if:

1. A pesticide is to be applied at a time the school is not in session under the calendar set by the school board; and

2. Persons other than the applicators and the minimum number of school staff necessary to allow the applications are not scheduled to be in the building during the application and for at least twenty-four (24) hours after the application.

(b) A master copy of the notification shall be maintained by the school in a file marked IPM for twenty four months after the notice is issued and shall be subject to inspection upon request by Division of Environmental Services personnel.

(2) The notification shall include the following:

(a) The date of possible pesticide application;

(b) A description of the general location of the pesticide application;

(c) description of pests treated, the brand name of the pesticides applied, including the list of active ingredients, and the pesticide application method; and

(d) A telephone number that parents and staff can use to contact the school for more information.

(3) If special circumstances arise that prevent advance notice from being provided as required, such as the emergency application of pesticides to control organisms that pose an immediate health threat, the school shall provide the notice as soon as possible. The notice shall explain the reasons why advance notice was not provided and shall also include the information required in subsection 2(a) to (d) of this section.

(4) The certified applicator shall only be responsible to furnish to the school the information needed by the school to comply with subsections (2)(a) to (c) of this section:

(a) At least thirty-six (36) hours prior to the application of the pesticide, if the school notification is provided as required by subsection (1)(a) of this section; or

(b) As early as possible, if the school notification is provided as required by subsection (3) of this section;

(5) Qualifications for pesticide applicators. Persons who apply pesticides in schools shall be certified under Category 7(a), General Pest and Wood-destroying Organisms, and Category 7(b), Integrated Pest Management, to apply pesticides. Applicators currently holding a Category 7(a) certification on the effective date of this administrative regulation shall receive their Category 7(b) certification without additional examination.

(6) Exemptions. This administrative regulation shall not apply to application of the following types of pesticides:

(a) Germicides, disinfectants, bactericides, sanitizing agents, water purifiers, and swimming pool chemicals used in normal

cleaning activities;

(b) Personal insect repellents;

(c) Human or animal ectoparasite control products administered by qualified health professionals or veterinarians; and

(d) Manufactured paste or gel bait insecticides placed in areas where humans or pets do not have reasonable access to the bait; or

(e) Paraffin-based rodent control products placed in industry identified tamper-resistant bait stations.

Section 13. Qualifications for Pesticide Application for Health Care Centers. Pesticide applicators who apply pesticides in health care centers shall be certified in 7(a), General Pest and Wood-destroying Organisms, and 7(b), Integrated Pest Management, to apply pesticides. Applicators currently holding a Category 7(a) certification on the effective date of this administrative regulation shall receive their Category 7(b) certification without additional examination.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commercial Structural Pest Control Examination Application", 2002;

(b) "Monthly Report of Wood-Destroying Organism Treatments" form, 11/99;

(c) "Structural Pest Control Renewal Form", December 2006; and

(d) "Consumer Disclosure Form", 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Environmental Services, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at www.kyagr.com.

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: June 15, 2012 at 11a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2012 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2012 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing requirements for the structural pest control industry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by establishing licensure requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 217B.050 by

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clearly stating the requirements for structural pest control licensure.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation removes the category of pesticide sales agent.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements. The amendment allows the requirements for a pesticide sales agent to be found in only one place in the administrative regulations.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements. The amendment allows the requirements for a pesticide sales agent to be found in only one place in the administrative regulations.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation amendment will make the requirements for a pesticide sales agent easier to locate and follow.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 975 pesticide sales agents in the Commonwealth.

(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 individuals will need to take no action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individual will be able to find the requirements for a pesticide sales agent in a single location within the regulations. The change makes the requirements easier to understand.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal EPA funds 51% of the program, and pesticide product registration fees fund 49%.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Division of Regulation and Inspection.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B.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 fiscal changes will occur.

(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 fiscal changes will occur.

(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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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 Department of Agriculture Office of Consumer and Environmental Protection Division of Environmental Services (Amendment)

302 KAR 29:060. Certification.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Certification. Unless otherwise specified, the certifications provided for in this chapter shall be valid for three (3) years and must be renewed and maintained in accordance with Section 7 of this administrative regulation.

~~Section 2. [Types of Certification. (4)]~~ Category 7. Industrial, institutional, structural, and health-related pest control. This category shall cover all persons using or supervising the use of pesticides for structural pests only, in, on, or around food-handling establishments, human dwellings, educational facilities, health care centers, industrial establishments, including warehouses and grain elevators and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products. Industrial, institutional, structural, and health-related pest control certification shall be divided into the following subcategories:

~~(1)[(a)]~~ Structural pest control certification shall cover the use of pesticides in the control of general pests and wood-destroying organisms by all means other than fumigation. Persons certified under this section shall be exempt from the certification requirements of 302 KAR Chapters 27 and 28 if using or supervising the use of pesticides for the control of structural-invading pests in areas adjacent to or outside any structure being treated by the person pursuant to the provisions of 302 KAR Chapter 29.

~~(2)[(b)]~~ Integrated pest management certification shall cover an environmentally-sound approach to pest management in schools and health care facilities with the goal of the judicious use of pesticides.

~~(3)[(c)]~~ Structural fumigation certification shall cover the use of pesticides in the form of poisonous gases.~~(2) Category 8. Public health pest control. This category shall include state, federal, or other governmental employees using or supervising the use of~~

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pesticides in management and control of pests in public health programs.

~~(3) Category 12. Pesticide sales agent. This category shall include any individual who sells or distributes restricted use pesticides or any individual who sells and makes recommendations for the use and application of pesticides to the final user. Category 12 certification as a pesticide sales agent under this administrative regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 27 and 28. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification if the person selling or distributing pesticides is licensed as a pesticide sales agent.]~~

Section 3. General Requirements. To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. Competency in the use and handling of pesticides shall be determined and based upon standards established in this administrative regulation. The examination and testing shall include the general standards of competency in Section 4 of this administrative regulation and the specific standards of competency in Section 5 of this administrative regulation for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination. Upon successfully passing an examination, a person shall have ninety (90) days from the date of testing to submit a completed "Structural Pest Control License Form" specifying the category or categories in which a license is requested. After ninety (90) days have expired, a person shall retake the exam before activation of a license may occur.

Section 4. General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

- (1) Label and labeling comprehension:
 - (a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;
 - (b) Classification of the product, general or restricted; and
 - (c) Necessity for use consistent with the labeling.
- (2) Safety factors, including:
 - (a) Pesticide toxicity, hazard to humans, and common exposure routes;
 - (b) Common types and causes of pesticide accidents;
 - (c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;
 - (d) Symptoms of pesticide poisoning;
 - (e) First aid and other procedures to be followed if a pesticide accident occurs;
 - (f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers; and
 - (g) The proper selection and use of personal protective equipment for the handling and application of pesticides;
- (3) The potential environmental consequences of the use and misuse of pesticides as may be influenced by factors such as:
 - (a) Weather and other climatic conditions;
 - (b) Types of terrain, soil, or other substrata;
 - (c) Presence of fish, wildlife, and other nontarget organisms; and
 - (d) Drainage patterns;
- (4) Pest identification, including consideration of the following factors:
 - (a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and
 - (b) Pest maturation and development as it may relate to the problem of identification and control.

- (5) Pesticides, including consideration of the following factors:
 - (a) Types of pesticides;
 - (b) Types of pesticide formulations;
 - (c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulation;
 - (d) Hazards and residues associated with use;
 - (e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
 - (f) Dilution procedures.
- (6) Equipment, including consideration of the following factors:
 - (a) Types of pesticide application equipment and advantages and limitations of each; and
 - (b) Uses, maintenance, and calibration of equipment.
- (7) Application techniques; factors including:
 - (a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;
 - (b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
 - (c) Prevention of drift and pesticide loss into the environment.
- (8) Laws and regulations. Knowledge of pertinent aspects of the Federal Environmental Pesticides Control Act, 7 U.S.C. 136, and KRS Chapter 217B.

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:~~[(1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall be subdivided as follows:]~~

~~(1) Category 7(a) Structural pest control. Persons requesting certification in this subcategory shall demonstrate practical knowledge of a wide variety of pests including general pests and wood-destroying organisms. This practical knowledge shall include their life cycles, types of formulations appropriate for their control, minimum standards of application, and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including babies, pregnant women, and elderly people, is frequently a potential problem, applicants shall demonstrate practical knowledge of the specific factors which may lead to a hazardous condition. Because school and health-related pest control may involve outdoor applications, persons shall also demonstrate practical knowledge of environmental conditions.~~

~~(2) Category 7(b) Integrated pest management. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of an integrated pest management program to determine if and when a treatment is needed. Components of an integrated pest management program may include education, proper waste management, structural repair, maintenance, biological and mechanical control techniques, and pesticide application. A prerequisite for integrated pest management certification shall be 7(a) certification. Regardless of the original issue date of this 7(b) integrated pest management certification, its expiration and renewal dates shall be the same as the corresponding 7(a) certification.~~

~~(3) Category 7 (c) Structural fumigation. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of those pests for which treatment by fumigation is an appropriate control technique. This practical knowledge shall include their life cycles, fumigants appropriate for their control, and alternative control techniques. Because of the potential dangers inherent in the use of fumigant gases, the applicant shall demonstrate knowledge of the dangers involved and the safety precautions established by these administrative regulations and by good operating practice. For those persons holding both a category 7(a) and 7(c) certification, the expiration and renewal dates of the 7(c) certification shall be the same as the corresponding 7(a) certification regardless of its original issue date. [(2) Category 8. Public health. Each person with certification in category 8 in effect on the effective date of this administrative regulation shall be granted certification in category 7(a) and category 7(b) with a expiration date of December 31, 2012.~~

~~(3) Category 12. Pesticide sales agent. Persons desiring certification in this category shall demonstrate practical knowledge of pesticide labels and label comprehension including environmental~~

hazards, rates of application, proper application techniques, storage, shipping, handling, worker protection safety issues, and the different types of pesticides.]

Section 6. License Examination. Structural. (1) The examinations administered by the department pursuant to KRS 217B.530 and this administrative regulation for licensees to do business as structural pest control applicators, structural pest control managers, structural fumigation applicators, and structural fumigation managers shall contain all the requirements for certification to apply pesticides under this administrative regulation. If a person obtains a license to do business in one (1) or more of the above categories, that person shall be certified to purchase, use, or apply pesticides in the appropriate subcategory of industrial, institutional, structural, or health-related pest control.

(2) Any applicant that willfully engages in fraud or deceit in the making of an application or the taking of an examination will be in violation of this administrative regulation and may be denied certification and may be subject to the penalties set forth in KRS 217B.990.

Section 7. Certification Maintenance. To maintain a category 7(a), or category 12 certification, each person certified under this administrative regulation shall in a [any] three (3) year period, attend at least twelve (12) continuing education units of training, approved by the department, in the use and application of pesticides. To maintain a category 7(b) certification, an additional three (3) continuing education units of training shall be required. And, to maintain a category 7(c) certification, each person certified in this category shall in any three (3) year period, attend at least nine (9) continuing education units and three (3) category specific continuing education units of training. For those persons holding a category 7(a) certification who are also seeking to maintain a category 7(c) certification, an additional three (3) category specific continuing education units shall be required. All certifications in effect on the effective date of this administrative regulation shall be renewed with an expiration date of December 31, 2015[2012]. Credit shall be given in full continuing education unit increments only.~~[All persons holding certification in any category shall begin a new three (3) year training period beginning January 1 after the effective date of this administrative regulation.]~~

Section 8. Credentials. (1) If a person meets all the requirements to obtain a license to do business under KRS 217B.500 to 217B.585 and this administrative regulation, the department shall issue a document signifying that he is licensed to do business in the category for which he qualifies.

(a) Inactive status. If an applicator or operator for any reason changes status and is no longer employed but elects to maintain his license, he may do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall be required to maintain certification and pay the annual renewal fee. The licensee shall not be permitted to perform any type of regulated activity until the license is reactivated.

(b) Employee commercial license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any active commercial pesticide license or active certification during the term of his employment with the department unless required by the department in the performance of his official duties. Any commercial pesticide license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the department unless required by the department in the performance of his official duties.

(2) If a person qualifies for certification incident to qualification for a license to do business, the department shall issue him one (1) document which shall be the license to do business and shall contain the certification category number.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a certification to any person who holds a valid certification in another state if, in the

opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

(4) A certification may be granted, denied, suspended, or revoked independent of the grant, denial, suspension, or revocation of any license to do business. In a like manner, any license to do business may be suspended or revoked independent of the grant, denial, suspension, or revocation of any certification.

Section 9. Incorporation by Reference. (1) "Structural Pest Control License Form", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: June 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2012 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2012 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing requirements for the structural pest control industry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by establishing licensure requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 217B.050 by clearly stating the requirements for structural pest control licensure.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation removes the category of pesticide sales agent and public health pest control.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements. The amendment allows the requirements for a pesticide sales agent and public health pest control to be found in only one place in the administrative regulations.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements. The amendment allows the requirements for a pesticide sales agent and public health pest control to be found in only one place in the administrative regulations.

(d) How will this amendment assist in the effective administra-

tion of the statutes: This administrative regulation amendment will make the requirements for a pesticide sales agent and public health pest control easier to locate and follow.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently 975 Pesticide Sales agents and 87 Public Health category 8 license holders. Commercial License Pest Control companies operate within the Commonwealth. Approximately 2,430 persons currently hold certifications in structural pest control.

(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 individuals will need to take no action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individual will be able to find the requirements for a pesticide sales agent in a single location within the regulations. The change makes the requirements easier to understand.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal EPA funds 51% of the program, and pesticide product registration fees fund 49%.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Division of Regulation and Inspection.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B.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 fiscal changes will occur.

(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 fiscal changes will occur.

(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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

quent years? No changes in spending will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amendment)

401 KAR 51:001. Definitions for 401 KAR Chapter 51.

RELATES TO: KRS 48.010(15)(a), 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, 50 Appendices A-R, 51.100, 51.121, 51.165, 51.166, 51 Appendix S, 52.920, 53, 60, 60 Appendices A, B, 61, 61 Appendix B, 63 Appendices A-D, 70.2, 75, 82, 96, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used in 401 KAR Chapter 51. The definitions contained in this administrative regulation are not [neither] more stringent[~~nor otherwise different~~] than the corresponding federal definitions.

Section 1. Definitions. The definitions with citations to the Code of Federal Regulations shall be governed by 40 C.F.R. Parts 50 through 96[~~, effective July 1, 2010~~]. (1) "Acid rain emissions limitation" means a limitation on emissions of SO₂ or NO_x imposed by the Acid Rain Program under 42 U.S.C. 7651 to 7651o.

(2) "Actual emissions":

(a) Means the actual rate of emissions of a regulated NSR pollutant from an emissions unit as determined according to the following:

1. Actual emissions as of a particular date equals the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four (24) month period, that precedes that date and is representative of normal source operation, unless a different time period is more representative of normal source operation; and

2. The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time periods are used to calculate actual emissions;

(b) Means source-specific allowable emissions for the unit are equivalent to actual emissions of the unit if the cabinet has made an equivalency determination pursuant to 40 C.F.R. 51.166;

(c) Means, for an emissions unit that has not begun normal operations on a particular date, the potential to emit of the unit on that date; and

(d) Does not mean:

1. Calculating if a significant emissions increase has occurred; or

2. Establishing a PAL under 401 KAR 51:017, Section 20.

(3) "Actuals PAL" or "PAL" means a plant-wide applicability limit established for a major stationary source based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(4) "Adverse impact on visibility" is defined by 40 C.F.R. 51.301.

(5) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(6) "Air contaminant" is defined by KRS 224.01-010(1).

(7) "Air pollutant" means air contaminant.

(8) "Air pollution" is defined by KRS 224.01-010(3).

(9) "Air pollution control equipment" means a mechanism, device, or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to

its normal operation.

(10) "Allocate" or "allocation" means the number of NOx allowances to be credited to a NOx budget unit.

(11) "Allocation period" means each three (3) year period beginning May 1, 2004.

(12) "Allowable emissions" means:

(a) The emissions rate of a stationary source calculated using the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate, hours of operation, or both, and the most stringent of the following:

1. The applicable standards codified in 40 C.F.R. Parts 60 and 61;

2. The applicable SIP emissions limitations, including those with a future compliance date; or

3. The emissions rates specified as a federally enforceable permit condition, including those with a future compliance date; or

(b) For an actuals PAL, the emissions rate of a stationary source calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit, and the most stringent provision of paragraph (a)1. through 3. of this subsection.

(13) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source; or

(b) A physical change in or change in the method of operation of an affected facility that increases the potential to emit a pollutant, to which a standard applies, emitted by the facility or that results in the emission of an air pollutant, to which a standard applies, not previously emitted.

(14) "Alternative method" is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both the U.S. EPA and the cabinet.

(15) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(16) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(17) "ANSI" means American National Standards Institute.

(18) "AOAC" means Association of Official Analytical Chemists.

(19) "ASTM" means American Society for Testing and Materials.

(20) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, that:

(a) For an existing electric utility steam generating unit (EUSGU), the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding the date the owner or operator begins actual construction of the project, unless a different twenty-four (24) month time period is more representative of normal source operation.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period; and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b. of this subparagraph; and

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed with a different consecutive twenty-four (24) month period allowed for each regulated NSR pollutant;

(b) For an existing emissions unit that is not an EUSGU, the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year

period beginning on or after November 15, 1990, and immediately preceding the earlier of the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the cabinet for a permit required under 401 KAR 51:017 or 51:052.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward:

(i) To exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period;

(ii) To exclude any emissions that would have exceeded an emission limitation with which the major stationary source is required currently to comply, if the source had been required to comply with the limitations during the consecutive twenty-four (24) month period; and

(iii) For an emission limitation that is part of a maximum achievable control technology standard proposed or promulgated under 40 C.F.R. Part 63, only if the Commonwealth of Kentucky has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with 40 C.F.R. 51.165(a)(3)(ii)(G); and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b. of this subparagraph.

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used for each regulated NSR pollutant to determine the baseline actual emissions for the emissions units being changed with a different consecutive twenty-four (24) month period;

(c) For a new emissions unit, equals zero for determining the emissions increase that will result from the initial construction and operation of the new unit and thereafter, for all other purposes, equals the unit's potential to emit; or

(d) For a PAL for a stationary source, is determined as follows:

1. For an existing EUSGU, in accordance with the procedures contained in paragraph (a) of this subsection;

2. For other existing emissions units, in accordance with the procedures contained in paragraph (b) of this subsection; and

3. For a new emissions unit, in accordance with the procedures contained in paragraph (c) of this subsection.

(21) "Baseline area" means an intrastate area and every part of that area designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu\text{g}/\text{m}^3$ annual average of the pollutant for which the minor source baseline date is established for SO₂, NO₂, or PM₁₀ or 0.3 $\mu\text{g}/\text{m}^3$ annual average for PM_{2.5}.

(a) Area redesignations under 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) do not intersect and are not smaller than the area of impact of a major stationary source or major modification that:

1. Establishes a minor source baseline date; or

2. Is subject to 401 KAR 51:017 and would be constructed in the Commonwealth of Kentucky.

(b) A baseline area established originally for total suspended particulate (TSP) increments remains in effect to determine the amount of available PM₁₀ increments, unless the cabinet rescinds the corresponding minor source baseline date.

(22) "Baseline concentration" means the ambient concentration level that exists in the baseline area on the date the applicable minor source baseline date is established.

(23) "Baseline date" means major source baseline date or minor source baseline date and is established for each pollutant for which increments or other equivalent measures have been established if the area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of the source's complete application; and

(a) For a major stationary source, the pollutant would be emit-

ted in significant amounts; or

(b) For a major modification, there would be a significant net emissions increase of the pollutant.

(24) "Begin actual construction" means:

(a) Initiation of physical on-site construction activities on an emissions unit that are of a permanent nature and include installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures; and

(b) For a change in method of operations, those on-site activities, other than the preparatory activities, that mark the initiation of the change.

(25) "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each regulated NSR pollutant that will be emitted from a proposed major stationary source or major modification and:

(a) Is determined by the cabinet pursuant to 401 KAR 51:017, Section 8, after taking into account energy, environmental, and economic impacts and other costs, to be achievable by the source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant;

(b) Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard codified in 40 C.F.R. Parts 60 and 61; and

(c) Is satisfied by a design, equipment, work practice, or operational standard or combination of standards approved by the cabinet, if:

1. The cabinet determines pursuant to 40 C.F.R. 51.166(b)(12) that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible;

2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice, or operation; and

3. The standard provides for compliance by means that achieve equivalent results.

(26) "BOD" means biochemical oxidant demand.

(27) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(28) "BTU" means British thermal unit.

(29) "Building, structure, facility, or installation" means all of the pollutant emitting activities that:

(a) Belong to the same industrial grouping or have the same two (2) digit major group code as described in the Standard Industrial Classification Manual;

(b) Are located on one (1) or more contiguous or adjacent properties;

(c) Are under the control of the same person or persons under common control; and

(d) Do not include the activities of a vessel.

(30) "C" means degree Celsius (centigrade).

(31) "Cabinet" is defined by KRS 224.01-010(9).

(32) "Cal" means calorie.

(33) "Capital expenditure" is defined by 40 C.F.R. 60.2.

(34) "cfm" means cubic feet per minute.

(35) "CH₄" means methane.

(36) "Clean coal technology" is defined by 40 C.F.R. 51.166(b)(33).

(37) "Clean coal technology demonstration project" is defined by 40 C.F.R. 51.166(b)(34).

(38) "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(39) "CO" means carbon monoxide.

(40) "CO₂" means carbon dioxide.

(41) "COD" means chemical oxidant demand.

(42) "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.

(43) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor,

and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(44) "Commence" means that an owner or operator:

(a) Has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility; or

(b) For construction of a major stationary source or major modification in the PSD or NSR program, has all necessary pre-construction approvals or permits, and:

1. Has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Has entered into binding agreements or contractual obligations, that cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(45) "Commence commercial operation" means to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date remains the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered; or

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of commercial operation.

(46) "Commence operation" means, for a NOx budget unit, to have begun a mechanical, chemical, or electronic process, including start-up of a unit's combustion chamber. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date remains the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered; or

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of operation.

(47) "Complete" is defined by 40 C.F.R. 51.166(b)(22).

(48) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(49) "Compliance supplement pool" means the quantity of NOx allowances provided to Kentucky by the U.S. EPA to be:

(a) Allocated to NOx budget units that achieve early reduction; or

(b) Used to assist NOx budget sources that are unable to meet the compliance deadline as provided in 401 KAR 51:180, Section 5.

(50) "Construction" means:

(a) Fabrication, erection, installation, or modification of an air contaminant source; or

(b) For the NSR program, any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit that would result in a change in the emissions at an air contaminant source.

(51) "Continuous emissions monitoring system" or "CEMS" means all of the equipment necessary to meet the data acquisition and availability requirements of 401 KAR 51:017 or 51:052 to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(52) "Continuous emission monitoring system for NOx" or "CEMS for NOx" means the equipment required to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NOx emissions, expressed in tons per hour for NOx. The following systems are necessary component parts, as required by

40 C.F.R. Part 75, included in a continuous emissions monitoring system:

- (a) Flow monitor;
- (b) NO_x pollutant concentration monitor;
- (c) Diluent gas monitor (O₂ or CO₂);
- (d) Continuous moisture monitor; and
- (e) Automated data acquisition and handling system.

(53) "Continuous emissions rate monitoring system" or "CERMS" is defined by 40 C.F.R. 51.166(b)(46).

(54) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations in 401 KAR Chapters 50 to 65, used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

(55) "Continuous parameter monitoring system" or "CPMS" is defined by:

- (a) 40 C.F.R. 51.166(b)(45) for 401 KAR 51:017; or
- (b) 40 C.F.R. 51.165(a)(1)(xxxiii) for 401 KAR 51:052.

(56) "Control period" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(57) "Director" means Director of the Division for Air Quality of the Energy and Environment Cabinet.

(58) "District" is defined by KRS 224.01-010(11).

(59) "dscf" means dry cubic feet at standard conditions.

(60) "dscm" means dry cubic meter at standard conditions.

(61) "Electric generating unit" means, for 401 KAR 51:160 to 51:195, a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.

(62) "Electric utility steam generating unit" or "EUSGU" is defined by 40 C.F.R. 51.166(b)(30).

(63) "Emission standard" means that numerical limit that fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

(64) "Emissions unit" means any part of a stationary source, including an EUSGU, that emits or has the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and 51:052, there are two (2) types of emissions units:

(a) A new emissions unit, which is any emissions unit that is or will be newly constructed and that has existed for less than two (2) years from the date the unit first operated; and

(b) An existing emissions unit, which is any emissions unit that does not meet the requirements in paragraph (a) of this subsection or is a replacement unit.

(65) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source shall use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

(66) "Equivalent method" means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet and the U.S. EPA pursuant to 40 C.F.R. 53.3 to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(67) "Excess NO_x emissions" means any tonnage of nitrogen oxides emitted by a NO_x budget unit during a control period that exceeds the NO_x budget emissions limitation for the unit.

(68) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(69) "Existing source" means a source that is not a new source.

(70) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the national ambient air quality standard for ozone.

(71) "°F" means degree Fahrenheit.

(72) "Federal land manager" is defined by 40 C.F.R. 51.166(b)(24).

(73) "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:

(a) Requirements developed under 40 C.F.R. Parts 60 and 61;

(b) Requirements in the Kentucky State Implementation Plan (SIP) approved by the U.S. EPA; and

(c) Any permit requirements established under 40 C.F.R. 52.21 or under the Kentucky SIP approved pursuant to 40 C.F.R. Part 51, Subpart I, including operating permits issued under a U.S. EPA-approved program incorporated into the SIP, that expressly requires adherence to a permit issued under the program.

(74) "Federally enforceable permit" means a permit issued under 401 KAR 52:020 or 52:030, as appropriate.

(75) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(76) "Fossil fuel" means natural gas; petroleum; coal; or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(77) "Fossil fuel fired" means, for a unit:

(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combusted comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date during the year the unit begins combusting fossil fuel.

(78) "ft" means feet or foot.

(79) "Fuel" means natural gas; petroleum; coal; wood; or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(80) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(81) "g" means gram.

(82) "gal" means gallon.

(83) "General fund" is defined by KRS 48.010(15)(a).

(84) "Generator" means a device that produces electricity.

(85) "gr" means grain.

(86) "HCl" means hydrochloric acid.

(87) "Heat input" means the product, in MMBTU per unit of time, of the gross calorific value of the fuel, in BTU per lb, and the fuel feed rate into a combustion device, in mass of fuel per unit of time, that:

(a) Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources; and

(b) Is measured, recorded, and reported to the cabinet.

(88) "HF" means hydrogen fluoride.

(89) "Hg" means mercury.

(90) "High terrain" is defined by 40 C.F.R. 51.166(b)(25).

(91) "hr" means hour.

(92) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(93) "Hydrocarbon combustion flare" means:

(a) A flare used to comply with an applicable New Source Performance Standard (NSPS) or Maximum Achievable Control Technology (MACT) standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(b) A flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 µg/dscm hydrogen sulfide.

(94) "H₂O" means water.

(95) "H₂S" means hydrogen sulfide.

(96) "H₂SO₄" means sulfuric acid.

(97) "in" means inch.

(98) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(99) "Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.

(100) "Innovative control technology" is defined by 40 C.F.R. 51.166(b)(19).

(101) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(102) "J" means joule.

(103) "Kg" means kilogram.

(104) "l" means liter.

(105) "lb" means pound.

(106) "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.

(107) "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.

(108) "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(109) "Low terrain" means an area other than high terrain.

(110) "Lowest achievable emissions rate" or "LAER" means, for any source:

(a)1. The most stringent emissions limitation that is contained in the Kentucky SIP for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitation is not achievable; or

2. The most stringent emissions limitation achieved in practice by the class or category of stationary source;

(b) For a major modification, the lowest achievable emissions rate for the new or modified emissions units at the stationary source; and

(c) An emissions limitation that does not exceed the allowable emissions of an applicable standard established pursuant to 40 C.F.R. Parts 60, 61, or 63.

(111) "m" means meter.

(112) "m³" means cubic meter.

(113) "Major emissions unit" means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of a PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act, 42 U.S.C. 7401 - 7671q for nonattainment areas.

(114) "Major modification" means a physical change in or a change in the method of operation of a major stationary source that results in a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant.

(a) A significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or nitrogen oxides is considered significant for ozone.

(b) A physical change or change in the method of operation does not include:

1. Routine maintenance, repair, and replacement;

2. Use of alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source that:

a. The source was capable of accommodating before January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052; unless the change would be prohibited by a federally enforceable permit condition that was established after January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052, pursuant to 40 C.F.R. 51.165 or 51.166; or

b. The source is approved to use by a permit issued pursuant to 401 KAR 51:017 or 51:052;

5. An increase in the hours of operation or in the production rate, unless the change is prohibited by any federally enforceable permit condition established after January 6, 1975, for 401 KAR 51:017 or December 21, 1976, for 401 KAR 51:052 pursuant to 40 C.F.R. 52.21; after June 6, 1979, pursuant to 401 KAR 51:015; after September 22, 1982, pursuant to 401 KAR 51:017; or pursuant to 401 KAR 52:020 and 51:016E;

6. A change in ownership at a stationary source;

7. The installation, operation, cessation, or removal of a tempo-

rary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

8. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit, on a pollutant-by-pollutant basis; or

9. The reactivation of a very clean coal-fired electric utility steam generating unit.

(c) Instead of this definition, the definition for "PAL major modification", in subsection (175) of this section, is used for a particular regulated NSR pollutant, if the major stationary source is complying with the requirements of 401 KAR 51:017, Section 20, and 401 KAR 51:052, Section 11, for a PAL for that pollutant.

(115) "Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.

(116) "Major source" means a source with a potential emission rate equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, carbon monoxide, or ODS.

(117) "Major source baseline date" means:

(a) For ~~PM₁₀~~[particulate matter] and sulfur dioxide, January 6, 1975;~~and]~~

(b) For nitrogen dioxide, February 8, 1988;~~and~~

(c) For ~~PM_{2.5}~~, October 20, 2010.

(118) "Major stationary source" means:

(a)1. A stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant, except that:

a. For ozone nonattainment areas: 100 tons per year of more of volatile organic compounds or nitrogen oxides in a marginal or moderate ozone nonattainment area; fifty (50) tons per year or more of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area; twenty-five (25) tons per year or more of volatile organic compounds or nitrogen oxides in a severe ozone nonattainment area; or ten (10) tons per year or more of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area;

b. Fifty (50) tons per year or more of carbon monoxide in a serious carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels; and

c. Seventy (70) tons per year or more of particulate matter (PM₁₀) in a serious PM₁₀ nonattainment area; or

2.a. For the PSD program, any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants with thermal dryers, kraft pulp mills, Portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140, fossil fuel boilers, or combination of fossil fuel boilers, totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants; and

b. Regardless of the stationary source size specified in clause a. [~~subclause (i)~~] of this subparagraph [~~clause~~], a stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

3. Any physical change that will occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change will constitute a major stationary source by itself;

(b) A source that is major for volatile organic compounds or nitrogen oxides is considered major for ozone; and

(c) Fugitive emissions are included only if the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140;
21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Another stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(119) "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that is reasonably preventable.

(120) "Mandatory Class I area" means an area identified in 40 C.F.R. Part 81, Subpart D, if the administrator of the U.S. EPA, in consultation with the Secretary of the U.S. Department of Interior, has determined visibility to be an important value.

(121) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the national ambient air quality standard for ozone.

(122) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(123) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes if a unit lacks certified monitors to report heat input and is:

(a) A value calculated according to 40 C.F.R. Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 C.F.R. Part 75, Appendix D, to report heat input; or

(b) A value reported according to 40 C.F.R. Part 75 using the maximum potential flow rate and either the maximum percent CO₂ concentration (in percent CO₂) or the minimum percent O₂, if the unit intends to use a flow monitor and a diluents gas monitor.

(124) "Maximum potential NO_x emission rate" means the emission rate of NO_x (in lb per MMBTU) calculated according to 40 C.F.R. Part 75, Appendix F, Section 3, using the maximum potential NO_x concentration as defined in 40 C.F.R. Part 75, Appendix A, Section 2, and the maximum percent O₂ or the minimum percent CO₂ under all operating conditions of the unit except for unit startup, shutdown, and malfunction.

(125) "Maximum rated hourly heat input" means a unit specific

maximum hourly heat input (MMBTU) that is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(126) "µg" means microgram

(127) "mg" means milligram.

(128) "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NO_x emissions through:

(a) Burning part of the fuel at a lower temperature; and

(b) Reducing conditions at the solid waste injection point that may destroy some of the NO_x formed upstream in the kiln burning zone.

(129) "min" means minute.

(130) "Minor source baseline date" means:

(a) The earliest date after the trigger date on which a major stationary source or a major modification subject to permit requirements established pursuant to 40 C.F.R. 52.21 or the Kentucky SIP submits a complete application. The trigger date is:

1. [For particulate matter and sulfur dioxide, the trigger date is] August 7, 1977, for PM₁₀ and SO₂;

2. [; and 2. For nitrogen dioxide, the trigger date is] February 8, 1988, for NO₂; and

3. October 20, 2011, for PM_{2.5};

(b) For TSP increments, that the originally established date remains in effect to determine the amount of available PM₁₀ increments, unless the cabinet rescinds the minor source baseline date pursuant to 40 C.F.R. 51.166(b)(14)(iv); and

(c) A date established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification will construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of its complete application pursuant to 401 KAR Chapter 52; and

2. For a major stationary source, the pollutant will be emitted in significant amounts or a significant net emissions increase of the pollutant will occur for a major modification.

(131) "MJ" means megajoules.

(132) "mm" means millimeter.

(133) "MM" means million.

(134) "mo" means month.

(135) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the national ambient air quality standard for ozone.

(136) "Modification" means any physical change in, or a change in the method of operation of, an affected facility that:

(a) Increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category considering available information;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility is considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specification as amended prior to the change;

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, unless an emission control system is removed or replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

(137) "Monitoring device" means the total equipment, required

by an applicable administrative regulation in 401 KAR Chapters 50 to 65, used to measure and record, if applicable, process parameters.

(138) "Monitoring system" means a monitoring system that meets the requirements of any applicable administrative regulation in 401 KAR Chapters 50 to 65.

(139) "MWe" means megawatt electrical.

(140) "N₂" means nitrogen.

(141) "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time if not restricted by seasonal or other deratings as measured with United States Department of Energy standards.

(142) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(143) "Necessary preconstruction approvals or permits" means those permits or approvals required under the administrative regulations approved to the Kentucky SIP pursuant to 40 C.F.R. 52.920, and federal air quality control laws and regulations established pursuant to 42 U.S.C. 7401 - 7671q.

(144) "Net emissions increase" means:

(a) For any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:

1. An increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to 401 KAR 51:017, Section 1(4), or 401 KAR 51:052, Section 1(2); and

2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph are determined as defined in this section.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:

1. For construction that commences prior to January 6, 2002, the change occurs between the date ten (10) years before construction on the change commences and the date that the increase from the change occurs; and

2. For construction that commences on and after January 6, 2002, the change occurs between the date five (5) years before construction on the change commences and the date that the increase from the change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

1. The cabinet or the U.S. EPA has not relied on the change in issuing a permit for the source pursuant to 401 KAR 51:017, 51:052, or 40 C.F.R. 52.21; and

2. The permit is in effect at the time the increase or decrease in actual emissions from the particular change occurs.

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM₁₀ emissions are used to evaluate the net emissions increase for PM₁₀.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. The decrease is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

3. The decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs if the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A re-

placement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(h) The term, actual emissions, as defined in subsection (2) of this section does not apply in determining creditable increases and decreases.

(145) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation, irrespective of a change in emission rate.

(146) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified in the Kentucky SIP.

(147) "ng" means nanograms.

(148) "NO" means nitric oxide.

(149) "NO₂" means nitrogen dioxide.

(150) "Nonattainment major new source review program" or "NSR program" is defined by 40 C.F.R. 51.165(a)(1)(xxx). For purposes of this definition, "administrator" means the U.S. EPA.

(151) "NOx" means nitrogen oxides.

(152) "NOx allowance" is defined by 40 C.F.R. 96.2.

(153) "NOx Allowance Tracking System" or "NATS" is defined by 40 C.F.R. 96.2 For purposes of this definition, "administrator" means the U.S. EPA.

(154) "NOx authorized account representative" is defined by 40 C.F.R. 96.2.

(155) "NOx budget emissions limitation" means, for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under 401 KAR 51:160 adjusted by deductions of sufficient NOx allowances to account for:

(a) Actual utilization under 40 C.F.R. 96.42(e) for the control period;

(b) Excess NOx emissions for a prior control period under 40 C.F.R. 96.54(d);

(c) Withdrawal from the NOx budget program under 40 C.F.R. 96.86; or

(d) A change in regulatory status for a NOx budget opt-in source under 40 C.F.R. 96.87.

(156) "NOx budget opt-in source" means an affected facility that has elected to become a NOx budget unit under the NOx Budget Trading Program and whose NOx budget opt-in permit has been issued and is in effect.

(157) "NOx budget source" is defined by 40 C.F.R. 96.2.

(158) "NOx Budget Trading Program" is defined by 40 C.F.R. 96.2.

(159) "NOx budget unit" means a unit that is subject to the NOx Budget Trading Program emissions limitation under 401 KAR 51:160 or 40 C.F.R. 96.80.

(160) "NOx budget unit operator" means a person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn and includes a holding company, utility system, or plant manager of a NOx budget unit or source.

(161) "NOx budget unit owner" means:

(a) A holder of a portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement and unless expressly provided for in a leasehold agreement, does not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn; or

(d) For any general account, a person who has an ownership

interest with respect to the NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership.

(162) "O₂" means oxygen.

(163) "O₃" means ozone.

(164) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(165) "Operating" means, for a NOx budget unit, having documented heat input for more than 876 hours in the six (6) months immediately preceding the submission of an application for an initial NOx budget permit.

(166) "Operator" means, for a NOx budget unit, any person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or unit for which an application for a NOx budget opt-in permit is submitted and not denied or withdrawn, and includes any holding company, utility system, or plant manager of the unit or source.

(167) "Opt-in" means to be elected to become a NOx budget unit under the NOx Budget Trading Program through a final NOx budget opt-in permit.

(168) "Owner", for a NOx budget unit, is defined by 40 C.F.R. 96.2.

(169) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source of which an affected facility is a part.

(170) "oz" means ounce.

(171) "Ozone depleting potential" or "ODP", means pursuant to 40 C.F.R. Part 82, Subpart A, Appendices A and B, the ratio of the total amount of ozone destroyed by a fixed amount of an ozone depleting substance to the amount of ozone destroyed by the same mass of trichlorofluoromethane (CFC-11) in which the ozone depleting potential of CFC-11 is equal to one and zero-tenths (1.0).

(172) "Ozone depleting substance" or "ODS" means any chemical compound regulated under 40 C.F.R. Part 82 with decay products, after the photolysis of the ODS by short-wave ultraviolet light, that are able to catalyze the destruction of stratospheric ozone.

(173) "PAL effective date" means:

(a) The date of issuance of the PAL permit; or

(b) For an increased PAL, the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(174) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(175) "PAL major modification" means any physical change in or a change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(176) "PAL permit" means the permit issued by the cabinet that establishes a PAL for a major stationary source.

(177) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(178) "Particulate matter" means a material, except uncombined water that exists in a finely divided form as a liquid or solid measured by a U.S. EPA-approved test method or a test method approved in the Kentucky SIP.

(179) "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP.

(180) "Peak load" means the maximum instantaneous operating load.

(181) "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption multiplied by 8,760 hours per year.

(182) "Person" is defined by KRS 224.01-010(17).

(183) "Plant-wide applicability limitation" or "PAL" means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and is established source-wide in accordance with 401 KAR

51:017 or 51:052.

(184) "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix L, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(185) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix J, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(186) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP.

(187) "Pollution prevention" is defined by 40 C.F.R. 51.166(b)(38).

(188) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(189) "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcite and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(190) "Potential to emit" or "PTE" means:

(a) The maximum capacity of a stationary source to emit a pollutant under its physical and operational design, in which:

1. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation is enforceable as a practical matter; and

2. This definition does not alter or affect the use of this term for other purposes of the Clean Air Act, 42 U.S.C. 7401 - 7671q, or the term "capacity factor" as used in the Acid Rain Program.

(b) For the PSD and NSR programs, the maximum capacity of a stationary source to emit a pollutant under its physical or operational design, in which:

1. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation or the effect it would have on emissions:

a. Is federally enforceable; or

b. For an actual PAL, is federally enforceable or enforceable as a practical matter; and

2. Secondary emissions are not counted.

(191) "ppb" means parts per billion.

(192) "ppm" means parts per million.

(193) "ppm(w/w)" means parts per million (weight by weight).

(194) "Precalciner kiln" means a kiln in which the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

(195) "Predictive emissions monitoring system" or "PEMS" is defined by 40 C.F.R. 51.166(b)(44).

(196) "Preheater kiln" means a kiln in which the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(197) "Prevention of Significant Deterioration Program" or "PSD Program" means a major source preconstruction program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.166 or 52.21.

(198) "Project" means a physical change in or change in method of operation of an existing major stationary source.

(199) "Projected actual emissions" means:

(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollu-

tant in any one (1) of the five (5) years, in a twelve (12) month period, following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if:

1. The project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; and

2. Full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source; or

(b) The maximum annual rate, in tons per year, at which an emissions unit, before beginning actual construction, is projected to emit a regulated NSR pollutant, if the source:

1.a. Considers all relevant information, including historical operational data and the company's own representations of expected and highest projected business activity, filings with the cabinet and the U.S. EPA, and compliance plans under the Kentucky SIP;

b. Includes fugitive emissions and emissions associated with startups, shutdowns, and malfunctions; and

c. Excludes, in calculating any increase in emissions that results from a project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the project, including any increased utilization due to product demand growth; or

2. Elects to use the emissions unit's potential to emit, in tons per year, instead of using subparagraph 1. of this paragraph to determine projected actual emissions.

(200) "psia" means pounds per square inch absolute.

(201) "psig" means pounds per square inch gage.

(202) "RACT/BACT/LAER Clearinghouse" or "RBLC" means the U.S. EPA's online collection of previous RACT/BACT/LAER determinations.

(203) "Reactivation of a very clean coal-fired EUSGU" is defined by 40 C.F.R. 51.166(b)(37).

(204) "Reasonable further progress" is defined by 42 U.S.C. 7501(1). For purposes of this definition, "administrator" means the U.S. EPA.

(205) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65.

(206) "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40 Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.

(207) "Regulated NSR pollutant" means the following:

(a) A pollutant for which a national ambient air quality standard has been promulgated and the following[any] constituents or precursors;

1. Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

2. Sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas;

3. Nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas unless it is demonstrated that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations;

4. Volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment or unclassifiable area unless it is demonstrated that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations; and

5. Particulate matter emissions, PM_{2.5} emissions, and PM₁₀ emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures[for such pollutants identified by the U.S. EPA];

(b) A pollutant subject to any standard promulgated under 42

U.S.C. 7411;

(c) A pollutant subject to a standard promulgated under or established by 42 U.S.C. 7671 to 7671q; or

(d) A pollutant that otherwise is subject to regulation, as defined in subsection (231) of this section, under 42 U.S.C. 7401 to 7671q, except that any hazardous air pollutant (HAP) listed in 42 U.S.C. 7412 or added to the list pursuant to 42 U.S.C. 7412(b)(2), that has not been delisted pursuant to 42 U.S.C. 7412(b)(3), is not a regulated NSR pollutant unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under 42 U.S.C. 7408.

(208) "Replacement unit" means an emissions unit that does not generate creditable emissions reductions by shutting down the existing emissions unit that is replaced, and that:

(a)1. Is a reconstructed unit within the meaning of 40 C.F.R. 60.15(b)(1) or that completely takes the place of an existing emissions unit;

2. Is identical to or functionally equivalent to the replaced emissions unit; and

3. Does not alter the basic design parameters of the process unit.

(b) Replaces a unit that:

1. Is permanently removed from the major stationary source, is otherwise permanently disabled, or is prohibited from operating by a permit that is enforceable as a practical matter; and

2. If brought back into operation, is considered a new emissions unit.

(209) "Repowering" is defined by 40 C.F.R. 51.166(b)(36).

(210) "Responsible official" means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25,000,000 in second quarter 1980 dollars; or

2. The delegation of authority to the representative is approved in advance by the cabinet pursuant to this subsection;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. The principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(211) "Run" means the net period of time, either intermittent or continuous within the limits of good engineering practice, when an emission sample is collected.

(212) "S" means at standard conditions.

(213) "sec" means second.

(214) "Secondary emissions" means emissions that:

(a) Occur as a result of the construction or operation of a major stationary source or major modification, and do not come from the major stationary source or major modification itself;

(b) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification that causes the secondary emissions;

(c) Include emissions from an offsite support facility that would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and

(d) Do not include emissions that come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or vessel.

(215) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment for the national ambient air quality standard for ozone.

(216) "Severe nonattainment county" or "severe nonattainment

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area" means a county or portion of a county designated severe nonattainment for the national ambient air quality standard for ozone.

(217) "Shutdown" means the cessation of an operation.

(218) "Significant" means:

(a) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
PM _{2.5}	10 tpy direct, 40 tpy of sulfur dioxide or nitrogen oxides for precursors*
PM ₁₀	15 tpy
Particulate matter	25 tpy [of particulate matter emissions] [15 tpy of PM ₁₀ emissions]
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2 x 10 ⁻⁶ megagrams per year (Mg/y) (3.5 x 10 ⁻⁶ tpy)
Municipal waste combustor metals (measured as particulate matter)	14 Mg/y (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 Mg/y (40 tpy)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	45 [36] Mg/y (50 tpy)

*Nitrogen oxide emissions are evaluated unless demonstrated not to be a PM_{2.5} precursor pursuant to subsection (207)(a)(3) of this section.

(b) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in the table in paragraph (a) of this subsection, any emissions rate;

(c) For 401 KAR 51:017, in reference to an emissions rate or a net emissions increase associated with a major stationary source or major modification, that is to be constructed within ten (10) kilometers of a Class I area, an impact on that area equal to or greater than one (1) µg/m³ over a twenty-four (24) hour average;

(d) For 401 KAR 51:052, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
PM _{2.5}	10 tpy direct, 40 tpy of sulfur dioxide or nitrogen oxides for precursors*
PM ₁₀	15 tpy
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy

*Nitrogen oxide emissions are evaluated unless demonstrated not to be a PM_{2.5} precursor pursuant to subsection (207)(a)(3) of this section.

(e) For 401 KAR 51:052, with the exception of the significant emissions rate for ozone in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions that exceeds the following:

1. Twenty-five (25) tons per year of volatile organic compounds or nitrogen oxides in a serious or severe ozone nonattainment area; or

2. Any increase in actual emissions of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area; or

(f) For 401 KAR 51:052, with the exception of the significant emissions rate for carbon monoxide in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions of carbon monoxide that equals or exceeds fifty (50) tons per year in a serious nonattainment area for carbon monoxide in which a stationary source contribute significantly to carbon monoxide levels.

(219) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is equal to or greater than the emission level that is significant for that pollutant.

(220) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount equal to or greater than the applicable significant level as defined in subsection (218) of this section or in 42 U.S.C. 7401 to 7671q, whichever is lower for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

(221) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the PAL pollutant's applicable significant level as defined in subsection (218) of this section; or in 42 U.S.C. 7401 to 7671q, whichever is lower.

(222) "SO₂" means sulfur dioxide.

(223) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(224) "sq" means square.

(225) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(226) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65 or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(227) "Standard conditions" means:

(a) For source measurements, twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg); or

(b) For air quality determinations, twenty-five (25) degrees Celsius (seventy-seven (77) degrees Fahrenheit) and a reference pressure of 760 mm Hg (29.92 in. of Hg).

(228) "Start-up" or "startup" means the setting in operation of an affected facility.

(229) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410 that has been approved by the U.S. EPA.

(230) "Stationary source" means a building, structure, facility, or installation that emits or has the potential to emit a regulated NSR pollutant.

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(231) "Subject to regulation" is defined by 40 C.F.R. 51.166(b)(48).

(232) "Submit" means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.

(233) "TAPPI" means Technical Association of the Pulp and Paper Industry.

(234) "Temporary clean coal technology demonstration project" is defined by 40 C.F.R. 51.166(b)(35).

(235) "Ton" or "tonnage", for a NOx budget source, means a short ton or 2,000 pounds. For determining compliance with the NOx budget emissions limitation, total tons for a control period is calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 C.F.R. Part 96, Subpart H with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(236) "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

(237) "tpy" means tons per year.

(238) "TSS" means total suspended solids.

(239) "Uncombined water" means water that can be separated from a compound by ordinary physical means and that is not bound to a compound by internal molecular forces.

(240) "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(241) "Urban county" means a county that is a part of an urbanized area with a population greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county is classified as urban for 401 KAR Chapters 50 to 65.

(242) "Urbanized area" means an area defined by the U.S. Department of Commerce, Bureau of Census.

(243) "U.S. EPA" means the United States Environmental Protection Agency.

(244) "UTM" means Universal Transverse Mercator.

(245) "Visibility impairment" is defined by 40 C.F.R. 51.301.

(246) "Volatile organic compound" or "VOC" is defined by 40 C.F.R. 51.100(s).

(247) "yd" means yard.

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

(a) "North American Industry Classification System", 2007, as published by the Office of Management and Budget; and

(b) "Standard Industrial Classification Manual", 1987, as published by the Office of Management and Budget [~~is incorporated by reference~~].

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 200 Fair Oaks Lane, 1st floor, Frankfort, Kentucky 40601-1403, (502) 564-3999;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Frankfort Regional Office, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40601, (502) 564-3358;

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

(3) The Standard Industrial Classification Manual is also available under Order No. PB 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia

22161, phone (703) 487-4650.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 13, 2012

FILED WITH LRC: June 14, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2012, at 10:00 a.m. (local time) in Conference Room 201B on the first floor of the Division for Air Quality at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. 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 on July 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 listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Laura Lund, Environmental Technologist III, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, ext. 4428, fax (502) 564-4666, and email Laura.Lund@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 51.

(b) The necessity of this administrative regulation: This administrative regulation provides clear and consistent definitions for terms used in 401 KAR Chapter 51.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the Cabinet to provide for the prevention, abatement, and control of air pollution. The definitions contained in this administrative regulation are not more stringent than the corresponding federal definitions and assist in the fulfillment of federal and state statutes by providing clear and consistent definitions for terms used in 401 KAR Chapter 51.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the public and the regulated community by providing clear and consistent definitions for terms used in 401 KAR Chapter 51.

(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 adopts revisions to the New Source Review (NSR) program at the federal level that implement the PM_{2.5} National Ambient Air Quality Standards (NAAQS). Specifically, the definition of "Regulated NSR pollutant" has been amended for consistency with the federal program.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to ensure consistency between state and federal programs.

(c) How the amendment conforms to the content of the authorizing statutes: 42 U.S.C. 7410(a)(1) requires each state to adopt and submit a plan providing for the implementation, maintenance, and enforcement of a NAAQS. This amendment provides the mechanisms and tools necessary to implement, maintain, and enforce standards for PM_{2.5}. This amendment maintains consistency with corresponding federal definitions affecting Kentucky's NSR program.

(d) How the amendment will assist in the effective administration of statutes: This amendment provides definitions of terms used in 401 KAR Chapter 51 to prevent and control air pollution that are

consistent with those at the federal level.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals, businesses, organizations, or governments will be affected by this regulation if they are subject to any of the requirements contained in this chapter.

(4) Provide an assessment 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: This amendment maintains consistency with corresponding federal definitions affecting Kentucky's NSR program.

(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: Affected facilities will be required to apply and use the terms as defined in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not impose an increased cost to the regulated community.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): When operating in compliance, the affected facilities will not be subject to enforcement actions and penalties. Furthermore, compliance with the Clean Air Act requirements preserves and improves air quality throughout the Commonwealth.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish, nor directly or indirectly increase, any fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation contains thresholds over which facilities may be subject to permitting requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 7410(a)(1) requires Kentucky to adopt and submit a plan providing for the implementation, maintenance, and enforcement of a NAAQS.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. The Clean Air Act is the federal mandate that requires states to have a plan for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The definitions contained in this administrative regulation are not more stringent than the corresponding federal definitions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State and local governments will be required to use definitions contained in this administrative regulation if subject to the requirements of 401 KAR Chapter 51.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5); 40 C.F.R. 51.165, 51.166; and 42 U.S.C. 7401-7671q.

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

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

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

(c) How much will it cost to administer this program for the first year? The Cabinet's existing operating budget is the source of funding for the implementation of this program.

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

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amendment)

401 KAR 51:017. Prevention of significant deterioration of air quality.

RELATES TO: KRS 224.10-100, 40 C.F.R. 51 Subpart I, Appendix S, sec. IV, Part 51, Appendix W, 51.166, 52.21, 52.26, 53, 58 Appendix A, 60, 61, 63, 70.6, 81.318, 81 Subpart D, 42 U.S.C. 7401-7671q[4321-4370d, EO-2009-538]

STATUTORY AUTHORITY: KRS 224.10-100(5), 40 C.F.R. 51.166, [52.21,] 42 U.S.C. 7401-7671q[EO-2009-538]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution.[EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet.] This administrative regulation provides for the prevention of significant deterioration of ambient air quality. The provisions of this administrative regulation are not[different nor] more stringent than the corresponding federal requirements[regulation, 40 C.F.R. 51.166].

Section 1. Applicability. (1) This administrative regulation shall apply to the construction of a new major stationary source or a project at an existing major stationary source that commences construction after September 22, 1982, and locates in an area designated attainment or unclassifiable under 42 U.S.C. 7407(d)(1)(A)(ii) and (iii).

(2) Except as otherwise provided in this administrative regulation, the provisions of Sections 8 to 16 of this administrative regulation shall apply to the construction of a new major stationary source or a major modification of an existing major stationary source.

(3) The owner or operator of a new major stationary source or

major modification, which is subject to the requirements of Sections 8 to 16 of this administrative regulation, shall not begin actual construction without a proposed permit or proposed permit revision issued under 401 KAR 52:020 stating that the major stationary source or major modification shall meet those requirements.

(4) Applicability tests for projects. Except as provided in subsection (5) of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed according to subparagraphs 1 to 3 of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using a method specified in subparagraphs 1 and 2 of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable procedure established in paragraph (a) of the subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1(144) and (218).

(5) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 20 of this administrative regulation.

Section 2. Ambient Air Increments. (1) In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the following levels:

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
Class I	
Particulate Matter:	
PM _{2.5} , annual arithmetic mean	1
PM _{2.5} , 24-hour maximum	2
PM ₁₀ , annual arithmetic mean	4
PM ₁₀ , 24-hour maximum	8
Sulfur Dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen Dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate Matter:	
PM _{2.5} , annual arithmetic mean	4
PM _{2.5} , 24-hour maximum	9
PM ₁₀ , annual arithmetic mean	17
PM ₁₀ , 24-hour maximum	30
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen Dioxide:	
Annual arithmetic mean	25

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 3. Ambient Air Ceilings. The concentration of a regulated NSR pollutant shall not exceed the concentration allowed under the national secondary ambient air quality standard or under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 4. Restrictions on Area Classifications. (1) The following areas, which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks that exceed 5,000 acres in size; and

(c) National parks that exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, shall be designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources that may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area that as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or sea-shore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 5. Exclusions from Increment Consumption. (1) Pursuant to notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 52:100, the cabinet may exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources that have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from these sources before the effective date of the order;

(b) Concentrations attributable to the increase in emissions from sources that have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to a federal statute over the emissions from those sources before the effective date of the plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources affected by plan revisions approved by the Administrator of the U.S. EPA as meeting the criteria established in subsection (3) of this section.

(2)(a) Exclusion of concentrations shall not apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the curtailment plan to which subsection (1)(b) of this section refers, whichever is applicable.

(b) If both an order and curtailment plan are applicable, an exclusion shall not apply more than five (5) years after the later of the two (2) effective dates.

(3) For excluding concentrations pursuant to subsection (1)(d) of this section:

(a) The time period over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur shall be specified and shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) The time period for excluding certain contributions in accordance with paragraph (a) of this subsection shall not be renewable;

(c) An emissions increase from a stationary source shall not occur that will:

1. Impact a Class I area or an area in which an applicable increment is known to be violated; or
2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations shall be in effect at the end of the time period established in paragraph (a) of this subsection, which ensure that the emissions levels from stationary sources affected by the SIP revision shall not exceed the levels occurring from those sources before the revision was approved.

Section 6. Stack Heights. (1) The degree of emissions limitation required for control of an air pollutant under this administrative regulation shall not be affected by:

(a) So much of the stack height of a source as exceeds good engineering practice; or

(b) Another dispersion technique.

(2) Subsection (1) of this section shall not apply to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

Section 7. Exemptions. (1) Sections 8 to 16 of this administrative regulation shall not apply to a particular major stationary source or major modification, if:

(a) The owner or operator:

1. Obtained the necessary federal, state, and local preconstruction approval effective before September 22, 1982;
2. Commenced construction before September 22, 1982; and
3. Did not discontinue construction for a period of eighteen (18) months or more.

(b) 1. The major stationary source is a nonprofit health institution, a nonprofit educational institution, or a major modification at such an institution; and

2. The Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements.

(c) The source or modification is a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants, furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140;

21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;

22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

23. Taconite ore processing plants;

24. Glass fiber processing plants;

25. Charcoal production plants;

26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or

27. Another stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(d) The source or modification is a portable stationary source that has previously received a permit under this administrative regulation; and

1. The owner or operator proposes to relocate the source, and the emissions of the source at the new location will be temporary;

2. The emissions from the source will not exceed its allowable emissions;

3. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and

4.a. Reasonable notice is given to the cabinet prior to the relocation identifying the proposed new location and the probable duration of operation at the new location.

b. Notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet pursuant to this subsection.

(e) The source or modification was not subject to this administrative regulation with respect to particulate matter requirements in effect before July 31, 1987, and the owner or operator:

1. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable SIP before July 31, 1987;

2. Commenced construction within eighteen (18) months after July 31, 1987; and

3. Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable period of time.

(f) 1. The source or modification was subject to this administrative regulation for particulate matter requirements in effect before July 31, 1987, and the owner or operator submitted an application for a permit under the applicable permit program before that date; and

2. The cabinet subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect.

(2) Sections 8 to 16 of this administrative regulation shall not apply to a major stationary source or major modification for a particular pollutant if the owner or operator demonstrates that, for that pollutant, the source or modification is located in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(3) Sections 9, 11, and 13 of this administrative regulation shall not apply to a proposed major stationary source or major modification for a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from a modification:

(a) Will not impact a Class I area or an area where an applicable increment is known to be violated; and

(b) Will be temporary.

(4) Sections 9, 11, and 13 of this administrative regulation, as applicable to a maximum allowable increase for a Class II area, shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT will be less than fifty (50) tons per year.

(5) The cabinet may exempt a proposed major stationary source or major modification from the monitoring requirements of Section 11 of this administrative regulation for a particular pollutant, if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification will cause air quality impacts in an area, which are less than the amounts listed in the following table; or

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 $\mu\text{g}/\text{m}^3$	8-hour average
Nitrogen dioxide	14 $\mu\text{g}/\text{m}^3$	annual average
PM _{2.5}	4 $\mu\text{g}/\text{m}^3$	24-hour average
PM ₁₀	10 $\mu\text{g}/\text{m}^3$	24-hour average
[Particulate matter]	10 $\mu\text{g}/\text{m}^3$ of PM ₁₀	24-hour average
Sulfur dioxide	13 $\mu\text{g}/\text{m}^3$	24-hour average
Ozone	A de minimis air quality level is not provided for ozone. However, a net increase	

	of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to this administrative regulation shall be required to perform an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 µg/m ³	3-month average
Fluorides	0.25 µg/m ³	24-hour average
Hydrogen sulfide	0.2 µg/m ³	1-hour average
Total reduced sulfur	10 µg/m ³	1-hour average
Reduced sulfur compounds	10 µg/m ³	1-hour average

(b) The concentrations of the pollutant in the area that the source or modification will affect are less than the concentrations listed in the table in paragraph (a) of this subsection, or the pollutant is not listed in the table.

(6) Permitting requirements equivalent to Section 9(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for nitrogen oxides, if:

(a) The owner or operator of the source or modification submitted an application for a permit or permit revision under the applicable permit program before the date on which the provisions embodying the maximum allowable increase took effect in the Kentucky SIP; and

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(7) Permitting requirements equivalent to Section 10(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for PM₁₀, if:

(a) The owner or operator of the source or modification submitted an application for a permit under the applicable permit program before the provisions embodying the maximum allowable increases for PM₁₀ took effect as part of Kentucky's SIP; and

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(8)(a) The cabinet may determine that the requirements for air quality monitoring of PM₁₀ in Section 11 of this administrative regulation shall not apply to a particular source or modification, if:

1. The owner or operator of the source or modification submitted an application for a permit under this section on or before June 1, 1988; and

2. The cabinet subsequently determines that the application as submitted before that date was complete, except for the requirements for monitoring particulate matter specified in Section 11 of this administrative regulation.

(b) The requirements for air quality monitoring of PM₁₀ in Section 11 of this administrative regulation shall apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation after June 1, 1988, and not later than December 1, 1988.

1. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes complete in accordance with Section 11 of this administrative regulation; and

2. If the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period, which may not be less than four (4) months, the data that Section 11 of this administrative regulation requires shall have been gathered over that shorter period.

(9) If the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation before the date the provisions embodying the maximum allowable increases for PM₁₀ took effect and the cabinet subsequently determined that the application as submitted before that date was complete, the requirements of Section 9(2) of this administrative regulation shall:

(a) Not apply to a stationary source or modification for a maximum allowable increase for PM₁₀; and

(b) Apply for the maximum allowable increases for TSP as in effect on the day the application was submitted.

Section 8. Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under the Kentucky SIP and each applicable emissions standard and standard of performance pursuant to 40 C.F.R. Parts 60 and 61.

(2) A new major stationary source shall apply BACT for each regulated NSR pollutant for which the source has the potential to emit in significant amounts.

(3) A major modification shall apply BACT:

(a) For each regulated NSR pollutant that results in a significant net emissions increase at the source; and

(b) For each proposed emissions unit at which a net emissions increase in the pollutant occurs as a result of a physical change or change in the method of operation of the unit.

(4) For phased construction projects:

(a) The cabinet shall review and modify, as appropriate, the BACT determination at the latest reasonable time occurring not later than eighteen (18) months prior to commencement of construction of each independent phase of the project; and

(b) If requested by the cabinet, the owner or operator of the applicable stationary source shall demonstrate the adequacy of a previous BACT determination for the source.

Section 9. Source Impact Analysis. (1) The owner or operator of the proposed source or modification shall demonstrate that allowable emissions increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, shall not cause or contribute to air pollution in violation of:

(a)[(4)] A national ambient air quality standard in an air quality control region; or

(b)[(2)] An applicable maximum allowable increase over the baseline concentration in any area.

(2) For purposes of PM_{2.5}, the demonstration pursuant to subsection (1) of this section is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, an air quality impact less than the amounts listed in the following table.

Pollutant	Averaging Time	Class I area	Class II area
PM _{2.5}	Annual	0.06 µg/m ³	0.3 µg/m ³
PM _{2.5}	24-hour	0.07 µg/m ³	1.2 µg/m ³

Section 10. Air Quality Models. (1) Estimates of ambient concentrations shall be based on the applicable air quality models, databases, and other requirements specified in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality Models" Appendix A.

(2) If an air quality model specified in 40 C.F.R. Part 51, Appendix W, is inappropriate, the model may be modified or another model substituted.

(a) The use of a modified or substitute model shall be:

1. Subject to notice and opportunity for public comment under 401 KAR 52:100; and

2. Approved in writing by the U.S. EPA pursuant to 40 C.F.R. 51.166(1).

(b) Methods similar to those outlined in the "Workbook for the Comparison of Air Quality Models," specified in 401 KAR 50:040, Section 1(3), shall be used to determine the comparability of air quality models.

Section 11. Air Quality Analysis. (1) Preapplication analysis.

(a) An application for a permit or permit revision under 401 KAR 52:020 and this administrative regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification will affect for each of the following:

1. For a source, each pollutant that the source will have the potential to emit in a significant amount;

2. For a modification, each pollutant that the modification will result in a significant net emissions increase.

(b) For a pollutant that does not have a national ambient air quality standard, the analysis shall contain air quality monitoring data the cabinet determines necessary to assess ambient air quality for that pollutant in an area that the emissions of that pollutant will affect.

(c) For pollutants, other than nonmethane hydrocarbons, for which a standard exists, the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant will cause or contribute to a violation of the standard or a maximum allowable increase.

(d) 1. The required continuous air quality monitoring data shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application.

2. If the cabinet determines that a complete and adequate analysis may be accomplished with monitoring data gathered over a period shorter than one (1) year, that period shall be not less than four (4) months.

(e) For analysis of volatile organic compounds, the owner or operator of a proposed major stationary source or major modification who satisfies all conditions of 40 C.F.R. Part 51, Appendix S, section IV may provide postapproval monitoring data for ozone instead of providing preconstruction data as required in this section.

(f) For air quality monitoring of PM₁₀ under Section 7(8)(a) and (b) of this administrative regulation, the owner or operator of the source or major modification shall use a monitoring method approved by the cabinet pursuant to 40 C.F.R. Part 53 and shall estimate the ambient concentrations of PM₁₀ using the data collected by that approved monitoring method in accordance with estimating procedures approved by the cabinet pursuant to 40 C.F.R. Part 58, Appendix A.

(2) Postconstruction monitoring. After construction of a major stationary source or major modification, the owner or operator shall conduct ambient monitoring that the cabinet determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in an area.

(3) Operation of monitoring stations. During the operation of air quality monitoring stations, the owner or operator of a major stationary source or major modification shall meet the requirements of 40 C.F.R. Part 58, Appendix A to satisfy the air quality analysis requirements of this section.

Section 12. Source Information. The owner or operator of a proposed source or modification shall submit to the cabinet all information necessary to perform an analysis or make a determination required under this administrative regulation. (1) The information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification; and

(c) A detailed description of the system of continuous emissions reduction planned for the source or modification, emissions estimates, and any information necessary to determine that BACT will be applied.

(2) Upon request of the cabinet, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate the impact; and

(b) The air quality impacts and the nature and extent of general commercial, residential, industrial, and other growth that has occurred since August 7, 1977, in the area the source or modification will affect.

Section 13. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation that will occur as a result of:

(a) The source or modification; and

(b) General commercial, residential, industrial, and other growth associated with the source or modification.

(2) The owner or operator shall not be required to provide an analysis of the impact on vegetation not having significant commercial or recreational value.

(3) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

(4) Visibility monitoring.

(a) If the cabinet requires monitoring of visibility in a Class I area impacted by the proposed new stationary source or major modification, the monitoring shall be performed using:

1. Human observations;

2. Teleradiometers;

3. Photographic cameras;

4. Nephelometers;

5. Fine particulate monitors; or

6. Other U.S. EPA-approved methods.

(b) The method selected shall be determined on a case-by-case basis by the cabinet pursuant to 40 C.F.R. 51.166.

(c) Visibility monitoring required by the cabinet in a Class I area shall be approved by the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the U.S. EPA, and the federal land manager, upon request.

Section 14. Sources Impacting Class I Areas; Additional Requirements. (1) Notice to U.S. EPA and federal land managers. The cabinet shall provide:

(a) Written notice to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of lands within a Class I area of a permit application for a proposed major stationary source or major modification that may affect the Class I area.

(b) Notice promptly after receiving the permit application. The notice shall:

1. Include a copy of all information relevant to the permit application;

2. Be given within thirty (30) days of receipt and at least sixty (60) days prior to the public hearing on the application for a permit to construct; and

3. Include an analysis of the proposed source's anticipated impacts on visibility in the Class I area.

(c) The cabinet shall also provide the federal land manager and other federal officials with a copy of the preliminary determination and shall make available to them the materials used in making that determination, promptly after the cabinet makes it. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an advanced notification of the permit application.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of lands located in a Class I area shall have an affirmative responsibility to protect visibility and other air quality related values of the lands and to consider, in consultation with the cabinet, if a proposed source or modification will have an adverse impact on those values.

(3) Visibility analysis.

(a) The cabinet shall consider an analysis performed by the federal land manager, which is provided within thirty (30) days of the notice and analysis required by subsection (1) of this section, which shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

(b) If the cabinet finds the analysis does not demonstrate to the cabinet's satisfaction that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation may be obtained.

(4) Denial; impact on air quality related values.

(a) The federal land manager of lands located in a Class I area may demonstrate to the cabinet that the emissions from a proposed source or modification will have an adverse impact on the visibility and other air quality related values of those lands, even though the change in air quality resulting from emissions from the proposed source or modification will not cause or contribute to concentrations that will exceed the maximum allowable increases for a Class I area.

(b) If the cabinet concurs with the demonstration specified in paragraph (a) of this subsection, the cabinet shall not issue the permit or permit revision.

(5) Class I variances.

(a) The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from the source or modification will not have adverse impact on the visibility or other air quality related values of lands located in a Class I area, even though the change in air quality resulting from emissions from the source or modification will cause or contribute to concentrations that will exceed the maximum allowable increases for a Class I area as specified in Section 2(1) of this administrative regulation.

(b) If limitations are necessary, the cabinet may issue the permit or permit revision with emissions limitations necessary to assure that emissions of sulfur dioxide, PM_{2.5}, PM₁₀[particulate matter], and nitrogen oxides will not exceed the maximum allowable increases over minor source baseline concentration for the pollutants as specified in 40 C.F.R. 51.166(p)(4)[Section 2(4) of this administrative regulation] if:

1. The federal land manager concurs with the demonstration specified in paragraph (a) of this subsection and certifies accordingly; and

2. The other applicable requirements of this administrative regulation are met.

(6) Sulfur dioxide variance by governor with federal land manager's concurrence.

(a) The owner or operator of a proposed source or modification, which cannot be approved under subsection (5) of this section because the source cannot be constructed without exceeding a maximum allowable increase in sulfur dioxide applicable to a Class I area for a period of twenty-four (24) hours or less, may demonstrate to the Governor of the Commonwealth of Kentucky that a variance will not adversely affect the visibility or other air quality related values of the area.

(b) The governor, after consideration of the federal land manager's recommendation, if applicable, and subject to the federal land manager's concurrence, may, after notice and public hearing, grant a variance from the maximum allowable increase.

(c) If a variance is granted, the cabinet shall issue a permit or permit revision to the source or modification under the requirements of 401 KAR Chapter 52 if the other applicable requirements of this administrative regulation are met.

(7) Variance by the governor with the President's concurrence.

(a) If the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America.

(b) If the variance is approved by the President, the cabinet shall issue a permit or permit revision in accordance with the requirements of 401 KAR Chapter 52, if the other applicable requirements of this administrative regulation are met.

(8) Emissions limitations for presidential or gubernatorial variance. For a permit or permit revision issued pursuant to subsections (6) or (7) of this section, the source or modification shall comply with the emissions limitations necessary to assure that:

(a) Emissions of sulfur dioxide from the source or modification shall not, during a day on which the other applicable maximum allowable increases are exceeded, cause or contribute to concentrations that will exceed the maximum allowable increases over the baseline concentration as specified in the following table; and

Maximum Allowable Increase (Micrograms per cubic meter)		
	Terrain areas	
Period of Exposure	Low	High
24-hour maximum	36	62
3-hour maximum	130	221

(b) Emissions shall not cause or contribute to concentrations that exceed other applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than a total of eighteen (18) days that are not necessarily consecutive during an annual period.

Section 15. Public Participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100, 40 C.F.R. 51.166(q), and this administrative regulation in processing applications under

this administrative regulation.

Section 16. Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982, shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52:020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;

2. Is discontinued for a period of eighteen (18) months or more; or

3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory demonstration that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with 401 KAR Chapters 50 to 68 and other requirements of local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, Sections 8 to 16 of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator elects to use the method specified in 401 KAR 51:001, Section 1(199)(b) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions units for which emissions of a regulated NSR pollutant could be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

a. Baseline actual emissions;

b. Projected actual emissions;

c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and

d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by any emissions unit identified in paragraph (b)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis for:

a. Five (5) years following resumption of regular operations after the change; or

b. Ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of the regulated NSR pollutant at the emissions unit.

(d) If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator:

1. Shall provide a copy of the information in paragraph (b) of

this subsection to the cabinet, but shall not be required to obtain a determination from the cabinet before beginning actual construction; and

2. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that reports the unit's annual emissions during the calendar year that preceded submission of the report.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceeds the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant; and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

a. The name, address, and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and

c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under to this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 17. Environmental Impact Statements. If a proposed source or modification is subject to action by a federal agency that may necessitate preparation of an environmental impact statement under 42 U.S.C. 4321 to 4370d (the National Environmental Policy Act), review by the cabinet conducted in accordance with this administrative regulation shall be coordinated with the broad environmental reviews under that Act and under 42 U.S.C. 7609 to the maximum extent feasible and reasonable.

Section 18. Innovative Control Technology. (1) An owner or operator of a proposed major stationary source or major modification may make a written request that the cabinet approve a system of innovative control technology.

(2) The cabinet may, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 8(2) of this administrative regulation by a date, specified by the cabinet that is not later than four (4) years from the time of start-up or seven (7) years from permit issuance;

(c) The source or modification shall meet requirements equivalent to those in Sections 8 and 9 of this administrative regulation based on the emissions rate that the stationary source employing the system of innovative control technology shall be required to meet on the date specified by the cabinet;

(d) The source or modification shall not before the date specified by the cabinet:

1. Cause or contribute to a violation of an applicable national ambient air quality standard; or

2. Impact an area in which an applicable increment is known to be violated;

(e) Section 14 of this administrative regulation relating to Class I areas has been satisfied for all periods during the life of the source or modification; and

(f) All other applicable requirements including those for public participation have been met.

(3) The cabinet shall withdraw approval to employ a system of

innovative control technology if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date and contributes to an unreasonable risk to public health, welfare, or safety; or

(c) The cabinet decides that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the cabinet may allow the source or modification up to an additional three (3) years to meet the requirement for the application of BACT through use of a demonstrated system of control.

Section 19. Permit Condition Rescission. (1)(a) An owner or operator holding a permit for a stationary source or modification that contains conditions pursuant to 401 KAR 51:015 or 51:016E may request that the cabinet rescind the applicable conditions.

(b) An owner or operator of a stationary source or modification who holds a permit for the source or modification that was issued under this administrative regulation as in effect on July 30, 1987, or an earlier version of this administrative regulation, may request that the cabinet rescind the permit or a particular portion of the permit.

(2) The cabinet shall rescind a permit condition if requested and if the applicant can demonstrate to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification.

Section 20. Plant-wide Applicability Limit Provisions. The cabinet shall only approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section. (1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:

1. Shall not be considered a major modification for the PAL pollutant;

2. Shall not have to be approved through Kentucky's major NSR program; and

3. Shall not be subject to the provisions of Section 16(4) of this administrative regulation concerning restrictions on relaxing enforceable emission limitations that a major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, a major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant, or major, based on their potential to emit;

(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation, including emissions associated with startup, shutdown, and malfunction; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source.

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall demonstrate that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall demonstrate that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section.

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(d) Each PAL shall regulate emissions of only one (1) pollutant.

(e) Each PAL shall have a PAL effective period of ten (10) years.

(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period.

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of the emissions reductions; and

2. The reductions will be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100. The cabinet shall:

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1 or under 42 U.S.C. 7401-7671q, whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shut down after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance

purposes include emissions from startups, shutdowns, and malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source shall be subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format;

(i) A requirement for the owner or operator to submit the reports required under subsection (13) of this section by the required deadlines; and

(j) Any requirements necessary to implement and enforce the PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any requirement enforceable as a practical matter and imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period, and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitations under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall decide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3. The cabinet shall issue a revised permit incorporating allow-

able limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS if the alternate monitoring system demonstrates compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 16(4) of this administrative regulation.

(9) Renewal of a PAL.

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL if the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is equal to or greater than eighty (80) percent of the current PAL level, unless the sum is greater than the source's potential to emit.

3. If the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is less than eighty (80) percent of the current PAL level, the cabinet may set the PAL at a different level if the level is determined to be:

a. More representative of the source's baseline actual emissions; or

b. Appropriate considering the following factors:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area of the source;

(iv) The cabinet's goal of promoting voluntary emissions reductions;

(v) Cost effective emissions control alternatives; and

(vi) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher

than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted in conjunction with PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for the requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the increase in emissions that cause the source's emissions to equal or exceed its PAL;

2. Demonstration that the increased PAL, as calculated in paragraph (c) of this subsection, exceeds the PAL; and

a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis with the application submittal, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years;

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plant-wide emissions of the PAL pollutant in terms of mass per unit of time;

2. A monitoring system authorized for use in the PAL permit shall be:

a. Approved by the cabinet pursuant to this subsection; and

b. Based on sound science and meet generally acceptable scientific procedures for data quality and manipulation;

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emission factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant contained in or created by all materials used in or at the emissions unit;

2. If the PAL pollutant cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable performance specifications found in 40 C.F.R. Part 60, Appendix B; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval if approved by the cabinet.

(f) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

3. The owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance if the cabinet determines that the testing is required and technically practicable.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements of paragraphs (c) to (g) of this subsection, in conjunction with permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points; or

2. Determine that operation of the emissions unit during operating conditions if there is not a correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means if approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR 52:020, 52:030, and 52:040 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210), certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(iii)(B) shall satisfy the deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator, and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

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(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published in 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before August 10, 2006, with a different PAL if the new PAL complies with the requirements of this administrative regulation.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 13, 2012

FILED WITH LRC: June 14, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2012, at 10:00 a.m. (local time) in Conference Room 201B on the first floor of the Division for Air Quality at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. 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 on July 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 listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Laura Lund, Environmental Technologist III, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, telephone (502) 564-3999, ext. 4428, fax (502) 564-4666, and email Laura.Lund@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the prevention of significant deterioration (PSD) of ambient air quality, and applies to major stationary sources and major modifications constructing in areas that are maintaining the National Ambient Air Quality Standards (NAAQS).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to continue to receive full approval of the PSD program into the Kentucky State Implementation Plan (SIP) and remain the PSD permitting authority.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation conforms to 42 U.S.C. 7470, which authorizes the federal PSD program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for issuing permits to stationary sources in areas where the NAAQS have been attained.

(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 reflects revisions to the PSD program at the federal level to address the PM_{2.5} NAAQS. This amendment includes maximum allowable increases for PM_{2.5} in Class I and II areas at annual and 24-hour levels. This amendment also includes de minimis levels to preclude further evaluation for sources emitting or increasing their emissions by an amount less than the air quality impact levels for PM_{2.5}.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to ensure consistency between state and federal programs.

(c) How the amendment conforms to the content of the au-

thorizing statutes: 42 U.S.C. 7410(a)(1) requires each state to adopt and submit a plan providing for the implementation, maintenance, and enforcement of a NAAQS. This amendment contains implementation tools for the maintenance and attainment of the NAAQS. KRS 224.10-100(5) requires the Cabinet to provide for the prevention, abatement, and control of air pollution. This amendment maintains consistency with corresponding federal requirements.

(d) How the amendment will assist in the effective administration of statutes: This amendment incorporates implementation elements relating to PM_{2.5}, as required by 40 C.F.R. 51.166, and eliminates regulatory uncertainty between the state and federal programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any new major stationary source or any project at an existing major stationary source that commences construction after September 22, 1982, and locates in an area designated attainment or unclassifiable is affected by this administrative regulation.

(4) Provide an assessment 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: Amendments to the current regulation include the permitting elements relating to PM_{2.5} emissions. Entities subject to this regulation are to provide PM_{2.5} emissions data and demonstrate that the project emissions do not cause or contribute to a violation of the NAAQS. In the past, DAQ has used PM₁₀ as a surrogate for PM_{2.5} due to inadequate test methods and the lack of implementation elements. However, the U.S. EPA has determined that the appropriate data and technology are now available and the use of the PM₁₀ surrogacy policy is no longer allowed.

(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: Affected facilities' permit applications will be required to provide emissions data for PM_{2.5} and demonstrate that the project's emissions do not cause or contribute to a violation of the PM_{2.5} NAAQS.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected facilities will incur the cost necessary to obtain a permit that includes an evaluation of PM_{2.5} emissions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): When operating in compliance, the affected facilities will not be subject to enforcement actions and penalties. Furthermore, compliance with the Clean Air Act requirements preserves and improves air quality throughout the Commonwealth.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish, nor directly or indirectly increase, any fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation only applies to new major stationary sources, or an existing major stationary source with a project, that commences construction after September 22, 1982, and is located in an area designated attainment or unclassifiable.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. As a SIP-approved state for the PSD program under 40 C.F.R. 51.166, recent changes in the federal PSD program make it necessary to revise this regulation to maintain federal approvability. 42 U.S.C. 7410(a)(1) requires Kentucky to adopt and submit a plan providing for the implementation, maintenance, and enforcement of a NAAQS.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. The Clean Air Act requires applicable sources demonstrate that any major construction or major modification will not cause emissions to cause or contribute to a violation of the NAAQS. 40 C.F.R. 51.166 is the federal rule that provides the framework to establish a plan and requirements necessary to receive full approval into the Kentucky SIP.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is no more stringent than the federal rule, codified in 40 C.F.R. 51.166, and no more stringent than the federal mandate established by 42 U.S.C. 7401-7626.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality will continue to implement and enforce the PSD program. Also, state and local governments constructing or modifying a major stationary source in an area classified as attainment or unclassified will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), (26); 40 C.F.R. 51.166; and 42 U.S.C. 7401-7671q.

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

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

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

(c) How much will it cost to administer this program for the first year? The Cabinet's existing operating budget is the source of funding for the implementation of this program.

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

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

RELATES TO: KRS 224.20-100[(5)], 224.20-110, 224.20-120, 40 C.F.R. Part 51 Appendix S, Part 51 Subpart I, 51.165, 51.166, 51.300, 51.307, 52.21, 60, 61, 70.6, Part 81 Subpart D, 81.318, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7401-7671q

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained. The provisions of this administrative regulation are not more stringent than the corresponding federal requirements [regulation, 40 C.F.R., 51.166].

Section 1. Applicability. This administrative regulation shall apply to the construction of a new major stationary source or a project that is a major modification at an existing major stationary source, which commences construction after September 22, 1982, and locates in or impacts upon an area designated nonattainment under 42 U.S.C. 7407(d)(1)(A)(i). (1) The provisions of this administrative regulation relating to visibility protection shall also apply to major sources or major modifications in nonattainment areas that potentially have an impact on visibility in a mandatory Class I federal area.

(2) Applicability tests for projects. Except as provided in subsection (3) of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase, as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed or modified according to subparagraphs 1 to 3 of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using the methods specified in subparagraphs 1 and 2 of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable test in paragraph (a) of this subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1(144) and (218).

(3) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 11 of this administrative regulation.

Section 2. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions

limitation compliance.

(a) The cabinet shall examine each proposed major new source and proposed major modification to determine if the source or modification will meet all applicable emissions requirements in the Kentucky State Implementation Plan (SIP) and 40 C.F.R. Parts 60 and 61.

(b) If the cabinet determines from the application and all other available information that the proposed source or modification will not meet the applicable emissions requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact.

(a) The cabinet shall determine if a proposed major stationary source or major modification will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major.

(b) If a designated nonattainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source will not cause a new violation.

(3) Fugitive emissions sources. Sections 4 and 10 of this administrative regulation shall not apply to a source or modification that will be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to one (1) of the following categories:

- (a) Coal cleaning plants with thermal dryers;
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants, furnace process;
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140;
- (u) Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
- (aa) Another stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

Section 3. Sources Locating in Designated Attainment or Unclassifiable Areas that Will Cause or Contribute to a Violation of a National Ambient Air Quality Standard. (1) This section shall apply only to new major stationary sources or new major modifications that will locate in designated attainment or unclassifiable areas, pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii), if the source or modification will cause impacts that exceed the significance levels, as listed in the table in this subsection, at a locality that does not or will not meet the national ambient air quality standards.

Pollutant	Annual Average	Averaging Time			
		24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	--	25 $\mu\text{g}/\text{m}^3$	--
PM _{2.5}	0.3 $\mu\text{g}/\text{m}^3$	1.2 $\mu\text{g}/\text{m}^3$	--	--	--
PM ₁₀	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	--	--	--
Nitrogen Dioxide	1.0 $\mu\text{g}/\text{m}^3$	--	--	--	--
Carbon Monoxide	--	--	0.5 mg/m^3	--	2 mg/m^3

(2) Sources to which this section applies shall meet the requirements in Section 4(1), (2) and (4) of this administrative regulation and may be exempt from Section 4(3) of this administrative regulation.

(3) For sources of sulfur dioxide (SO₂), particulate matter, and carbon monoxide (CO), the determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model listed in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality Models".

(4) For sources of NO_x, the initial determination that a new major source or major modification will cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide (NO₂) shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO₂ by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOCs or NO_x locating outside a designated ozone nonattainment area shall be presumed to not have a significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, the source shall be permitted pursuant to this administrative regulation and 401 KAR 52:020 until the area is designated nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(6) The determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas, the operation of which will cause a new violation of a national ambient air quality standard but will not contribute to an existing violation, may be approved only if the following conditions are met:

- (a) The new source shall:
 - 1. Meet an emissions limitation;
 - 2. Meet a design, operational, or equipment standard; or
 - 3. Control existing sources so that the new source will not cause a violation of a national ambient air quality standard.
- (b) The new emissions limitations for the new and existing sources affected shall be state and federally enforceable in accordance with Section 6 of this administrative regulation.

Section 4. Sources Locating in a Designated Nonattainment Area. This section shall apply to a new major stationary source or major modification that will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major. Approval to construct may be granted only if the conditions of this section are met. (1) The new major source or major modification shall be required to meet an emissions limitation that specifies the lowest achievable emissions rate (LAER) for the source.

(2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant, or an entity controlling, controlled by, or under common control with the applicant, in the Commonwealth of Kentucky are in compliance with all applicable emissions limitations and standards specified in Title 401, Chapters 50 to 65, and 40 C.F.R. Parts 60 and 61 and 42 U.S.C. 7401-7626, or are in compliance with an expeditious state and federally enforceable compliance schedule or a court decree es-

establishing a compliance schedule.

(3)(a) Except for VOCs or NO_x emissions, emissions from existing sources in the affected area of the proposed new major source or modification, whether or not under the same ownership, shall be reduced or offset at a ratio of at least 1:1, so that there will be reasonable further progress toward attainment of the applicable national ambient air quality standard (NAAQS). Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(b) The ratio of total emissions reductions of VOCs or NO_x to total increased emissions of the same air pollutant shall be at least the ratio indicated for the following ozone nonattainment area classifications:

1. For marginal nonattainment areas, at least 1.1 to 1;
2. For moderate nonattainment areas, at least 1.15 to 1;
3. For serious nonattainment areas, at least 1.2 to 1;
4. For severe nonattainment areas, at least 1.3 to 1; and
5. For extreme nonattainment areas, at least 1.5 to 1.

(4) The emissions reductions shall provide a positive net air quality benefit in the affected area.

(a) Atmospheric simulation modeling shall not be required for VOCs and NO_x.

(b) Except as provided in Section 3(5) of this administrative regulation, compliance with subsection (3) of this section and Section 5(3)(e) of this administrative regulation shall be adequate to meet this condition.

(5) The proposed major stationary source or major modification shall include in the application for a construction permit an analysis of the alternative sites, sizes, production processes, and environmental control techniques for the proposed source, which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 5. Determining Credit for Emissions Offsets. (1) The baseline for determining credit for emissions reductions or offsets shall be, considering that baseline actual emissions as defined in 401 KAR 51:001, Section 1(20), shall not be used for determining the baseline for emissions offsets:

(a) The emissions limitations in effect when the application to construct or modify a source is filed; or

(b) The actual emissions of the source from which offset credit is attained if:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards for the SIP was based on actual emissions; or

2. The SIP does not contain an emissions limitation for that source or source category.

(2) Credit for emissions offsets. Credit for emissions offset purposes may be allowed for existing control if the existing control goes beyond the control required under 401 KAR Chapters 50 to 65 and applicable federal regulations.

(3) General provisions for calculating offset values.

(a) Offset calculations shall be made on a pound-per-hour basis if all facilities involved in the emissions offset calculations are operating at their maximum or allowed production rate.

(b) Offsets may be calculated on a tons-per-year basis if baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period.

(c) If the cabinet requires certain hardware controls instead of an emissions limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(d) If the emissions limitations required by the cabinet allow greater emissions than the uncontrolled emissions rate of the source, emissions offset credit shall be allowed only for control below the uncontrolled emissions rate.

(e) The owner or operator of a new or modified major stationary source shall comply with any offset requirement in effect under this administrative regulation to increase emissions of an air pollutant by obtaining emissions reductions of the air pollutant from:

1. The same source or other sources in the same nonattainment area; or

2. A source in another nonattainment area if:

a. The other area has an equal or higher nonattainment classification than the area in which the source is located; and

b. Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

(4) Calculating offsets if an applicable emissions limitation does not exist. If the Kentucky SIP does not contain an emissions limitation for a source or source category, the emissions offset baseline involving the source shall be actual emissions determined under actual operating conditions for the previous two (2) year period.

(5) Calculating offsets for existing fuel combustion sources.

(a) The emissions for determining emissions offset credit involving an existing fuel combustion source shall be the allowable emissions under the emissions limitation requirements of the cabinet for the type of fuel being burned when the new major source or major modification application is filed.

(b) If the existing source has switched to a different type of fuel at some earlier date, a resulting emissions reduction, either actual or allowable, shall not be used for emissions offset credit.

(c) If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable emissions for the fuels involved shall not be allowed unless the permit is conditioned to require the use of a specified alternative control measure that will achieve the same degree of emissions reduction if the source switches back to a dirtier fuel at some later date.

(6) Calculating offsets for operating hours and source shutdowns.

(a) A source may be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if the work force to be affected has been notified in writing of the proposed shutdown or curtailment.

(b) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours:

1. May be generally credited for offsets pursuant to 40 C.F.R. 51.165(a)(3)(ii)(C)(1) if:

a. The reductions are surplus, permanent, quantifiable, and federally enforceable; and

b. The shutdown or curtailment occurred after the last day of the base year for the SIP planning process.

(i) The cabinet may consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop an attainment demonstration explicitly includes the emissions from the previously shutdown or curtailed emission unit, pursuant to 40 C.F.R. 51.165(a)(3)(ii)(C)(1)(ii).

(ii) Credit shall not be given for a shutdown that occurred before August 7, 1977;

2. That do not meet the requirements of subparagraph 1.b. of this paragraph may be generally credited pursuant to 40 C.F.R. 51.165(a)(3)(ii)(C)(2) if:

a. The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

b. The applicant establishes that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment meet the requirements of subparagraph 1.a. of this paragraph.

(7) Calculating offsets for hydrocarbon substitution. An emissions offset credit shall not be allowed for replacing one volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane, or trichlorofluoroethane.

(8) Banking of emissions offset credit.

(a) New sources obtaining permits by applying offsets after the effective date of this administrative regulation may bank offsets that exceed the requirements of Section 5(3) of this administrative regulation.

(b) An owner or operator of an existing source that reduces its own emissions may bank a resulting reduction beyond those required by regulation for use under this administrative regulation,

even if the offsets are applied immediately to a new source permit.

(c) Banked emissions offsets may be used under the preconstruction review program required in 42 U.S.C. 7401 to 7626, as long as these banked emissions are identified and accounted for in Kentucky's control strategy.

(9) Offset credit for meeting NSPS or NESHAPS.

(a) If a source is subject to an emissions limitation established in a New Source Performance Standard (NSPS) or a National Emissions Standard for Hazardous Air Pollutants (NESHAPS) and a different emissions limitation is required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emissions offsets.

(b) The difference in emissions between NSPS or NESHAPS and other emissions limitations shall not be used as offset credit.

Section 6. Administrative Procedures for Emissions Offsets. (1) Emission reductions shall be enforceable by the cabinet and the U.S. EPA, and shall be accomplished by the start-up date of the new source.

(a) If emissions reductions are to be obtained in a state that neighbors the Commonwealth for a new source to be located in the Commonwealth, the emissions reductions shall be enforceable by the neighboring state or local agencies and the U.S. EPA.

(b) The necessary emissions offsets may be proposed by the owner of the proposed source or by the cabinet.

(2) Source initiated emissions offsets.

(a) The owner or operator of a source may propose:

1. Internal emissions offsets, which involve reductions from sources controlled by the owner; or

2. External emissions offsets, which involve reductions from other sources, if the emissions offsets meet the requirements of this section and Section 4(3) of this administrative regulation.

(b) An internal emissions offset shall be included and made enforceable as a condition of the source's permit.

(c) An external emissions offset shall only be accepted if the cabinet requires the affected source to comply with a new emissions limitation to ensure that its emissions shall be reduced by a specified amount in a specified time; and the new emissions limitation shall be enforceable by the cabinet and the U.S. EPA.

(3) Cabinet initiated emissions offsets.

(a) The cabinet may commit to reducing emissions from mobile sources and other existing sources to provide a net air quality benefit in the impact area of a proposed new source to accommodate the proposed new source.

(b) This emissions reduction commitment shall be reflected in the emissions limitation requirements for the new and existing sources as required by this section.

Section 7. Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52:020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;

2. Is discontinued for a period of eighteen (18) months or more; or

3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory demonstration that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with applicable provisions of 401 KAR Chapters 50 to 65 and other applicable requirements under local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation

in an enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, the requirements of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator uses the method specified in 401 KAR 51:001, Section 1(199)(b) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions units for which emissions of a regulated NSR pollutant may be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

a. Baseline actual emissions;

b. Projected actual emissions;

c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and

d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by an emissions unit identified in paragraph (a)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for:

a. Five (5) years following resumption of regular operations after the change; or

b. Ten (10) years if the project increases the design capacity of or potential to emit for that regulated NSR pollutant at the emissions unit.

(d) If the unit is an existing EUSGU, before beginning actual construction, the owner or operator:

1. Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet; and

2. Shall not be required to obtain a determination from the cabinet before beginning actual construction; and

3. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that contains the unit's annual emissions during the calendar year preceding report submittal.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceed the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant; and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted to the cabinet within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

a. The name, address, and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and

c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under this sub-

section available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 8. Permit Condition Rescission. (1) An owner or operator holding a permit for a stationary source or modification that was issued pursuant to 401 KAR 51:050 or 51:051E may request that the cabinet rescind the applicable conditions.

(2) The cabinet shall rescind a permit condition if the owner or operator:

(a) Requests and demonstrates to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification if construction will have commenced after September 22, 1982; and

(b) Demonstrates that the rescission will not violate the requirements of Sections 4(3) and 7 of this administrative regulation.

Section 9. Class I Areas. (1) The following areas, which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks that exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources that may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 10. Protection of Visibility. (1) New source review; applicability and exemptions.

(a) A stationary source or modification to which this section applies shall not begin actual construction without a permit that states the stationary source or modification shall meet the requirements of this section.

(b) This section shall apply to construction of a new major stationary source or major modification that will be constructed in an area designated as nonattainment under 42 U.S.C. 7407(d)(1)(A)(i) and potentially have an impact on visibility in a Class I area.

(c) This section shall apply to a major stationary source or major modification for each pollutant subject to regulation under 42 U.S.C. 7401 to 7626 that it will emit, except as provided in paragraphs (d) and (e) of this subsection.

(d) This section shall not apply to a particular major stationary source or major modification if:

1. The source or modification is a nonprofit health or nonprofit educational institution or a major modification will occur at the institution, and the Governor of the Commonwealth requests that it be exempt from the requirements of this section; and

2. The source is a portable stationary source that has previously received a permit under this section and will be temporarily relocated; and

(a) The emissions from the source will not exceed the allowable emissions;

b. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and

c. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. The notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet pursuant to this section.

(e) This section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the al-

lowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Will not impact a Class I area;

2. Will not impact an area where an applicable increment is known to be violated; and

3. Will be temporary.

(2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impairment to visibility that will occur in a Class I area as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification.

(3) Federal land manager notification.

(a) The federal land manager and the federal official charged with direct responsibility for management of Class I areas shall have an affirmative responsibility to protect the visibility and other air quality related values of the Class I lands and to consider, in consultation with the cabinet, if a proposed source or modification will have an adverse impact on these values.

(b) The cabinet shall provide written notification to all affected federal land managers and to the federal official charged with direct responsibility for management of lands within the Class I area of a permit application or an advanced notice of a permit application for a proposed new major stationary source or major modification that may affect visibility in a Class I area. The notification shall:

1. Include a copy of all information relevant to the permit application;

2. Be submitted pursuant to this paragraph within thirty (30) days of receipt of the permit application or advanced notice of permit application and at least sixty (60) days prior to a public hearing on the application for a permit to construct; and

3. Include an analysis of the proposed source's anticipated impacts on visibility in a Class I area.

(c)1. The cabinet shall consider an analysis by the federal land manager, provided within thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that the proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

2. If the cabinet finds that the analysis does not demonstrate, to the satisfaction of the cabinet, that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public hearing notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation may be obtained.

(d) Adverse impact on visibility as it applies to paragraph (c) of this subsection shall be determined on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and time of natural conditions that reduce visibility.

(4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100 in processing applications under this section and shall follow the procedures at 40 C.F.R. 52.21(r), effective July 1, 2009, to the extent that the procedures of 401 KAR 52:100 do not apply.

(5) National visibility goal.

(a) The cabinet shall only issue permits to those sources for which emissions will be consistent with making reasonable progress toward the national goal of preventing future, and remedying existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.

(b) In making the decision to issue a permit, the cabinet shall consider:

1. The costs of compliance;

2. The time necessary for compliance;

3. The energy and non-air quality environmental impacts of compliance; and

4. The useful life of the source.

(6) Monitoring.

(a) The cabinet may require monitoring of visibility in a Class I area near the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA.

(b) The monitoring method selected shall be determined on a

case-by-case basis by the cabinet.

(c) The cabinet shall not undertake visibility monitoring in a Class I area without the approval of the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

Section 11. Plant-wide Applicability Limit Provisions. The cabinet may approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section. (1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:

1. Shall not be considered a major modification for the PAL pollutant;

2. Shall not have to be approved through Kentucky's major NSR program; and

3. Shall not be subject to the provisions of Section 7(4) of this administrative regulation concerning restrictions on relaxing enforceable emissions limitations that the major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, the major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(c) The cabinet shall not allow a PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant or major, based on their potential to emit;

(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source, in which:

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall demonstrate that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall demonstrate that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL;

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section;

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(d) Each PAL shall regulate emissions of only one (1) pollutant;

(e) Each PAL shall have a PAL effective period of ten (10) years;

(f) The owner or operator of a major stationary source with a

PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period; and

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of the emissions reductions; and

2. The reductions would be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100 for issuing permits or permit revisions. The cabinet shall:

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1 or under 42 U.S.C. 7401-7671q, whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shut down after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source shall be subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format;

(i) A requirement for the owner or operator to submit, by the reports required under subsection (13) of this section by the required deadlines; and

(j) Any requirements necessary to implement and enforce the

PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any other requirement:

a. That is enforceable as a practical matter; and

b. That may be imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall provide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS if the alternate monitoring system demonstrates compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 7(4) of this administrative regulation.

(9) Renewal of a PAL.

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward to a level not greater than the potential to emit if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL without considering the factors specified in subparagraph 3 of this section, if the emissions level calculated according to subsection (5) of this section is equal to or greater than eighty (80) percent of the PAL level; or

3. The cabinet may set the PAL at a level that is determined to be:

a. More representative of the source's baseline actual emissions; or

b. Appropriate considering the following factors:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area of the source;

(iv) The cabinet's goal of promoting voluntary emissions reductions; or

(v) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted in conjunction with the PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for the requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the increase in emissions for the PAL major modification;

2. Demonstration that increased PAL, as calculated in paragraph (c) of this subsection exceeds the PAL, and:

a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be deter-

mined by conducting a new BACT analysis when the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years.

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plant-wide emissions of the PAL pollutant in terms of mass per unit of time;

2. A monitoring system authorized for use in the PAL permit shall be:

a. Approved by the cabinet pursuant to this subsection; and

b. Based on sound science and meet generally-acceptable scientific procedures for data quality and manipulation;

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emissions factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant contained in or created by all materials used in or at the emissions unit;

2. If it cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant

content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable Performance Specifications found in 40 C.F.R. Part 60, Appendix A; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(f) Emissions factors. An owner or operator using emissions factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emissions factor, if applicable; and

3. The owner or operator of a significant emissions unit that relies on an emissions factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emissions factor within six (6) months of PAL permit issuance if the cabinet determines that the testing is required and technically practicable.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during the periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements in paragraphs (c) to (g) of this subsection, in conjunction with permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points if a correlation cannot be demonstrated; or

2. If there is not a correlation between monitored parameters and the PAL pollutant emissions, determine that operation of the emissions unit during operating conditions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify the compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR Chapter 52 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit

number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210), certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(iii)(B) shall satisfy this deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by the applicable program implementing 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator, and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published at 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before August 10, 2006, with a PAL that complies with the requirements of this administrative regulation.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 13, 2012

FILED WITH LRC: June 14, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2012, at 10:00 a.m. (local time) in Conference Room 201 B on the first floor of the Division for Air Quality at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. 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 on July 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 listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Laura Lund, Environmental Technologist III, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, ext. 4428, fax (502) 564-4666, and email Laura.Lund@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes air quality permitting requirements for the construction or modification of major stationary sources located within, or impacting upon, areas where the national ambient air quality standards have not been demonstrated to be attained.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that the addition of stationary source emissions will not contribute significantly to Kentucky's achievement of reasonable further progress of a national ambient air quality standard for an area currently not attaining that standard. This administrative regulation provides for economic growth in a nonattainment area without impeding Kentucky's progress towards cleaner air and attainment of the applicable national ambient air quality standards (NAAQS).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the Cabinet to provide for the prevention, abatement, and control of air pollution. 42 U.S.C 7503 requires air quality permits issued to sources located or impacting a nonattainment area to include provisions for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality, which are contained in this administrative regulation. This regulation conforms to the statutes because it is no more stringent than the federal mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the requirements for issuing permits to stationary sources in areas where the NAAQS have not been attained.

(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 significant impact levels (SILs) for PM_{2.5}.

(b) The necessity of the amendment to this administrative regulation: The PM_{2.5} SILs included in this amendment are necessary to ensure consistency between state and federal New Source Review (NSR) permitting programs.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the Cabinet to provide for the prevention, abatement, and control of air pollution. 42 U.S.C 7503 requires that permits issued in a nonattainment area contain provisions for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality, which are contained in this administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: This amendment incorporates SILs for PM_{2.5}, as required by 40 C.F.R. 51.165.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Any new major stationary source or any project at an existing major stationary source that commences construction after September 22, 1982, and locates in an area designated nonattainment is affected by this administrative regulation. This regulation does not affect sources in Jefferson County, which are regulated under the Louisville Metro Air Pollution Control District. There are currently 6 counties in Kentucky (not including Jefferson County) classified as nonattainment for the 1997 annual particulate matter NAAQS (Boone, Boyd, Bullitt, Campbell, Kenton, and a portion

of Lawrence). This amendment affects new major stationary sources or new major modifications locating in areas that have attained the NAAQS, but cause impacts that will exceed the amounts of PM_{2.5} listed in an area that does not or will not attain the NAAQS.

(4) Provide an assessment 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: Changes to the current regulation will include the permitting of PM_{2.5} and require affected facilities to provide data on their PM_{2.5} emissions. In the past, DAQ has used PM₁₀ as a surrogate for PM_{2.5} due to inadequate test methods and the lack of implementation elements. However, the U.S. EPA has determined that the appropriate data and technology are now available and the use of the PM₁₀ surrogacy policy is no longer allowed.

(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: Affected facilities' permit applications will be required to provide emissions data for PM_{2.5} and demonstrate that the project's emissions do not cause or contribute to a violation of the PM_{2.5} NAAQS.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected facilities will incur the cost necessary to obtain a permit that includes an evaluation of PM_{2.5} emissions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): When operating in compliance, the affected facilities will not be subject to enforcement actions and penalties. Furthermore, compliance with the Clean Air Act requirements preserves and improves air quality throughout the Commonwealth.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish, nor directly or indirectly increase, any fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation only applies to new major stationary sources, or an existing major stationary source with a project, that commences construction after September 22, 1982, and is located or impacting upon an area designated nonattainment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. As a SIP-approved state for the NSR program under 40 C.F.R. 51.165, recent changes in the federal NSR program make it necessary to revise this regulation to maintain federal approvability. 42 U.S.C. 7410(a)(1) requires Kentucky to adopt and submit a plan providing for the implementation, maintenance, and enforcement of a standard.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. The federal mandate governing nonattainment NSR requires sources subject to this regulation to demonstrate that any construction or modification of a major stationary source will not cause a net increase in air pollution, that emissions resulting from the project will not create a delay in attainment of the NAAQS, and

that the source will install and use control technology that achieves the lowest achievable emissions rate (LAER). The Clean Air Act is the federal mandate that requires states to have a plan for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality. 40 C.F.R. 51.165 is the federal rule that provides authority for the Cabinet to establish a plan and promulgate administrative regulation requirements to ensure compliance.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is no more stringent than the federal rule, codified in 40 C.F.R. 51.165, and no more stringent than the federal mandate established by 42 U.S.C. 7401-7626.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality will continue to implement and enforce the New Source Review (NSR) program. Also, state and local governments constructing or modifying a major stationary source in, or impacting upon, an area where the national ambient air quality standards have not been attained will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 40 C.F.R. 51.165, and 42 U.S.C. 7401-7671q.

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

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

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

(c) How much will it cost to administer this program for the first year? The Cabinet's existing operating budget continues as the source of funding for the implementation of this program.

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

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, [439.470], 439.590 and 439.640 authorize the Justice and

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Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Western Kentucky Correctional Complex.

Section 1. Incorporation by Reference. (1) "Western Kentucky Correctional Complex Policies and Procedures," June 15, 2012 [April 14, 2008], are incorporated by reference. Western Kentucky Correctional Complex policies and procedures include:

- WKCC 01-02-01 Public Information and Media Communication (Amended 6/15/12[11/14/06])
- ~~[WKCC 01-08-01 No Smoking- WKCC Facility (Amended 2/15/08)]~~
- WKCC 02-01-01 Inmate Funds (Amended 6/15/12[10/14/05])
- WKCC 02-01-02 Inmate Canteen (Amended 6/15/12[11/14/06])
- WKCC 03-00-06 Confidentiality of Information by Consultants, Contract Personnel, and Volunteers (Amended 11/14/06)
- WKCC 06-00-01 Offender Records and Information Access (Amended 6/15/12[11/14/06])
- WKCC 06-00-02 Administrative Process for Inmate Court Orders (Added 6/15/12)
- WKCC 08-02-01 Fire Safety Plan (Amended 6/15/12[10/14/05])
- WKCC 09-11-01 Tool Control (Amended 6/15/12[10/14/05])
- WKCC 10-02-02 Special Management Unit (SMU) Operating Procedures, Living Conditions and Classification (Amended 6/15/12[Added 11/14/06])
- WKCC 11-00-01 Food Service General Guidelines (Amended 6/15/12[4/14/08])
- WKCC 11-02-00 Food Service Budgeting and Purchasing (Added 6/15/12)
- WKCC 11-03-01 Food Service Meals, Menus, Nutrition and Special Diets (Amended 6/15/12[2/15/08])
- WKCC 12-00-02 Housekeeping, Sanitation and Waste Removal (Amended 6/15/12[11/14/06])
- WKCC 13-01-01 Use of Pharmaceutical Products (Amended 6/15/12[4/14/08])
- WKCC 13-02-01 Health Care Services (Amended 6/15/12[10/14/05])
- WKCC 13-02-02 Mental Health Services (Added 6/15/12)
- WKCC 14-02-01 Inmate Clothing and Personal Hygiene Provisions (Amended 6/15/12[11/14/06])
- WKCC 14-04-01 Legal Services Program (Amended 6/15/12[4/14/08])
- WKCC 15-01-01 Hair and Grooming Standards (Amended 6/15/12[10/14/05])
- WKCC 16-01-01 Visiting Policy and Procedures (Amended 6/15/12[2/15/08])
- WKCC 16-02-01 Inmate Correspondence (Amended 6/15/12[2/15/08])
- WKCC 16-03-01 Inmate Access to Telephones (Amended 10/14/05)
- WKCC 16-04-01 Inmate Packages (Amended 6/15/12[4/14/08])
- WKCC 17-01-01 Inmate Personal Property (Amended 6/15/12[10/14/05])
- WKCC 17-02-01 Inmate Reception and Orientation (Amended 6/15/12[4/14/08])
- WKCC 19-04-01 Assignment to and Safety Inspections [Inspection] of Inmate Work Program Areas (Amended 6/15/12[11/14/06])
- WKCC 19-04-02 Farm Management and Production Guidelines (Added 6/15/12)
- WKCC 20-01-01 Education Program (Amended 6/15/12[9/14/06])
- WKCC 21-00-01 Library Services (Amended 6/15/12[11/14/06])
- WKCC 22-00-01 Inmate Recreation and Leisure Time Activi-

- ties (Amended 6/15/12[10/13/05])
- WKCC 22-00-02 Inmate Organizations (Amended 6/15/12[11/14/06])
- WKCC 23-00-01 Religious Services (Amended 6/15/12[2/15/08])
- WKCC 24-00-01 Social Services (Amended 6/15/12[11/14/06])
- WKCC 25-02-01 Inmate Release Process (Amended 6/15/12[2/15/08])
- WKCC 25-03-01 Prerelease Programs (Amended 6/15/12[11/14/06])
- WKCC 26-01-01 Volunteer Services Program (Amended 6/15/12[9/14/06])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 15, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2012 at 9:00 a.m. in the Kentucky Transportation Cabinet Building's Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Amy V. Barker, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Western Kentucky Correctional Complex.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020 and Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes policies and procedures necessary for the operation of WKCC through the authority of the Cabinet and the Department of Corrections to establish regulations necessary for the functions of the department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to Western Kentucky Correctional Complex employees and the inmate population as to their duties, rights, privileges and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendments update the policies and procedures to reflect changes in operations at the institution, clarify language, make changes to conform to KRS Chapter 13A, and update ACA standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the author-

izing statutes: It permits the Commissioner or her authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Western Kentucky Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: This will help Western Kentucky Correctional Complex to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 210 employees of the correctional institution, 670 inmates, and all visitors to the Western Kentucky Correctional Complex.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase in cost is not anticipated to the entities from the changes in operations made in the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institutions.

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

(a) Initially: No additional cost anticipated

(b) On a continuing basis: No additional cost anticipated

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this biennium.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No increase in fees

(9) TIERING: Is tiering applied? No Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation may impact Western Kentucky Correctional Complex's operational procedure.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this regulation do not create any revenue for the Western Kentucky Correctional Complex.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The

amendments to this regulation do not create any revenue for the state or local government.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Western Kentucky Correctional Complex operates, but does not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Western Kentucky Correctional Complex operates, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Bell County Forestry Camp.

Section 1. Incorporation by Reference. (1) "Bell County Forestry Camp Policies and Procedures," June 15, 2012~~[May 15, 2008]~~, are incorporated by reference. Bell County Forestry Camp Policies and Procedures include:

BCFC 01-08-01	Public Information and News Media Access (Amended 5/15/08)
BCFC 02-01-01	Inmate Canteen (Amended 5/15/08)
BCFC 02-08-01	Prisoners' Fund (Amended 6/15/12[5/15/08])
BCFC 05-02-01	Consultants, Research, and Student Interns (Amended 5/15/08)
BCFC 06-01-01	Offender Records (Amended 6/15/12[10/15/01])
BCFC 06-02-01	Storage of Expunged Records (Amended 10/15/01)
BCFC 07-02-01	Preventative Maintenance Plan (Amended 6/15/12[Added 10/15/01])
BCFC 07-04-01	Smoking Control (Amended 6/15/12[5/15/08])
BCFC 07-05-01	Permit Required Confined Space (Amended 6/15/12[10/15/01])
BCFC 08-02-01	Fire Prevention (Amended 7/8/08)
BCFC 08-03-01	Fire Procedures (Amended 5/15/08)
BCFC 08-09-01	Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances (Amended 10/15/01)
BCFC 09-05-01	Entry and Exit onto Institutional Grounds (Added 6/15/12)
BCFC 09-06-01	Search Policy and Disposition of Contraband (Amended 6/15/12[5/15/08])
BCFC 09-08-01	Drug Abuse Testing (Amended 5/15/08)
BCFC 09-08-02	Breathalyzer Testing (Added 10/15/01)
BCFC 09-09-01	Operation of Licensed Vehicles by Inmates (Amended 5/15/08)
BCFC 09-14-01	Bell County Forestry Camp Restricted Area

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as (Amended 6/15/12[5/15/08])
 BCFC 09-27-01 Procedures for Prohibiting Inmate Authority Over Other Inmates (Amended 5/15/08)
BCFC 09-28-01 Canine Unit (Added 6/15/12)
 BCFC 10-01-01 Temporary Segregation Holding Area (Amended 6/15/12[5/15/08])
 BCFC 11-01-01 Food Services: General Guidelines (Amended 6/15/12[10/15/04])
 BCFC 11-02-01 Food Service Security (Amended 6/15/12[10/15/04])
 BCFC 11-03-01 Dining Room Guidelines (Amended 6/15/12[10/15/04])
 BCFC 11-04-01 Food Service: Meals (Amended 6/15/12[10/15/04])
 BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 6/15/12[10/15/04])
 BCFC 11-05-01 Food Service: Kitchen and Dining Room Inmate Work Responsibilities (Amended 6/15/12[Added 10/15/04])
 BCFC 11-05-02 Health Requirements of Food Handlers (Amended 6/15/12[10/15/04])
 BCFC 11-06-01 Food Service: Inspection and Sanitation (Amended 6/15/12[10/15/04])
 BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products (Amended 6/15/12[10/15/04])
 BCFC 12-01-01 Sanitation, Living Condition Standards, and Clothing Issues (Amended 5/15/08)
 BCFC 12-01-02 Bed Areas and Bed Assignments (Amended 5/15/08)
 BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry (Amended 5/15/08)
 BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule (Amended 5/15/08)
 BCFC 12-03-02 Barber Shop[shop] Services and Equipment Control (Amended 5/15/08)
 BCFC 12-07-01 BCFC Recycling Project (Amended 10/15/01)
 BCFC 13-01-01 Medical Services (Amended 6/15/12[5/15/08])
 BCFC 13-02-01 Sick Call and Physician's Weekly Clinic (Amended 6/15/12[5/15/08])
 BCFC 13-03-01 Dental Services (Amended 5/15/08)
 BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 5/15/08)
 BCFC 13-05-01 Emergency Medical Care (Amended 6/15/12[5/15/08])
 BCFC 13-06-01 Consultations (Amended 5/15/08)
 BCFC 13-07-01 Health Records (Amended 6/15/12[5/15/08])
 BCFC 13-08-01 Vision and Optometry Services (Amended 7/8/08)
 BCFC 13-09-01 Family Notification: Serious Illness, Serious Physical Injury, or Death (Amended 5/15/08)
 BCFC 13-10-01 Health Education: Special Health Care Needs (Amended 5/15/08)
 BCFC 13-11-01 Informed Consent (Amended 5/15/08)
 BCFC 13-12-01 Mental Health Care (Amended 5/15/08)
 BCFC 13-13-01 Special Health Care Programs (Amended 6/15/12[5/15/08])
 BCFC 13-14-01 Use of Pharmaceutical Products (Amended 6/15/12[7/8/08])
 BCFC 13-15-01 Parenteral Administration of Medications and Use of Psychotropic Drugs (Amended 6-15-12[5/15/08])
 BCFC 13-16-01 Elective Services (Amended 6/15/12[5/15/08])
 BCFC 13-18-01 Serious and Infectious Diseases (Amended 5/15/08)
 BCFC 13-19-01 Continuity of Health Care (Amended 5/15/08)
 BCFC 13-20-01 Inmates Assigned to Health Services (Amended 5/15/08)
 BCFC 13-21-01 Suicide Prevention and Intervention Pro-

gram (Amended 5/15/08)
 BCFC 13-24-01 Inmate Self-Administration of Medication (Amended 5/15/08)
 BCFC 13-25-01 Syringes, Needles, and Sharps Control (Amended 5/15/08)
 BCFC 13-26-01 Sexual Assault (Amended 5/15/08)
 BCFC 14-01-01 Inmate Rights and Responsibilities (Amended 5/15/08)
~~[BCFC 15-01-01 BCFC Adjustment Program (Amended 5/15/08)]~~
 BCFC 16-01-01 Inmate Visiting (Amended 6/15/12[5/15/08])
 BCFC 16-02-01 Telephone Communications (Amended 5/15/08)
 BCFC 16-03-01 Inmate Mail Regulations (Amended 5/15/08)
 BCFC 16-03-02 Inmate Packages (Amended 5/15/08)
 BCFC 17-01-01 BCFC Inmate Receiving and Orientation Process (Amended 5/15/08)
 BCFC 17-04-01 BCFC Inmate Property Control (Amended 7/8/08)
 BCFC 17-05-01 Inmate Canteen (Amended 5/15/08)
 BCFC 18-01-01 Institutional Classification Committee (Amended 5/15/08)
 BCFC 18-02-01 Identification of Special Needs Inmates (Amended 6/15/12[5/15/08])
 BCFC 19-01-01 Work Assignment (Amended 5/15/08)
 BCFC 19-02-01 Governmental Services Program (Amended 5/15/08)
 BCFC 20-01-01 Academic School (Amended 5/15/08)
 BCFC 21-01-01 Library Services (Amended 5/15/08)
 BCFC 22-01-01 Recreation and Inmate Activities (Amended 6/15/12[5/15/08])
 BCFC 22-02-01 Inmate Clubs and Organizations (Amended 5/15/08)
 BCFC 23-01-01 Religious Services (Amended 5/15/08)
 BCFC 24-01-01 Social Services and Counseling Program (Amended 5/15/08)
 BCFC 24-01-02 Casework Services (Amended 5/15/08)
 BCFC 25-01-01 BCFC Pre-release Program (Amended 5/15/08)
 BCFC 25-02-01 Community Center Program (Amended 7/8/08)
 BCFC 25-02-02 Inmate Furlough (Amended 5/15/08)
 BCFC 25-04-01 Inmate Discharge Procedure (Amended 5/15/08)
 BCFC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 5/15/08)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 15, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2012 at 9:00 a.m. at the Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Amber Arnett, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort,

Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amber Arnett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing Bell County Forestry Camp including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of Bell County Forestry Camp.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings Bell County Forestry Camp into compliance with ACA Standards and updates current practices for the department and its facilities.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Bell County Forestry Camp.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the penal institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Bell County Forestry Camp, its 50 employees and 300 inmates, and all visitors to the correctional institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institutions.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Bell County Forestry Camp budgeted funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Changes will be implemented with budgeted funds.

(8) State whether or not this administrative regulation estab-

lishes any fees or directly or indirectly increases any fees: No.

(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? The amendments to this regulation may impact Bell County Forestry Camp by changing a number of operational procedures.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

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

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

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Bell County Forestry Camp operates, but does not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Bell County Forestry Camp operates, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Department of Kentucky State Police (Amendment)

502 KAR 10:120. Hazardous materials endorsement requirements.

RELATES TO: KRS 281A.120, 281A.130, 281A.150, 281A.160, 281A.170, 49 U.S.C. 5103a, 49 C.F.R. Part 1572, 49 C.F.R. Part 383

STATUTORY AUTHORITY: KRS 281A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate administrative regulations to reasonably carry out the provisions of KRS 281A.040. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining for the first time a hazardous materials endorsement for a commercial

driver's license no later than January 31, 2005. On or after May 31, 2005, this requirement shall further apply to all persons seeking to renew a hazardous materials endorsement for a commercial driver's license. This administrative regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

Section 1. Definitions. (1) "CDL" or "Commercial Driver's License" is defined by KRS 281A.010(5) and 49 C.F.R. 383.5.

(2) "Determination of No Security Threat" is defined by 49 C.F.R. 1572.3.

(3) "DOT" means the federal Department of Transportation.

(4) "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.3.

(5) "Fingerprint centers" means regional offices of Kentucky State Police's Division of Driver's Testing established to process the fingerprints of applicants for a hazardous materials endorsement for a commercial driver's license holder under KRS 281A.170(2)(b).

(6) "HME" means hazardous materials endorsement.

(7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.3.

(8) "KDOT" means the Kentucky Department of Transportation.

(9) "KSP" means the Kentucky State Police.

(10) "Proper identification" means:

(a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or

(b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee or refugee status.

(11) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME Submitted on or After January 31, 2005. (1) An applicant applying for a hazardous materials endorsement on or after January 31, 2005, shall first obtain a commercial driver's instruction permit or CDL prior to requesting a security threat assessment from the TSA. In order to receive the security threat assessment, the applicant shall complete a "Transportation Security Administration Application for Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9. The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.

(2) To begin the process, an applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.

(3) An applicant shall bring proper identification, their DOT medical card, a completed "Transportation Security Administration Application for Hazardous Materials Endorsement," OMB No. 1652-0027, and a certified check of \$115 for the fingerprint fee.

(4) An applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the biographical information sheet to the TSA.

(5) If TSA informs the commonwealth of a finding of Determination of No Security Threat, then the applicant shall be notified and may proceed to the circuit clerk's office to take the knowledge test required to qualify for the HME.

(6) If TSA informs the commonwealth of a finding of Initial Determination of Security Threat, the applicant shall not be issued a HME. The applicant shall be entitled to appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1572.141. Following appeal, if the applicant receives a Final Determination of Security Threat, applicant may seek a waiver from TSA in accordance with procedures set forth in 49 C.F.R. 1572.143.

(7) Within fifteen (15) days after the TSA has notified the commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Threat, KDOT shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

tion date of the HME.

Section 3. Renewal Applications For HME Submitted On or After May 31, 2005. (1) KDOT shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.

(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.

(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655. A renewal applicant shall submit to fingerprinting and further complete the "Transportation Security Administration Application for Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.

(4) A renewal applicant shall bring to their appointment proper identification, their DOT medical card, a completed "Transportation Security Administration Application for Hazardous Materials Endorsement," OMB No. 1652-0027, and a certified check of \$115 for the fingerprint fee.

(5) A renewal applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.

(6) If the commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the commonwealth may extend the expiration date of the HME for a period up to ninety (90) days. Any additional extension shall be approved by TSA.

(7) If TSA informs the commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified and may proceed to the circuit clerk's office to take the knowledge test required to qualify for the HME.

(8) If TSA informs the commonwealth of a finding of Initial Determination of Security Threat, the renewal applicant shall not be issued a HME. The renewal applicant is entitled to appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1572.141. Following appeal, if the renewal applicant receives a Final Determination of Security Threat, applicant may seek a waiver from TSA in accordance with procedures set forth in 49 C.F.R. 1572.143.

(9) Within fifteen (15) days after the TSA has notified the commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Threat, KDOT shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

(10) An applicant who has received a passing score on the HME test and is applying for a Class C CDL with a hazardous endorsement must drive a Class C placarded vehicle for the skills test.

Section 4. Transfer Applications For HME Submitted On or After May 31, 2005. (1) In accordance with 49 C.F.R., 1572.13(g), an applicant who applies to transfer an existing HME from another state to the commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

Section 5. Regional Fingerprint Centers. KSP shall establish eight (8) regional fingerprinting centers in the commonwealth. These centers shall be located in the following cities:

(1) Lexington at 162 East Main Street, Room 201, Lexington, Kentucky 40507;

(2) Louisville at Bowman Field, 3501 Roger E. Schupp Street, Louisville, Kentucky 40205;

(3) Erlanger at 645 Stevenson Road, Erlanger, Kentucky 41018;

(4) Paducah at McCracken County Courthouse, South 7th, Paducah, Kentucky 42003;

(5) Madisonville at Hopkins County Courthouse, Main Street, Room 11, Madisonville, Kentucky 42431;

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(6) Bowling Green at Warren County Courthouse, 1001 Center Street, Room 103, Bowling Green, Kentucky 42101;

(7) London at 225 West 5th Street (corner of 5th and Long Street), London, Kentucky 40743; and

(8) Paintsville at Johnson County Courthouse, Court Street, 2nd Floor, Paintsville, Kentucky 41240.

Section 6. Incorporation by Reference. (1) "Transportation Security Administration Application For Hazardous Materials Endorsement" OMB No. 1652-0027, Exp. 1/31/08, is incorporated by reference~~[, is incorporated by reference]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at any KSP regional fingerprint centers, and at KSP Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BREWER, Commissioner

APPROVED BY AGENCY: May 31, 2012

FILED WITH LRC: May 31, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 31, 2012, at 1 p.m. at the Kentucky State Police Headquarters, 919 Versailles Rd., 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 July 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Emily Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Perkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Allows persons with a commercial driver's instruction permit or CDL to obtain a security threat assessment that is required to obtain a hazardous materials endorsement.

(b) The necessity of this administrative regulation: To conform to federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Allows a person seeking a hazardous materials endorsement on their Class C CDL to apply for a security threat assessment with a commercial driver's instruction permit or CDL instead of requiring that they have a CDL.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Currently KSP is unable to process a Class C CDL with a hazardous materials endorsement because it requires a person to have a CDL when you cannot obtain a CDL without a security threat assessment.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows KSP to begin issuing Class C CDL with hazardous materials endorsements by clarifying that persons with a commercial driver's instruction permit may obtain a security threat assessment.

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

To conform with 49 U.S.C. 5103a, 49 C.F.R. Part 1572.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 281A.160 requires KSP to administer the knowledge and skills tests for commercial driver's license applicants. 281A.040 authorizes any agency with specific authority under functions authorized by 218A to promulgate administrative

regulations. The amendment conforms with these statutes to enable KSP to perform the knowledge and skills tests for Class C CDL with a hazardous materials endorsement.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows KSP to perform its mandate to conduct the knowledge and skills testing for applicants seeking a Class C CDL with a hazardous materials endorsement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects all employers who require a Class C CDL with a hazardous materials endorsement, i.e. oxygen supply, etc.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs. This amendment does not change the fee base.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employers will be able to send employees to obtain a Class C CDL with a hazardous materials endorsement.

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

(a) Initially: No additional costs, as this regulation does not alter the fee schedule.

(b) On a continuing basis: No additional costs, as this regulation does not alter the fee schedule.

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

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Police; Department of Transportation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 49 U.S.C. 5103a, 49 C.F.R. Part 1572

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

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

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

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

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

Note: If specific dollar estimates cannot be determined, provide

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

**Public Protection Cabinet
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)**

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130[~~EO 2008-507~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation establishes an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

Section 1. Definitions. (1) "ABS" means acrylonitrile-butadiene-styrene pipe.

(2) "APML" means the "Approved Parts or Materials List".

(3) "ASTM" means American Society for Testing Materials.

(4) "Code" is defined by KRS 318.010(11).

(5) "Committee" means the State Plumbing Code Committee.

(6) "Department" means Department of Housing, Buildings, and Construction.

(7) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(8) "Person" is defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) A part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) A part or material shall not be used in a drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Frankfort, Kentucky 40601-5405.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been reviewed by the Kentucky Plumbing Code Committee and approved by the department and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032;

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(g) Dual flush water closets by Caroma, USA. The water closets shall use eight-tenths (.8) gallons for the short flush cycle and one and six-tenths (1.6) gallons for the full flush cycle.

(3) Tubular traps with gasket in trap seal;

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover;

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Little Giant Pump Company, Drainsaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(e) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(f) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(g) Electric Drain System as manufactured by Myers for light commercial and household usage;[i]

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves;

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe;

(b) Sink and lavatory faucets and pop-up lavatory assembly

parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6) inches of sand grillage and shall be:

- (a) Backfilled by hand and tamped six (6) inches around piping;
- (b) Surrounded by six (6) inches of sand grillage;

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc;

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation;

(10)(a) Water heaters. Heat pump water heaters as manufactured by:

1. Dec International, Inc., Therma-Stor Products Group; or

2. Steibel Eltron Accelera 300. If these water heaters are shipped with a 100 PSI Pressure and Temperature Relief Valve, they shall be replaced with a 150 PSI Pressure and Temperature Relief Valve.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters.[:]

a.[:(a)] Nonpressure type without the requirement of a temperature and pressure relief valve; or

b.[:(b)] The pressure type with the requirements that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater, which shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130, REU-V2520 FFU-US, REU-V2520 FFUC-US, REU-V2020W-US, REU-V2020WC-US, and REU-V1616W-US pressure type, which shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater, which shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater, which shall be equipped with an approved temperature and pressure relief valve.

11. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

12. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP, which shall be equipped with an approved temperature and pressure relief valve.

14. Ariston electric water heaters, model numbers P-15S and P-10S, which shall be equipped with an approved temperature and pressure relief valve.

15. Vaillant Corporation gas fired point of use water heater.

16. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

17. Field Controls Company Power Venter - Models PVAE and

SWG for use in conjunction with gas and oil fired water heaters.

18. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480.

19. Hot Aqua Instantaneous Tankless Electric Water Heaters, Model Numbers, 18/125PC, 24/125PC, 24/120, 32/120, 24/240, 36/240, 48/240, 59/240, 70/240, 24/208, 35/208, 46/208, 60/208, 28/277, 42/277, 55/277, 69/277, 24/120-P, 59/240-P, 46/208-P, 55/277-P, 18/125PC and 24/125PC. This product shall not be approved for supplying hot water for showers.

20. Stiebel Eltron Tankless Water Heater.[:]

a.[:(a)] Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories and sinks;

b. Models Temptra/DHC-E 8/10 and DHC-E 12;

c. Models Mini 2, Mini 3, Mini 4, and Mini 6 Point of Use tankless electric water heaters; and

d. Models 12/2 Plus, 15/15 Plus, 20/20 Plus, 24/24 Plus, 29 Plus, and 36 Plus.

21. Bosch Aqua Star tankless water heater. Models 125X, 125B, 125S, 125BS, 125FX and 38B. All models shall be installed with temperature and pressure relief valves.

22. Controlled Energy Corporations "Powerstream" tankless water heater.

23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gallon models.

24. Powerstar PS19T and PS28T Electric Instantaneous Water Heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valves.

25. Aquastar AQ240 FX (LP, NG) gas fired instantaneous water heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valve.

26. S.E.T.S. Tankless Water Heater Models: #220, #180, #165 and #145 to be installed with temperature and pressure relief valve.

27. Rinnai Continuous Flow Water Heaters: Models 2532FFU(-C), 2532W(-C), 2532FFU and 2424W(-C) all requiring an approved pressure and temperature relief valve.

28. Noritz American Corporation Tankless, Instantaneous Water Heater Models: N-042, N-063 to be installed with temperature and pressure relief valve.

29. Takagi Industrial Company USA, Inc., Instantaneous Water Heaters, Models: T-KLS; T-K JR; T-K2; T-KD20 to be installed with temperature and pressure relief valve.

30. Envirotech Systems ESI 2000 Series Tankless Water Heaters, all requiring an approved pressure and temperature relief valve.

31. Quieside Instantaneous Water Heater Models: QVW8 - 100, 120, 175. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees.

32. Seisco Residential Tankless Water Heaters Model: RA 05, RA 07, RA 09, RA 11, RA 14, RA 18, RA 22 and RA 28. All models shall be equipped with an approved temperature and pressure relief valve.[:]

(11) Compression joints. Fail-safe hot and cold water systems.;

(12) Orion fittings for acid waste piping systems for above and below ground;

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping;

(14) Johns Manville Flex I drain roof drain system;

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick;

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping;

(17) Elkay Aqua-chill water dispensers.;

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum;

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only;

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only;[-]

(20) Interceptors:

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.

(g) Schier Grease Interceptors Trapper II Series meeting ASME 112.14.3 Model numbers 1820, 2025, 2635 and 3050.

(h) Schier Grease Interceptors Great Basin Series meeting ASME 112.14.3 Model numbers GB-75 and GB-250 approved only with the installation of two-directional, accessible cleanouts on the inlet and the outlet. The discharge of garbage disposals shall not be permitted;[-]

(21) Plastic Oddities Srv (sewer relief vent) clean-out;

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-06 except dimensions at the time of manufacture;

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc;

(24) Eljer plumbing ware - Elgers ultra one/G water closet;

(25)(a) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company, which shall have a three (3) inch vent and alternate additional waste openings shall be located in the pump chamber above the top of the base chamber;

(b) Hydromantic JB-1 System as manufactured by Hydromantic Pumps, Inc.;

(26) Exemplar Energy garden solar water heater;

(27) ProSet[ProSset] systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. Proset E-Z flex coupling shall be approved for similar or dissimilar materials;

(28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries;

(b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Ste-Croix.

(c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc.;

(29) Clamp-All Corporation Pipe Coupling Systems shall be approved size for size on dissimilar materials on new or existing installations. The use of Snap-All Increaser/Reducer transition bushings shall be included in this approval;

(30) Mission Rubber Company "Band-Seal Specialty Coupling" shall be approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35;

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans;

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material;[-]

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers;

(33)(a) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel

pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade;

(b) Fernco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch;[-]

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe shall have been tested for the tensile strength, durability, of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials;

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes;

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes;

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building;

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer;

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line;

(40)(a) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations;

(b) Flo-Bowl Waxless Leakless Toilet System as manufactured by Flo-Bowl Systems Inc.;

(41)(a) Conbraco 78-RV Series In-Line Water Heater Shut-Off Thermal Expansion Control Valve preset at 125 psi to relieve thermal expansion;

(b) Watts Regulator BRV Expansion Relief Valve to relieve thermal expansion;[-]

(42) Plastic Productions PVC "Quick Stub" approved as a solvent weld transition between tubular PVC and schedule 40 PVC;

(43) HubSett In Line Test Coupling: PVC and ABS test couplings produced by HubSett Manufacturing Inc. for testing soil waste and vent systems;

(44) Viega/Ridgid ProPress System: Copper press fittings for joining copper water tubing and using an elastomeric o-ring that forms the joint.

(a) The fitting shall be made by pressing the socket joint under pressure in accordance with the manufacturer's installation requirements.

(b) This system shall be approved for pipe sizes one-half (1/2) inch through four (4) inch for above slab installations only;

(45) TRIC Trenchless Systems for replacement sewers in four (4) inch and six (6) inch sizes.

(a) A video camera tape of the existing sewer shall be made to determine proper alignment and reviewed by the plumbing inspector.

(b) After the installation is complete, another tape shall be reviewed[~~reviewed~~] by the plumbing inspector to ensure that the installation was successful.

(c) The sewer shall be tested according to 815 KAR 20:150.

(d) The interior heat fusion bead shall be removed to provide a smooth surface with no obstruction;

(46) Envirovac Inc.: Evac Vacuum Systems Condensate Collection System approved for condensate collection and the discharge from lavatories only;

(47) Macerating Systems from Sanitary-for-All, consisting of a sump with a macerating pump, with or without a macerating toilet. The sump shall be air tight and provided with a minimum one and one-fourth (1 1/4) inch vent. These systems shall be installed in accordance with the manufacturer's recommendations and shall not be used as a primary means of waste disposal;

(48) Rhino Wet Waste Interceptor manufactured by Ecosystems Inc. to be used as a prefiltration of wet wastes before dis-

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charging to a grease trap or interceptor;

(49) Quick Snap Multi Level Flange as manufactured by Jett Plumbing Products, Inc;

(50) Sioux Chief Manufacturers Stainless Steel Swivel Ring Closet Flange;

(51) Service Weight and No-Hub Cast Iron Pipe and Fittings furnished by DWV Casting Company complying with ASTM A74, A888 and CIPI 301-00;

(52) American Pipe Lining, Inc. APL 2000, which is an epoxy lining used in restoring water distribution systems. The use of APL 2000 shall be subject to the following conditions;

(a) A plumbing construction permit shall be required;

(b) Installation shall be by a licensed plumber;

(c) Water quality shall be tested before and after each project; and

(d) A water distribution system treated with APL 2000 shall be clearly marked on all exposed piping and water heater with the following notice: "FLAMELESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPING SYSTEM";[-]

(53) Base Products Corporation;

(a) Water powered pump: basepump. Each model shall:

1. Be installed with a reduced pressure principle backflow preventer with copper piping only;

2. Be approved for groundwater removal only; and

3. Require incoming water pressure of 50 psi to operate.

(b) Battery back-up pump: hydropump;[-]

(54) Perma-Liner Industries, Inc, Lateral Lining System.:

(a) This system shall be approved for pipe sizes three (3) inches through eight (8) inches for interior and exterior installations.

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required by 815 KAR 20:150, Section 4(2) or (3).

(c) Exterior applications shall be videoed before and after and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).

(d) A permit shall be obtained prior to an exterior or interior application;[-]

(55) Stainless steel piping system for potable water applications manufactured by Victaulic for above ground applications only;

(56) Wallgate Classic Model CME recessed and molded handwasher/dryer;

(57) MaxLiner;[-]

(a) This system shall be approved for pipe sizes three (3) inch through ten (10) inch for interior and exterior installations.

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required in 815 KAR 20:150, Section 4(2) or (3).

(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).

(d) Permits shall be required for both interior and exterior applications;[-]

(58) Nuflow Technologies Inc., Nuflow System;

(a) This system shall be approved for pipe sizes one and one-half (1 1/2) inch through twelve (12) inch for interior and exterior installations.

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required in 815 KAR 20:150, Section 4(2) or (3).

(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).

(d) Permits shall be required for both interior and exterior applications;[-]

(59) Schluter Shower System for waterproofing tiled shower installations installed per manufacturer recommendations;

(60) ~~WATCO~~[WATACO] Manufacturing Watco Flex and Watco Flex 900 Innovator tub waste and overflow;

(61) J.R. Smith MFG. CO. THE BOSS TEE Series 4505 cleanout tee; and

(62) Pipe Patch NO-Dig Repair System by Source One Environmental.

(a) The repair shall require a plumbing installation permit is-

sued by the Department; and

(b) After the repair has been completed, the building sewer shall be inspected, tested with either a water or a smoke test, and approved by the Department.

AMBROSE WILSON IV, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 13, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2012, at 9:00 am, EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2012 (five working days prior to the hearing) of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365 ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

(b) The necessity of this administrative regulation: This amendment is necessary in order to provide more installation options for parts and materials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 authorizes the department to adopt reasonable rules or regulations, after review by the State Plumbing Code Committee, for the administration of the plumbing program. The State Plumbing Code Committee approved recommendation of these amendments on February 21, 2012.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide more installation options for parts and materials.

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

(a) How the amendment will change this existing administrative regulation: The amended parts or materials list provides more plumbing installation options in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: These amendments update the plumbing code to provide more installation options for parts and materials.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation updates existing regulation to provide additional installation options for parts and materials.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist those individuals in the plumbing industry by providing more installation options for parts and materials.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Plumbing, the State Plumbing Code Committee and licensed plumbers.

(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: Affected entities will have additional installation options of plumbing parts and materials.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated additional cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits anticipated from this regulation will be more installation options of parts and materials.

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

(a) Initially: No cost to implement.

(b) On a continuing basis: No cost to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing, and the State Plumbing Code Committee will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 318.130.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes no revenues nor creates expenditures.

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

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

(c) How much will it cost to administer this program for the first year? Not applicable.

(d) How much will it cost to administer this program for subsequent years? Not applicable.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

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

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:191. Minimum fixture requirements.

RELATES TO: KRS 58.200, 318.160

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130

requires the department office, after approval by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. KRS 58.200(2) requires newly-constructed public buildings to be equipped with twice the number of restroom facilities for use by women as is provided for use by men. This administrative regulation establishes the minimum plumbing fixture requirements for buildings in Kentucky.

Section 1. Definitions. (1) "Developed travel distance" means the length of a pathway measured along the center line of the path.

(2) "Modular" means a structure or component that is wholly or in substantial part fabricated in an off-site manufacturing facility for installation at the building site.

Section 2. General Requirements. (1) In a building accommodating males and females, it shall be presumed that the occupants will be equally divided between males and females, unless otherwise denoted.

(2) The occupancy load factor used to determine the total number of plumbing fixtures required in a building shall be the load denoted in the Kentucky Building Code, incorporated by reference in 815 KAR 7:120.

(3) All types of buildings shall be provided with toilet rooms on each level or floor, unless the department determines that:

(a) Separate facilities on each level or floor are unnecessary; and

(b) Toilet rooms on every other level or floor shall be sufficient.

(4) Toilet rooms for males and females shall be clearly marked.

Section 3. Toilet Floor Construction Requirements. (1) Floors in toilet rooms shall be constructed of nonabsorbent materials.

(2) If a wood floor is used, the wood floor shall be covered by other nonabsorbent materials.

(3) If two (2) or more fixtures that receive human waste are installed, the toilet room shall have at least one (1) floor drain and one (1) accessible hose bibb.

Section 4. Facilities for Stages. (1) A separate water closet and lavatory shall be provided for males and females in the stage area.

(2) A drinking fountain shall be provided in the stage and auditorium area.

Section 5. Theaters, Assembly Halls, and Similar Occupancies. Separate toilet rooms for males and females shall be provided as established in this section and in Sections 2 through 4 of this administrative regulation. (1) Water closets and urinals for males.

(a) Water closets for males shall be installed in the following proportions:

1. One (1) water closet for each 100 males;

2. Two (2) water closets for 101 to 200 males;

3. Three (3) water closets for 201 to 400 males; and

4. If over 400 males, three (3) water closets plus one (1) additional water closet for each additional 500 males or fraction thereof.

(b) Urinals for males shall be installed in the following proportions:

1. One (1) urinal for eleven (11) to 100 males;

2. Two (2) urinals for 101 to 300 males;

3. Three (3) urinals for 301 to 600 males; and

4. If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof.

(2) Water closets for females. Water closets for females shall be installed in the following proportions:

- (a) One (1) water closet for each fifty (50) females;
- (b) Two (2) water closets for fifty-one (51) to 100 females;
- (c) Three (3) water closets for 101 to 150 females;
- (d) Four (4) water closets for 151 to 200 females; and
- (e) If over 200 females, four (4) water closets plus one (1) additional water closet for each additional 150 females or fraction thereof.

(3) Lavatories for Males or Females. Lavatories shall be installed in the following proportions:

- (a) One (1) lavatory for up to 100 persons;
- (b) Two (2) lavatories for 101 to 200 persons;
- (c) Three (3) lavatories for 201 to 400 persons;
- (d) Four (4) lavatories for 401 to 750 persons; and
- (e) If over 750 persons, four (4) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof.

(4) Sinks. There shall be one (1) service sink or slop sink on each floor.

(5) Number of fixtures. The number of fixtures shall be based upon the maximum seating capacity or fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person per each fifteen (15) square feet of area.

(6) Drinking fountain. A drinking fountain shall be provided on each floor for each 500 persons or fraction thereof.

(7) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 6. Libraries, Museums, and Art Galleries. Separate toilet facilities for males and females shall be provided as established in this section and in Sections 2 through 4 of this administrative regulation:

(1) There shall be one (1) water closet and one (1) lavatory for each 100 females or fraction thereof.

(2) Except as established in subsection (7) of this section, there shall be one (1) water closet and one (1) lavatory for each 200 males or fraction thereof.

(3) There shall be:

- (a) One (1) urinal for eleven (11) to 200 males;
- (b) Two (2) urinals for 201 to 400 males;
- (c) Three (3) urinals for 401 to 600 males; and
- (d) If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof.

(4) There shall be one (1) service sink or slop sink on each floor.

(5) A drinking fountain shall be provided for each 500 persons or fraction thereof.

(6) Number of fixtures. The number of fixtures shall be based upon the maximum seating capacity of fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person for each fifteen (15) square feet of area.

(7) Urinals may be substituted for water closets for males if:

- (a) The substituted urinals do not exceed one-third (1/3) of the required total number of water closets; and
- (b) The minimum number of urinals is installed.

(8) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 7. School Buildings Not Including Higher-Education Facilities. A school building shall be in compliance with the requirements established in 702 KAR 4:170 and this section. (1) Drinking fountains.

(a) A drinking fountain shall be provided on each floor and wing of a building.

(b) One (1) additional drinking fountain shall be provided for each seventy-five (75) pupils or fraction thereof.

(c) The drinking fountains shall be equipped with:

- 1. A protective cowl; and
- 2. The orifice, which shall be one (1) inch above the overflow rim of the fountain.

(2) Elementary through secondary level school buildings shall be provided with the following:

(a) Water closets for males shall be installed in the following proportions:

- 1. One (1) water closet for up to twenty-five (25) pupils;
- 2. Two (2) water closets for twenty-six (26) to 100 pupils; and

3. If over 100 pupils, two (2) water closets plus one (1) additional water closet for each additional 100 pupils or fraction thereof;

(b) Urinals for males shall be installed in the following proportions:

- 1. One (1) urinal for up to twenty-five (25) pupils;
- 2. Two (2) urinals for twenty-six (26) to fifty (50) pupils;
- 3. Four (4) urinals for fifty-one (51) to 100 pupils;
- 4. Six (6) urinals for 101 to 200 pupils;
- 5. Eight (8) urinals for 201 to 300 pupils;
- 6. Ten (10) urinals for 301 to 400 pupils;
- 7. Twelve (12) urinals for 401 to 500 pupils; and
- 8. If over 500 pupils, twelve (12) urinals plus one (1) additional urinal for each additional fifty (50) pupils or fraction thereof in excess of 500;

(c) Water closets for females shall be installed in the following proportions:

- 1. Two (2) water closets for up to twenty-five (25) pupils;
- 2. Three (3) water closets for twenty-six (26) to fifty (50) pupils;
- 3. Six (6) water closets for fifty-one (51) to 100 pupils;
- 4. Eight (8) water closets for 101 to 200 pupils;
- 5. Ten (10) water closets for 201 to 300 pupils;
- 6. Twelve (12) water closets for 301 to 400 pupils;
- 7. Fourteen (14) water closets for 401 to 500 pupils; and
- 8. If over 500 pupils, fourteen (14) water closets plus one (1) additional water closet for each additional forty (40) pupils or fraction thereof; and

(d)1. Lavatories for male and female pupils shall be installed in the following proportions:

a. One (1) lavatory for each twenty-five (25) pupils or fraction thereof; and

b. If over fifty (50) pupils, two (2) lavatories plus one (1) additional lavatory for each additional fifty (50) pupils or fraction thereof; and

2. Twenty-four (24) inches of sink or eighteen (18) inches of circular basin, if provided with water outlet for each space, shall be considered equivalent to one (1) lavatory.

(3) One (1) service sink or slop sink shall be installed on each floor of a building.

(4) If detached modular classrooms are used, sanitary facilities shall not be required, if:

(a) The entrance of the modular classroom for elementary grades through the fifth grade is within a developed travel distance not to exceed 100 feet from the accessible entrance to the main structure or an approved central modular restroom;

(b) The entrance of the modular classroom for sixth grade and above is within a developed travel distance not to exceed 200 feet, from the accessible entrance to the main structure or an approved central modular restroom;

(c) The travel path meets the accessibility requirements in the Kentucky Uniform Building Code; and

(d) There are sufficient fixtures in the main structure to serve the entire capacity of the school, including the modular classrooms.

(5) Water closets in a school building shall be of the elongated bowl type with a split open front seat.

Section 8. Schools of Higher Education and Similar Educational Facilities. (1)(a) Except as established in paragraph (b) of this subsection, in a school of higher education or a similar education facility, there shall be installed:

1. One (1) water closet for each fifty (50) males and one (1) water closet for each twenty-five (25) females or fraction thereof;

2. One (1) lavatory for each fifty (50) persons or fraction thereof;

3. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof; and

4. One (1) urinal for each fifty (50) males or fraction thereof; and

(b) One (1) water closet less than the number specified in paragraph (a) of this subsection may be provided for each urinal installed except that the number of water closets in those cases shall not be reduced to less than two-thirds (2/3) of the minimum specified.

(2) Water closets in a school of higher education or a similar education facility shall be of the elongated bowl type with a split

open front seat.

Section 9. Public Garages and Service Stations. (1) Separate toilet rooms for males and females shall be provided with at least:

- (a) A water closet and lavatory for females; and
- (b) A water closet, lavatory, and urinal for males.

(2) Water closets shall be of the elongated bowl type with a split open front seat.

Section 10. Churches. (1) Sanitary facilities shall be provided in a church as follows:

(a) One (1) drinking fountain for each 400 persons or fraction thereof;

(b) One (1) water closet for each 150 females or fraction thereof;

(c) One (1) water closet for each 300 males or fraction thereof;

(d) One (1) urinal for fifty (50) to 150 males or fraction thereof;

(e) One (1) additional urinal for each additional 150 males or fraction thereof; and

(f) One (1) lavatory for each 150 persons or fraction thereof.

(2) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 11. Transient Lodging Facilities. A transient lodging facility shall be in compliance with the requirements established in 902 KAR 10:010 and this section. (1) A hotel or motel with private rooms shall have one (1) water closet, one (1) lavatory, and one (1) bathtub or shower per room.

(2) In the public and service areas, there shall be:

(a) One (1) water closet for each twenty-five (25) males or fraction thereof;

(b) One (1) water closet for each fifteen (15) females or fraction thereof;

(c) One (1) lavatory for each twenty-five (25) persons or fraction thereof;

(d) One (1) urinal for eleven (11) to 100 males plus one (1) additional urinal for each additional fifty (50) males or fraction thereof;

(e) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof on each floor; and

(f) One (1) service sink or slop sink on each floor.

(3) In residential-type buildings, there shall be one (1) water closet, one (1) lavatory, and one (1) bathtub or shower for each ten (10) males and each ten (10) females or fraction thereof.

(4) In rooming houses with private baths, there shall be one (1) water closet, one (1) lavatory, and one (1) bathtub or shower per room.

(5) In rooming houses without private baths, there shall be:

(a) One (1) water closet for one (1) to ten (10) males and one (1) for each additional twenty-five (25) males or fraction thereof;

(b) One (1) water closet for one (1) to eight (8) females and one (1) for each additional twenty (20) females or fraction thereof;

(c) One (1) urinal for eleven (11) to 100 males and one (1) for each additional fifty (50) males or fraction thereof;

(d) One (1) lavatory for each ten (10) persons or fraction thereof; and

(e) One (1) bathtub or shower for each ten (10) persons or fraction thereof.

Section 12. Dormitories: School, Labor, or Institutional. (1) Water closets. There shall be:

(a) One (1) water closet for up to ten (10) males plus one (1) additional water closet for each additional twenty-five (25) males or fraction thereof; and

(b) One (1) water closet for up to eight (8) females plus one (1) additional water closet for each additional twenty (20) females or fraction thereof.

(2) Urinals.

(a) There shall be:

1. One (1) urinal for each twenty-five (25) males or fraction thereof up to 150 males; and

2. If there are over 150 males, one (1) additional urinal for each additional fifty (50) males or fraction thereof.

(b) If urinals are provided, a urinal may be substituted for a

water closet, not to exceed one-third (1/3) of the required total number of water closets.

(c) Trough urinals shall be figured on the basis of one (1) urinal for each twenty-four (24) inches of length.

(3) Lavatories. There shall be one (1) lavatory for one (1) to twelve (12) persons, with an additional one (1) lavatory for each additional twenty (20) males and fifteen (15) females or fraction thereof.

(4) Additional fixtures. There shall be:

(a) 1. One (1) bathtub or shower for each eight (8) persons or fraction thereof, up to 150 persons; and

2. If there are over 150 persons, there shall be one (1) additional bathtub or shower for each twenty (20) persons;

(b) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof;

(c) One (1) laundry tray or clothes washer for each fifty (50) persons or fraction thereof; and

(d) One (1) service sink or slop sink for each 100 persons or fraction thereof.

(5) If the dormitory is located in a youth camp, the requirements of 902 KAR 10:040 shall apply in addition to the requirements established in this section.

Section 13. Hospitals, Nursing Homes, and Institutions. A hospital, nursing home, or institution shall comply with the requirements established in 902 KAR 20:031, 20:046, 20:056, and 9:010. Sanitary facilities shall be provided on each floor level and shall conform to this section. (1) Hospitals.

(a) Wards. There shall be:

1. One (1) water closet for each ten (10) patients or fraction thereof;

2. One (1) lavatory for each ten (10) patients or fraction thereof;

3. One (1) tub or shower for each fifteen (15) patients or fraction thereof; and

4. One (1) drinking fountain for each 100 patients or fraction thereof.

(b) Individual rooms. There shall be one (1) water closet, one (1) lavatory, and one (1) tub or shower.

(c) Waiting rooms. There shall be one (1) water closet and one (1) lavatory.

(2) Nursing homes and institutions (other than penal). There shall be:

(a) One (1) water closet for each twenty-five (25) males or fraction thereof;

(b) One (1) water closet for each twenty (20) females or fraction thereof;

(c) One (1) lavatory for each ten (10) persons or fraction thereof;

(d) One (1) urinal for each fifty (50) males or fraction thereof;

(e) One (1) tub or shower for each fifteen (15) persons or fraction thereof;

(f) One (1) drinking fountain on each floor; and

(g) One (1) service sink or slop sink on each floor.

(3) Institutions, penal.

(a) Cell. There shall be:

1. One (1) prison-type water closet; and

2. One (1) prison-type lavatory.

(b) Day rooms and dormitories.

1. There shall be:

a. One (1) water closet for each eight (8) female inmates or fraction thereof and one (1) water closet for each twelve (12) male inmates or fraction thereof;

b. One (1) lavatory for each twelve (12) inmates or fraction thereof;

c. One (1) shower for each fifteen (15) inmates or fraction thereof;

d. One (1) drinking fountain per floor; and

e. One (1) service sink or slop sink per floor.

2. For males, one (1) urinal may be substituted for each water closet if the number of water closets is not reduced to less than one-half (1/2) the number required.

(c) Toilet facilities for employees shall be located in separate rooms from those in which fixtures for the use of inmates or pa-

tients are located.

- (d) There shall be one (1) drinking fountain on each floor.
- (e) There shall be one (1) service sink or slop sink per floor.

Section 14. Workshops, Factories, Mercantile, and Office Buildings. Separate toilet facilities shall be provided for males and females on each floor unless otherwise denoted. (1) Workshops and factories: Sanitary facilities shall conform to the following:

(a) There shall be:

- 1. One (1) water closet for each twenty-five (25) males or fraction thereof, up to 100;
- 2. One (1) lavatory for each twenty-five (25) males or fraction thereof, up to 100;
- 3. One (1) urinal for eleven (11) to fifty (50) employees;
- 4. Two (2) urinals for fifty-one (51) to 100 employees;
- 5. One (1) lavatory for each twenty-five (25) females or fraction thereof up to 100; and
- 6. One (1) water closet for each fifteen (15) females or fraction thereof up to 100;

(b) If in excess of 100 persons, there shall be:

- 1. One (1) additional water closet for each additional thirty (30) males and each additional thirty (30) females or fraction thereof;
- 2. One (1) additional lavatory for each additional fifty (50) males and females or fraction thereof; and
- 3. One (1) additional urinal for each additional 100 males or fraction thereof;

(c) There shall be:

- 1. One (1) shower for each fifteen (15) persons or fraction thereof, exposed to skin contamination from irritating, infectious, or poisonous materials;

2.a. One (1) drinking fountain on each floor for each fifty (50) employees or fraction thereof, up to 100 employees; and

b. If there are more than 100 employees, there shall be an additional drinking fountain on each floor for each additional seventy-five (75) employees or fraction thereof; and

3. One (1) service sink or slop sink per floor; and

(d) 1. Individual sinks or wash troughs may be used in lieu of lavatories.

2. Twenty-four (24) inches of sink or trough, if provided with water, or eighteen (18) inches of circular basin shall be deemed the equivalent of one (1) lavatory.

(2) Mercantile.

(a) Employees.

1. Except as provided in subparagraph 2 of this paragraph, sanitary facilities within each store shall be provided for employees. If more than five (5) persons are employed, separate facilities for each sex shall be provided.

2. For a store containing not more than 3,000 square feet of total gross floor area, employee facilities shall not be required if adequate interior facilities are provided within a centralized toilet room area or accessible areas having a travel distance of not more than 500 feet within the building in which the store is located.

(b) Customers.

1. Sanitary facilities shall be provided for customers if the building contains 5,000 square feet or more.

2. In a mall or shopping center, the required facilities, based on one (1) person per 100 square feet of total area, shall be installed in individual stores or in a central toilet room area or areas, if:

a. The distance from the main entrance of a store does not exceed 500 feet; and

b. The toilet room area is accessible to physically disabled persons.

(c) Sanitary facilities shall be provided as stated in this section and there shall be:

- 1. One (1) water closet for one (1) to 150 males;
- 2. Two (2) water closets for 151 to 300 males;
- 3. Three (3) water closets for 301 to 450 males;
- 4. If over 500 males, three (3) water closets plus one (1) additional water closet for each additional 500 males or fraction thereof;
- 5. One (1) urinal for fifty (50) to 200 males;
- 6. Two (2) urinals for 201 to 400 males;
- 7. Three (3) urinals for 401 to 600 males;
- 8. If over 300 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof;

- 9. One (1) water closet for one (1) to 100 females;
- 10. Two (2) water closets for 101 to 200 females;
- 11. Three (3) water closets for 201 to 400 females;
- 12. If over 400 females, three (3) water closets plus one (1) additional water closet for each additional 300 females or fraction thereof;

- 13. One (1) lavatory for one (1) to 200 persons;
- 14. Two (2) lavatories for 201 to 400 persons;
- 15. Three (3) lavatories for 401 to 700 persons;
- 16. If over 700 persons, three (3) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof; Three (3) lavatories plus one (1) lavatory for each 500 persons, or fraction thereof, in excess of 700;

17. One (1) drinking fountain on each floor for each 500 persons or fraction thereof; and

18. One (1) service sink or slop sink per floor.

(3) Office buildings.

(a) Employees.

1. Except as established in subparagraph 2 of this paragraph, sanitary facilities within office buildings shall be provided for employees. If more than five (5) persons are employed, separate facilities for each sex shall be provided.

2. For an office building or space containing not more than 3,000 square feet of total gross floor area, employee facilities shall not be required if adequate interior facilities are provided within a centralized toilet room area or areas having a travel distance of not more than 500 feet within the same building.

(b) Customers.

1. Sanitary facilities shall be provided for customers if the office building or space contains 5,000 square feet or more.

2. In an office building, the required facilities, based on one (1) person per 100 square feet of total area, shall be installed within the individual offices, or in a central toilet room area or areas if:

a. The distance from the main entrance of an office space does not exceed 500 feet; and

b. The toilet room area is accessible to physically disabled persons.

(c) Separate sanitary facilities for each gender shall be provided as stated in this section.

1. For males and females there shall be:

- a. One (1) water closet for one (1) to fifteen (15) persons;
- b. Two (2) water closets for sixteen (16) to thirty-five (35) persons;
- c. Three (3) water closets for thirty-six (36) to fifty-five (55) persons;
- d. Four (4) water closets for fifty-six (56) to eighty (80) persons;
- e. Five (5) water closets for eighty-one (81) to 110 persons;
- f. Six (6) water closets for 111 to 150 persons;
- g. If over 150 persons, six (6) water closets plus one (1) additional water closet for each additional forty (40) persons or fraction thereof;

h. One (1) lavatory for one (1) to fifteen (15) persons;

i. Two (2) lavatories for sixteen (16) to thirty-five (35) persons;

j. Three (3) lavatories for thirty-six (36) to sixty (60) persons;

k. Four (4) lavatories for sixty-one (61) to ninety (90) persons;

l. Five (5) lavatories for ninety-one (91) to 125 persons;

m. If over 125 persons, five (5) lavatories plus one (1) additional lavatory for each additional seventy-five (75) persons or fraction thereof; and

n. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof.

2. For males, if urinals are provided, one (1) water closet less than the number specified may be provided for each urinal installed if the number of water closets is not reduced to less than seventy (70) percent of the minimum specified.

Section 15. Swimming Pool Bathhouses. A swimming pool bathhouse shall comply with the requirements established in 902 KAR 10:120 and this section. (1) Bathhouses for public swimming pools shall be divided into two (2) parts separated by a tight partition, with one (1) part designated for "Males" or "Men" and the other part designated for "Females" or "Women."

(2) Sanitary facilities shall be provided in each bathhouse to serve the anticipated bather load, as defined in 902 KAR 10:120,

and shall conform to the following:

(a) For swimming pools in which the total bather capacity is 200 persons or less, there shall be:

1. One (1) water closet for each seventy-five (75) males or fraction thereof;

2. One (1) water closet for each fifty (50) females or fraction thereof;

3. One (1) urinal for each seventy-five (75) males or fraction thereof;

4. One (1) lavatory for each 100 persons or fraction thereof;

5. One (1) shower per each fifty (50) persons or fraction thereof; and

6. One (1) drinking fountain per each 200 persons or fraction thereof;

(b) For swimming pools in which the total bather capacity exceeds 200 persons, there shall be:

1. Five (5) water closets for 201 to 400 females, with one (1) additional water closet for each additional 250 females or fraction thereof;

2. Three (3) water closets for 201 to 400 males, with one (1) additional water closet for each additional 500 males or fraction thereof;

3. Three (3) urinals for 201 to 400 males, with one (1) additional urinal for each additional 500 males or fraction thereof;

4. One (1) lavatory for up to 150 persons;

5. Two (2) lavatories for 151 to 400 persons;

6. Three (3) lavatories for 401 to 750 persons;

7. If over 750 persons, three (3) lavatories plus one (1) additional lavatory for each additional 750 persons or fraction thereof;

8. One (1) shower per each fifty (50) persons or fraction thereof up to 150;

9. If over 150 persons, three (3) showers plus one (1) additional shower for each additional 500 persons or fraction thereof; and

10. One (1) drinking fountain per each 500 persons or fraction thereof.

(3) Fixture schedules shall be increased for pools at schools or similar locations where bather loads may reach peaks due to schedules of use. Pools used by groups or classes on regular time schedules of:

(a) One (1) hour or less shall have one (1) shower for each six (6) swimmers; and

(b) One (1) to two (2) hours shall have one (1) shower for each ten (10) swimmers.

(4) Satisfactorily designed and located shower facilities, including warm water and soap, shall be provided for each sex. Showers shall be supplied with water at a temperature of not less than ninety (90) degrees Fahrenheit and at a flow rate of at least three (3) gallons per minute. Thermostatic, tempering, or mixing valves shall be installed to prevent scalding of the bathers.

(5) The requirement relating to bathhouse toilet room and shower facilities may be waived if the facilities are available to pool patrons within 150 feet from the pool.

Section 16. Park Service Buildings or Bathhouses. A park service building or bathhouse shall comply with the requirements established in 902 KAR 15:020, Section 8, and this section. (1) Except for a self-contained recreational vehicle community, each park shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures specified in this section.

(2) Except for a self-contained recreational vehicle community, sanitary facilities shall be provided as follows:

(a) If there are one (1) to fifteen (15) vehicle spaces, there shall be for:

1. Males: One (1) water closet, one (1) urinal, one (1) lavatory, and one (1) shower; and

2. Females: One (1) water closet, one (1) lavatory, and one (1) shower;

(b) If there are sixteen (16) to thirty (30) vehicle spaces, there shall be for:

1. Males: One (1) water closet, one (1) urinal, two (2) lavatories, and two (2) showers; and

2. Females: Two (2) water closets, two (2) lavatories, and two (2) showers;

(c) If there are thirty-one (31) to forty-five (45) vehicle spaces, there shall be for:

1. Males: Two (2) water closets, one (1) urinal, three (3) lavatories, and three (3) showers; and

2. Females: Two (2) water closets, three (3) lavatories, and three (3) showers;

(d) If there are forty-six (46) to sixty (60) vehicle spaces, there shall be for:

1. Males: Two (2) water closets, two (2) urinals, three (3) lavatories, and three (3) showers; and

2. Females: Three (3) water closets, three (3) lavatories, and three (3) showers;

(e) If there are sixty-one (61) to eighty (80) vehicle spaces, there shall be for:

1. Males: Three (3) water closets, two (2) urinals, four (4) lavatories, and four (4) showers; and

2. Females: Four (4) water closets, four (4) lavatories, and four (4) showers;

(f) If there are eighty-one (81) to 100 vehicle spaces, there shall be for:

1. Males: Four (4) water closets, two (2) urinals, five (5) lavatories, and five (5) showers; and

2. Females: Five (5) water closets, five (5) lavatories, and five (5) showers; and

(g) If over 100 vehicle spaces are provided, there shall be provided:

1. One (1) additional water closet and one (1) additional lavatory for each sex per additional thirty (30) spaces or fraction thereof;

2. One (1) additional shower for each sex per additional forty (40) vehicle spaces or fraction thereof; and

3. One (1) additional urinal for males per additional 100 vehicle spaces or fraction thereof.

Section 17. Residential and Day Camp Sites. A residential or day camp site shall comply with the requirements established in 902 KAR 10:040 and this section. (1)(a) Each residential camp site shall be provided with sanitary facilities for each sex as specified in this section.

(b) A day camp shall:

1. Not be required to provide shower facilities; and

2. Provide all other sanitary facilities for each sex as specified in this section.

(2) Sanitary facilities shall be provided as follows:

(a) If there are one (1) to eighteen (18) persons served, there shall be for:

1. Males: One (1) water closet, one (1) urinal, one (1) lavatory, and one (1) shower; and

2. Females: Two (2) water closets, one (1) lavatory, and one (1) shower;

(b) If there are nineteen (19) to thirty-three (33) persons served, there shall be for:

1. Males: Two (2) water closets, one (1) urinal, two (2) lavatories, and two (2) showers; and

2. Females: Two (2) water closets, two lavatories, and two showers;

(c) If there are thirty-four (34) to forty-eight (48) persons served, there shall be for:

1. Males: Two (2) water closets, two (2) urinals, two (2) lavatories, and three (3) showers; and

2. Females: Three (3) water closets, two (2) lavatories, and three (3) showers;

(d) If there are forty-nine (49) to sixty-three (63) persons served, there shall be for:

1. Males: Three (3) water closets, two (2) urinals, three (3) lavatories, and four (4) showers; and

2. Females: Four (4) water closets, three (3) lavatories, and four (4) showers;

(e) If there are sixty-four (64) to seventy-nine (79) persons served, there shall be for:

1. Males: Three (3) water closets, three (3) urinals, three (3) lavatories, and five (5) showers; and

2. Females: Five (5) water closets, three (3) lavatories, and five (5) showers;

(f) If there are eighty (80) to ninety-five (95) persons served,

there shall be for:

1. Males: Four (4) water closets, three (3) urinals, four (4) lavatories, and six (6) showers; and

2. Females: Six (6) water closets, four (4) lavatories, and six (6) showers; and

(g) If over ninety-five (95) persons are served, there shall be provided:

1. One (1) additional water closet and one (1) additional lavatory for each twenty-five (25) persons or fraction thereof served;

2. One (1) additional shower for each twenty (20) persons or fraction thereof served; and

3. One (1) additional urinal per fifty (50) additional males or fraction thereof.

(3) Coed day camps with equal number of males and females shall meet the fixture requirements of Section 6(2) of this administrative regulation, relating to elementary through secondary level school buildings.

(4) Water closets may be substituted for urinals if facilities are to be used by both sexes.

Section 18. Retail Food Stores and Restaurants. Sanitary facilities shall be provided for employees. A retail food store or restaurant shall comply with the requirements established in 902 KAR 10:020, 45:005, and this section. (1) Food stores.

(a) If more than five (5) persons of different sex are employed, separate sanitary facilities shall be provided for the employees.

(b)1. Separate sanitary facilities for each sex shall be provided for customers if the building contains 5,000 square feet or more.

2. In a mall or shopping center, the required facilities shall be:

a. Based on one (1) person per fifty (50) square feet; and

b. Installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of a store does not exceed 500 feet.

(c) There shall be:

1. One (1) water closet for one (1) to 100 persons;

2. Two (2) water closets for 101 to 200 persons;

3. Three (3) water closets for 201 to 400 persons;

4. If over 400 persons, three (3) water closets plus one (1) additional water closet for each additional 500 males or 300 females or fraction thereof;

5. One (1) urinal for eleven (11) to 200 males;

6. Two (2) urinals for 201 to 400 males;

7. Three (3) urinals for 401 to 600 males;

8. If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof;

9. One (1) lavatory for one (1) to 200 persons;

10. Two (2) lavatories for 201 to 400 persons;

11. Three (3) lavatories for 401 to 700 persons;

12. If over 700 persons, three (3) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof;

13. One (1) drinking fountain on each floor for each 500 persons or fraction thereof; and

14. One (1) service sink, utility sink, or curbed mop basin per floor as required by the Cabinet for Health and Family Services.

(2) Restaurants.

(a) If more than five (5) persons of different sex are employed, separate sanitary facilities for each sex shall be provided for the employees.

(b)1. Except as provided in subparagraph 3 of this paragraph, in a new establishment or an establishment that is extensively altered or changed from another type occupancy to a restaurant, toilet facilities for each sex shall be provided and readily accessible for the use of both patrons and employees.

2. Carryout-type food service operations shall be exempt from providing toilet facilities for the use of their patrons.

3. A restaurant with a business occupancy of one (1) to fifteen (15) persons shall:

a. Comply with the requirements in paragraphs (c) and (e) of this subsection; or

b. Provide one (1) unisex facility consisting of one (1) water closet and one (1) lavatory.

(c) There shall be:

1. Two (2) water closets for one (1) to 100 persons;

2. Three (3) water closets for 101 to 200 persons;

3. Four (4) water closets for 201 to 300 persons; and

4. If over 300 persons, four (4) water closets plus one (1) additional water closet for each additional 200 persons or fraction thereof.

(d) There shall be:

1. One (1) urinal for fifty (50) to 200 males; and

2. If over 200 males, one (1) urinal plus one (1) additional urinal for each additional 150 males or fraction thereof.

(e) There shall be:

1. One (1) lavatory for one (1) to 200 persons;

2. Two (2) lavatories for 201 to 400 persons;

3. Three (3) lavatories for 401 to 600 persons; and

4. If over 600 persons, three (3) lavatories plus one (1) additional lavatory for each additional 200 persons or fraction thereof.

(f) There shall be:

1. One (1) drinking fountain for one (1) to 100 persons; and

2. If over 100 persons, two (2) drinking fountains plus one (1) additional water fountain for each additional 400 persons or fraction thereof.

(g) If food is consumed indoors on the premises, water stations may be substituted for drinking fountains.

(h) There shall be one (1) service sink, utility sink, or curbed mop basin on each floor as required by the Cabinet for Health and Family Services.

(i) Lavatories for hand washing shall be provided in the kitchen area, readily accessible to the employees.

(3) Licensed food establishments. In all food establishments licensed by the Cabinet for Health and Family Services, Department for Public Health, the requirements in this subsection shall be met.

(a) Hand-washing sinks.

1. All hand-washing sinks shall have a minimum hot water temperature of 100 degrees Fahrenheit and a maximum of 120 degrees Fahrenheit.

2. Self-closing faucets shall provide a flow of water for no less than fifteen (15) seconds from activation.

3. Placement of hand-washing sinks shall be approved by the Cabinet for Health and Family Services, Department for Public Health pursuant to 902 KAR 45:005.

(b) A three (3) compartment sink used for washing utensils shall be required and[which] shall drain by a direct connection with a minimum of a two (2) inch drain.[by:

~~1. A direct connection with a minimum of a two (2) inch drain;~~
or

~~2. An indirect connection to a three (3) inch trap with a minimum of an eight (8) inch by eight (8) inch open-grated floor sink.]~~

(c) Dishwashing or ware washing machines shall discharge indirectly through a three (3) inch open receptacle.

(d) Residential type dishwashing machines shall discharge:

1. Through an air gap device; or

2. Indirectly through a three (3) inch open receptacle.

(e) Sinks solely used for food preparation~~[Food preparation sinks]~~ shall discharge by an indirect connection to a minimum three (3) inch trap.

(f) All hub drains, open receptacles, floor sinks, or other waste receptacles shall extend one (1) inch above the floor plane unless a full grate/strainer is installed flush with the floor.

(g) Occupied mobile food units not located within an existing permitted food establishment shall:

1. Meet the requirements of the Kentucky Plumbing Code;

2. Have a waste tank no less than fifty (50) percent larger than the freshwater tank;

3. Have a National Sanitary Foundation (NSF) approved freshwater tank for potable water; and

4. Have a minimum of a three (3) compartment sink and one (1) hand sink.

AMBROSE WILSON IV, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 13, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2012, at 9:00 am, EDT, at the Department of Housing,

Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2012 (five working days prior to the hearing) of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365 Ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum plumbing fixture requirements for buildings in Kentucky.

(b) The necessity of this administrative regulation: This amendment updates the regulation to address sanitary issues relating to three compartment sinks and food preparations sinks.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to be used within the state. The Plumbing Code Committee approved recommendation of this amendment on May 15, 2012.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment will update the administrative regulation to ensure safe and sanitary conditions relating to food service prep sinks and 3 compartment sinks for utensil washing.

(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 ensure that food contamination from sanitary sewer back ups are prevented in sinks used solely for food preparation; and ensure the elimination of odors resulting from indirection connections which are currently being utilized for 3 compartment sinks installed for washing utensils.

(b) The necessity of the amendment to this administrative regulation: To amend the regulation to avoid conflict with the Cabinet for Health and Family Services' new regulations.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments conform to statutory authority by establishing allowable connections, parts and materials to be used in the State. Additionally, the amendments avoid any regulatory conflict between the Cabinet for Health and Family Services and the Division of Plumbing.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will provide the most sanitary installation parameters for 3 compartment sinks and food prep sinks so as to minimize risk of potential unsanitary conditions resulting from other types of connections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Housing, Buildings and Construction, the Cabinet for Health and Family Services, Division of Plumbing, plumbers and plumbing inspectors.

(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:

(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: Plumbers will follow the lan-

guage within the regulation in order to avoid any conflict with the Cabinet for Health and Family Services' regulation and will allow increased sanitary connections regarding 3 compartment sinks used for utensil washing and food prep sinks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not increase any fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of Housing, Buildings and Construction, the plumbing industry, and the Cabinet for Health and Family Services will be applying the same criteria for retail food stores and restaurants and each will benefit from safer, more sanitary plumbing installation options.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is associated with the amendment.

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

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

(9) TIERING: Is tiering applied? Tiering would apply only as a result of fixture requirements are based upon the number of occupants that a facility accommodates.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, the Division of Plumbing, the Cabinet for Health and Family Services, plumbers and plumbing inspectors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Department of Housing, Buildings and Construction is authorized by KRS 318.130 to promulgate and amend the Kentucky State Plumbing Code.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The amendment will not have an impact on expenditures and revenues.

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

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

(c) How much will it cost to administer this program for the first year? There is no additional cost related to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost nor revenues related to this amendment 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 (+/-): No change in revenues.

Expenditures (+/-): No change in expenditures.

Other Explanation:

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

815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.

RELATES TO: KRS Chapter 13B, 164.772(3), 227A.010, 227A.060, 227A.100, 339.230, 29 C.F.R. 570

STATUTORY AUTHORITY: KRS 227A.040(1), (8), 227A.060, 227A.100(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.040 and 227A.060 authorize the Department[Office] of Housing, Buildings and Construction to promulgate administrative regulations to establish a process for the licensing of electrical contractors, electricians, and master electricians. KRS 227A.100(9) authorizes the department to promulgate administrative regulations governing an inactive license. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians, and master electricians.

Section 1. Application Procedure. An applicant for licensure pursuant to KRS 227A.060 shall:

- (1) Complete an application as required by Section 2 of this administrative regulation;
- (2) Pay the application fee required by Section 3 of this administrative regulation;
- (3) Provide verifiable evidence of experience and training as specified in Section 4 of this administrative regulation; and
- (4) Provide evidence of passage of the examination required by Section 5 of this administrative regulation.

Section 2. Application Requirements. (1) The applicant shall complete an application form, either Electrical Contractor's License Application, Form BCE-EL-2, or Electrical License Application Form, BCE-EL-3, which shall include the following information:

- (a) The applicant's name;
 - (b) The applicant's home address;
 - (c) The applicant's business address;
 - (d) The applicant's home and business telephone numbers;
 - (e) The applicant's date of birth;
 - (f) The applicant's Social Security number or employer identification number;
 - (g) The applicant's email address;
 - (h) The licenses applied for;
 - (i) For master electrician or electrician, a narrative listing of the applicant's experience in the electrical industry, including:
 1. Business name and address;
 2. Job title; and
 3. Supervisor's name;
 - (j) For master electrician or electrician, a listing of all approved training or apprenticeship programs the applicant has completed;
 - (k) A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);
 - (l) A passport-sized color photograph of the applicant;
 - (m) For electrical contractor licenses, the name and license number of the master electrician who will be affiliated with the applicant; and
 - (n) For electrical contractor licenses, the name of the insurer providing the applicant's liability and workers' compensation coverage and the policy number of each coverage.
- (2) An applicant for reciprocity shall:
- (a) Comply with the requirements set forth in the reciprocity agreement between Kentucky and the state in which the applicant is licensed; and
 - (b) Submit a completed Reciprocity Electrical License Application, Form BCE-EL-4, which shall include:
 1. A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);
 2. A passport-sized color photograph of the applicant;

3. For electrical contractor licenses, proof of compliance with the insurance and workers' compensation requirements established in Section 7 of this administrative regulation; and
4. A copy of the applicant's license from the participating state.

Section 3. Application, Renewal, Reinstatement, and Late Fees. (1) The application and renewal fees shall be:

- (a) \$200 for an electrical contractor's license;
 - (b) \$100 for a master electrician's license; or
 - (c) Fifty (50) dollars for an electrician's license.
- (2) Application, renewal, reinstatement, and late fees shall not be refundable.
- (3) The reinstatement fee for any lapsed license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee and shall be paid in addition to the license renewal fee.
- (4) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely and a late fee shall not be assessed.
- (5) Renewal fees for inactive licenses shall be one-half (1/2) the fee for an active license.
- (6) The fee to return a license to an active status from an inactive status shall be the remaining one-half (1/2) renewal fee for that year.

Section 4. Verification of Experience. (1) An applicant shall submit verification of experience for licensure as a master electrician or electrician.

- (2) Verification shall be submitted in the form of:
- (a) Tax returns or other official tax documents that indicate the applicant's occupation or the nature of the applicant's business activities, including Federal Schedule C, Form W-2, Form 1099, or local occupational tax returns;
 - (b) A copy of a business license issued by a county or municipal government that did not issue electrical contractors, master electrician's, or electrician's licenses prior to June 24, 2003, if the business license indicates the applicant operated as an electrical contractor or worker;
 - (c) A sworn affidavit, on the affiant's letterhead, certifying that the affiant has personal knowledge that the applicant has worked as a master electrician or an electrician for at least one (1) of the following:
 1. An electrical workers union;
 2. A certified electrical inspector; or
 3. An employer that employed the applicant as an electrician or a master electrician; or
 - (d) 1. Records of a branch of the United States Armed Forces that indicate the applicant performed a function that primarily involved electrical work.
 2. Experience gained while in the military shall be deemed to have been earned in Kentucky.
- (3) One year of electrical experience shall consist minimally of 1,600 hours of electrical work in a contiguous twelve (12) month period.

Section 5. Examinations. (1) An applicant for an electrical contractor's license, master electrician's license, or electrician's license shall pass an examination administered by an approved examination provider. A passing score shall be valid for a period of three (3) years.

- (2) For an electrical contractor's license, an applicant that is a business entity shall designate a person to take the examination on behalf of the applicant. The designee shall be:
- (a) An owner of the applicant;
 - (b) An officer of the applicant;
 - (c) A director of the applicant; or
 - (d) A full-time employee of the applicant.
- (3)(a) If a person designated by an entity as provided in subsection (2) of this section leaves the employment or no longer maintains an interest in that entity, the entity shall designate another person who either:
1. Has passed the examination; or
 2. Successfully passes the examination within thirty (30) days.
- (b) Failure to have a designee that has passed the examination

shall render the licensee no longer qualified to be licensed.

(4) Upon application by a testing agency, a national code group, or by an applicant for certification, the department may recognize another examination as equivalent to an examination administered by an approved examination provider. The person or group submitting the examination shall demonstrate that the examination covers the same material and requires the same level of knowledge as the approved examinations.

Section 6. Appeal Procedure. (1) An applicant denied a license may appeal the decision to the Commissioner of the Department of Housing, Buildings and Construction. The applicant shall submit written notice of the appeal to the Department of Housing, Buildings, and Construction within ten (10) business days of receiving notice that the license application has been denied.

(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the Commissioner of the Department of Housing, Buildings, and Construction.

Section 7. Proof of Insurance. (1) An applicant for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least \$500,000 issued by an insurer authorized to do business in Kentucky and naming the Department of Housing, Buildings, and Construction, Electrical Licensing, as the certificate holder.

(2) The applicant shall provide proof of workers' compensation insurance by providing:

(a) An insurance certificate from an approved insurance provider with the Kentucky Department of Insurance; or

(b) A notarized statement that the applicant is not required to obtain workers' compensation coverage and the reason why the coverage is not required.

(3) Electrical contractors shall require their liability and workers' compensation insurers to provide notice to the Department of Housing, Buildings, and Construction if:

(a) A policy is cancelled, terminated, or not renewed; or

(b) The policy limits are lowered.

(4) Electrical contractors shall advise the Department of Housing, Buildings, and Construction of a:

(a) Change in their insurance coverage, including cancellation or termination of any policy;

(b) Change in the insurer providing the coverage; or

(c) Changed circumstances that require the contractor to obtain coverage.

Section 8. Renewal Requirements. (1) A license shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships, or business entities without a birth month, the renewal month shall be the month the license was issued.

(2) The Department of Housing, Buildings, and Construction shall issue an initial license to an applicant for a period of up to twenty-three (23) months and shall charge a pro rata initial license fee to reflect the actual term of the initial license. An initial license shall not be issued for less than a twelve (12) month period.

(3) A licensee shall apply for license renewal on Electrical License Renewal Application, Form BCE-EL-5.

Section 9. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform electrical work requiring a license if the license is inactive.

(2) An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the Department of Housing, Buildings, and Construction of compliance with workers' compensation laws.

(3) A certified electrical inspector may be licensed as an electrical contractor, master electrician, or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.

(4) Performing electrical work that requires a license while holding an inactive license shall be grounds for revocation or sus-

pension of all electrical licenses and certifications held by the licensee.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form BCE-EL-2, "Electrical Contractor's License Application", March, 2007 edition;

(b) Form BCE-EL-3, "Electrical License Application", May 2011 edition;

(c) Form BCE-EL-4, "Reciprocity Electrical License Application", August 2009 edition; and

(d) Form BCE-EL-5, "Electrical License Renewal Application", August 2009 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, Electrical Licensing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 13, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2012, at 9:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2012 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for the licensing of electrical contractors, electricians and master electricians under the provisions of 227A.060.

(b) The necessity of this administrative regulation: This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians and master electricians for the issuance of licenses as required by KRS 227A.060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutes by establishing the standards and procedures that are to be followed for the licensing of electrical contractors, electricians and master electricians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist by clarifying and defining the number of hours of electrical work which constitute a "work year" towards licensure requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment will clarify the minimum number of hours that are to be counted as a work year towards licensure

requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to eliminate the confusion of the alternate requirement "verifiable experience in the electric trade" before satisfying qualifications of licensure as an electrician and master electrician as provided in KRS 227A.060.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227A.040 requires the Department to promulgate administrative regulations to create procedures governing the issuance of licenses to electrical contractors, master electricians and electricians, including the fees. This amendment satisfies those statutory obligations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the Department by clarifying what is acceptable towards licensure as a work year of "verifiable experience in the electric trade."

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Will not affect any business or individual currently holding or seeking a license as an electrician or master electrician, but will simply clarify existing language.

(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 be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Applicants for electrician and master electrician licenses have clear direction as to the minimum number of hours satisfactory to the Electrical Advisory Committee and Department to be counted as a work year in the electric trade.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. Regulation clarifies existing language.

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3): Licensees will better understand electrician and master electrician licensure requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: None

(a) Initially: No cost to implement.

(b) On a continuing basis: No cost to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency restricted 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 funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? Tiering is not applied as this amendment clarifies existing language.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Housing, Buildings and Construction, Electrical Licensing Section, will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 227A.040(1), KRS 227A.040(8), KRS 227A.060 and KRS 227A.100(9).

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 regulatory amendment will clarify existing language regarding the minimum number of work hours within a 12 month period which would meet work experience to qualify for licensure.

(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 regulatory amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulatory amendment simply clarifies language already in the regulation.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Quality Living (Amendment)

910 KAR 1:190. Nutrition program for older persons.

RELATES TO: KRS 194A.060(2), 205.201, 205.203, 205.455(4), 205.460, 205.465, 209A.030, 310.005, 310.021, 310.031, 42 U.S.C. 3018, 3025, 3030a to 3030g-22

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(1), (2), 42 U.S.C. 3030e

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3030e authorizes grants to states under approved state plans to establish and operate a nutrition program for older persons. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. KRS 205.204(1) and (2) designates the cabinet as the state agency to administer the Older Americans Act in Kentucky and authorizes the cabinet to promulgate administrative regulations necessary to comply with any requirement imposed or required by federal law. This administrative regulation sets forth the standards of operation for the nutrition program for older persons.

Section 1. Definitions. (1) "Area Agencies on Aging and Independent Living" or "AAAIL" means an entity designated by the state to administer, at the local level, the programs funded by the department[Older Americans Act of 1965, as amended].

(2) "Area plan" means the plan that:

(a) Is submitted by a district for the approval of the department; and

(b) Releases funds under contract for the delivery of services within the planning and service area.

(3) "Central kitchen" means an institutional kitchen which is equipped and used for preparing food to be sent to meal sites for service.

(4) "Certified nutritionist" is defined by KRS 310.005 and KRS 310.031.

(5) "Community" means a county designated as urban or rural in accordance with the most current percentage of population listing from the U.S. Census Bureau.

(6) "Congregate meal" means a meal provided to a qualified individual in a congregate or group setting.

(7)[(6)] "Congregate nutrition services" means the provision of meals and related nutrition services in a group setting to older individuals that include:

(a) Nutrition education;

(b) Nutrition assessment;

- (c) Nutrition counseling;
- (d) Nutrition screening;
- (e) Opportunities for social engagement at senior centers or on field trips; and
- (f) Volunteer roles that contribute to overall health and well-being.

(8)[(7)] "Cycle menu" means a menu planned for at least five (5) weeks and repeated with modification for seasonal menu items.

(9)[(8)] "Department" means the Department for Aging and Independent Living.

(10)[(9)] "Dietary reference intakes" means the nutritional requirements:

(a) Established by the Food and Nutrition Board of the Institute of Medicine of the National Academies; and

(b) Included in DAIL-NP-17.9.8, Meal Planning Nutrient Requirements.

(11)[(10)] "District" is defined by KRS 205.455(4).

(12)[(11)] "District nutrition program" means the program approved by the department and administered in each of the fifteen (15) planning and service areas in Kentucky by the districts or other contract agencies.

(13)[(12)] "Home delivered meal" means a meal provided to a qualified individual in his or her place of residence.

(14)[(13)] "Home delivered nutrition services" means the provision of meals and related nutrition services to older individuals who are homebound that include:

- (a) Nutrition screening;
- (b) Nutrition education;
- (c) Nutrition assessment; and
- (d) Nutrition counseling.

(15)[(14)] "Licensed dietitian" is defined by KRS 310.005(11).

(16)[(15)] "Meal" means a portion of food that:

- (a) Consists of a minimum of five (5) dissimilar components;
- (b) Provides the equivalent of one-third (1/3) of the dietary reference intakes;

(c) Meets the requirements of the Dietary Guidelines for Americans; and

(d) Is served with optional condiments to complete the meal as approved by the licensed dietitian or certified nutritionist.

(17)[(16)] "Modified atmosphere packaging" means the method of extending the shelf life of fresh food products where the atmospheric air inside a package is replaced with a protective gas mix that helps ensure the product stays fresh for as long as possible.

(18)[(17)] "Nontraditional meal" means a meal approved by the department that is cold, frozen, dried, canned, or modified atmosphere packaging.

(19)[(18)] "Nutrition counseling" means individualized guidance:

(a) To an individual who is at nutritional risk because of the individual's health or nutritional history, dietary intake, chronic illness, medications use, or to caregivers; and

(b) Provided one-on-one by a licensed dietitian to address options and methods for improving the individual's nutrition status.

(20)[(19)] "Nutrition screening" means the identification of those at risk of poor nutrition in accordance with Section 9 of this administrative regulation.

(21)[(20)] "Nutrition service provider" means an entity that is awarded a contract under the area plan to provide nutrition services covered under this administrative regulation.

(22)[(21)] "Nutrition Services Incentive Program" or "NSIP" means federally provided incentives to encourage and reward effective performance by states in the efficient delivery of nutrition meals to older individuals.

(23)[(22)] "OAA" means the Older Americans Act of 1965, as amended, with the relevant portions of the federal law for purposes of this program codified as 42 U.S.C. 3030a to 3030g-22.

(24) "Rural" means a community with less than 50,000 population living in a rural area as designated by the most current listing from the U.S. Census Bureau.

(25)[(23)] "Standardized recipe" means a written formula for producing food items of a consistent quality and quantity that specifies the yield and portion size adjusted for the requirements of the nutrition program for older persons.

(26)[(24)] "State nutrition program for older persons" means

the nutrition program administered by the department that includes:

- (a) Meals;
- (b) Nutrition screening and education; and
- (c) Nutrition assessment and counseling.

(27) "Target group" means:

(a) Low-income individuals, including low-income minority older individuals;

(b) Older individuals with limited English proficiency;

(c) Older individuals residing in rural areas; and

(d) Older individuals at risk for institutional placement.

(28) "Traditional meal" means a ready to eat hot meal.

(29) "Urban" means a community with 50,000 or more population living in an urbanized area as designated by the most current listing from the U.S. Census Bureau.

Section 2. Eligibility. (1) Except as provided in subsection (2) of this section, an individual shall be eligible for congregate meals and congregate nutrition services if the individual:

- (a) Is aged sixty (60) or older;
- (b) Is the spouse of an individual aged sixty (60) or older; or
- (c) Has a disability and resides at home with the eligible older individual.

(2) The AAAIL may, in accordance with 42 U.S.C. 3030g-21(2)(H), (I), provide a congregate meal to:

- (a) A volunteer providing services during meal hours; or
- (b) An individual under age sixty (60) who:

- 1. Has a disability; and
- 2. Resides in a housing facility primarily occupied by older individuals at which congregate nutrition services are provided.

(3) An individual shall be eligible for home-delivered meals and home-delivered nutrition services if the individual:

- (a) 1. Is a person aged sixty (60) or over, or the spouse of a person aged sixty (60) or over;
- 2. Is unable to attend a congregate site because of illness or an incapacitating disability; and

3. Does not have a person in the home able to prepare a nutritious meal on a regular basis; or

- (b) 1. Is under age sixty (60);
- 2. Has a disability; and

3. Resides with a homebound individual aged sixty (60) or over.

(4) Eligibility for the Homecare Program home-delivered meals shall be in accordance with 910 KAR 1:180.

Section 3. District Nutrition Funding. The district nutrition program may include meals or nutrition services from the following funding sources:

- (1) Congregate or home delivered meals funded by the OAA;
- (2) Home delivered meals as specified in 910 KAR 1:180 funded by the State Homecare Program;
- (3) A congregate meal as specified in 910 KAR 1:160 funded by the State Adult Day and Alzheimer's Respite Program;
- (4) NSIP funding for expansion of meals served in the state; or
- (5) Other funds designated in the AAAIL's approved area plan such as United Way or other local funding.

Section 4. Congregate Nutrition Services. (1) Except in a rural area where such frequency is not feasible and a less frequency is approved by the department, pursuant to 42 U.S.C. 3030e, congregate meals shall be provided by a nutrition service provider who, five (5) or more days per week, in each rural and urban community, within the nutrition service provider's service and planning area, provides at least one (1) hot or nontraditional meal per day and any additional meals which the nutrition service provider may elect to provide in a congregate setting ~~pursuant to 42 U.S.C. 3030(e)].~~

(2)[(1)] The requirements established in this subsection shall apply to the transportation of meals to a congregate site.

(a) 1. Bulk foods shall be transported in a stainless steel pan or aluminum disposable pan in an insulated container.

2. Use of plastic shall be restricted to cold foods only.

(b) 1. Hot items shall be transported in a bulk container separated from cold products.

2. A container shall be preheated or prechilled before being

loaded.

(3)[(2)] The order of service shall be as established in this subsection.

(a) Congregate meals shall be served after packaging the home delivered meals.

(b) Nutritional site personnel shall check and record temperatures of congregate meals daily.

(c) Milk and other cold food items shall not be preset on a table prior to meal service.

(d) A table shall not be preset with eating or drinking utensils more than four (4) hours prior to meal service unless each item is individually wrapped.

(e) A preset table shall not be used for activities prior to meal service.

(f) After all participants have been served, volunteers and other staff may be served.

(g) Food items left over at the point of service shall be:

1. Offered as seconds to a participant, if requested by the participant and after all have been served; or

2. Discarded.

(4)[(3)](a) Only complete meals shall be claimed for payment.

(b) Omission of required meal components shall cause that meal to be incomplete and ineligible for payment and for USDA reimbursement.

(c) Refusal by a participant of specific meal components shall not render that meal incomplete.

(5)[(4)] Each center's carry-out policy shall:

(a) Prohibit the carryout of potentially hazardous foods in accordance with 902 KAR 45:005;

(b) Assure a participant is advised concerning the risks involved if foods are held at unsafe temperatures; and

(c) Assure staff or volunteers shall not devote time or supplies to the task of packaging individual menu items as carry-outs for participants or staff.

(6)[(5)] A center shall not provide carry out of unserved or left over meals.

(7)[(6)] A participant shall have an opportunity to complete a satisfaction survey ~~[developed by the nutrition service provider]~~ to evaluate meals and service at least annually.

(8)[(7)](a) An ongoing participant nutrition education program shall be implemented by the nutrition service provider or AAAIL and include at a minimum one (1) session per month at each nutrition site.

(b) The education program shall include a variety of teaching methods on the following topics:

1. Nutrition and its relevance to health promotion and disease prevention;

2. Consumer approaches to food safety and food purchasing;

3. Food fads and diets;

4. Physical activity; and

5. Activities to modify behavior and improve health literacy, including providing information and optimal nutrients.

Section 5. Home Delivered Nutrition Services. Home delivered meals shall be provided by a nutrition service provider who, five (5) or more days a week, in each rural and urban community within the nutrition service provider's service and planning area, provides at least one (1) home delivered hot or nontraditional meal per day and any additional meals which the nutrition service provider may elect to provide. (1)(a) Except as provided in paragraph (b) of this subsection, a meal shall be delivered only to an eligible person in the eligible person's home.

(b) A meal may be left with a designee of the older person if the designee has been informed of the requirements of the nutrition program and has indicated a willingness to comply with those requirements.

(c) For traditional meals, an AAAIL shall train and monitor delivery staff to ensure that the meal participant or designee acknowledges delivery of the meal.

(2) Documentation for the provision of non-traditional meals shall show:

(a) The participant has expressed a preference for the non-traditional meals or lives off an established route;

(b) Proper storage and heating facilities are available in the

home;

(c) The participant is able to prepare and consume the meal alone or with available assistance; and

(d) Cost is no more than a traditional meal.

(3)(a) A provider of home delivered meals shall use methods of delivery that shall prevent outside contamination and hold food at appropriate temperatures as specified in paragraph (b) of this subsection.

(b) Meals shall be delivered in accordance with the requirements established in this paragraph.

1. Delivery routes shall be established by the nutrition service provider to minimize nutrient loss and to facilitate temperature retention.

2. Meals shall be delivered within four (4)~~[three (3)]~~ hours from the end of preparation to the final destination~~[, unless a waiver is approved by the licensed dietitian or certified nutritionist to alleviate a temporary problem meeting this deadline].~~

3. Hot food shall be maintained at or above 135 degrees Fahrenheit.

4. Cold food shall be maintained at or below forty-one (41) degrees Fahrenheit, and ice may be used if the food containers are constructed to prevent water seepage into the food.

5.a. Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of each meal delivery route.

b. If the temperatures are not consistent with the requirements of subparagraphs 3. and 4. of this paragraph, the nutrition site personnel shall check and record the meal temperatures daily until the temperatures are consistent with those requirements.

6. Neutral temperature foods shall be packaged and delivered in a way as to prevent outside contamination.

7.a. Frozen meals shall be maintained in a frozen state during delivery.

b. If the meal has thawed to the extent that ice crystals are not contained in the meal or the temperature is above forty (40) degrees Fahrenheit, the meal shall not be refrozen for later use. The meal shall be either:

(i) Heated and consumed immediately; or

(ii) Discarded.

(4) A participant shall have an opportunity to:

(a) Complete a satisfaction survey developed by the nutrition service provider to evaluate meals and services at least annually; and

(b) Provide ongoing comments for preparation of menus.

(5)(a) An ongoing participant nutrition education program shall be implemented by the nutrition service provider and shall include a minimum of one (1) session each month for the home delivered meal participant.

(b) The program shall include nutrition training as specified in Section 4(8)[(7)](b) of this administrative regulation.

(6) A nutrition service provider shall have a contingency plan in place to replace a meal if the meal:

(a) Does not register the correct temperature on delivery; or

(b) Is not delivered.

Section 6. Emergency Meals. (1) Provisions shall be made for furnishing emergency meals during inclement weather conditions, power failure, or any disaster that may cause isolation or create a special need.

(2) An emergency meal shall:

(a) Be shelf stable, frozen, freeze-dried, dehydrated, modified atmosphere packaging, or a combination of these types of meals;

(b) Meet the nutritional requirements of this program;

(c) Follow a menu that has been:

1. Approved by a certified nutritionist or licensed~~[the agency nutrition service provider]~~ dietitian; and

2. Planned for a minimum of three (3) days;

3. Delivered, reported and billed in the same month; and

4. Not to be held for more than sixty (60) days; and

(d) Use frozen meals only if the:

1. Participant is able to store, prepare, and consume the meal alone or with available assistance; and

2. Delivery system is arranged so that storage time after delivery is minimal.

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(3) Water shall be provided if necessary to prepare a meal.

(4) The menu plan shall include some foods which require no cooking prior to consumption.

(5) One (1) dish meals may be used if the nutritional requirements of the Dietary Guidelines of Americans are met.

(6)(a) Foods may be taken to the nutrition site.

(b) A participant may assist with packaging foods for distribution if the participant is a volunteer at the nutrition site.

(7) An emergency meal package shall be distributed to the eligible homebound client receiving home delivered meals.

(8) Emergency meals may be used for a congregate participant if the center is closed.

(9) For reporting purposes, meals shall be delivered, reported, and billed by a service provider during the month~~counted by a senior center during the quarter~~ of distribution.

Section 7. Nutrition Services Incentive Program (NSIP). (1) Additional funding received from the NSIP for the nutrition program shall be used exclusively to purchase food and shall not be used to pay for another nutrition-related service or for state or agency administrative costs.

(2) The department shall disburse NSIP monies to AAAILs based upon the AAAIL's proportion of the total number of eligible meals served in the state.

(3) The AAAIL shall:

(a) Expend NSIP monies within the fiscal year funds are allocated by the department;

(b) Use the NSIP funds to expand the total number of meals provided in the state;

(c) Not use the NSIP funds to reduce funds from any other grant or contract which the provider may be given;

(d) Maintain records to show the amount of cash received and how it was expended;

(e) Only use the NSIP funds to purchase:

1. Foods approved by the United States Department of Health and Human Services or~~and~~ other foods produced in the United States of America; or

2. Meals if the cost of the meal is quoted as a unit of service cost which includes both food and labor. Ready to serve meals may be purchased on a unit of service cost basis if each meal contains food equivalent in value to the current rate of reimbursement; and

(f) Serve meals through a nutrition service provider under the jurisdiction, control, management, and audit authority of the department and AAAIL and to eligible individuals as described in Section 2 of this administrative regulation.

(4) Financial records kept by the nutrition service provider shall show:

(a) Meals provided are bid without regard to NSIP reimbursement;

(b) NSIP funds are used as a revenue source for expansion of meals served in the state;

(c) The unit of service cost of a meal is not reduced in anticipation of future NSIP reimbursement but is stated as a true cost in both bidding and reporting procedures; and

(d) Monthly financial reports reflect NSIP expenditures.

(5) NSIP funding shall not be used for the following situations:

(a) Meals served to individuals, guests, or staff less than sixty (60) years of age;

(b) Meals served to a person who is paying a set fee for the meal;

(c) Meals that are served to consumers that meet income eligibility criteria under other programs;

(d) Meals used as a non-federal match for other federal program funding;

(e) Alcoholic beverages and vitamin supplements;

(f) Sponsored meals if a set fee or charge is involved; or

(g) Meals served to individuals in nursing homes, adult day care, or assisted living facilities if the meal is a part of the per diem.

Section 8. Nutrition Program Costs. (1) Ready-to-serve meal costs shall include the following:

(a) The cost of raw food, including food purchased with NSIP cash resources;

(b) The costs of serving supplies, disposables, cleaning materials, and noncapital items used in the preparation of food;

(c) The costs of labor for food preparation, cooking, portioning of foods, and delivery of food to the site of service. Labor costs shall include:

1. Fringe benefits;

2. Wages for persons who prepare and maintain the sanitary condition of the kitchen and storage areas; and

3. Wages paid for time spent in food and supplies inventorying, storing and receiving, and in direct supervision of employees;

(d) Equipment costs for capital items such as a:

1. Range;

2. Dishwasher;

3. Truck or van;

4. Steam table; or

5. Freezer;

(e) The costs of space, related utility costs, equipment operation, maintenance and repair costs; and

(f) The nonlabor costs of transporting food, food storage, insurance, and general liability.

(2) Food service and delivery costs shall include:

(a) The total labor costs for serving foods and for home delivery of meals to a participant;

(b) Mileage and maintenance of vehicle costs for home delivery of meals;

(c) Costs incurred for nutrition education and nutrition outreach services; and

(d) Project management costs, including personnel, equipment, and supply costs.

(3)(a) A food service contract bid shall be structured in accordance with Kentucky's Procurement Code, KRS Chapter 45A.

(b) Meals shall:

1. Be bid without regard to funding source; and

2. Contain both a meal preparation cost and a delivery cost.

Section 9. Responsibilities of AAAIL. (1) An AAAIL shall have written policies and procedures to carry out the AAAIL's responsibilities as established in this subsection. The AAAIL shall:

(a) Solicit the expertise of a dietitian or other individual with equivalent education and training in nutrition science or an individual with comparable expertise in the planning of nutritional services pursuant to 42 U.S.C. 3030g-21(1);

(b) Pursuant to 42 U.S.C. 3030g-21(2)(K), encourage individuals who distribute nutrition services to provide homebound older individuals with medical information approved by health care professionals, such as informational brochures on how to get vaccines in the individual's community for:

1. Influenza;

2. Pneumonia; and

3. Shingles;

(c) Provide implementation and management of the state nutrition program for older persons;

(d) Assure that a nutrition service provider provides:

1. At least one (1) meal per day in a congregate nutrition site or provide home delivered meals based upon a determination of a participant's needs;

2. Meals to reach the maximum number of eligible older individuals consistent with the requirement established in 42 U.S.C. 3025(a)(2)(E);

3. a. Nutrition screening and counseling and nutrition education services to address a participant's assessed needs and ensure that nutrition funds are used to provide these services. Nutrition screening shall be provided for all participants of the nutrition program for older persons as outlined in the state data system at least annually. The results of this screening shall be reported to the department. A participant who receives a nutrition score of six (6) or higher shall have documentation of further action such as referrals to a:

(i) Dietitian for nutrition counseling; or

(ii) Participant's physician;

4. Nutrition services to keep older persons healthy, reduce the older adult's risk of chronic disease and disability, and help the older adult to manage chronic diseases and conditions;

5. An emergency plan for back up food preparation sites, nutri-

tion sites, and meal delivery; and

6. A plan for furnishing emergency meals during an emergency, such as:

- a. Inclement weather conditions;
- b. Power failure;
- c. A disaster that may cause isolation; or
- d. A medical emergency;

(e) Use meal contributions to increase the number of meals served and facilitate access to these meals; and

(f) Monitor the nutrition program a minimum of twelve (12) times per year to evaluate compliance with nutrition program policies and central kitchens a minimum of one (1) time per year.

(2) If the AAAIL is the provider of meals and services, the AAAIL shall comply with all responsibilities of the nutrition service provider as specified in Section 12[40] of this administrative regulation.

Section 10. Nutrition Site Operation. (1)(a) Congregate meal services shall be funded at a site if the site has been approved by the department.

(b) The services shall not become operational until an on-site visit by the department has been completed and approval given by the office, except for emergency situations.

(2) Prior to approval of any site, it shall be inspected by the following:

(a) A local health department for compliance with applicable health codes;

(b) A local fire department for compliance with fire and building safety codes; and

(c) The department for compliance with 42 U.S.C. 3027(a)(8).

(3) A site shall:

(a) Be located as near as possible to the target group of individuals;

(b) Comply with the confidentiality and disclosure requirements of KRS 194A.060(2); and

(c) Be clearly identified to the public with a sign.

(4)(a) Selection of a site to offer congregate meal services shall be based on information on older people in its service area and on the advice of public and voluntary agencies serving the elderly.

(b) The following factors shall be given consideration in choosing a site:

1. Demographic information and projections;

2. Accessibility to the maximum number of people who are socially or economically deprived;

3. Proximity to other services and facilities;

4. Convenience to public or private transportation or location within comfortable walking distance for participants;

5. Clear of structural barriers or difficult terrain; and

6. The safety and security of participants and staff.

(5) A site shall:

(a) Take necessary actions to create for handicapped older people barrier-free access and movement with the facility in conformance with the requirements of 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973;

(b) Make arrangements for security of site equipment, furniture, and files;

(c) Have signs visible for exits, entrances, and other areas of importance;

(d) Have safety features appropriate to special uses in a bathroom and kitchen;

(e) Adopt procedures for fire safety, including:

1. Fire drills;

2. Inspection;

3. Maintenance of fire extinguishers; and

4. Training by fire department personnel; and

(f) Maintain and repair the site.

(6) A site that does not meet the requirements of subsection (5) of this section shall comply with a corrective action plan administered by the department.

(7)(a) A site shall have an individual, either volunteer or paid staff, who shall be responsible for the administration of the site.

(b) At least one (1) staff person or trained volunteer shall be present at the site during hours of operation.

(c) Minimum services shall be available at a site as follows:

1. At least one (1) hot meal in accordance with Section 4 of this administrative regulation;

2. Outreach services that may be funded by Title III-B or Title III-C;

3. Information and referral; and

4. Nutrition education.

(d) An optional service may be home-delivered meals.

(e) A congregate meal may be:

1. Prepared on site,

2. Catered; or

3. Prepared in a central kitchen.

Section 11. Kitchen Approval. (1) Upon the effective date of this administrative regulation, a new kitchen preparing a congregate meal or home delivered meal shall not become operational until inspected by the following:

(a) A local health department for compliance with applicable health codes;

(b) A local fire department for compliance with fire and building safety codes;

(c) An AAAIL inspection for compliance with 910 KAR 1:290; and

(d) The department using a DAIL-NP-17.96 Kitchen Checklist for compliance with:

1. Facility specifications;

2. Food preparation;

3. Use of equipment;

4. Delivery; and

5. Clean up; and

(2) The department shall notify the AAAL of kitchen operation approval within ten (10) days of the initial on-site visit.

Section 12. Responsibilities of Nutrition Service Providers. (1) The nutrition service provider contracting to provide meals and services shall have written policies and procedures to carry out the responsibilities of the service provider as established in this subsection. The nutrition service provider shall:

(a) Provide the AAAIL using the state data system with statistical and other information necessary for state reporting requirements established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018;

(b) Provide a recipient with an opportunity to voluntarily contribute to the cost of the service. Pursuant to 42 U.S.C. 3030c-2(b), voluntary contributions:

1. May be solicited in the method of solicitation is noncoercive; and

2. Shall be encouraged for an individual whose self-declared income is at or above 185 percent of the federal poverty level, at contribution levels based on the actual cost of the service;

(c) Assure that an older person shall not be denied service because the older person does not or cannot contribute to the cost of the service;

(d) Protect the privacy of each older person with respect to contributions;

(e) Report to appropriate officials, such as Department for Community Based Services, EMS, local law enforcement, for follow-up, conditions or circumstances which place the older person or his household in imminent danger;

(f) Make arrangements for services to older persons in weather-related emergencies;

(g) Assist a participant with access to benefits under other programs;

(h) Employ staff to ensure that the service staff is based on the number of program participants and the type of services provided;

(i) Have a site director, on a paid or volunteer basis, responsible for activities at the site.

1. Congregate and home delivered meals funds shall pay up to a maximum of five (5) hours, per day, of the site director's time; and

2. Other funding sources may be used to pay for additional hours;

(j) Permit staff of the AAAIL, the cabinet, and federal representatives to monitor and inspect the operation of the site; and

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(k) Attend meetings and training sessions as requested by the AAAIL and the department.

(2) The service provider contracting to provide meals only shall:

(a) Provide the AAAIL using the state data system with statistical and other information necessary for state reporting requirements established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018; and

(b) Abide by the requirements of subsection (1)(i) through (k) of this section.

Section 13.[44-] Meal Planning. Nutrient dense meals shall be planned using preparation and delivery methods that preserve the nutritional value of foods. The use of saturated fats, salt and sugar shall be restricted to maintain good health, in accordance with the dietary reference intakes and the Dietary Guidelines for Americans.

(1) Menus shall be:

(a) Planned through a formal procedure for soliciting participant comments established in each district;

(b) Planned a minimum of one (1) month in advance or, if a cycle menu is planned, used at least for five (5) weeks;

(c) In compliance with the Dietary Guidelines for Americans;

(d) Provided to each participating older individual and shall include a meal plan to provide:

1. A minimum of thirty-three and one-third (33 1/3) percent of the allowances established in the dietary reference intakes, if the individual is provided one (1) meal per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(I);

2. A minimum of sixty-six and two-third (66 2/3) percent of the allowances established in the dietary reference intakes, if the individual is provided two (2) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A) (ii)(II); or

3. One hundred (100) percent of the allowances established in the dietary reference intakes, if the individual is provided three (3) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(III);

(e) Altered to meet participant dietary needs such as low sugar, low salt, low fat, or low cholesterol;

(f) Certified by the licensed dietitian or certified nutritionist as meeting the nutritional requirements;

(g) Adhered to without substitution, unless a substitution is approved by the licensed dietitian or certified nutritionist. If a substitution is approved, the nutrition service provider shall provide a copy of the revised menu to the AAAIL; and

(h) 1. Posted in a conspicuous location, including at each congregate meal site and each preparation site; or

2. Provided in advance to each participant receiving home delivered meals.

(2) Special menus which allow for religious, ethnic, cultural, or regional dietary practices may be provided if foods and preparations are available.

(3)(a) Additional foods, such as fresh produce, baked items, or donated canned items, may be added to the meal to provide personal satisfaction and additional nutrition but shall not be considered part of the reimbursable program meal.

(b) Home-canned foods shall not be used.

(4)(a) If a potluck meal is served at a particular site, a congregate meal shall not be served at that site for that particular mealtime.

(b) Home delivered meals shall be provided on the same basis as if the potluck meal had not been scheduled.

Section 14.[42-] Consultation Requirements. A licensed dietitian or certified nutritionist shall provide an AAAIL with a minimum of four (4) hours of consultation per month including:

(1) Food quality, safety, and service;

(2) Assessment of employee practices;

(3) Staff training;

(4) Menu preparation or review;

(5) Assurances that nutrition screening, assessment, and counseling is completed;

(6) Reliable nutrition education is provided to a congregate and home delivered meal participant; and

(7) Individual diet counseling.

Section 15.[43-] Food Procurement. (1) Foods purchased for use in the nutrition program shall be obtained from sources which conform to the nutritional requirements of 902 KAR 45:005.

(2)(a) Term contracts may be used for repetitively purchased items.

(b) Fixed quantity contracting shall be used if definite items and quantities can be determined for future delivery dates.

Section 16.[44-] Food Preparation. (1)(a) Standardized recipes shall be used in food preparation and yield shall be indicated.

(b) Recipes shall specify the yield and portion size adjusted for the requirements of the nutrition program for older persons.

(2) The standards established in this section shall apply for quality control.

(a) Food production standards.

1. Hot foods shall be produced within eight (8) hours preceding service unless otherwise directed in the recipe.

2. Protein foods shall be cooked completely once the cooking cycle has begun.

3. Foods to be served cold and neutral temperature foods may be prepared earlier than the preceding eight (8) hours if so directed in the recipe.

4. Solid and semisolid cooked foods stored under refrigeration shall be placed in containers that are no more than four (4) inches in depth.

(b) The holding time for hot foods shall not exceed four (4)~~three (3)~~ hours after preparation~~[-unless a waiver is approved by the licensed dietitian or certified nutritionist to alleviate a temporary problem meeting this deadline]~~.

(c) Temperature standards.

1. Hot foods shall be packed at temperatures of at least 160 degrees Fahrenheit, and the internal temperature of hot foods to be transported shall be at least 135 degrees Fahrenheit during transportation and service.

2. Cold foods shall not exceed forty-one (41) degrees Fahrenheit during transportation and service.

3. Thermometers used to check food temperatures shall be:

a. Of metal stem-type construction;

b. Numerically scaled;

c. Accurate to plus or minus three (3) degrees Fahrenheit; and

d. Checked periodically to ensure that each thermometer is registering accurately.

4. Food temperatures for both hot and cold items shall be checked and recorded daily at the kitchen and at the site of service.

(3)(a) Food preparation facilities shall be in compliance with state and local fire, health, sanitation and safety regulations which apply to food service operations.

(b) A food preparation and service kitchen shall be inspected periodically by state and local health officials and the department dietitian.

(4) Standards for food handling and personal hygiene shall be in accordance with the food service requirements of the Kentucky Food Code governed by 902 KAR 45:005.

Section 17.[45-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-NP-17.96 Kitchen Checklist", edition 5/12;

(b) "DAIL-NP-17.9.8, Meal Planning Nutrient Requirements", December 30, 2009; and

(c) ~~(b)~~ Dietary Guidelines for Americans, 2010, U.S. Department of Agriculture, and U.S. Department of Health and Human Services.

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

(3) The Dietary Guidelines for Americans may be accessed online at www.dietaryguidelines.gov.

DEBORAH S. ANDERSON, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 13, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2012, at 9:00 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business July 31, 2012. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the nutrition program for older persons.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the Cabinet to administer the nutrition program for older persons.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 42 U.S.C. 3030e authorizes grants to states under approved state plans to establish and operate a nutrition program for older persons. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. This administrative regulation establishes standards with respect to an older person receiving nutritional services such as congregate meals, home-delivered meals, NSIP meals, nutrition screening, assessment, and counseling.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide guidance to affected entities required to provide nutritional services based on the needs of older persons pursuant to 42 U.S.C. 3030e.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates definitions, clarifies that congregate meals can be served at a less frequency in rural areas, if feasible and department approved, pursuant to 42 U.S.C. 3030e(1); requires monitoring of meal delivery for home-delivered meals; clarifies emergency meal procedures; establishes nutrition scoring requirements; and establishes requirements for nutrition site operation.

(b) The necessity of the amendment to this administrative regulation: It is necessary that an Area Agency on Aging and Independent Living (AAAIL) and their nutrition service providers understand the amendments to this regulation to operate the nutrition program for older persons.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies and establishes standards for AAAILs and their service providers to provide the nutritional services in conformity with 42 U.S.C. 3030a through 3030g-22.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide guidance to the AAAIL and AAAIL's service provider to implement the nutrition requirements of 42 U.S.C. 3030a through 3030g-22.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The department, fifteen (15) AAAILs and their nutrition service providers (that may include the 15 AAAILs or other nutrition service providers), and older persons receiving nutritional

services under 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: DAIL will monitor the AAAILs for compliance of the amendments to this administrative regulation. The AAAIL will comply with the amendments to this administrative regulation and make ready for department monitoring of such amendments. The nutrition providers will comply with the amendments to this administrative regulation and make ready for AAAIL monitoring of such amendments. The older person receiving nutritional services will benefit from the amendments to this administrative regulation because the amendments further clarify better operation of the nutrition program.

(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: DAIL will monitor the AAAIL in implementation of the amendments to this administrative regulation. The AAAIL will monitor their nutrition service provider in implementation of the amendments to this administrative regulation. The older person receiving nutritional services have no actions to comply with.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All parties will benefit from better operation of the nutrition program for older persons.

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

(a) Initially: FY 2013 - \$7,716,350 Federal and \$1,361,708 State Match.

(b) On a continuing basis: \$7,716,350 Federal and \$1,361,708 State Match.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? FY 2013 - \$7,716,350 Federal and FY 2013 - \$1,361,708 - State Match.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

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? Department for Aging and Independent Living

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 3030e, KRS 194A.050(1), and KRS 205.204(1) and (2)

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

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

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year? FY 2013 \$7,716,350 Federal and FY 2013 - \$1,361,708 State Match.

(d) How much will it cost to administer this program for subsequent years? \$7,716,350 Federal and \$1,361,708 State Match.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C.3030e

2. State compliance standards. KRS 194A.050(1), KRS 205.204(1) and (2)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 3030e

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. None

NEW ADMINISTRATIVE REGULATIONS

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(New Administrative Regulation)**

201 KAR 2:340. Special pharmacy permit for clinical practice.

RELATES TO KRS 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities that provide non-dispensing pharmacy services. This administrative regulation establishes the requirements for the special pharmacy permit for clinical practice.

Section 1. Definition. "Special pharmacy permit for clinical practice" means a permit issued to a pharmacy that maintains patient records and other information for the purpose of engaging in the practice of pharmacy and does not dispense prescription drug orders.

Section 2. General Requirements. (1) An applicant for a special pharmacy permit for clinical practice shall:

(a) Prepare and adopt a policy and procedure manual that is updated annually;

(b) Maintain pharmacy references as outlined in 201 KAR 2:090;

(c) Maintain a physical pharmacy address;

(d) Designate a Pharmacist-in-Charge (PIC) without a required minimum number of hours of physical presence;

(e) Maintain patient records for five (5) years in a manner that shall provide adequate safeguard against improper manipulation or alteration of the records; a computer malfunction or data processing services' negligence is not a defense against the charges of improper recordkeeping; and

(f) Maintain patient records by establishing:

1. A patient record system to be maintained for patients for whom non-dispensing pharmacy services and functions are being performed;

2. A procedure for obtaining, recording, and maintaining information required for a patient record by a pharmacist, pharmacist intern, or pharmacy technician; and

3. A procedure for a patient record to be readily retrievable by manual or electronic means.

(2) An applicant for a special pharmacy permit for clinical practice shall be exempt from the following:

(a) Prescription equipment requirements of 201 KAR 2:090, Section 2;

(b) Pharmacy sanitation requirements of 201 KAR 2:180; and

(c) Security and control of drugs and prescriptions requirements of 201 KAR 2:100, Sections 1, 2, 3, and 4.

Section 3. Pharmacy Closure. The permit holder shall provide notification to the board thirty (30) days prior to permanent pharmacy closure.

Section 4. License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special pharmacy permit for clinical practice on either the Application for Special Pharmacy Permit for Clinical Practice or the Application for Special Pharmacy Permit for Clinical Practice Renewal; and

(2) As appropriate, the:

(a) Initial application fee established by 201 KAR 2:050, Section 1(9); or

(b) Renewal application fee established by 201 KAR 2:050, Section 1(10).

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Special Pharmacy Permit for Clinical Practice", Form 1, 5/2012; and

(b) "Application for Special Pharmacy Permit for Clinical Practice Renewal", Form 2, 5/2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: June 7, 2012

FILED WITH LRC: June 14, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2012 at 9:00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Tuesday July 31, 2012 at 11:59 p.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601; phone (502) 564-7910; fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows a pharmacy to provide non-dispensing pharmacy services to patients.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.191(1)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations that establishes the requirements for a pharmacy to provide non-dispensing pharmacy services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for an individual to operate a pharmacy that provides non-dispensing pharmacy services.

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

(a) How the amendment will change this existing administrative regulation: "Not Applicable"

(b) The necessity of the amendment to this administrative regulation: "Not Applicable"

(c) How the amendment conforms to the content of the authorizing statutes: "Not Applicable"

(d) How the amendment will assist in the effective administration of the statutes: "Not Applicable"

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates less than fifty pharmacies annually will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An individual will be able to obtain a special pharmacy permit for clinical practice permit that will provide non-dispensing services to patients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial fee for a special pharmacy permit for clinical practice will be \$100 and thereafter an annual renewal fee of \$100.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An individual will be able to obtain a special pharmacy permit for clinical to serve patients of a non-dispensing role.

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

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to any pharmacy that provides non-dispensing pharmacy services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.035 and KRS 315.191 requires or authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 12, 2012

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 12, 2012, 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 May 2012 meeting were approved.

Present were:

Members: Senators Joe Bowen, David Givens, and Joey Pendleton, and Representatives, Robert Damron, and Danny Ford.

LRC Staff: Dave Nicholas, Donna Little, Emily Caudill, Sarah Amburgey, Emily Harkenrider, Karen Howard, Betsy Cupp, and Laura Napier.

Guests: Granville Smith, Michael West, Board of Ophthalmic Dispensers; Angela Evans, Sandra Miller, Board of Licensure for Marriage and Family Therapists; Ron Brooks, Margaret Everson, Karen Waldrop, Department of Fish and Wildlife; Amber Arnett, Amy Barker, Sara Pittman, Meredith Sanford, Department of Corrections; Kevin C. Brown, Ron Chandler, Hiren Desai, Kay Kennedy, Felicia C. Smith, Department of Education; Terry Tolan, Governors Office of Early Childhood; Bill Clark, Department of Insurance, Russell R. Coy II, Blanche Minor, Cecilia Webber, and Tim West, Department of Insurance.

The Administrative Regulation Review Subcommittee met on Tuesday, June 12, 2012, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

GENERAL GOVERNMENT CABINET: Kentucky Board of Licensure for Ophthalmic Dispensers: Board

201 KAR 13:040. Licensing; application, examination; renewal; and inactive status. Granville Smith, chair, and Michael West, assistant attorney general, represented the board.

In response to a question by Co-Chair Bowen, Mr. Smith stated that as society had become more mobile, licensees needed a practical examination that was the same from state to state. This administrative regulation established a national practical examination.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, and 4 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 4(4) to establish the grace period referenced in the applications; and (3) to amend Section 8 to revise the applications incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Marriage and Family Therapists: Board

201 KAR 32:035. Supervision of marriage and family therapist associates. Angela Evans, assistant attorney general, and Sandra Miller, chair, represented the board.

In response to a question by Representative Ford, Ms. Miller stated that the previous version of this administrative regulation contained an error. This amendment corrected and clarified the definition of "group supervision" without affecting the maximum limit of supervisees per supervisor. This administrative regulation did not affect costs for the agency or the regulated community, including licensees.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 1:410. Taking of fish by nontraditional fishing methods. Ron Brooks, fisheries director; Margaret Everson, assistant attorney general; and Karen Waldrop, wildlife Director, represented the department.

In response to a question by Senator Kerr, Mr. Brooks stated

that recreational boating and angling was prohibited at Greenbo Lake in the designated cove during skin or scuba diving. Skin and scuba diving were permitted between 10 a.m. and 6 p.m. Recreational boating and angling were allowed during the skin and scuba diving time period if divers were not present. Divers placed a flag in the cove during diving to indicate to other nondiving lake users that the cove was unavailable.

In response to questions by Co-Chair Bowen, Mr. Brooks stated that grabbing and snagging were nontraditional forms of harvesting fish. A minority of fishermen were opposed to this administrative regulation because of the provisions for diving in the cove, during which time boating and angling in that area were prohibited. This began a three (3) year trial period for the diving policy. Greenbo Lake was the only lake owned by the Commonwealth with water clarity suitable for skin and scuba diving. Administrative regulations were initiated for a mix of reasons. Preferably, initiation would be due to biological studies, but often the public requested new administrative regulations or amendments to existing administrative regulations.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 5, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4(25) to clarify hunting requirements for "A" Tracts at the West Kentucky WMA; and (2) to amend Sections 4, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:081. Transportation and holding of live native wildlife.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to correct a citation; (2) to amend Sections 1, 2, 3, 5, 6, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (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. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:082. Transportation and holding of live exotic wildlife.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 2:084. Importation of game birds.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting 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: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Amber

Arnett, staff attorney, and Amy Barker, assistant general counsel, represented the department.

In response to a question by Co-Chair Bell, Ms. Arnett stated that there was not a difference between the terms, “skin search” and “strip search,” but that “skin search” had been a typographical error in the previous version of this administrative regulation. The procedure itself was not actually changed.

A motion was made and seconded to approve the following amendments: (1) to amend CPP 2.12 for compliance with 2012 Senate Bill 90 regarding unclaimed funds in inmate jail accounts; (2) to amend CPP 10.2 to use defined term of strip search rather than skin search; (3) to amend authorized inmate property list in CPP 17.1 to remove tobacco products as the institutions are now tobacco-free and to make other minor adjustments; and (4) to amend Section 1 and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: General Administration

702 KAR 1:160. School health services. Kevin Brown, general counsel and associate commissioner; Hiren Desai, associate commissioner; and Kay Kennedy, director of support services, represented the department.

In response to a question by Senator Givens, Ms. Kennedy stated that feedback from healthcare partners reported ineffective compliance with scoliosis screening because many parents opted their children out of the screening. Additionally, the examinations were performed by inadequately trained school staff, rather than healthcare professionals. The result was inaccuracy of screening results. The screening was best performed by trained healthcare personnel at regular medical examinations.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 6 to incorporate by reference the Immunization Certificate. Without objection, and with agreement of the agency, the amendments were approved.

Office of Instruction

704 KAR 3:340. Commonwealth Diploma Program. Kevin Brown, general counsel and associate commissioner; Robin Chandler, policy advisor; and Terry Holliday, commissioner, represented the department.

In response to a question by Senator Kerr, Ms. Smith stated that the Commonwealth Diploma program was being eliminated but local school districts could opt to establish local recognitions. Ms. Chandler stated that the cost of administering the program had become too high, especially considering the departments emphasis on college and career readiness for all students. The Commonwealth Diploma Program had served its purpose, but it was appropriate for it to end now.

In response to questions by Representative Damron, Ms. Chandler stated that in the 2011 – 2012 school year, 1,651 Commonwealth Diplomas had been awarded. The Commonwealth Diploma required advanced placement classes and a composite score of at least eight (8) across all advanced placement areas examined. Mr. Brown stated that transferring the program to the local government level had been initiated by staff of the Department of Education. Mr. Holliday stated that postsecondary institutions did not consider the Commonwealth Diploma for enrollment purposes. New programs, such as the Advanced Placement Achievement Program, were being developed to replace the Commonwealth Diploma Program. The decision to eliminate the Commonwealth Diploma Program was not based on “top-down” administrative issues. Members of the gifted and talented community had raised concerns that funding was diverted from that program to the Commonwealth Diploma Program. Local school districts could still choose to give recognition similar to the Commonwealth Diploma Program. Funding savings would go directly back to the local districts. The funding had been used to cover the actual costs of the diplomas, materials, and administrative

aspects of the program. The department took a bigger financial hit than the local school districts.

Representative Damron stated that it was a mistake to eliminate the Commonwealth Diploma Program. It was important to local school districts and provided a strong motivation for students to achieve.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to create a new Section 3 to: (a) specify that the Commonwealth Diploma shall not be awarded by the Kentucky Board of Education after the 2012-2013 academic year; and (b) authorize local districts to develop policies and procedures to award local recognitions. Without objection, and with agreement of the agency, the amendments were approved.

Kindergartens and Nursery Schools

704 KAR 5:070. Common Kindergarten entry screener. Kevin Brown, general counsel and associate commissioner; Felicia Cummings-Smith, associate commissioner; and Terry Tolan, executive director, Governor’s Office of Early Childhood, represented the department.

In response to questions by Senator Givens, Ms. Cummings-Smith stated that the office’s intent was to create better validity for kindergarten entry screening. Screening was in place at the local school district level, but this administrative regulation centralized the screening at the department level. The department’s goals were to provide a “snapshot” of where the prospective pupil was academically, physically, socially, and emotionally in order to demonstrate school readiness, and to demonstrate that the Commonwealth’s early childhood development programs had an impact on school readiness. To achieve those goals, the department needed a standard screening process. The screening would collect information about a child’s preschool years without blaming or giving credit for school readiness for prospective students who did not participate in early childhood development programs. The department hoped that the data would indicate that strong early childhood development programs had a positive influence on school readiness. There was not a specific plan to use the data to assist funding determinations; however, the data may provide direction in making other decisions. Mr. Brown stated that KRS 158.6453 did not apply to this administrative regulation because this administrative regulation governed screening only, not the statewide assessment established by the statute.

Senator Givens stated that he was concerned that this administrative regulation would lead to endorsement of some paths of school-readiness preparation and devalue others. He stated that he was a proponent of a school voucher program that would not penalize parents or private institutions that prepared pupils for at or above the school-readiness level of the public programs. Cautiousness was crucial.

In response to questions by Co-Chair Bell, Ms. Tolan stated that this administrative regulation would help build on and improve existing early childhood development programs but would not categorize, or “label,” prospective pupils. This screening would provide a “snapshot” in time of the prospective pupil. This administrative regulation would assist in defining levels of school readiness and, in some situations, may indicate the need for further testing for specific prospective pupils. This administrative regulation would build stronger relationships among the early childhood development community.

Co-Chair Bell stated that he hoped the department and Governor’s Office on Early Childhood would use common sense and would not categorize, or label, prospective pupils at such an early state in their academic career.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and 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.

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. Bill Clark, chief

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financial analyst; Russell R. Coy II, capital coordinator; and Tim West, deputy general counsel, represented the division.

In response to a question by Co-Chair Bowen, Mr. Clark stated that this administrative regulation pertained to risk-based capital and revised the program slightly for clarification. There were currently no domestic fraternal benefit societies in Kentucky. This administrative regulation adjusted the multiplier regarding the six (6) trend test.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4, and 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.

The following administrative regulations were deferred to the July 10, 2012, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board
201 KAR 8:562. Licensure of dental hygienists.

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

301 KAR 2:041. Shooting areas, dog training areas, commercial foxhound training enclosures, and bobwhite shoot-to-train season.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:260. Procedures for recommendation of early termination of probation and review of compliance of supervised individuals.

501 KAR 6:280. Risk and needs assessment.

Other Business: Representative Ford introduced his legislative successor, David Meade.

The Subcommittee adjourned at 2:10 p.m. until July 10, 2012.

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OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS Meeting of June 8, 2012

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on L&O for its meeting of June 8, 2012, having been referred to the Committee on June 6, 2012, pursuant to KRS 13A.290(6):

815 KAR 6:070

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

815 KAR 6:070

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 8, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto. Subsequent to the committee's finding the Kentucky Board of Home Inspectors voted to withdraw 815 KAR 6:070. Notification of the withdrawal is attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION Meeting of June 11, 2012

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of June 11, 2012, having been referred to the Committee on June 6, 2012, pursuant to KRS 13A.290(6):

11 KAR 4:080
11 KAR 5:145
16 KAR 4:030
702 KAR 7:065

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 11, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW SUBCOMMITTEE

Meeting of June 12, 2012

The following administrative regulations were available for consideration and placed on the agenda of the Education Assessment and Accountability Review Subcommittee for its meeting of June 12, 2012:

703 KAR 5:002
703 KAR 5:140
703 KAR 5:240

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

703 KAR 5:002
703 KAR 5:140
703 KAR 5:240

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 12, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE Meeting of June 20, 2012

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee

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on Health and Welfare for its meeting of June 20, 2012, having been referred to the Committee on June 6, 2012, pursuant to KRS 13A.290(6):

201 KAR 20:490
201 KAR 23:015
921 KAR 2:015 & E
921 KAR 3:035

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 20, 2012 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

A - 2

The Locator Index lists all administrative regulations published in VOLUME 39 of the *Administrative Register of Kentucky* from July 2012 through June 2013. 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 38 are those administrative regulations that were originally published in VOLUME 38 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2012 Kentucky Administrative Regulations Service* was published.

KRS Index

A - 5

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 39 of the *Administrative Register of Kentucky*.

Technical Amendment Index

A - 7

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the *2012 Kentucky Administrative Regulations Service*. 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 of Kentucky*.

Subject Index

A - 8

The Subject Index is a general index of administrative regulations published in VOLUME 39 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
VOLUME 38					
<p>The administrative regulations listed under VOLUME 38 are those administrative regulations that were originally published in Volume _____ year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2012 Kentucky Administrative Regulations Service</i> was published.</p>					
SYMBOL KEY:			Amended	1879	
* Statement of Consideration not filed by deadline			301 KAR 2:049		
** Withdrawn, not in effect within 1 year of publication			Amended	1883	(See 39 Ky.R.)
*** Withdrawn before being printed in Register			301 KAR 2:081		
**** Emergency expired after 180 days			Amended	1887	(See 39 Ky.R.)
(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.			301 KAR 2:082		
			Amended	1893	(See 39 Ky.R.)
			301 KAR 2:084		
			Amended	1898	(See 39 Ky.R.)
			301 KAR 2:300		
			Amended	1899	(See 39 Ky.R.)
			301 KAR 3:022		
			Amended	1903	(See 39 Ky.R.)
			301 KAR 2:251		
			Amended	1661	
			As Amended	1948	
103 KAR 31:170E	1934	5-11-12			
405 KAR 10:011E(r)	1935	5-4-12	304 KAR 1:040		
405 KAR 10:015E	1937	5-4-12	Amended	2002	
921 KAR 2:015E	1429	12-29-11	304 KAR 1:080	2110	
Replaced	1969	6-20-12	304 KAR 1:410	1974	
			405 KAR 10:015	2111	
			405 KAR 10:030		
			Amended	2004	
			405 KAR 16:020		
			Amended	2007	
			501 KAR 6:020		
			Amended	1905	(See 39 Ky.R.)
			501 KAR 6:050		
			Amended	2011	
			501 KAR 6:091(r)	1808	
			501 KAR 6:110		
			Amended	2013	
			501 KAR 6:200		
			Amended	1791	
			As Amended	1951	
			501 KAR 6:240		
			Amended	1793	
			As Amended	1953	
			501 KAR 6:260	1916	
			501 KAR 6:280	1918	
			503 KAR 1:110		
			Amended	1795	
			As Amended	1953	
			503 KAR 3:070		
			Amended	1665	
			As Amended	1956	
			601 KAR 1:018		
			Amended	1487	
			As Amended	1957	
			601 KAR 1:019	1399	
			As Amended	1962	
			702 KAR 1:160		
			Amended	1799	(See 39 Ky.R.)
			703 KAR 5:002(r)	1401	(See 39 Ky.R.)
			703 KAR 5:070		
			Amended	1907	(See 39 Ky.R.)
			703 KAR 5:140		
			Amended	1391	(See 39 Ky.R.)
			703 KAR 5:220	707	
			703 KAR 5:225	1919	(See 39 Ky.R.)
			703 KAR 5:240	1407	(See 39 Ky.R.)
			704 KAR 3:340		
			Amended	1909	(See 39 Ky.R.)
			704 KAR 5:070	1410	(See 39 Ky.R.)
			803 KAR 2:300		

LOCATOR INDEX - EFFECTIVE DATES

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Amended	2016		811 KAR 1:093	2118	
803 KAR 2:307			811 KAR 1:095		
Amended	2018		Amended	2077	
803 KAR 2:309			811 KAR 2:093	2119	
Amended	2021		811 KAR 2:096		
803 KAR 2:313			Amended	2084	
Amended	2023		811 KAR 2:100		
803 KAR 2:316			Amended	2093	
Amended	2025		815 KAR 6:010		
803 KAR 2:317			Amended	1498	
Amended	2027		Amended	1866	
803 KAR 2:319			As Amended	1966	
Amended	2029		815 KAR 6:070	1521	
803 KAR 2:320			As Amended	1968	
Amended	2031		815 KAR 20:100		
803 KAR 2:403			Amended	2099	
Amended	2037		900 KAR 7:030		
803 KAR 2:405			Amended	2102	
Amended	2040		900 KAR 9:010	2121	
803 KAR 2:407			921 KAR 2:015		
Amended	2042		Amended	1501	
803 KAR 2:425			As Amended	1969	6-20-12
Amended	2044		921 KAR 3:035		
803 KAR 2:500			Amended	1804	6-20-12
Amended	2046				
804 KAR 4:370					
Amended	2049				
806 KAR 3:190					
Amended	1910	(See 39 Ky.R.)			
810 KAR 1:018					
Amended	2052				
810 KAR 1:028					
Amended	2061				
810 KAR 1:040	2116				
811 KAR 1:090					
Amended	2068				

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 39

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.)

105 KAR 1:400E	4	5-30-12
502 KAR 10:120E	8	5-31-12

ORDINARY ADMINISTRATIVE REGULATIONS:

16 KAR 2:120			201 KAR 30:125		
Amended	66		Amended	86	
105 KAR 1:400			201 KAR 30:180		
Amended	68		Amended	87	
105 KAR 1:420			201 KAR 30:190		
Amended	72		Amended	90	
105 KAR 1:430			201 KAR 33:035		(See 38 Ky.R.)
Amended	74		As Amended	12	
201 KAR 2:340	172		202 KAR 7:601		(See 38 Ky.R.)
201 KAR 13:040		(See 38 Ky.R.)	AmComments	40	
As Amended	11		301 KAR 1:410		(See 38 Ky.R.)
201 KAR 22:001			As Amended	13	
Amended	76		301 KAR 2:049		(See 38 Ky.R.)
201 KAR 22:040			As Amended	15	
Amended	77		301 KAR 2:081		(See 38 Ky.R.)
201 KAR 22:045			As Amended	18	
Amended	79		301 KAR 2:082		(See 38 Ky.R.)
201 KAR 22:053			As Amended	23	
Amended	81		301 KAR 2:084		(See 38 Ky.R.)
201 KAR 30:030			As Amended	27	
Amended	83		301 KAR 2:300		(See 38 Ky.R.)
			AmComments	53	
			301 KAR 3:022		(See 38 Ky.R.)
			AmComments	56	
			302 KAR 16:091		
			Amended	94	
			302 KAR 27:050		
			Amended	95	
			302 KAR 28:020		
			Amended	100	
			302 KAR 28:050		

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Amended	102				
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Amended	104				
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302 KAR 29:060					
Amended	110				
401 KAR 51:001					
Amended	113				
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Amended	124				
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Amended	144				
501 KAR 6:140					
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As Amended	28				
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As Amended	30				
703 KAR 5:070		(See 38 Ky.R.)			
AmComments	59				
703 KAR 5:140		(See 38 Ky.R.)			
As Amended	31				
703 KAR 5:225		(See 38 Ky.R.)			
AmComments	60				
703 KAR 5:240		(See 38 Ky.R.)			
As Amended	32				
704 KAR 3:340		(See 38 Ky.R.)			
As Amended	34				
704 KAR 5:070		(See 38 Ky.R.)			
As Amended	35				
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As Amended	36				
815 KAR 20:020					
Amended	151				
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Amended	155				
815 KAR 35:060					
Amended	162				
910 KAR 1:190					
Amended	164				

SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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13B	815 KAR 35:060	224.20-100	401 KAR 51:001
16.505 - 16.652	105 KAR 1:430		401 KAR 51:052
48.010	401 KAR 51:001	224.20-110	401 KAR 51:001
58.200	815 KAR 20:191		401 KAR 51:052
61.510 - 61.705	105 KAR 1:430	224.20-120	401 KAR 51:001
61.645	105 KAR:400		401 KAR 51:052
61.701	105 KAR 1:420	227A.010	815 KAR 35:060
61.702	105 KAR 1:420	227A.060	815 KAR 35:060
61.645	105 KAR 1:420	227A.100	815 KAR 35:060
78.510 - 78.852	105 KAR 1:430	247.232	302 KAR 16:091
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150.025	301 KAR 3:022	281A.130	502 KAR 10:120
150.092	301 KAR 2:300	281A.150	502 KAR 10:120
150.170	301 KAR 2:300	281A.160	502 KAR 10:120
150.175	301 KAR 2:300	281A.170	502 KAR 10:120
	301 KAR 3:022	310.005	910 KAR 1:190
150.180	301 KAR 3:022	310.021	910 KAR 1:190
150.183	301 KAR 3:022	310.031	910 KAR 1:190
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150.280	301 KAR 3:022	311A.120	202 KAR 7:601
150.290	301 KAR 3:022	311A.130	202 KAR 7:601
150.450	301 KAR 3:022	315.010	201 KAR 2:340
150.485	301 KAR 3:022	315.020	201 KAR 2:340
150.520	301 KAR 3:022	315.035	201 KAR 2:340
150.525	301 KAR 3:022	315.191	201 KAR 2:340
150.600	301 KAR 3:022	318.010	815 KAR 20:020
150.603	301 KAR 3:022	318.015	815 KAR 20:020
150.620	301 KAR 3:022	318.130	815 KAR 20:020
150.660	301 KAR 3:022	318.150	815 KAR 20:020
150.720	301 KAR 3:022	318.160	815 KAR 20:191
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158.645	703 KAR 5:225	324A.010	201 KAR 30:030
158.6451	703 KAR 5:070	324A.030	201 KAR 30:030
	703 KAR 5:225	324A.035	201 KAR 30:030
158.6453	703 KAR 5:070		201 KAR 30:125
	703 KAR 5:225		201 KAR 30:180
158.6455	703 KAR 5:070	324A.040	201 KAR 30:190
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161.020	16 KAR 2:120		201 KAR 30:190
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161.030	16 KAR 2:120	324A.052	201 KAR 30:030
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217B.515	302 KAR 29:050	12 U.S.C.	201 KAR 30:125
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217B.525	302 KAR 29:050	20 U.S.C.	703 KAR 5:225
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49 U.S.C.
Pub.L.110-245

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401 KAR 51:052
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105 KAR 1:430

TECHNICAL AMENDMENT INDEX

**Regulation
Number**

**Effective
Date**

**Regulation
Number**

**Effective
Date**

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2012 *Kentucky Administrative Regulations Service*. 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 of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

SUBJECT INDEX

AGRICULTURE, DEPARTMENT OF

Agriculture Pest Control
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