

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 36, NUMBER 9  
Monday, March 1, 2010

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The Administrative Regulation Review Subcommittee is tentatively scheduled to meet March 8, 2010 at 1:00 p.m. in room 149 Capitol Annex. See tentative agenda on pages 2277-2278 of this Administrative Register.

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

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

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

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
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**Plumbing**

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- 910 KAR 1:260. Kentucky Family Caregiver Program.

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

**Filing and Publication**

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

**Public Hearing and Public Comment Period**

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

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

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

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

**Review Procedure**

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

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, FEBRUARY 15, 2010

STATEMENT OF EMERGENCY  
703 KAR 5:180E

HB 176, which was passed during the 2010 General Assembly and signed by the Governor on January 15, 2010, requires the Kentucky Board of Education to promulgate administrative regulations relating to the system of interventions and alternative governance options available to schools, districts, and the state for persistently low-achieving schools. Approval by the Kentucky Board of Education of an emergency regulation is necessary to implement the alternative governance options so that the options may be included in the Commonwealth's federal Race to the Top competitive grant application which is due January 19, 2010. This emergency administrative regulation enables the Commonwealth to be eligible for federal Race to the Top funding and is required in order to file a competitive application by the January 19, 2010 deadline. This emergency administrative regulation establishes the elements and procedures for implementing the alternative governance options as established by HB 176 and as outlined in the Race to the Top application. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is being filed with the Regulations Compiler simultaneously with the emergency administrative regulation.

STEVEN BESHEAR, Governor  
TERRY HOLLIDAY, Ph.D., Commissioner

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Board of Education  
Department of Education  
(New Emergency Administrative Regulation)

**703 KAR 5:180E. Intervention system for persistently low-achieving schools.**

RELATES TO: KRS 158.6453, 158.6455, 160.346  
STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346 (1)(a), (9)  
EFFECTIVE: January 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.346 as amended by 2010 Ky. Acts ch. 1 (HB 176) requires the Kentucky Board of Education to promulgate administrative regulations to establish the process and procedures for implementing school interventions and alternate management options for schools, districts, and the state for persistently low-achieving schools. This administrative regulation establishes the process and procedures for implementing those interventions and alternate governance options.

Section 1. Definitions. (1) "Assessment Team" means a group assigned by the Commissioner of Education to conduct the audit required by KRS 160.346 who are selected pursuant to the requirements of 703 KAR 5:120.

(2) "District Leadership Assessment" means the audit that is conducted:

(a) In a district that contains at least one (1) persistently low-achieving school; and

(b) Pursuant to Section 3 of this administrative regulation.

(3) "Needs Assessment" means a formal process to ascertain the strengths and weaknesses of the identified school for the purpose of developing the strategy for the school's turnaround pursuant to KRS 160.346.

(4) "School Leadership Assessment" means the audit that is conducted:

(a) In a persistently low-achieving school; and

(b) Pursuant to Section 2 of this administrative regulation.

Section 2. School Leadership Assessment. (1) Within sixty (60) days of identification as a persistently low-achieving school by the Department of Education, a school leadership assessment shall be performed for a persistently low-achieving school by the assessment team to review the functioning of the school council and also

the specific leadership capacity of the principal.

(2) The assessment shall make a determination of the school council's and principal's ability to lead the intervention in the school based upon the following criteria:

(a) The school leadership's ability to function as an effective learning community and support a climate conducive to performance excellence;

(b) The school leadership's ability to actively engage families and community groups to remove barriers to learning in an effort to meet the intellectual, social, career, and developmental needs of students;

(c) The school leadership's ability to focus its professional learning program primarily on job-embedded professional learning;

(d) The school leadership's ability to make instructional decisions that focus on support for:

1. Teaching and learning;
2. Organizational direction;
3. High performance expectations;
4. Creating a learning culture; and
5. Developing leadership capacity.

(e) The school leadership's ability to organize the school to maximize use of all available resources (both human and fiscal) to support high student and staff performance; and

(f) The school leadership's ability to effectively:

1. Identify the needs of all students;
2. Set specific, measurable goals to address those needs;
3. Implement specific strategies to reach those goals;
4. Provide adequate resources to implement those strategies;

and

5. Frequently monitor implementation of the strategies and make adjustments when strategies are not achieving the desired outcomes.

(3) The school leadership assessment shall utilize the

(a) Standards and Indicators for School Improvement;

(b) The Missing Piece of the Proficiency Puzzle;

(c) Classroom observations;

(d) Stakeholder interviews;

(e) Teacher and principal working conditions survey; and

(f) Portfolio of school records.

(4) The assessment team shall submit a report to the Commissioner that specifically makes recommendations regarding whether the:

(a) School council has the capability and capacity to continue its roles and responsibilities established in KRS 160.345; and

(b) Principal has the capability and capacity to continue his or her roles and responsibilities established in KRS 160.345.

(5) A School Leadership Assessment shall be repeated every two years until the requirements of KRS 160.346(8) are met.

Section 3. District Leadership Assessment. (1) Within sixty (60) days of identification by the Kentucky Department of Education as a district containing a low-achieving school, a district leadership assessment shall be performed by the assessment team to review the functioning of the district administration and its specific leadership capacity related to each identified school.

(2) The assessment team shall submit a report to the commissioner that specifically makes a recommendation regarding whether the district has the capability and capacity to manage the intervention in the identified school(s).

(3) There shall be only one (1) district leadership assessment per district, per year, regardless of the number of persistently low-achieving schools located in the district.

(4) The assessment shall make a determination of the district's ability to manage the intervention in the school based upon the following criteria:

(a) The district leadership's commitment to support each school in its efforts to be effective learning communities and to support climates conducive to performance excellence;

(b) The district leadership's commitment to actively engage families and community groups to remove barriers to learning in an effort to meet the intellectual, social, career, and developmental needs of students;

(c) The district leadership's commitment to provide the resources, time and calendars necessary for each school to build professional learning programs based primarily on job-embedded professional learning;

(d) The district leadership's commitment to support instructional decisions that focus on support for teaching and learning, organizational direction, high performance expectations, creating a learning culture, and developing leadership capacity;

(e) The district leadership's ability to provide the human, fiscal and time resources to allow each school to support high student and staff performance; and

(f) The district leadership's ability to support, through its district improvement plan, school efforts to effectively:

1. Identify the needs of all students;
2. Set specific, measurable goals to address those needs;
3. Implement specific strategies to reach those goals;
4. Provide adequate resources to implement those strategies;

and

5. Frequently monitor implementation of the strategies and make adjustments if strategies are not achieving the desired outcomes.

(5) The district leadership assessment shall utilize the:

- (a) Standards and Indicators for School Improvement;
- (b) Stakeholder interviews; and
- (c) Portfolio of district records.

(6) A district leadership assessment shall be repeated every two years until the requirements of KRS 160.346(8) are met by all schools in the district.

**Section 4. Notification to Schools and Districts of Leadership Assessment Determination.** Within ten (10) days of receipt of the assessment team's recommendations for a specific school, the commissioner shall notify, in writing, the school council, superintendent, and local board of education of the determination regarding:

- (a) School council authority;
- (b) Principal authority; and
- (c) District capacity.

**Section 5. Authority to Select an Intervention Option.** (1) If the school assessment determines that the school council has sufficient capacity to manage the recovery, and the district assessment determines the district has the capacity to support the recovery, the school council shall, within thirty (30) days after the receipt of the commissioner's notification, choose an intervention option and develop an action plan. The council shall present the option and plan to the local board of education, which shall give final approval and provide the necessary support and resources for the recovery effort.

(2) If the school assessment determines that the school council does not have sufficient capacity to manage the recovery and recommends the council's authority be transferred and the district audit finds sufficient district capacity to support the recovery and recommends the council's authority be transferred to the superintendent, the superintendent shall, within thirty (30) days after the receipt of the commissioner's notification, make a recommendation for an intervention option and submit the choice to the local board of education, which shall make the final determination on the intervention option.

(3) If the school assessment determines that the school council has sufficient capacity to manage the recovery, and the district assessment determines the district does not have the capacity to support the recovery, the school council shall, within thirty (30) days after the receipt of the commissioner's notification, choose the intervention option and submit its choice to the local board of education, which shall review the option chosen by the school council and submit the choice to the Commissioner of Education who shall approve the choice.

(4) If the school assessment determines that the school council does not have sufficient capacity to manage the recovery and recommends the council's authority be transferred, and the district assessment finds the district lacks sufficient capacity to support the recovery and recommends the council's authority be transferred to the Commissioner of Education, the Commissioner of Education

shall, within thirty (30) days after receipt of the assessment determination and in consultation with the school council, superintendent and local board of education, determine the intervention option. The identified school and local district shall implement the intervention option with support from the Kentucky Department of Education.

**Section 6. Implementation of Intervention Options.** (1) A school or district engaging in the restaffing option shall:

(a) Replace the principal with a certified principal who has specific training in turning around low-achieving schools and grant the new leader sufficient operational flexibility, including staffing, calendars, time, and budgeting, to fully implement a comprehensive approach in order to substantially improve student achievement outcomes and, if a high school, increase high school graduation rates. The current principal shall be eligible to remain if the school leadership assessment recommends and the commissioner determines the principal has the capacity to lead the recovery.

(b) Replace the school council with individuals appointed by the commissioner. The current school council shall be eligible to remain if the school leadership assessment recommends and the commissioner determines the school council has the capacity to lead the recovery.

(c) Use standards adopted locally by the board of education to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students;

(d) Select new staff to replace those transferred or dismissed;

(e) Implement strategies designed to increase opportunities for career growth, including more flexible working conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school;

(f) Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

(g) Adopt a new governance structure which shall include requiring the school to provide quarterly progress reports to the local board of education and the Kentucky Department of Education;

(h) Use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with the required core academic standards established in 704 KAR 3:303;

(i) Promote the continuous use of student data from formative, interim, and summative assessments to inform and differentiate instruction in order to meet the academic needs of individual students;

(j) Establish schedules and implement strategies that provide increased learning time; and

(k) Provide appropriate social, emotional, and community-oriented services and supports for students.

(2) A school or district engaging in the External Management Option shall:

(a) choose an education management organization (EMO) from a list of approved EMO's established by the Kentucky Board of Education pursuant to Section 6 of this administrative regulation;

(b) Contract with the EMO to provide day to day management of the school; and

(c) Provide quarterly progress reports to the local board of education and the Kentucky Department of Education.

(3) A school or district engaging in the Transformation Option shall:

(a) Replace the principal who led the school prior to commencement of the transformation model with a certified principal who has specific training in turning around low-achieving schools. The current principal shall be eligible to remain if the school leadership assessment recommends and the commissioner determines the principal has the capacity to lead the recovery and has specific training in turning around low-achieving schools;

(b) Replace the school council with individuals appointed by the commissioner. The current school council shall be eligible to remain if the school leadership assessment recommends and the commissioner determines the school council has the capacity to

lead the recovery.

(c) Use rigorous, transparent, and equitable evaluation systems for teachers and principals that:

1. Take into account data on student growth as a significant factor as well as other factors such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduations rates; and

2. Are designed and developed with teacher and the principal's involvement;

(d) Identify and provide additional leadership and compensation opportunities to school leaders, teachers, and other staff who have increased student achievement and high-school graduation rates, if applicable, and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;

(e) Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies which shall include:

1. Subject-specific pedagogy;

2. Instruction that reflects a deeper understanding of the community served by the school; and

3. Differentiated instruction;

(f) Implement strategies designed to increase opportunities for career growth which shall include more flexible working conditions designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation school;

(g) Use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with state academic standards;

(h) Promote the continuous use of student data from formative, interim, and summative assessments to inform and differentiate instruction in order to meet the academic needs of individual students;

(i) Increase learning time and create community-oriented schools that:

1. Establish schedules and implement strategies that provide increased learning time; and

2. Provide ongoing mechanisms for family and community engagement; and

(j) Provide operational flexibility and sustained support that:

1. Gives the school sufficient operational flexibility, including staffing, calendar, time, and budgeting to fully implement a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates; and

2. Ensures that the school participates in ongoing, intensive technical assistance and related support from the local district and the state.

(k) Provide quarterly progress reports to the local board of education and the Kentucky Department of Education.

(4) A school or district engaging in the School Closure Option shall develop a plan for the closure of the school. The plan shall include:

(a) A process for the transfer of students to higher performing schools in the district;

(b) A determination by the local board of education regarding staff assignments and the use of the existing facility and other assets;

(c) A method of monitoring the progress of students in their new school environment; and

(d) A quarterly progress report to the local board of education and the Kentucky Department of Education.

Section 7. Establishment of Approved External Management Organizations. (1) The list of approved EMOs shall be created by the Commissioner of Education following the application process established in subsection (2) of this section.

(2) The commissioner shall issue a request for information to solicit EMO applicants who shall detail the scope of the services they are able to provide to persistently low-achieving school. The request for information shall include the following information to

solicit the EMO's qualifications:

(a) The ability of the EMO to staff the school with dynamic leadership with experience in turning around low-performing schools during the period of the contract;

(b) The ability of the EMO to conduct a needs assessment in the school and develop a plan of action based on the needs assessment;

(c) The ability of the EMO to deliver a comprehensive list of services designed to turnaround the school(s);

(d) The ability of the EMO to screen staff and make decisions on staff assignments;

(e) Its familiarity with Kentucky school laws and administrative regulations;

(f) The experience of the EMO in turning around low-achieving schools;

(g) References from other low-achieving schools or school districts supporting the EMO's ability to turn around low-achieving schools;

(h) Evidence by the EMO that its provision of services includes instructional leadership, professional learning support for teachers and other staff, and services to families and community stakeholders;

(i) Evidence of the EMO's financial stability, any pending or threatened litigation, and liability insurance coverage; and

(j) Other information required pursuant to KRS Chapter 45A.

(3) The Commissioner of Education shall review all responses and determine which applicants meet the criteria in subsection (2) of this section. The qualifying applicants shall be submitted to the Kentucky Board of Education for approval. The list of approved EMOs shall be made public upon approval by the Kentucky Board of Education.

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

(a) "Standards and Indicators for School Improvement", dated March 30, 2000; and

(b) "The Missing Piece of the Proficiency Puzzle", dated June 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

TERRY HOLLIDAY, Ph.D., Commissioner of Education  
JOE BROTHERS, Chairperson

APPROVED BY AGENCY: January 15, 2010

FILED WITH LRC: January 15, 2010 at 2 p.m.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the processes to be followed when a school is identified as persistently low-achieving.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of 160.346 that set forth the processes to be followed when a school is identified as a persistently low-achieving.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for establishing the process and procedures for implementing the intervention options of KRS 160.346 that are available to schools, districts, local boards of education and the commissioner of education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics for establishing the process and procedures for implementing the intervention options of KRS



160.346 that are available to schools, districts, local boards of education and the commissioner of education.

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

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky that have schools identified as persistently low-achieving 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 proposed regulation will impact identified schools and districts by providing the detail necessary to carry out their roles and responsibilities in KRS 160.346.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts must formally choose an intervention option for those options listed in KRS 160.346 and carry out the processes detailed for that option in the regulation. The Commissioner of Education must notify the local district upon receipt of audit committee recommendations as to school and district leadership capacity based on the recommendations in the audits. Kentucky Department of Education staff and contracted individuals will be responsible for completion of the audits described in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the School Districts or the Commissioner of Education other than minimal administrative costs. The audit is paid through the Commonwealth School Improvement Funds. The cost is estimated at \$25,000 per audit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The identified persistently low-achieving schools will have an improved chance of turning around their struggling school by qualifying for significant fiscal and human resources to assist in the school improvement efforts. The commissioner and Kentucky Department of Education staff will have better ability to conduct audits and make recommendations to the school districts regarding the best strategies for improving these schools.

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

(a) Initially: The proposed regulation results in additional costs to the Kentucky Department of Education to conduct the audit process. The audit is paid through the Commonwealth School Improvement Funds. The cost is estimated at \$25,000 per audit.

(b) On a continuing basis: The proposed regulation results in additional costs to the Kentucky Department of Education to conduct the audit process. The audit is paid through the Commonwealth School Improvement Funds. The cost is estimated at \$25,000 per audit.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Commonwealth School Improvement Funds and federal funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts containing low-achieving

schools.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.035, 156.070, 160.346.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. The amount of dollars expended by the State for this administrative regulation depends on the number of schools identified as persistently low-achieving. No additional costs are expected.

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

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

(c) How much will it cost to administer this program for the first year? The proposed regulation, as required by HB 176, will result in audits of low-performing schools and districts. The audit is paid through the Commonwealth School Improvement Funds. The cost is estimated at \$25,000 per audit.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation, as required by HB 176, will result in audits of low-performing schools and districts. The audit is paid through the Commonwealth School Improvement Funds. The cost is estimated at \$25,000 per audit.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 811 KAR 1:070E

KRS 230.260(9) grants the Kentucky Horse Racing Authority the authority to issue and establish the conditions of licensure in the Commonwealth of Kentucky. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the commission (which still refers to the commission in its previously constituted form as the Kentucky Horse Racing "Authority"). KRS 230.260(9) states as follows: "Applications for licenses shall be made in the form, in the manner, and contain information as the authority may, by administrative regulation, require. Fees for all licenses issued under KRS 230.310 shall be prescribed by and paid to the authority." KRS 230.310 provides that each license issued by the commission is effective for the duration of the calendar year in which it is issued. Due to the need for increased enforcement activities, a corresponding increase in licensing fees is warranted. This emergency administrative regulation is necessary to allow the amended fees to apply to all licenses processed and issued for the 2010 calendar year and to remove racing association licensing requirements in order to be consistent with 811 KAR 1:034E. The delays inherent in the ordinary regulation process will not permit licenses to be issued under the new fee structure throughout 2010. Since pari-mutuel horse racing will be conducted in Kentucky throughout the year 2010, it is

imperative that licenses be issued consistently throughout the year under the new fee structure. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. This emergency administrative regulation is substantially different from the regulation filed July 20, 2009 because necessary forms and references have been updated; the requirement for those under the age of eighteen (18) to be enrolled in an educational program has been removed; the criminal background reporting requirements have been changed; a new category of licensee has been specified; new timelines for changes in application information have been identified; and all racing association licensing requirements have been removed in order to comply with 810 KAR 1:034E. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor  
ROBERT D. VANCE, Secretary  
ROBERT M. BECK, Chairman

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Authority  
Division of Licensing  
(Emergency Amendment)**

**811 KAR 1:070E. Licensing Standardbred racing. [Licensing; owners, drivers, trainers, and grooms.]**

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.310, 230.320[KRS 230.310]

STATUTORY AUTHORITY: KRS 30.215(2), 230.260, 230.290(2), 230.310(1).[230.260]

EFFECTIVE: January 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: 230.215(2) grants the Kentucky Horse Racing Authority (the "Authority") the authority to regulate conditions under which standardbred racing shall be conducted in Kentucky. KRS 230.310(1) authorizes the Authority to establish licensing requirements for participation in standardbred racing. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission (the "commission") and transferred all functions of the Authority to the commission. This administrative regulation establishes licensing procedures and requirements for participation in standardbred racing.[To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to set out the requirements of and to provide for the licensing of owners, trainers, drivers, and grooms.]

Section 1. Definitions. (1) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, association, club, committee, organization, lessor, lessee, racing stable, farm name, or other group of persons acting in concert.

(2) "Restricted area" means a portion of association grounds to which access is limited to licensees whose occupation or participation requires access, and to those individuals accompanying a licensee as permitted by the association.

Section 2. Persons Required to be Licensed. (1) A person shall not participate in pari-mutuel racing under the jurisdiction of the commission without a valid license issued by the commission pursuant to KRS 230.310.

(2) An owner, owner/trainer, owner/driver, owner/trainer/driver, trainer, driver, and driver/trainer, shall also have a valid license issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in order to participate in pari-mutuel racing in Kentucky. Categories of licenses issued by the commission shall include the following:

(a) Racing participants and personnel including the following: owner, owner/trainer, owner/driver, owner/trainer/driver, driver/trainer, authorized agent, trainer, assistant trainer, driver, farm manager or agent, veterinarian, veterinary technologist or technician, veterinary assistant, equine health professional, farrier, ven-

dor, mutuel clerk, stable employee, occupational, special event and any employee listed in Section 5 of this administrative regulation.

(b) Racing officials.

(c) Persons employed by the association, or employed by a person or concern contracting with or approved by the association or commission to provide a service or commodity associated with racing or racing patrons, with job duties which require their presence anywhere on association grounds.

(d) Sole proprietors, independent contractors, and all partners of a partnership contracting with or approved by the association or commission to provide a service or commodity on association grounds.

(e) Commission employees with job duties which require their presence anywhere on association grounds; and

(f) Commission members.

(3) Lessors and lessees. Any horse under lease shall race in the name of the lessee and a copy of the lease shall be filed with the clerk of course. A horse shall not race under lease without an eligibility certificate issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in the name of the lessee. Both the lessee and lessor shall be licensed by the commission prior to post.

(4) The commission shall require a person working at a licensed association in the Commonwealth which provides information concerning timed public qualifying races to obtain a valid license issued by the commission. The presiding judge or designee may refuse entry or scratch any horse involving any person who, after requested to obtain a valid license, fails to or is unable to obtain a license.

(5) A person required to be licensed shall submit a completed written application on the form "Licensing Application" (KHRC 25-01 (01/10) or forms pursuant to Section 7 of this administrative regulation, along with the fee required by Section 5 of this administrative regulation. A temporary license may be obtained by an authorized representative of an owner in accordance with Section 17 of this administrative regulation. A conditional license may be issued by the commission or its designee upon submission of a written application.

Section 3. General License Application Requirements for all Applicants. (1) Any person required to be licensed by Section 2 of this administrative regulation and desiring to participate in standardbred racing in the Commonwealth may apply to the commission for a license.

(2) An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force. An application shall be submitted not later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 17 of this administrative regulation. The license application shall be reviewed and the license issued by commission personnel.

(3) Information provided on or with a license application shall be complete and correct. Material misrepresentation by a license applicant or his or her agent shall result in an immediate license suspension, revocation, refusal, or denial, or imposition of a fine by the commission or the Presiding judge.

(4)(a) An applicant for licensing shall be a minimum of sixteen (16) years of age except as provided by paragraph (b) of this subsection. An applicant may be required to submit a certified copy of his or her birth certificate or work permit.

(b) The commission may grant an owner's license to a person less than sixteen (16) years of age if the person's parent or legal guardian is licensed by the commission. An application under this subsection shall be signed by the applicant's parent or legal guardian in the presence of one (1) or more of the judges.

(5) An application from a person or entity consisting of more than one (1) individual person desiring to race horses in the Commonwealth shall, upon request, in addition to designating the person or persons representing the entire ownership of the horses, be accompanied by documents which fully disclose the identity, degree, and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(6) The commission shall provide notice to an applicant that

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the license has been issued, denied, or refused. If all requirements for licensure are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for Specific Licenses. (1) Driver. A person desiring to drive a harness horse at a race meeting licensed by the commission shall obtain a license from the commission and the United States Trotting Association, Standardbred Canada, or an appropriate international harness racing governing agency.

(2) General qualifications for a qualifying-fair (QF) provisional ("P") and full ("A") driver's license. An applicant for a provisional license to drive a harness horse at a race meeting licensed by the commission shall meet the following requirements:

(a) Be at least sixteen (16) years of age for a (QF) license.

(b) Be at least eighteen (18) years of age for a (P) or (A) license.

(c) No applicant who has previously held any type of license shall be subsequently denied a driver's license solely on the basis of age.

(d) Applicants for a provisional license will only be considered for such a license when they have obtained at least twelve (12) satisfactory qualifying drives within a consecutive twelve (12) month period, or fifteen (15) such drives within a two (2) year period and the approval of the Presiding judge and the local district track committee appointed by the U.S.T.A. District Chairman. Amateur races conducted at extended pari-mutuel tracks may be considered as qualifying races for the purpose of meeting this requirement. Drivers holding a qualifying-fair license will not be considered for advancement to a provisional license until he or she has had at least six (6) months driving experience while holding a qualifying-fair license, or have at least three (3) months driving experience while holding a qualifying-fair license and twenty-four (24) satisfactory qualifying drives and the unanimous written consent of the presiding judge and the members of the local district track committee.

(e) At the discretion of the presiding judge, a qualifying driver who has had satisfactory drives at fairs or in amateur races conducted at county fairs may be given credit for not more than three-fourths (3/4) of those drives toward the requisite number of qualifying drives required for advancement to a provisional license.

(f) In determining the applicant's qualifications for a provisional license the Presiding judge shall consider each qualifying drive and shall not deem a drive to be unsatisfactory based solely upon the failure of the horse to go in qualifying time.

(g) Other criteria to be considered by the presiding judge and the district track committee shall include the applicant's ability to harness and equip a horse properly and to establish his or her proficiency in handling the animal; such examination to be administered by the district track committee.

(h) Upon satisfactory recommendations from both the presiding judge and the district track committee the applicant shall be granted a provisional license for a probationary term of fifteen (15) pari-mutuel starts.

(i) Upon satisfactory completion of the probationary pari-mutuel races as described above, and with written approval of the presiding judge, a provisional license shall be issued by this association.

(j) The applicant shall submit satisfactory evidence of an eye examination indicating 20/40 corrected vision in both eyes, or if one (1) eye is blind, at least 20/30 corrected vision in the other eye, and, upon request, shall submit evidence of physical and mental ability or submit to a physical examination.

(3) (Full) A full license valid for all meetings. Drivers holding a provisional license will not be considered for advancement to a full license until he or she has qualified in one (1) of the three (3) following categories:

(a) Had at least one (1) year's driving experience while holding a provisional driver's license plus twenty-five (25) satisfactory pari-mutuel starts in the twelve (12) month period beginning with the issuance of the provisional license.

(b) Or had less than one (1) year's driving experience while holding a provisional driver's license, but with at least fifty (50) satisfactory pari-mutuel starts.

(c) Or made twenty-five (25) satisfactory extended pari-mutuel

starts, or starts at grand circuit meetings in the two (2) year calendar period preceding the date of application provided he or she has at least fifty (50) satisfactory fair starts.

(d) Notwithstanding the foregoing, the applicant must have at least ten (10) wins at extended pari-mutuel meetings while holding a provisional license and meet the provisions of Section 9 of this administrative regulation or must have at least five (5) wins at extended pari-mutuel meetings while holding a provisional license and obtain the unanimous consent of the presiding judge and the members of the local district track committee.

(4) Trainer. An applicant for a trainer license shall show proof that he or she is duly licensed as a trainer by the United States Trotting Association and shall meet the requirements set forth in 811 KAR 1:085 and 811 KAR 1:090, Sections 1, 2, 3, 5, and 14. If any licensed trainer is absent from a racing meet for more than six (6) days, the trainer shall appoint and have properly licensed a new trainer of record.

(5) Veterinary Personnel.

(a) An application from a person desiring to treat, prescribe for, or attend to any horse on association grounds as a practicing veterinarian shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.

(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician shall be accompanied by evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth of Kentucky, and "Veterinarian Authorization Form" (KHRC 25-04 (01/10)) signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS Chapter 321.

(c) An application from a veterinary assistant shall be accompanied by a "Veterinarian Authorization Form" (KHRC 25-04 (01/10)) signed by a licensed veterinarian certifying that the applicant works for him or her as required by KRS 321.443.

(d) Equine health professionals. An application from an equine health professional not defined by KRS Chapter 321 shall be accompanied by a "Veterinarian Authorization Form" (KHRC 25-04 (01/10)) signed by a licensed veterinarian attesting to the skill and integrity of the applicant by the licensed veterinarian and the chief state veterinarian.

(6) Farriers. An application from a person not previously licensed in the capacity of farrier shall submit a diploma or other document signifying successful completion of a farrier course or examination recognized by the American Farrier's Association, or submit a letter of recommendation from a licensed farrier.

(7) Stable employee, occupational employee, vendor employee. In order to obtain a stable employee, occupational employee, or vendor employee license, the license applicant's employer shall sign the employee's license application verifying employment and workers' compensation coverage.

(8) Special event licensees. A special event license shall be issued to employees who are employed by an association only for the duration of a special event. A special event license shall be valid for the days of the event only, and the duration of the license shall not exceed three (3) calendar days.

Section 5. Licensing Fees. (1) The following annual fees shall accompany the application and shall not be refundable:

(a) \$125 - owner, trainer, driver, owner/trainer/driver, owner/driver, driver/trainer, owner/trainer, assistant trainer, veterinarian, claiming license, and temporary license;

(b) \$100 - racing officials, assistant racing secretary, director of racing, placing judge, farrier, testing laboratory employee, racing department employee, valet, paddock blacksmith, and outrider;

(c) Fifty (50) dollars - veterinary assistant, veterinary technician, veterinary technologist, equine health professional, vendor, mutuel employee, farm manager, and farm agent;

(d) Twenty-five (25) dollars - association employee, occupational employee, vendor employee, any person employed by a concern contracting with the association to provide a service or commodity and which employment requires that person's presence on association grounds during a race meeting, film patrol crew member, television production employee, member of an associa-

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tion security department (including a policeman, watchman, fireman, ambulance driver, or emergency medical technician), track superintendent, member of maintenance department staff, admissions department manager and employee, association concessions manager and employee, parking manager and employee, and all other persons employed by the association;

(e) Ten (10) dollars – special event mutuel, special event occupational, and special event vendor employee, including stable foreman, exercise personnel, hotwalker, groom, watchman, and pony person.

(f) Five (5) dollars – stable employee.

(2) A replacement fee for a duplicate license shall be ten (10) dollars, except that this fee shall be waived for the first duplicate license issued during any calendar year.

Section 6. Fingerprinting, if requested. A license applicant may be required to furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license. If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previous fingerprints or require new fingerprints. The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

Section 7. Multi-state/National Licenses. In lieu of a license application as required by this administrative regulation, an applicant may submit an ARCI multi-state license and information form or the national racing compact license and information form. It shall be accepted if the commission determines that it ensures compliance with all licensing requirements in this administrative regulation and KRS Chapter 230.

Section 8. Consent to investigate by license applicants and licensees. After an applicant files a license application, the commission may:

(1) Investigate the criminal background, employment history, and racing history record of the applicant;

(2) Engage in research and interviews to determine the applicant's character and qualifications; and

(3) Verify information provided by the applicant.

Section 9. Consent to search and seizure by licensees. (1) By acceptance of a license, a licensee consents to search and inspection by the commission or its agents at any location described in KRS 230.260(2), including any training facility, and to the seizure of any prohibited medication, controlled substance, paraphernalia, or device in violation of state or federal law or Title 810 or 811 of the Kentucky Administrative Regulations.

(2)(a) A licensee shall consent to a reasonable search of the property in his or her possession by the commission or its representatives, including tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort at any location under the jurisdiction of the commission.

(b) A licensee shall consent to the seizure of any object which may be evidence indicating a violation of an administrative regulation.

(c) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly to the best of his or her knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(d) A licensee shall consent to out-of-competition testing.

Section 10. Employer responsibility. (1) An employer shall not employ an unlicensed person for a position that requires a license under KRS 230.300 or 230.310 or this administrative regulation. If an employer does so, the employer may be subjected to license suspension, denial, or revocation under KRS Chapter 230, Title 810 or 811 of the Kentucky Administrative Regulations.

(2) Every employer shall be responsible for ensuring compliance with all applicable employment laws.

(3) The license application of an employee shall be signed by the employer.

(4) A licensed employer shall carry workers' compensation

insurance covering his or her employees as required by KRS Chapter 342.

Section 11. Financial Responsibility. A licensee shall maintain financial responsibility during the period for which the license is issued. A licensee's failure to satisfy a final judgment rendered against him or her by a Kentucky court, or a domesticated judgment from another jurisdiction, for goods, supplies, services, or fees used in the course of his or her licensed occupation, constitutes a failure to meet the financial responsibility requirements of KRS 230.310. If the licensee fails to show just cause for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked until the licensee provides written documentation of satisfaction of the judgment. An applicant for a license may be required to submit evidence of financial responsibility to the commission if such a judgment has been rendered against him or her.

Section 12. Voluntary Withdrawal of License Application. A license applicant may with the approval of the license review committee voluntarily withdraw his or her license application from the license review process. If the applicant chooses to voluntarily withdraw his or her application, then this withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice. The commission shall issue a notice of the withdrawal, and the notice shall be communicated to the Association of Racing Commissioners International.

Section 13. License Review Committee. (1) The Executive Director or Presiding judge may refer a license application to the License Review Committee in lieu of denying.

(2) The License Review Committee shall be composed of the Executive Director or designee, the Director of Licensing or designee, the presiding judge or designee, and at least one other commission member or commission staff member as designated by the Executive Director. At least three members of the committee shall participate in any license review committee meeting.

(3) If a referral to the committee is made, then a license shall not be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the committee to appear personally. If the committee is unable to make a favorable ruling on the license application, then the committee may give the license applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section 12 of this administrative regulation. If the license applicant does not wish to voluntarily withdraw his or her application, then the committee shall deny the application.

(4) The denial of the application may be appealed in accordance with KRS Chapter 13B.

(5) In the alternative, the commission, the License Review Committee, or the Executive Director may refer the case directly to the commission without denial or approval of the application.

Section 14. License denial, revocation, or suspension. (1) The commission or its designee may refuse or deny a license application; commission or presiding judge may suspend or revoke a license or otherwise penalize a licensee in accordance with KRS 230.320(1), or other person participating in Kentucky horse racing, for any of the following reasons:

(a) The public interest for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering may be adversely affected if the license is issued;

(b) The licensee or applicant has any felony or misdemeanor criminal conviction from any jurisdiction, including having entered into any form of diversionary program, within fifteen (15) years preceding the date of submission of a license application;

(c) The licensee or applicant has pending criminal charges or is criminally charged during the license period in any jurisdiction.

(d) The licensee or applicant has had a license issued by the legally constituted racing or gaming commission of a state, province, or country denied, suspended, or revoked.

(e) The licensee or applicant has had a license issued by the Commonwealth of Kentucky revoked, suspended, or denied;

(f) The licensee or applicant has applied and received a license

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at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;

(g) The licensee or applicant has made a material misrepresentation, falsification, or omission of information in an application for a license;

(h) The licensee or applicant has been ejected, ruled off, or excluded from racing association grounds in the Commonwealth of Kentucky or a racetrack in any jurisdiction;

(i) The licensee or applicant has violated or attempted to violate a statute, administrative regulation, or similar rule respecting horse racing in any jurisdiction;

(j) The licensee or applicant has perpetrated or attempted to perpetrate a fraud or misrepresentation in connection with the racing or breeding of a horse or pari-mutuel wagering;

(k) The licensee or applicant has caused, attempted to cause, or participated in any way in an attempt to cause the prearrangement of a race result, or has failed to report knowledge of this kind of activity immediately to the judges;

(l) The licensee or applicant has demonstrated financial irresponsibility by accumulating unpaid obligations, defaulting on obligations, or issuing drafts or checks that are dishonored or not paid;

(m) The licensee or applicant has failed to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced;

(n) The licensee or applicant has misrepresented or attempted to misrepresent facts in connection with the sale of a horse or other matter pertaining to racing or registration of a horse;

(o) The licensee or applicant has offered, promised, given, accepted, or solicited a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failed to report conduct of this nature immediately to the judges;

(p) The licensee or applicant has abandoned, mistreated, abused, neglected, or engaged in an act of cruelty to a horse;

(q) The licensee or applicant has engaged in conduct that is against the best interest of horse racing, or compromises the integrity of operations at a track, training facility, or satellite facility;

(r) The licensee or applicant has entered, or aided and abetted the entry, of a horse ineligible or unqualified for the race entered;

(s) The licensee or applicant has possessed on association grounds, without written permission from the commission or the presiding judge:

1. A firearm; or

2. Any other appliance or device, other than an ordinary whip, which could be used to alter the speed of a horse in a race or workout.

(t) The licensee or applicant has violated any of the alcohol or substance abuse provisions outlined in KRS Chapter 230 or 811 KAR 1:225;

(u) The licensee or applicant has failed to comply with a written order or ruling of the commission or the judges pertaining to a racing matter or investigation;

(v) The licensee or applicant has failed to answer truthfully questions asked by the commission or its representatives pertaining to a racing matter;

(w) The licensee or applicant has failed to return to an association any purse money, trophies, or awards paid in error or ordered redistributed by the commission;

(x) The licensee or applicant has participated in or engaged any conduct of a disorderly nature on association grounds which includes, but is not limited to:

1. Failure to obey the judges' or other officials' orders that are expressly authorized by the administrative regulations of the commission;

2. Failure to drive when programmed unless excused by the judges;

3. Fighting;

4. Assaults;

5. Offensive and profane language;

6. Smoking on the track in colors during actual racing hours;

7. Warming up a horse prior to racing without colors;

8. Disturbing the peace;

(y) The licensee or applicant has used profane, abusive, or insulting language to or interfered or obstructed a commission member, employee, agent, or any racing official, while these per-

sons are in the course of performing their duties;

(z) The licensee or applicant is unqualified to perform the duties for which the license is issued;

(aa) The licensee or applicant has discontinued or is ineligible for the activity for which the license is to be issued, or for which a previous or existing license was issued;

(bb) The licensee or applicant has made a material misrepresentation in the process of registering, nominating, entering, or racing a horse as Kentucky owned, Kentucky bred, or Kentucky sired;

(cc) The licensee or applicant has failed to pay a required fee or fine, or has otherwise failed to comply with Kentucky statutes or administrative regulations;

(dd) The licensee or applicant failed to comply with a written directive or ruling of the commission or the presiding judge;

(ee) The licensee or applicant has failed to advise the commission of changes in the application information as required by Section 16 of this administrative regulation;

(ff) The licensee or applicant has failed to comply with the temporary license requirements of Section 17 of this administrative regulation;

(gg) The licensee or applicant has violated the photo identification badge requirements of Section 20 of this administrative regulation;

(hh) The licensee or applicant has aided or abetted any person in violation of any statute or administrative regulation pertaining to horse racing;

(ii) The licensee or applicant has hired an unlicensed person required by KRS 230.300 or 230.310 or this administrative regulations to be licensed;

(jj) The licensee or applicant, being a person other than a licensed veterinarian, has possessed on association grounds:

1. A hypodermic needle, hypodermic syringe, or other device which could be used to administer any substance to a horse, except as permitted by 811 KAR 1:090; or

2. A medication, stimulant, sedative, depressant, local anesthetic, or any other foreign substance prohibited by a statute or administrative regulation of the commission; or

(kk) The licensee or applicant has manufactured, attempted to manufacture, or possessed a false license photo identification badge;

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the presiding judge and to the AR-CI by the division of licensing, whereby other racing jurisdictions shall be advised of the license suspension, revocation, or denial.

(3) A license applicant may appeal the suspension, revocation, or denial in accordance with KRS 230.320 and KRS Chapter 13B.

Section 15. Reciprocity. If the license of a person is denied, suspended, or revoked, or if a person is ruled off, excluded, or ejected from a racetrack in Kentucky or in another jurisdiction, the commission may require reinstatement at that track before a license is granted by the commission.

Section 16. Changes in Application Information. (1) The licensee or applicant shall report changes in any information required for licensing in writing to the commission;

(2) Any change in information required for licensing shall be submitted in writing upon the "Change in License Information Form" (KHRC 25-03 (01/10)), signed by the licensee, and filed at the commission central office, within thirty (30) days of the change, unless it is information listed in Subsection 3 for this section.

(3) The licensee shall report changes in information in writing within seventy-two (72) hours of the occurrence for these items:

(a) Criminal charges;

(b) Criminal convictions;

(c) License denials and license suspensions of ten (10) days or more;

(d) License revocations or fines of \$500 or more in other jurisdictions;

(e) Racing related disciplinary charges pending in other jurisdictions; and

(f) Withdrawal, with or without prejudice, of a license application by the licensee in any jurisdiction.

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Section 17. Temporary licenses. (1) Only an owner is eligible for a temporary license. A horse in a trainer's care shall not start in a race unless the owner has a current license or has an application for a temporary license. "Application for a Temporary Owner's License" (KHRC 25-02 (01/10)), on file with the commission. A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains. The commission may refuse the license if the applicant fails to supply a name, social security number, and mailing address for a temporary license. A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the thirtieth day pending completion of all licensing procedures. Upon expiration of the thirty (30) day temporary license, the owner's license shall be suspended or the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures. Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year. If temporary license expires prior to completion of all owner license procedures, the applicant shall pay an additional licensing fee.

(2) An owner shall not be eligible to be issued more than one (1) temporary license in any calendar year.

(3) A temporary license shall not be valid for claiming.

Section 18. Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except when prohibited by Section 19 of this administrative regulation due to a potential conflict of interest.

Section 19. Conflict of Interest. (1) The License Review Committee and the Presiding judge or designees shall deny or refuse to process the license of a person, and the commission or the presiding judge shall revoke or suspend a licensee who is determined to have a conflict of interest. This conflict of interest may exist when a spouse, immediate family member, or other persons in a similar relationship to a licensee or applicant holds a license which the License Review Committee or presiding judge finds to be a conflict of interest with the licensee's or applicant's. A finding of a conflict of interest may be appealed to the commission pursuant to KRS 230.320 and KRS Chapter 13B.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official during that race.

(3) A person who is licensed as an owner or trainer or has any financial interest in a horse entered in that race shall not participate in that race as any of the following:

(a) Racing official;

(b) Practicing veterinarian for any horse other than owner's;

(c) Veterinary technician, veterinary technologist, veterinarian assistant, or equine professional to any horse other than the owner's;

(d) Officer or managing employee;

(e) Track maintenance supervisor or employee;

(f) Outrider;

(g) Race track security employee;

(h) Farrier;

(i) Racing chemist; and

(j) Testing laboratory employee.

(4) More than one license to participate in racing may be granted to a person except if prohibited by this administrative regulation due to a potential conflict of interest.

Section 20. License Photo Identification Badges. (1) If a licensee desires access to restricted areas of a racing association grounds, then the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge). These photo identification badges are available to licensees upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.

(2) A person shall present an appropriate license to enter a restricted area.

(3) The judges or racing association may require visible display of a license in a restricted area.

(4) A license may only be used by the person to whom it is issued, and a licensee shall not allow another person to use his or

her badge for any purpose.

(5) Licensee credentials (photo identification badges) are the property of the commission and shall be surrendered to the Executive Director, the judges, the commission Director of enforcement or director of licensing, or designee, upon request.

Section 21. Duties of Licensees. (1) A licensee shall be knowledgeable of this administrative regulation and, by acceptance of the license, agrees to abide by this administrative regulation.

(2) A licensee shall report to track security or judge any knowledge the licensee has that a violation of these rules has occurred or may occur.

(3) A licensee shall abide by all rulings and decisions of the judges and the commission, and all decisions by the judges and the commission shall remain in force unless reversed or modified by the commission or a court of competent jurisdiction upon proper appeal pursuant to KRS 230.330.

(4) Rulings and decisions of the judges may be appealed to the commission, except those made by the judges as to:

(a) Findings of fact as occurred during and incident to the running of a race; and

(b) A determination of the extent of disqualification of horses in a race for fouls committed during the race.

(5) A licensee shall cooperate fully with all investigations and inquiries made by commission representatives or association security, or both.

(6) A licensee shall obey instructions from commission representatives or association security, or both.

(7) All licensees shall immediately report to the commission any known or suspected irregularities, any violation of the administrative regulations rules of the commission, or any wrongdoings by any person and cooperate in any subsequent investigation.

Section 22. Common Law Rights of Associations. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Licensing Application" (KHRC 25-01 (01/10));

(b) "Application for a Temporary Owner's License" (KHRC 25-02 (01/10));

(c) "Change in Application Information Form" (KHRC 25-03 (01/10));

(d) "Veterinarian Authorization Form" (KHRC 25-04 (01/10)); and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available at [www.khrc.gov](http://www.khrc.gov). [Owners. Every person owning a horse that is entered at a race meeting licensed by the authority shall be required to obtain a license from the authority and the United States Trotting Association. The application shall be on forms provided by the authority and shall be filed at any authority office. The license shall be presented to the clerk of the course at the time the horse is entered in a race.

Section 2. Leased Horses. Any horse under lease shall race in the name of the lessee and a copy of such lease must be filed with the Kentucky Horse Racing Authority. No horse shall race under lease without an eligibility certificate issued by the United States Trotting Association in the name of the lessee and the lessee is a current licensee of the authority in good standing. Persons violating this administrative regulation shall be fined, suspended or expelled.

Section 3. Driver's Application for License. Every person desiring to drive a harness horse at a race meeting licensed by the authority shall be required to obtain a license from the authority and the United States Trotting Association. Such application shall be on forms provided by the authority. Applications may be filed at any authority office. Such license shall be presented to the clerk of course before driving. Pending a valid license by the United States Trotting Association, the authority may, at its discretion, issue a provisional or full driver's license to those who qualify as set by this

administrative regulation.

Section 4. Qualification for a Provisional and Full Driver's License. (1) Every applicant for a provisional license to drive a harness horse at a race meeting licensed by the commission shall meet the following requirements:

(a) Not have been convicted of a crime described in KRS 335B.010(4) or which otherwise directly relates to the qualifications of driving a harness horse at a race meeting.

(b) Submit evidence of his ability to drive in a race and, if he is a new applicant, this shall include the equivalent of one (1) year's training experience. Any new applicant for a driver's license shall be approved by the presiding judge and a committee of three (3) "A" class drivers appointed by the United States Trotting Association District Six (6) Chairman.

(c) Be at least eighteen (18) years of age.

(d) Furnish a completed application form.

(e) Submit satisfactory evidence of an eye examination indicating 20/40 corrected vision in both eyes, or if one (1) eye blind, at least 20/30 corrected vision in the other eye; and, when requested, submit evidence of physical and mental ability and/or submit to a physical examination.

(f) No person sixty (60) years of age or older who has never held any type of driver's license previously shall be issued a driver's license.

(g) When requested, submit a written examination at a designated time and place to determine his qualifications to drive and his knowledge of racing and the rules. In addition, any driver who presently holds a license and wishes to obtain a license in a higher category, who has not previously submitted to such written test, shall be required to take a written test before becoming eligible to obtain a license in a higher category.

(h) No applicant who has previously held any type of driver's license shall be subsequently denied a driver's license solely on the basis of age.

(2) A full license will be granted to an applicant who qualifies for a provisional license and has acquired:

(a) At least one (1) year's driving experience while holding a provisional license from the United States Trotting Association.

(b) Twenty-five (25) satisfactory starts in the calendar year preceding the date of his application at an extended pari-mutuel meeting.

(3) In the event any person is involved in an accident on the track, the authority may order the person to submit to a physical examination and the examination shall be completed within thirty (30) days from the request or his license may be suspended until compliance.

(4) All penalties imposed on any driver may be recorded on the reverse side of his authority driver's license by the presiding judge.

(5) The Kentucky Racing Authority reserves the right to require any driver to take a physical examination at any time.

Section 5. Trainers' Application for License. An applicant for a trainer's license shall show proof that he is duly licensed as a trainer by the United States Trotting Association and shall meet the requirements set forth in 811 KAR 1:085, Sections 1, 2, 3, 5, and 14, and 811 KAR 1:090, Section 6.

Section 6. Absence of Trainers. When any licensed trainer is absent from a racing meet for more than six (6) days, it shall be the duty of the trainer to appoint and have properly licensed a new trainer of record.

Section 7. Grooms' Application for License. An applicant for a license as a groom must satisfy the authority that he possesses the necessary qualifications, both mental and physical to perform the duties required. Elements to be considered, among others, shall be character, reputation, temperament, experience, knowledge of the rules of racing and of the duties of a groom. No license shall be issued to applicants under sixteen (16) years of age.

Section 8. (1) The holder of a license issued by the United States Trotting Association for the calendar year shall be presumed to be qualified to receive a license.

(2) A holder of a current qualifying license issued by the United States Trotting Association may be allowed to drive a horse that is already qualified, however, if the horse does not meet the standards of the meeting, the horse shall be placed on the stewards list. If a race is held solely for qualifying drivers, the race may not be

charted. A race solely for qualifying drivers must have more than four (4) starters.

Section 9. The following shall constitute disorderly conduct and be reason for a fine, suspension, or revocation of an owner's, driver's, trainer's, or groom's license:

(1) Failure to obey the judges' or other officials' orders that are expressly authorized by the administrative regulations of this authority.

(2) Failure to drive when programmed unless excused by the judges.

(3) Drinking intoxicating beverages within four (4) hours of the first post time of the programs on which he is carded to drive.

(4) Fighting.

(5) Assaults.

(6) Offensive and profane language.

(7) Smoking on the track in colors during actual racing hours.

(8) Warming up a horse prior to racing without colors.

(9) Disturbing the peace.

(10) Refusing to take a breath analyzer test when directed by the presiding judge, deputy commissioner (supervisor of racing), or assistant deputy commissioner (assistant supervisor of racing).

Section 10. Colors and Helmet. Drivers must wear distinguishing colors, and clean white pants, and shall not be allowed to start in a race or other public performance unless in the opinion of the judges they are properly dressed. From the time it becomes necessary to wear colors before the races, no one will be permitted to jog, train, warm up or drive a horse during a race meet licensed by the Kentucky Horse Racing Authority unless he or she is wearing a protective safety helmet, with the chin strap fastened and in place, that meets the standards and requirements as set forth in the Snell Memorial Foundation's 1984 Standard For Protective Headgear For Use In Harness Racing. This standard is hereby incorporated by reference. Any equestrian helmet bearing the Snell label shall be deemed to have met the performance requirements as set forth in the standards.

Section 11. Misconduct in Colors. Any driver wearing colors who shall appear at a betting window or at a bar or in a restaurant dispensing alcoholic beverages shall be fined not to exceed \$100 for each such offense.

Section 12. Driver Change. No driver can, without good and sufficient reasons, decline to be substituted by the judges. Any driver who refuses to be so substituted may be fined or suspended, or both by order of the judges.

Section 13. Amateur Definition. An amateur driver is one who has never accepted any valuable consideration by way of or in lieu of compensation for his services as a trainer or driver during the past ten (10) years.

Section 14. Registered Colors. Drivers holding an "A" license or drivers with a "V" license who formerly held an "A" license, shall register their colors with the United States Trotting Association. Registered stables or corporations may register their racing colors with the United States Trotting Association.

Section 15. Incorporation by Reference. (1) The "Application for Owner's License, June 1993", "Driver's Application for License, June 1993", "Provisional and Full Driver's Application for License, June 1993", are incorporated by reference.

(2) Application forms may be inspected, copied, or obtained at the Kentucky Horse Racing Authority, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.]

ROBERT M. BECK, Chairman

ROBERT D. VANCE, Security

APPROVED BY AGENCY: January 14, 2010

FILED WITH LRC: January 15, 2010 at 2 p.m.

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

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(a) What this administrative regulation does: This administrative regulation, 811 KAR 1:070, governs the licensing of individual participants in standardbred horse racing in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The regulation is necessary to provide licensing standards for standardbred racing, and to provide a licensing fee schedule. Revenues generated by licensing fees provide operational funds for the Kentucky Horse Racing Commission ("KHRC").

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs standardbred licensing pursuant to KRS 230.215(2) and KRS 230.260(3) which authorize the KHRC to promulgate administrative regulations governing the conditions of horse racing. In addition, KRS 230.290 and KRS 230.310 provide statutory criteria for the licensing of participants in Kentucky racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes the conditions upon which licenses may be granted by the KHRC.

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

(a) How the amendment will change this existing administrative regulation: This amendment contains several substantive changes which update the licensing standards for standardbred racing and increase the licensing fee in some categories of licenses, to insure that there is adequate funding for operational costs of the KHRC. In addition, it also amends the language of the regulation to conform to KRS Chapter 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to update the licensing standards for standardbred racing, and to increase the licensing fees to provide adequate funding for the KHRC.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation sets forth the rules regarding standardbred licenses.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will provide further guidance and clarity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2,000 standardbred licenses are issued in a calendar year to a variety of licensees, including owners, trainers, assistant trainers, drivers, stable employees, veterinary personnel, racing officials, farriers, vendors, agents, mutual clerks, agents, and employees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: All of the above entities will be impacted by updates in licensing standards and procedures. The increase in licensing fees from \$100 to \$125 will apply to owners, trainers, assistant trainers, drivers, and veterinarians. This increase in fees will impact approximately 1,500 license applicants in these categories.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All will file an updated application in the 2010 licensing year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to comply with the updates to the licensing regulations. There will be a \$25 increase in licensing fees to owners, trainers, assistant trainers, drivers, and veterinarians.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All participants will benefit from better notice to them of the qualifications to obtain a license, and of the licensing procedures.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: It is estimated that there will be no new costs to the agency associated with these amendments.

(a) Initially: N/A

(b) On a continuing basis: N/A

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation will not require an increase in fees, except as described in (4).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Increase in fees as described in (4).

(9) TIERING: Tiering does not apply because the updates in the licensing regulation shall apply to all participants in horse racing equally.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), KRS 230.260(3), KRS 230.290, and KRS 230.310.

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. Will increase funding for standardbred racing by approximately \$37,000.00 per year.

(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? See above.

(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? See above.

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

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

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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services  
(As Amended at ARRS, February 8, 2010)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.740, 164.744(2), 164.753(3), 164.769  
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3),  
164.769(5), (6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Critical shortage area" is defined in KRS 164.769(2)(a).

(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.

(4) "Eligible program of study" is defined in KRS 164.769(2)(b).

(5) "Expected family contribution" is defined in KRS 164.769(2)(c).

(6) "Kentucky Teacher Internship Program" or "KTIP" means the one (1) year of supervision, assistance, and assessment that is:

(a) Required by KRS 161.030 and established in 16 KAR 7:010; and

(b) Also referenced as the beginning teacher internship.

(7) "Participating institution" is defined in KRS 164.769(2)(d).

(8) "Professional Teaching Certificate" means the document issued to:

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

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessments.

(9) "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, or secondary instruction.

(10) "Qualified teaching service" is defined in KRS 164.769(2)(e).

(11) "Semester" is defined in KRS 164.769(2)(f).

(12) "Summer term" is defined in KRS 164.769(2)(g).

(13) "Teaching" means performing continuous classroom instruction pursuant to a Professional Teaching Certificate or during participation in the Kentucky Teacher Internship Program (KTIP), and shall not include substitute teaching.

Section 2. Eligibility of Renewal Applicants and Selection Process. (1) Applicants shall complete the Teacher Scholarship Application set forth in 11 KAR 4:080, Section 1(3), according to its instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant's financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday, preceding

the academic year for which the award is requested.

(2) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 164.769 shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(3) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:

(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.

(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.

(c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher scholarship award shall be calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.

(2) The maximum teacher scholarship award for a student classified as a junior, senior, post baccalaureate, or graduate shall be \$1,250 for a summer session, \$2,500 for a semester, and \$5,000 for an academic year (exclusive of a summer session).

(3) The maximum teacher scholarship award for a student classified as a freshman or sophomore shall be \$325 for a summer session, \$625 for a semester, and \$1,250 for an academic year (exclusive of a summer session).

(4) The maximum award to an eligible student enrolled less than full time in the last semester or summer term during which a baccalaureate, post baccalaureate or master's degree will be completed shall be:

(a) \$210 per credit hour if the student is enrolled during a regular semester; or

(b) \$105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. (1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.

(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.

(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the

authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.

(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 12 of this administrative regulation.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2)(a) If a recipient has received loans or scholarships from more than one (1) program that is administered by the authority, and requires a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently.

(b) Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.

(c) If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

**(3) A recipient shall receive cancellation under this program for each semester during which service is provided as specified in KRS 164.769(6)(c) if the recipient:**

**(a) Has completed the program of study;**

**(b) Is providing qualified teaching service; and**

**(c) Is prohibited from participating in KTIP solely as a result of state budget limitations.** ~~Recipients who have completed their program of study and are providing qualified teaching service, but who are prohibited from participating in KTIP solely as a result of state budget limitations, shall receive cancellation under this program for each semester during which service is provided as specified in KRS 164.769(6)(c).1~~

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient failing to complete the eligible program of study, attain certification after completion of the eligible program of study, or[te] commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.

(3) If a repayment obligation subsequently becomes eligible for service credit cancellation as a result of the recipient's provision of teaching service, refund of payments previously made shall not be given to the recipient.

Section 7. Default. (1) Upon default on a repayment obligation under this program, the recipient's account shall be transferred to the appropriate agency of the Commonwealth of Kentucky for collections and shall be subject to the collection charges and fees assessed by that agency.

(2) A recipient whose repayment obligation has defaulted and who subsequently begins either providing qualified teaching service in the Commonwealth of Kentucky or participating in KTIP shall be removed from default status.

Section 8. Disability Discharge. A conditional or permanent discharge of the repayment obligation required by this program shall be granted by the Authority upon submission by the recipient of the documentation required by this section.

(1) Conditional discharge. A conditional discharge shall be granted for a maximum two (2) year period, subject to annual review by the Authority, upon the submission of one (1) of the following as proof of the recipient's qualifying disability;

(a) A finding of permanent disability by the Social Security Administration; or

(b) A completed Teacher Scholarship Program Application for Discharge, which shall include a certification by the recipient's treating physician that the recipient is unable to work or earn money and that the condition is expected to persist indefinitely.

(2) Permanent discharge. At the expiration of the two (2) year Conditional Discharge period specified in subsection (1) of this section, the Authority shall grant a permanent discharge to a recipient under this program upon the submission by the recipient of current documentation verifying that the qualifying disability exists at the time the permanent discharge is granted.

Section 9. Notifications. A recipient shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 10. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 11. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least ~~three (3)~~ **three (3)** years after the student ceases to be enrolled at the institution.

Section 12. Refunds. (1) If a student fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the

program on or after the student's first day of class of the period of enrollment or changes enrollment status, the Authority may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently-enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP grant;

(b) KTG;

(c) Teacher scholarship;

(d) Kentucky Educational Excellence Scholarship;

(e) National Guard tuition assistance; and

(f) Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund and repayment of the teacher scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any teacher scholarship disbursement for that award period shall be subject to full refund.

(c) If a teacher scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full teacher scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. refund if the teacher scholarship has already been disbursed.

(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security number;

2. The reason for the refund;

3. The date of enrollment status change;

4. The semester and year; and

5. The calculation used for determining the refund.

Section 13. Information Dissemination and Recruitment. The authority shall disseminate information through high school princi-

pals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively recruit students from minority population groups for participation in this program.

Section 14. Incorporation by Reference. (1) "Teacher Scholarship Program Application for Discharge", November 2007, is incorporated by reference.

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

CHARLEY SIMPSON, Chair

APPROVED BY AGENCY: November 19, 2009

FILED WITH LRC: December 11, 2009 at 10 a.m.

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### COUNCIL ON POSTSECONDARY EDUCATION (As Amended at ARRS, February 8, 2010)

#### 13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes.

RELATES TO: KRS Chapter 13B, 164.020, 164.030, 164A.330(6)

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the Council on Postsecondary Education to determine tuition and approve the minimum qualifications for admission to a state[~~state-supported~~] postsecondary education institution and authorizes the Council to set different tuition amounts for residents of Kentucky and for nonresidents. This administrative regulation establishes the procedure and guidelines for determining the residency status of a student who is seeking admission to, or who is enrolled at, a state-supported postsecondary education institution.

Section 1. Definitions. (1) "Academic term" means a division of the school year during which a course of studies is offered, and includes a semester, quarter, or single consolidated summer term as defined by the institution.

(2) "Continuous enrollment" means enrollment in a state-supported postsecondary education institution at the same degree level for consecutive terms, excluding summer term, since the beginning of the period for which continuous enrollment is claimed unless a sequence of continuous enrollment is broken due to extenuating circumstances beyond the student's control, including serious personal illness or injury, or illness or death of a parent.

(3) "Degree level" means enrollment in a course or program that[which] could result in the award of a:

(a) Certificate, diploma, or other program award at an institution;

(b) Baccalaureate degree or lower, including enrollment in a course by a nondegree-seeking postbaccalaureate student;

(c) Graduate degree or graduate certification other than a first-professional degree in law, medicine, dentistry, or "Pharm. D"; or

(d) Professional degree in law, medicine, dentistry, or "Pharm. D".

~~(4) "Demonstration of Kentucky domicile and residency" means the presentation of documented information and evidence sufficient to prove by a preponderance of the evidence that a person is domiciled in Kentucky and is a resident of Kentucky.~~

(5) "Dependent person" means a person who cannot demonstrate financial independence from parents or persons other than a spouse and who does not meet the criteria for independence established in Section 5 of this administrative regulation.

~~(5) [(6)]~~ "Determination of residency status" means the decision

of a postsecondary education institution that may include a formal hearing that results in the classification of a person as a Kentucky resident or as a nonresident for admission and tuition assessment purposes.

**(6) [(7)]** "Domicile" means a person's true, fixed, and permanent home and is the place where the person intends to remain indefinitely, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.

**(7) [(8)]** "Full-time employment" means continuous employment for at least forty-eight (48) weeks at an average of at least thirty (30) hours per week.

**(8) [(9)]** "Independent person" means a person who demonstrates financial independence from parents or persons other than a spouse and who meets[can meet] the criteria for independence established in Section 5 of this administrative regulation.

**(9) [(40)]** "Institution" means an entity defined by KRS 164.001(12)[in KRS 164.001(44)] if the type of institution is not expressly stated and includes the Kentucky Virtual University, the Council on Postsecondary Education, and the Kentucky Higher Education Assistance Authority.

**(10) [(41)]** "Kentucky resident" means a person determined[determination] by an institution for tuition purpose to be[that a person is] domiciled in and [is] a resident of Kentucky as determined by this administrative regulation.

**(11) [(42)]** "Nonresident" means a person who:

**(a) Is domiciled outside by Kentucky;**

**(b) Currently maintains legal residence outside Kentucky;**

**or**

**(c) Is not a Kentucky resident as determined by[is domiciled outside of Kentucky or who currently maintains legal residence outside Kentucky or who is not a Kentucky resident within the meaning of]** this administrative regulation.

**(12) [(43)]** "Parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court-appointed legal guardian if:

1. The guardianship is recognized by an appropriate court within the United States;

2. There was a relinquishment of the rights of the parents; and

3. The guardianship was not established primarily to confer Kentucky residency on the person.

**(13) [(44)]** "Preponderance of the evidence" means the greater weight of evidence[;] or evidence that[which] is more credible and convincing to the mind.

**(14) [(45)]** "Residence" means the place of abode of a person and the place where the person is physically present most of the time for a noneducational purpose in accordance with Section 3 of this administrative regulation.

(16) "Student financial aid" means all forms of payments to a student if one (1) condition of receiving the payment is the enrollment of the student at an institution, and includes student employment by the institution or a graduate assistantship.

(17) "Sustenance" means living expenses including room, board, maintenance, transportation, and [also may include] educational expenses including tuition, fees, books, and supplies.

Section 2. Scope. (1) State-supported postsecondary education institutions were established and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to postsecondary education is predicated on the proposition that the state benefits significantly from the existence of an educated citizenry. As a matter of policy, access to postsecondary education shall be provided so far as feasible at reasonable cost to a qualified[an] individual who is domiciled in Kentucky and who is a resident of Kentucky.

(2) The Council on Postsecondary Education may require a student who is neither domiciled in nor a resident of Kentucky to meet higher admission standards and to pay a higher level of tuition than resident students.

(3) This administrative regulation shall apply[applies] to all student residency determinations regardless of circumstances, including residency determinations made by the state-supported institutions for prospective and currently-enrolled students; the Southern Regional Education Board for contract spaces; reciprocity

agreements, if[where] appropriate; the Kentucky Virtual University; academic common market programs; the Kentucky Educational Excellence Scholarship Program; and other state student financial aid programs, as appropriate.

Section 3. Determination of Residency Status; General Rules.

(1) A determination of residency shall include:

(a) An initial determination of residency status by an institution during the admission process or upon enrollment in an institution for a specific academic term or for admission into a specific academic program;

(b) A reconsideration of a determination of residency status by an institution based upon a changed circumstance; or[and]

(c) A formal hearing conducted by an institution upon request of a student after other administrative procedures have been completed.

(2) An initial determination of residency status shall be based upon:

(a) The facts in existence when the credentials established by an institution for admission for a specific academic term have been received and during the period of review by the institution;

(b) Information derived from admissions materials;

(c) If applicable, other materials required by an institution and [which are] consistent with this administrative regulation; and[or]

(d) Other information available to the institution from any source.

(3) An individual seeking a determination of Kentucky residency status shall demonstrate that status by a preponderance of the evidence.

(4) A determination of residency status shall be based upon verifiable circumstances or actions.

(5) Evidence and information cited as the basis for Kentucky domicile and residency shall accompany the application for a determination of residency status.

(6) A student classified as a nonresident shall retain that status until the student is officially reclassified by an institution.

(7) A student may apply for a review of a determination of residency status once for each academic term.

(8) If an institution has information that a student's residency status may be incorrect, the institution shall review and determine the student's correct residency status.

(9) If the Council on Postsecondary Education has information that an institution's determination of residency status for a student may be incorrect, it may require the institution to review the circumstances and report the results of that review.

(10) An institution shall impose a penalty or sanction against a student who gives incorrect or misleading information to an institutional official, including payment of nonresident tuition for each academic term for which resident tuition was assessed based on an improper determination of residency status. The penalty or sanction may also include:

(a) Student discipline by the institution through a policy written and disseminated to students; or

(b) Criminal prosecution.

Section 4. Presumptions Regarding Residency Status. (1) In making a determination of residency status, it shall be presumed that a person is a nonresident if:

(a) A person is, or seeks to be, an undergraduate student and admissions records show the student to be a graduate of an out-of-state high school within five (5) years prior to a request for a determination of residency status;

(b) A person's admissions records indicate the student's residence to be outside of Kentucky at the time of application for admission;

(c) A person moves to Kentucky primarily for the purpose of enrollment in an institution;

(d) A person moves to Kentucky and within twelve (12) months enrolls at an institution more than half time;[or]

(e) A person has a continuous absence of one (1) year from Kentucky;or[;]

(f) A person attended an out-of-state higher education institution during the past academic year and paid in-state tuition at that institution.

(2) A presumption arising from subsection (1) of this section shall only be overcome by preponderance~~[presentation]~~ of evidence ~~[that is]~~ sufficient to demonstrate that a person is domiciled in and is a resident of Kentucky.

Section 5. Determination of Whether a Student is Dependent or Independent. (1) In a determination of residency status, an institution shall first determine whether a student is dependent or independent. This provision is predicated on the assumption that a dependent person lacks the financial ability to live independently of the person upon whom the student is dependent and therefore lacks the ability to form the requisite intent to establish domicile. A determination that a student is independent shall be only one (1) step in the overall determination of whether a student is or is not a resident of Kentucky.

(2) In determining the dependent or independent status of a person, the following information shall be considered as well as other relevant information available at the time the determination is made:

(a)1. Whether the person has been claimed as a dependent on the federal or state tax returns of a parent or other person for the year preceding the date of application for a determination of residency status; or

2. Whether the person is no longer claimed by a parent or other person as a dependent or as an exemption for federal and state tax purposes; and

(b) Whether the person has financial earnings and resources independent of a person other than an independent spouse necessary to provide for the person's own sustenance.

(3) An individual who enrolls at an institution immediately following graduation from high school and remains enrolled shall be presumed to be a dependent person unless the contrary is evident from the information submitted.

(4) Domicile may be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

(5) Marriage to an independent person domiciled in and who is a resident of Kentucky shall be a factor considered by an institution in determining whether a student is dependent or independent.

(6) Financial assistance from or a loan made by a parent or family member other than an independent spouse, if used for sustenance of the student:

(a) Shall not be considered in establishing a student as independent; and

(b) Shall be a factor in establishing that a student is dependent.

Section 6. Effect of a Determination of Dependent Status on a Determination of Residency Status. (1) The effect of a determination that a person is dependent shall be:

(a) The domicile and residency of a dependent person shall be the same as either parent. The domicile and residency of the parent shall be determined in the same manner as the domicile and residency of an independent person; and ~~;~~

(b) The domicile and residency of a dependent person whose parents are divorced, separated, or otherwise living apart shall be Kentucky if either parent is domiciled in and is a resident of Kentucky regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to federal or Kentucky income tax provisions.

(2)~~[(a)]~~ If the parent or parents of a dependent person are Kentucky residents and are domiciled in Kentucky but subsequently move from the state;

[(a).] The dependent person shall be considered a resident of Kentucky while in continuous enrollment at the degree level in which currently enrolled; and ~~;~~

(b) The dependent person's residency status shall be reassured if continuous enrollment is broken or the current degree level is completed. ~~[If continuous enrollment is broken or the current degree level is completed, the dependent person's residency status shall be reassessed when the circumstances detailed in subparagraph 1 of this paragraph are present.]~~

Section 7. Member of Armed Forces of the United States, Spouse and Dependents; Effect on a Determination of Residency

Status. (1) A member, spouse, or dependent of a member whose domicile and residency was Kentucky at the time of induction into the Armed Forces of the United States, and who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky residency status:

(a) During the member's~~[his or her]~~~~[the]~~ time of active service; or

(b) If the member~~[- spouse, or dependent]~~ returns to this state within six (6) months of the date of the member's discharge from active duty.

(2)(a) A member of the armed services on active duty for more than thirty (30) days and who has a permanent duty station in Kentucky who meets the criteria set forth in 20 U.S.C. 1015d shall be classified as a Kentucky resident and shall be entitled to in-state tuition as shall the spouse or a dependent child of the member[- spouse or dependent of a member of the Armed Forces of the United States stationed in Kentucky on active military orders shall be considered a Kentucky resident while the member is on active duty in this state pursuant to those orders if the member is not:

1. Stationed in Kentucky for the purpose of enrollment at an institution; or

2. On temporary assignment of less than one (1) year].

(b) A member, spouse, or dependent of a member~~[-]~~ shall not lose Kentucky residency status if the member is~~[thereafter]~~ transferred on military orders while the member, spouse, or dependent requesting the status is in continuous enrollment at the degree level in which currently enrolled.

(3)(a) Membership in the National Guard or civilian employment at a military base alone shall not qualify a person for Kentucky residency status under the provisions of subsections (1) and (2) of this section. If a member of the Kentucky National Guard is on active duty status for a period of not less than thirty (30) days, the member shall be considered a Kentucky resident, as shall the spouse of a dependent child of the member. [Provided, however, that a member of the Kentucky National Guard who is on active duty status for a period of not less than thirty (30) days, and who meets the requirements of subsection (2)(a) shall be considered a Kentucky resident, as shall the spouse and a dependent child of the member.]

(4) A person's residency status established pursuant to this section shall be reassessed if the qualifying condition is terminated.

Section 8. Status of Nonresident Aliens; Visas and Immigration. (1)(a) A person holding a permanent residency visa or classified as a political refugee shall establish domicile and residency in the same manner as another person.

(b) Time spent in Kentucky and progress made in fulfilling the conditions of domicile and residency prior to obtaining permanent residency status shall be considered in establishing Kentucky domicile and residency.

(2) A person holding a nonimmigrant visa with designation A, E, G, H-1, H-4 if accompanying a person with an H-1 visa, I, K, L, N, R, shall establish domicile and residency the same as another person.

(3)(a) An independent person holding a nonimmigrant visa with designation B, C, D, F, H-2, H-3, H-4 if accompanying a person with an H-2 or H-3 visa, J, M, O, P, Q, S, TD<sub>1</sub> or TN shall not be classified as a Kentucky resident, because that person does not have the capacity to remain in Kentucky indefinitely and therefore cannot form the requisite intent necessary to establish domicile as defined in Section 1(6)~~[within the meaning]~~ of this administrative regulation.

(b) A dependent person holding a visa as described in paragraph (a) of this subsection, but who is a dependent of a parent holding a visa as described in subsection (2) of this section, shall be considered as holding the visa of the parent.

(c) A dependent person holding a visa described in subsection (2) of this section or paragraph (a) of this subsection, if a parent is a citizen of the United States and is a resident of and domiciled in Kentucky, shall be a resident of Kentucky for the purposes of this administrative regulation.

(4) A person shall be a Kentucky resident for the purpose of this administrative regulation if the person graduated from a Ken-

tucky high school and:

- (a) Is an undocumented alien;
- (b) Holds a visa listed in subsections (2) or (3)(a) of this section; or
- (c) Is a dependent of a person who holds a visa listed in subsections (2) or (3)(a) of this section.

(5)(a) Except as provided in paragraph (b) of this subsection, a person who has petitioned the federal government to reclassify visa status shall continue to be ineligible until the petition has been decided by the federal government.

(b) A person who has petitioned the federal government to reclassify his or her visa status based on [a] marriage to a Kentucky resident and who can demonstrate that the petition has been filed and acknowledged by the federal government, may establish Kentucky domicile and residency at that time.

Section 9. Beneficiaries of a Kentucky Educational Savings Plan Trust. A beneficiary of a Kentucky Educational Savings Plan Trust shall be granted residency status if the beneficiary meets the requirements of KRS 164A.330(6).

Section 10. Criteria Used in a Determination of Residency Status. (1)(a) A determination of Kentucky domicile and residency shall be based upon verifiable circumstances or actions.

(b) A single fact shall not be paramount, and each situation shall be evaluated to identify those facts essential to the determination of domicile and residency.

(c) A person shall not be determined to be a Kentucky resident by the performance of an act that[which] is incidental to fulfilling an educational purpose or by an act performed as a matter of convenience.

(d) Mere physical presence in Kentucky, including living with a relative or friend, shall not be sufficient evidence of domicile and residency.

(e) A student or prospective student shall respond to all requests for information regarding domicile or residency[A person shall respond to all information] requested by an institution.

(2) The following facts, although not conclusive, shall have probative value in their entirety and shall be individually weighted, appropriate to the facts and circumstances in each determination of residency:

(a) Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or contiguous area while maintaining residence and domicile in Kentucky;

(b) Continuous physical presence in Kentucky while in a non-student status for the twelve (12) months immediately preceding the start of the academic term for which a classification of Kentucky residency is sought;

(c)1. Filing a[of] Kentucky resident income tax return for the calendar year preceding the date of application for a change in residency status; or

2. Payment of Kentucky withholding taxes while employed during the calendar year for which a change in classification is sought;

(d) Full-time employment of at least one (1) year while living in Kentucky;

(e) Attendance as a full-time, nonresident student at an out-of-state institution based on a determination by that school that the person is a resident of Kentucky;

(f) Abandonment of a former domicile or residence and establishing domicile and residency in Kentucky with application to or attendance at an institution following and incidental to the change in domicile and residency;

(g) Obtaining licensing or certification for a professional and occupational purpose in Kentucky;

(h) Payment of real property taxes in Kentucky;

(i) Ownership of real property in Kentucky, if the property was used by the student as a residence preceding the date of application for a determination of residency status;

(j) Long-term lease of at least twelve (12) consecutive months of noncollegiate housing;

~~(k) Marriage of an independent student to a person who was domiciled in and a resident of Kentucky prior to the marriage; and~~

~~(k)(l) Continued presence in Kentucky during academic~~

~~breaks; and~~

~~(m) The extent to which a student is dependent on student financial aid in order to provide basic sustenance.~~

(3) Except as provided in subsection (4) of this section, the following facts, because of the ease and convenience in completing them, shall have limited probative value in a determination that a person is domiciled in and is a resident of Kentucky:

(a) Kentucky automobile registration;

(b) Kentucky driver's license; ~~and~~

(c) Registration as a Kentucky voter;

(d) Long-term lease of at least twelve (12) consecutive months of noncollegiate housing; and

(e) Continued presence in Kentucky during academic breaks.

(4) The absence of a fact contained in subsection (3) of this section shall have significant probative value in determining that a student is not domiciled in or is not a resident of Kentucky.~~[(5) A person shall not be determined to be a Kentucky resident by the performance of an act which is incidental to fulfilling an educational purpose or by an act performed as a matter of convenience. Mere physical presence in Kentucky, including living with a relative or friend, shall not be sufficient evidence of domicile and residency. A person shall respond to all information requested by an institution.]~~

Section 11. Effect of a Change in Circumstances on Residency Status. (1) If a person becomes independent or if the residency status of a parent or parents of a dependent person changes, an institution shall reassess residency either upon a request by the student or a review initiated by the institution.

(2) Upon transfer to a Kentucky institution, a student's residency status shall be assessed by the receiving institution.

(3) A reconsideration of a determination of residency status for a dependent person shall be subject to the provisions for continuous enrollment, if applicable.

Section 12. Student Responsibilities. (1) A student shall report under the proper residency classification, which includes the following actions:

(a) Raising a question~~[in a timely manner]~~ concerning residency classification;

(b) Making application for change of residency classification~~[in a timely manner]~~ with the designated office or person at the institution; and

(c) Notifying the designated office or person at the institution immediately upon a change in residency.

(2) If a student fails to notify an institutional official of a change in residency, an institutional official may investigate and evaluate the student's residency status.

(3)(a) If a student fails to provide, by the date specified by the institution, information required by an institution in a determination of residency status, the student shall be notified by the institution that the review has been canceled and that a determination has been made.

(b) Notification shall be made by registered mail, return receipt requested.

(c) Notification shall be made within ten (10) calendar days after the deadline for receipt of materials has passed.

(4)(a) The formal hearing conducted by an institution and the final recommended order shall be[represent] a final administrative action with no appeal to the Council on Postsecondary Education.

(b) A formal administrative hearing conducted by the Council on Postsecondary Education for residency determinations related to eligibility for the Academic Common Market and Regional Contract Programs shall be conducted pursuant to the provisions of KRS Chapter 13B and 13 KAR 2:070. The recommended order issued by the President of the Council shall be[represents] a final administrative action.

(5) A student shall not be entitled to appeal a determination of residency status if the determination made by an institution is because a student has failed to meet published deadlines for the submission of information as set forth in subsection (3) of this section. A student may request a review of a determination of residency status in a subsequent academic term.

Section 13. Institutional Responsibilities. Each institution shall:

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(1) Provide for an administrative appeals process that includes a residency appeals officer to consider student appeals of an initial residency determination and which shall include a provision of fourteen (14) days for the student to appeal the residency appeals officer's determination;

(2) Establish a residency review committee to consider appeals of residency determinations by the residency appeals officer. The residency review committee shall make a determination of student residency status and notify the student in writing within forty-five (45) days after receipt of the student appeal;

(3) Establish a formal hearing process as described in Section 14 of this administrative regulation; and

(4) Establish written policies and procedures for administering the responsibilities established in subsections (1), (2), and (3) of this section and that are:

- (a) Approved by the institution's governing board;
- (b) Made available to all students; and
- (c) Filed with the council.

Section 14. Formal Institutional Hearing. (1) A student who appeals a determination of residency by a residency review committee shall be granted a formal hearing by an institution if the request is made by a student in writing within fourteen (14) calendar days after notification of a determination by a residency review committee.

(2) If a request for a formal hearing is received, an institution shall appoint a hearing officer to conduct a formal hearing. The hearing officer **shall**:

(a) ~~Be~~ **shall** be a person not involved in determinations of residency at an institution except for formal hearings; and

(b) ~~Not be~~ **shall** not be an employee in the same organizational unit as the residency appeals officer.

(3) An institution shall have written procedures for the conduct of a formal hearing that have been adopted by the board of trustees or regents, as appropriate, and that provide for:

(a) A hearing officer to make a recommendation on a residency appeal;

(b) Guarantees of due process to a student that include:

1. The right of a student to be represented by legal counsel; and

2. The right of a student to present information and to present testimony and information in support of a claim of Kentucky residency; and

(c) A recommendation to be issued by the hearing officer.

(4) An institution's formal hearing procedures shall be filed with the Council on Postsecondary Education and shall be available to a student requesting a formal hearing.

Section 15. Cost of Formal Hearings. (1) An institution shall pay the cost for all residency determinations including the cost of a formal hearing.

(2) A student shall pay for the cost of all legal representation in support of the student's claim of residency.

PAUL E. PATTON, Chair

APPROVED BY AGENCY: January 13, 2010

FILED WITH LRC: January 15, 2010 at 8 a.m.

CONTACT PERSON: Dennis L. Taulbee, General Counsel, Council on Postsecondary Education, 1024 Capital Center Dr. Suite 250, Frankfort, Kentucky 40601, phone (502) 573-1555 ext. 142, fax (502) 573-1031, email dennis.taulbee@ky.gov.

### KENTUCKY STATE BOARD OF ELECTIONS (As Amended at ARRS, February 8, 2010)

**31 KAR 4:020. Election costs and county clerk reimbursement and form.**

RELATES TO: KRS 117.343

STATUTORY AUTHORITY: KRS 117.015(1), 117.343

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.343

authorizes ~~provides that~~ the State Board of Elections to promulgate ~~may issue~~ administrative regulations prescribing ~~providing for~~ the method and forms for documenting and submitting claims by a county clerk to request reimbursement from ~~may be reimbursed by~~ the State Board of Elections for the costs of employing office personnel necessary for the conduct of elections, including registration and purgation of voters in the county ~~and purgation of voters~~. This administrative regulation establishes the ~~is necessary to provide a~~ method and form for a county clerk to request reimbursement ~~for these costs~~ from the State Board of Elections for the costs of employing office personnel necessary to conduct elections.

Section 1. **(1) County clerk** reimbursement shall be based on the number of registered voters for the general election held in November.

**(2) To apply for reimbursement, a county clerk shall complete and submit the original, signed form, State Board of Elections Reimbursement of Personnel Election Expenses, to the Kentucky State Board of Elections.**

Section 2. Incorporation by Reference. (1) "State Board of Elections Reimbursement of Personnel Election Expenses," SBE 2000, November 2009 [DOA-48, (April 1997 Edition), State Board of Elections], is incorporated by reference.

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

TREY GRAYSON, Chair

APPROVED BY AGENCY: November 17, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

CONTACT PERSON: Kathryn H. Gabhart, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

### KENTUCKY STATE BOARD OF ELECTIONS (As Amended at ARRS, February 8, 2010)

#### 31 KAR 4:030. Reporting forms.

RELATES TO: KRS 117.085, 117.086, 117.235, 117.255, 117.275, 117.355, 118.425, 119.307

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.086(8), 117.355(4), 118.425(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.355(4) requires the State Board of Elections to prescribe the forms for the precinct election sheriff and the county board of elections to report election irregularities and recommendations for improving the election process, to report special ballot and voter assistance usage statistics, and to report other information required by the state board. KRS 117.086(8) requires the State Board of Elections to prescribe a form on which the county board of elections shall report the number of rejected absentee ballots and the reasons for rejection of those ballots. KRS 118.425(4) requires the State Board of Elections to prescribe a form by which the county board of elections shall make out duplicate certificates of the total number of votes received by each of the candidates for office and the total number of votes for an against each of the ballot questions. This administrative regulation establishes the procedure and forms for the county clerk, the county board of elections, and the precinct election sheriff to report election and voting data after the election ~~prescribes these forms~~.

Section 1. **The following reporting forms shall be filed in accordance with the referenced statutes:**

**(1) Pursuant to KRS 117.355(1), the precinct election sheriff shall file the Precinct Election Sheriff's Postelection Report, SBE 53, with the chair of the county board of elections and the**

**local grand jury:**

**(2) Pursuant to KRS 117.355(2), the county board of election shall file the County Board of Elections Postelection Report, SBE 54, with the State Board of Elections and the local grand jury;**

**(3) Pursuant to KRS 117.275(4) and 117.355(3), the county board of elections shall file the County Board of Elections Postelection Statistical Report, SBE 54A, with the State Board of Elections;**

**(4) Pursuant to KRS 117.355(2), the county board of elections shall file the County Board of Elections Precinct Election Officials Absence Report, SBE 54B, with the State Board of Elections;**

**(5) Pursuant to 117.086(7), the county clerk shall file the List of Voters Issued Absentee Ballots, SBE 33A, with the State Board of Elections;**

**(6) Pursuant to KRS 117.086(8), the county board of elections shall file the Number of Rejected Absentee Ballots and Reasons for Rejected Ballots, SBE 33B; and**

**(7) Pursuant to KRS 117.086(7) and 118.425(4), the county clerk shall file the Certification Official Count and Record of Election Totals, SBE 49, with the Secretary of State.**

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

(a) [SBE-53- ] "Precinct Election Sheriff's Postelection Report", SBE 53, April 2000[(April-2000-edition)];

(b) **"Precinct Election Sheriff's Postelection Report", SBE 53, February 2010;**

(c) [SBE-54- ] "County Board of Elections Postelection Report", SBE 54, September 2002[(September-2002-edition)];

(d) **"County Board of Elections Postelection Report", SBE 54, February 2010;**

(e)[(e)] [SBE-54A- ] "County Board of Elections Postelection Statistical Report", SBE 54A, December 2005[(December-2005-edition)];

(f)[(d)] [SBE-54B- ] "County Board of Elections Precinct Election Officials Absence Report", SBE 54B, September 2002[(September-2002-edition)];

(g)[(e)] [SBE-33A- ] "List of Voters Issued Absentee Ballots", SBE 33A, November 2009[(September-2002-edition)];

(h)[(f)] [SBE-33B- ] **"Number[List]** of Rejected Absentee Ballots and Reasons for Rejected Ballots", **SBE 33B, September 2002[(September-2002-edition)];** and

(i)[(g)] [SBE-49- ] "Certification Official Count and Record of Election Totals", **SBE 49, November 2003[(November-2003-edition)].**

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

TREY GRAYSON, Chair

APPROVED BY AGENCY: November 17, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

CONTACT PERSON: Kathryn H. Gabhart, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

**PERSONNEL CABINET  
(As Amended at ARRS, February 8, 2010)**

**101 KAR 2:120. Incentive programs.**

RELATES TO: KRS 18A.202, 199.555(1)

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(d), 18A.202(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(d) requires the Secretary of Personnel to promulgate administrative regulations to implement work-related incentive programs for state employees. KRS 18A.202 authorizes the secretary to establish work-related incentive programs for state employees. This administrative regulation establishes the requirements for

an employee suggestion system incentive program and a state employee adoption benefit program.

Section 1. Employee Suggestion System. (1) Administration. An employee with status in the classified service or an employee governed by KRS Chapter 16 may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state.

(a)1. The employee suggestion system council, headed by the chairperson designated by the Secretary of Personnel, shall:

- a. Ensure proper evaluation of each suggestion;
- b. Review and act upon, by approval or denial, a suggestion presented to the council by a cabinet or agency; and
- c. Reconsider denials as set forth in subsection (4) of this section.

2. A designated coordinator may present recommended suggestions to the council and request that the council vote on suggestions.

3. The council may defer action for up to one (1) year and one (1) month pending documentation of cash savings.

4. The council shall receive administrative support from the Personnel Cabinet.

5. The council shall prepare an annual report to be submitted to the Secretary of Personnel that shall include the number of suggestions received and the status of each suggestion.

6. The council shall meet:

- a. At a minimum on a quarterly basis; or
- b. Upon the request of the council[-

2-] chairperson or a majority of the coordinators.  
(b) Each cabinet secretary or agency head shall designate, in writing, the appointment of a coordinator who shall also serve on the council. The coordinator shall receive suggestions and establish and maintain internal procedures to ensure appropriate evaluation of suggestions.

(c) The coordinator shall present suggestions recommended for approval by the cabinet or agency to the council for consideration.

(2) Eligibility.

(a) A suggestion shall be a positive idea which:

1. Explains how to improve methods, equipment or procedures;
2. Reduces time or cost of a work operation;
3. Creates a safer work environment;
4. Increases revenue; or
5. Improves relationships with or services for the public.

(b) The suggestion shall:

1. Present an improvement in state service or function;
2. Explain how the change would be accomplished;
3. Define what benefits would be realized by the state, particularly in terms of efficiency, effectiveness, safety, economy, conservation of energy resources, or public relations;

4.a. Be made by an employee to the employee's cabinet or agency; or

b. Be forwarded from other coordinators if the suggestion affects the coordinator's agency;

5. Within ninety (90) working days of implementation by the agency, be:

- a. Submitted on the Employee Suggestion Form, P-35; and
- b. Accompanied by exhibits or illustrations as needed;
6. Be practical, useful, and constructive; and
7. Be eligible for an award only after legislative action or administrative regulation changes, if required, have been completed which shall be the responsibility of the agency that desires to implement the suggestion[~~to request~~].

(c) The following suggestions shall not be eligible for a cash award:

1. A suggestion that falls within the scope of the duties of the **suggester**[~~suggested~~] and which the suggester has the authority to initiate or implement without other administrative approval. "Scope of duties" shall include a specific set of tasks as set forth in the position description of the suggester upon submission of the suggestion;

2. A suggestion related to a particular problem given to an employee to solve within the scope of the employee's duties and



responsibilities;

3. A suggestion made by a member of the council, a cabinet, or agency suggestion review committee;

4. A suggestion which includes a proposal to perform routine maintenance operations or follow manufacturer's recommendations;

5. A suggestion to make a change which has been documented in writing as already under consideration by those administratively responsible; or

6. A suggestion which corrects an error or condition that exists because established procedures were not followed.

(d) If more than one (1) suggester makes significant contributions to the idea, the suggestion may be submitted jointly, and an award granted shall be divided equally between or among the suggesters.

(e)1. The first suggestion received shall take precedence over all future suggestions having the same purpose.

2. If two (2) or more similar suggestions are received on the same day, an award granted shall be divided equally between or among the suggesters.

(f) A suggestion shall be considered a confidential communication among the suggesters and the employees and officers whose responsibility it is to process, investigate, review, or evaluate suggestions.

(3) General provisions.

(a) The cabinet or agency head shall establish an internal system for receipt, evaluation, and reconsideration of employee suggestions. This system shall, at a minimum, include the following:

1. A method to notify the suggester in writing that the suggestion has been received and to notify the suggester in writing of a change in the status of the suggestion;

2. A method to document the original suggestion, evaluation, and action taken; and

3. A method to prepare and present documentation of a suggestion for recommendation to the council.

(b)1. Eligibility of a suggestion shall be evaluated according to the circumstances existing upon submission of the suggestion.

2. An evaluation shall be completed by a person with expertise in the area under consideration.

3. The results of the evaluation shall be recorded on the Evaluation of Employee Suggestion **Form**, Form P-36, and the form shall be dated and signed by the individual making the evaluation.

(c)1. The suggester shall be notified in writing of the disposition of the suggestion within ninety-five (95) calendar days of receipt by the coordinator.

2. If all parties involved agree, an extension of time shall be granted if extenuating circumstances exist.

3. A suggestion shall be considered to be active and eligible for an award until the suggester is notified in writing that the suggestion has been approved or denied.

4. If a suggestion will not be implemented, the coordinator shall notify the suggester in writing stating the reason it was not implemented.

5.a. If an eligible suggestion is not adopted and conditions under which it was originally considered have changed, the suggester may request reevaluation by the cabinet or agency.

b. The request shall:

(i) Be in writing;

(ii) Be evaluated by the next level of supervision;

(iii) Be received by the agency within one (1) year from the date of rejection; and

(iv) Include information regarding the change in conditions.

(d) If a suggestion is approved and implemented by the cabinet or agency, the suggester's coordinator shall recommend approval of the suggestion to the council.

1. The recommendation shall contain:

a. The suggestion as completed by the suggester on the Employee Suggestion Form, P-35;

b. The evaluation forms completed according to the criteria set forth in this administrative regulation; and

c. A statement of actual or projected cost savings using generally accepted accounting principles.

2. Upon receipt of the council's decision, the chairperson of the council shall send written notification of the council's action to the

suggester's coordinator and the coordinator shall then provide written notification to the suggester regarding the decision.

3. If an eligible suggestion is denied by the council, the suggestion shall remain on active file with the council for a period of one (1) year from the date of denial.

(e) Award of cash payment shall be in accordance with KRS 18A.202.

1. The cash payment shall be calculated based upon the amount saved over the period of one (1) year minus implementation costs and shall be determined according to generally accepted accounting principles.

2.a. The award check shall be issued by the agency where the suggester is employed.

b. Funds for payment shall come from the agency or agencies implementing the suggestion.

c. If applicable the agency issuing the check may interaccount other agencies implementing the suggestion for a proportionate share of the total award amount.

3.a. If a suggestion may result in financial savings to the state and proper documentation of cost savings has not yet been obtained, the council shall request that each agency implementing the suggestion maintain records which document the cost savings for a period not to exceed one (1) year from the date of implementation.

b. Documentation shall be conducted according to generally accepted accounting principles.

c. This cost savings analysis shall be forwarded by the coordinator to the council chairperson within thirty (30) work days of completion of the analysis.

(f)1. If a suggestion has been approved by the council and has resulted in a financial savings to the state, the suggester shall be compensated in an amount of ten (10) percent of the amount saved over one (1) calendar year, with a minimum of \$100 and a maximum of \$2,500.

2. If a suggestion approved by the council results in an intangible improvement in state service, the suggester shall be compensated in the amount of \$100.

3. Upon the suggester's receipt of compensation, the suggestion shall become the property of the state.

(4) Reconsideration.

(a) A suggester may request reconsideration of a suggestion that has not received approval from the cabinet or agency within ten (10) work days of the date that written notice of denial is received by the suggester.

(b)1. The suggester shall request reconsideration in writing and shall set forth the basis for the request.

2.a. The request shall be filed with the coordinator within ten (10) days of the date of the denial.

b. If the tenth day falls on a day that the cabinet or agency office is closed during regular work hours, the request may be filed on the next work day.

(c) Within thirty (30) work days, the cabinet or agency shall act on the request for reconsideration and notify the suggester in writing of the reason for the decision.

(5) Council review.

(a)1. A suggestion may be reviewed by the council on its own motion, or upon request of the suggester.

2. If a suggestion has been reconsidered and denied by the cabinet or agency, the suggester may request a review by the council.

a. The suggester shall request review within thirty (30) days of receipt of the written notification of the outcome of the reconsideration and shall set forth in writing the basis for the request.

b.(i) The request shall be filed in the office of the employee suggestion system chairperson within the thirty (30) day period.

(ii) If the 30th day falls on a day that the chairperson's office is closed during regular work hours, the request may be filed on the next work day.

(b) The council shall complete the review within ninety (90) calendar days of the date that the chairperson receives the request for review.

(c) The council chairperson shall notify the agency head of the council's findings and its recommendation concerning the suggestion's implementation or denial.

## VOLUME 36, NUMBER 9 – MARCH 1, 2010

Section 2. Adoption Benefit Program. (1) A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child, as defined by KRS 199.555(1), or any other child.

~~(2)(a)]~~ The eligible employee shall receive:

~~(a)[1-]~~ Up to \$5,000 in unreimbursed direct costs related to the adoption of a special needs child; or

~~(b)[2-]~~ Up to \$3,000 in unreimbursed direct costs related to the adoption of any other child.

~~(3)(b-]~~ Unreimbursed direct costs related to the adoption of a special needs child or other child shall include:

~~(a)[1-]~~ Licensed adoption agency fees;

~~(b)[2-]~~ Legal fees;

~~(c)[3-]~~ Medical costs;

~~(d)[4-]~~ Court costs; and

~~(e)[5-]~~ Other fees or costs associated with child adoption in accordance with state and federal law and after review and approval by the court at the finalization of the adoption.

~~(4)(e)]~~ Application for financial assistance shall be made by submitting a completed State Employee Adoption Assistance Application to the Secretary of Personnel along with documentary evidence of:

~~(a)[1-]~~ Finalization of the adoption;

~~(b)[2-]~~ Certification by the Secretary of the Cabinet for Health and Family Services that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and

~~(c)[3-]~~ A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the finalization of the adoption.

~~(5)(d-]~~ If both adoptive parents are executive branch state employees, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that specified in paragraph (a) of this subsection.

~~(6)(e)]~~ Upon approval of the application for financial assistance, the employee's agency shall dispense funds in the amount authorized by the Secretary of Personnel.

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

(a) "Employee Suggestion Form", P-35, October ~~2007~~[1997];

(b) "Evaluation of Employee Suggestion **Form**" Form, P-36, October 2007; and

(c) "State Employee Adoption Assistance Application", ~~February 2010~~[October 2007].

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

NIKKI JACKSON, Secretary

APPROVED BY AGENCY: December 7, 2009

FILED WITH LRC: December 7, 2009 at 2 p.m.

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax: (502) 564-0224.

### FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Property Valuation (As Amended at ARRS, February 8, 2010)

**103 KAR 5:190. State registration requirements and application process for purchasing certificates of delinquency; fees; and definitions for related entities and related interests.**

RELATES TO: KRS 134.128, 134.129

STATUTORY AUTHORITY: KRS **134.128(2)3, 134.19(3)**[134.129(3), 134.128(2)(d)3]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.129(2) requires a person to hold a certificate of registration from the Department of Revenue prior to the payment of any certif-

icate of delinquency that results in the person owning more than five (5) certificates of delinquency statewide, more than three (3) certificates of delinquency in any county, or investing more than \$10,000 in the payment of certificates of delinquency statewide in a calendar year. KRS 134.129(3) ~~requires~~[authorizes] the Department of Revenue to promulgate administrative regulations to establish registration requirements, an application process, and ~~an imposition of~~ an administrative fee to offset the cost of processing and reviewing the application for a certificate of registration. KRS 134.128(2)(d)3 requires the department to define "related entities" and "related interests" for the purpose of regulating the sale of certificates of delinquency. This administrative regulation establishes the registration requirements and application process for persons to hold a certificate of registration prior to the payment of a certificate of delinquency. ~~[This administrative regulation establishes the administrative fee that may be charged to offset the cost of processing and reviewing the application for certificate of registration. This administrative regulation also defines "related entities" and "related interests".]~~

Section 1. Definitions. (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under the common control with, another person.

(2) "Agent" means a person authorized by agreement with a registrant to act on behalf of a registrant.

(3) "Applicant" means a person filing a complete application.

(4) "Application" means an Application for Certificate of Registration to Purchase Certificates of Delinquency, Form number 62A370A.

(5) "Commissioner" means the Commissioner of the Department, or his or her designee.

(6) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, twenty-five (25) percent or more of a class of voting securities or voting interests of a registrant or applicant, or person in control of a registrant or applicant;

(b) The power to elect a majority of executive officers, managers, directors, trustees, or other person exercising managerial authority of a registrant or applicant;

(c) The power to exercise influence, directly or indirectly, over the management or policies of a registrant or applicant;

(d) Holding the position of an officer, director, general partner, or managing member of the registrant or the applicant or in a position of similar status or performing similar duties and functions of the registrant or the applicant; or

(e) Being entitled to receive twenty-five (25) percent or more of the profits from the registrant or applicant.

(7) "Department" means the Kentucky Department of Revenue.

(8) "Person" means any individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government ~~or~~[and] any subdivision, agency or instrumentality thereof, ~~or~~[and] any other legal or commercial entity.

~~(9)[(10)]~~ "Registrant" means a person registered to purchase a certificate of delinquency.

~~(10)[(11)]~~ "Related entities" ~~or~~[and] "related interests" means a relationship between two persons in which a person:

(a) Can exercise control or significant influence over another person;

(b) Is related by blood, adoption, or marriage to another person;

(c) Controls or is controlled by another person; or

(d) Is an agent or affiliate of another person.

Section 2. Registration Requirement. (1) A person required by KRS 134.129(1) to register annually shall file a notarized application with the department at least sixty (60) days prior to the purchase of any certificate of delinquency that requires registration under KRS 134.129 and this administrative regulation. ~~[All persons who purchase or intend to purchase any certificate of delinquency that results in the person owning more than five (5) certificates of delinquency statewide, more than three (3) certificates of delinquency in any county, or investing more than \$10,000 in the pay-~~

ment of certificate of delinquency statewide in a calendar year, shall file an application with the department, at least sixty (60) days prior to the purchase of any certificate of delinquency that would require registration under KRS 134.129 and this administrative regulation. The application shall be notarized.]

(2) Pursuant to KRS 134.129(4), the department shall consider the following criteria and information in its review and evaluation of an application:

(a) The applicant and its directors, officers, members, and managers shall:

1. Be current and in good standing on all taxes owed to the Commonwealth;

2. Be in good standing with regard to operations under a previously issued certificate of registration;

3. Not have previously operated without obtaining a certificate of registration under KRS 134.139 under circumstances that required registration; and

4. Have a satisfactory record with the Office of Consumer Protection within the Office of the Attorney General. A record shall be considered satisfactory if the Office of the Attorney General has not filed a civil or criminal complaint against or entered into an Assurance of Voluntary Compliance with the applicant or registrant that resulted in an injunction, judgment, or order which contained a finding of fact or conclusion of law that the applicant or registrant violated any provision of KRS Chapter 360, 365, 367, or 380;

(b) If [in addition to the requirements established by KRS 134.129(4), which will be considered by the department in reviewing and evaluating an application, the department shall consider the following criteria and information in its review and evaluation:

(a) Whether the person is a related entity or has related interests with another person that is registered or intends to register with the department;

(c) If [(b) Whether] persons with related interests or related entities to the applicant meet the criteria established by KRS 134.129(4) and this administrative regulation;

(d) [(e)] If the applicant is not an individual, whether the applicant is in good standing in the state of incorporation or formation; and

(e) [(d)] If required by law to register to conduct business in the Commonwealth, if [whether] the applicant is in good standing with the Kentucky Secretary of State.

(3) [The department may consider additional criteria and request additional information from an applicant as part of the review process.

(4) The commissioner may [waive any requirement of the application or] permit an applicant to submit substituted information in lieu of the information required by this section or application if the required information is not available.

(4) [(5)] Every nonindividual applicant, at the time of the filing of the application and after a certificate of registration is issued, shall be in good standing in the state of its incorporation or formation.

(5) [(6)] Every applicant [shall], at the time of the filing of the application and after a certificate of registration is issued, shall be registered and qualified to do business in this Commonwealth, and be in good standing with the Kentucky Secretary of State.

Section 3. Review of Application. (1) The department shall [may] review and investigate any matter related to an application to determine if the applicant meets the requirements of KRS 134.129 and this administrative regulation.[:]

(2) The department shall approve an application and issue a certificate of registration to an applicant if the applicant [he, she, or it] meets the requirements of KRS 134.129 and this administrative regulation.

(3) The department shall [may] deny the application and refuse to issue a certificate of registration if the applicant does not meet one or more of the requirements as set forth in KRS 134.129 and this administrative regulation.

(4) All certificates of registration shall expire on December 31 in the calendar year in which they are issued regardless of the date of issuance.

(5) A certificate of registration shall be not be transferred or assigned.

(6) The department shall [may] deem an application abandoned if [when] the applicant fails to:

(a) File a complete application;

(b) [fails to] Timely provide any information required by this administrative regulation or requested by the department, or

(c) [fails to] Pay the processing fee required by this administrative regulation.

Section 4. Denial, Suspension, or Revocation of Registration.

(1) The department shall [may] revoke, suspend, refuse to issue a registration, or accept surrender of a registration in lieu of revocation or suspension, if the department finds that the person, applicant, or registrant:

(a) Failed to comply with the requirements of KRS 134.129 and this administrative regulation;

(b) Does not conduct [his, her, or its] business in accordance with the law;

(c) Is guilty of fraud in connection with any transaction governed by KRS 134.129 and this administrative regulation [or is the subject of an administrative cease and desist order or similar order, or permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act];

(d) Has made any misrepresentations or false statements to or concealed any essential or material fact or has suppressed or withheld from the department any information [and] which, if it had been properly and timely submitted or disclosed to the department, would have rendered the person ineligible to be registered under this administrative regulation;

(e) Has refused to permit an examination or investigation by the department of his or her books and affairs or has refused within a reasonable time to furnish any information or make any disclosure that may be required by the department under the provisions of this administrative regulation;

(f) Has abandoned an application by failing to provide the department any information required or requested by the department under this administrative regulation to complete an application;

(g) Has employed or contracted with a person who has had an application denied or certificate of registration revoked or suspended under this administrative regulation;

(h) Has failed to pay any required fee under this administrative regulation;

(i) Has failed to pay any state tax or to comply with any administrative or court order directing the payment of state tax; or

(j) Has violated any provision under this administrative regulation or order issued by the commissioner.

(2) Any person whose registration has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension shall not participate [is prohibited from participating] in any business activity of a registrant under this administrative regulation and shall not engage [from engaging] in any business activity on the premises where a registrant under this administrative regulation is conducting its business.

(3) Any person who has had his or her application denied by the department shall [may] not file another application until January 1 of the year following the denial.

(4) Any person who has had his or her certificate of registration revoked twice shall [may] be permanently barred from applying for a certificate of registration.

(5) The commissioner may enter into a consent order with another person at any time for the purpose of resolving a matter arising under this administrative regulation. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order.

(6) Any consent order that the commissioner enters into to resolve a matter arising under this administrative regulation shall be deemed an administrative action and a public record.

(7) The commissioner shall [may] stay, suspend, or postpone the effective date of an order issued under this administrative regulation, pending the administrative proceeding and the issuance of a final order resulting from the proceeding, upon written request by the affected person or licensee.

(8) The surrender or expiration of a registration shall not affect the registrant's civil or criminal liability for acts committed prior to

the surrender or expiration. The surrender or expiration of a registration shall not affect a proceeding to revoke or suspend a registration.

Section 5. Notice and Right of Appeal. (1)(a) The department shall provide written notice to:

1. An applicant ~~if[whenever]~~ an application is denied; ~~or~~

2. ~~A registrant if[or to a registrant whenever]~~ a certificate of registration is suspended or revoked.

(b) The notice shall be sent by certified mail or personal delivery to the last known address of the applicant or registrant, as provided by the applicant or registrant, according to the records of the department.

(c) An applicant or registrant shall be deemed to have received a copy of the written notice three (3) business days following the mailing thereof.

(2) Any applicant or registrant who has had his or her application denied or registration suspended or revoked may file a written request for a hearing.

(3) A written request for a hearing shall:

(a) Be filed with the department within (10) ten days of the date of the denial, suspension, or revocation;

(b) Shall be made in good faith; and

(c) ~~[Shall]~~ Briefly state the reason or reasons the person is aggrieved, together with the grounds to be relied upon as a basis for the relief to be sought at the hearing.

(4) A hearing shall be held within ten (10) days of the receipt of the written request for a hearing unless the parties agree otherwise.

(5) The commissioner shall appoint a hearing officer to preside over the matter. The hearing officer shall issue a recommended order within twenty-one (21) days of the hearing.

(6) The commissioner shall issue a final order within five (5) days of the issuance of the recommended order by the hearing officer.

(7) Any person aggrieved by the decision of the commissioner may file an appeal to the Franklin Circuit Court within thirty (30) days of the issuance of the final order.

~~Section 6. [Sharing of Information. Notwithstanding any provision to the contrary, the department may furnish to and exchange any information related to this administration regulation with officials of other properly authorized city, county, state or federal governmental authorities for official use only and on a confidential basis.]~~

~~Section 7.] Fees. Each application shall be accompanied by a nonrefundable processing fee in the amount of \$250.~~

Section 7. [8.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Certificate of Registration to Purchase Certificates of Delinquency", November 2009; and

(b) "Certificate of Registration", November 2009.

(2) ~~The following material is incorporated by reference:~~

(a) ~~"Application for Certificate of Registration to Purchase Certificates of Delinquency", November 2009; and~~

(b) ~~"Certificate of Registration", November 2009.~~

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

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009

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

FINANCE AND ADMINISTRATION CABINET  
Kentucky Department of Revenue  
Office of Income Taxation  
(As Amended at ARRS, February 8, 2010)

103 KAR 15:110. Ethanol tax credit.

RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.4242, 141.4246, 141.4248

STATUTORY AUTHORITY: KRS 131.130(1), 141.4246

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.4242 provides for a nonrefundable tax credit for producers of ethanol. KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.4246(2) requires the department to promulgate an administrative regulation to establish the manner in which a pass-through entity shall electronically notify the department of who may claim the approved tax credit. [141.4246 requires an ethanol producer that is a pass-through entity or an agricultural cooperative association to notify the department electronically of all partners, members, shareholders, or beneficiaries who may claim any amount of the approved credit.] This administrative regulation establishes guidelines and filing requirements for an ethanol producer filing a tax credit claim for gallons of ethanol produced in this state.

Section 1. Definitions. (1) "Applicant" means an ethanol producer that files a tax credit claim as provided by KRS 141.4242.

(2) "Application" or "Schedule ETH" means the Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol (Revenue Form 41A720ETH), incorporated by reference in 103 KAR 3:040, that is used to make[means] an ethanol tax credit claim [filed] with the department for gallons of ethanol produced in this state as provided by KRS 141.4242(3).

(3) "ASTM" means the American Society for Testing and Materials.

(4) "Corporation" is defined by KRS 141.010(24).

(5) "Department" is defined by KRS 141.010(2).

(6) "Ethanol" is defined by KRS 141.422(9).

(7) "Ethanol producer" is defined by KRS 141.422(11).

(8) "Identification number" means the:

(a) Social Security number for individuals;

(b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities

(9) "Individual" is defined by KRS 141.010(7).

(10) "Limited liability pass-through entity" is defined by KRS 141.010(28).

(11) "Pass-through entity" is defined by KRS 141.010(26).

(12) "Tax credit" means the ethanol credit authorized by KRS 141.4242.

Section 2. Application for Tax Credit. An applicant shall mail to the department a completed application on or before January 15 for the preceding calendar year. [(1) An applicant shall file an application with the department on Schedule ETH (Form number 41A720ETH), incorporated by reference in 103 KAR 3:040.

(2) Schedule ETH shall be mailed to the department on or before January 15 for the preceding calendar year.]

Section 3. Proof of ASTM standard specification. (1) An ethanol producer shall provide proof that the ethanol gallons reported on the application meet ASTM standard specification D4806 for ethanol.

(2) Proof submitted by an ethanol producer shall be in the form of documentation of laboratory results that certify that the ethanol reported on the Schedule ETH meets the ASTM standard specification.

(3) ~~[meet the ASTM specification.] An independent ASTM certified laboratory shall be used to generate the laboratory results that are required by this section.~~ [laboratory or a laboratory designated by the Kentucky Department of Agriculture shall be

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used to generate the laboratory results.]

**(4)(3)** Failure to submit documented laboratory results that certify that the ethanol meets the ASTM standard specification with the Schedule ETH shall result in the department disallowing the credit.

**(5)(a)** An ethanol producer shall have the ethanol tested as provided by subsection (2) of this section on July 1 and December 31 of each calendar year to determine if the ethanol meets the ASTM standard speciation.

**(b)** A copy of the laboratory results for July 1 and December 31 of each calendar year shall be attached to the Schedule ETH submitted to the department as provided by Section 2. of this administrative regulation.[(4)(a) Separate proof of the ASTM specification shall be provided to the department by an ethanol producer on July 1 and December 31 for each calendar year that a Schedule ETH is submitted.]

**(c)(b)** Failure to provide proof of meeting the ASTM standard specification on July 1 and December 31 of each calendar year with the application shall result in the denial of the credit claimed for gallons of ethanol back to the previous testing date of July 1 or December 31.[submit proof of meeting the ASTM specifications on the dates prescribed in this subsection shall result in the denial of the credit.]

**(d)(c)** If proof is timely submitted and the proof certifies that the ethanol does not meet the ASTM standard specification, then all credit claimed for gallons of ethanol back to the previous testing date of July 1 or December 31 shall be disallowed.

Section 4. **Filing Requirements**[Use of the Tax Credit]. (1)[An applicant who is an individual shall apply the tax credit against the tax liability imposed by KRS 141.020.

(2) An applicant that is a corporation shall apply the tax credit against the tax liability imposed by KRS 141.040 and 141.0401.

(3) An applicant that is a limited liability pass-through entity shall apply the tax credit against the tax liability imposed by KRS 141.0401.

(4) An applicant that is a pass-through entity not subject to the tax imposed by KRS 141.0401 shall distribute the tax credit to each partner based on the partner's distributive share.

(5) An applicant that is an estate or trust shall apply the tax credit against the tax liability imposed by KRS 141.030, or shall distribute the tax credit to each beneficiary based on the beneficiary's distributive share.

(6) An applicant claiming the tax credit shall attach the credit certificate issued[application approved] by the department to its tax return on which the tax credit is claimed.

**(2)(7)** A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1, Form 720S, Form number 41A720S(K-1); Form 765, Form number 41A765(K-1); or Form 765GP Form number 42A765GP(K-1), incorporated by reference in 103 KAR 3:040, to the partner's, member's or shareholder's tax return on which the credit is claimed.

Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity or agricultural cooperative association organized under KRS Chapter 272 claiming the ethanol tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

**(2)** The electronic mail shall contain a separate attachment in plain format text or plain ASCII format that includes each partner's, member's, or shareholder's:

**(a) Name;**

**(b) Address;**

**(c) Telephone number;**

**(d) Identification number; and**

**(e) Distributive share of the tax credit.**[The electronic filing shall contain:

(a) Each partner's, member's, or shareholder's name, address, telephone number, and identification number; and

(b) Each partner's, member's, or shareholder's distributive share of the tax credit.

(3) Any information required by subsection (2) of this section shall be filed as a separate document attached to the electronic mail message in plain format text or plain ASCII format.]

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at noon

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

### FINANCE AND ADMINISTRATION CABINET Kentucky Department of Revenue Office of Income Taxation (As Amended at ARRS, February 8, 2010)

#### 103 KAR 15:120. Cellulosic ethanol tax credit.

RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.4244, 141.4246, 141.4248

STATUTORY AUTHORITY: KRS 131.130(1), 141.4246

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.4244 provides a nonrefundable tax credit to producers of cellulosic ethanol. KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.4246(2) requires the department to promulgate an administrative regulation to establish the manner in which a pass-through entity shall electronically notify the department of who may claim the approved tax credit.[KRS 141.4246 requires an ethanol producer that is a pass-through entity or an agricultural cooperative association to notify the department electronically of all partners, members, shareholders, or beneficiaries who may claim any amount of the approved credit.] This administrative regulation establishes guidelines and filing requirements for a cellulosic ethanol producer filing a tax credit claim for gallons of cellulosic ethanol produced in this state.

Section 1. Definitions. (1) "Applicant" means a cellulosic ethanol producer that files a tax credit claim as provided by KRS 141.4244.

(2) "Application or "Schedule CELL" means the Schedule CELL, Application, and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol (Revenue Form 41A7220CELL), incorporated by reference in 103 KAR 3:040, that is used to make[means] a cellulosic ethanol tax credit claim[filed] with the department for gallons of cellulosic ethanol produced in this state as provided by KRS 141.4244(3).

(3) "ASTM" means the American Society for Testing and Materials.

(4) "Cellulosic ethanol" is defined by KRS 141.422(6).

(5) "Cellulosic ethanol producer" is defined by KRS 141.422(7).

(6) "Corporation" is defined by KRS 141.010(24).

(7) "Department" is defined by KRS 141.010(2).

(8) "Identification number" the means:

(a) Social Security number for individuals;

(b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities.

(9) "Individual" is defined by KRS 141.010(7).

(10) "Limited liability pass-through entity" is defined by KRS 141.010(28).

(11) "Pass-through entity" is defined by KRS 141.010(26).

(12) "Tax credit" means the cellulosic ethanol tax credit authorized by KRS 141.4244.

Section 2. Application for Tax Credit. An applicant shall mail to the department a completed application on or before January 15 for the preceding calendar year.[(1) An applicant shall file an application with the department on Schedule CELL (Form number 41A720CELL, incorporated by reference in 103 KAR 3:040).

(2) Schedule CELL shall be mailed to the department on or before January 15 for the preceding calendar year.]

Section 3. Proof of ASTM standard specification. (1) A cellulo-

sic ethanol producer shall provide proof that the cellulosic ethanol gallons reported on the application meet ASTM standard specification D4806 for ethanol that is produced from cellulosic biomass materials.

(2) Proof submitted by a cellulosic ethanol producer shall be in the form of documentation of laboratory results that certify that the cellulosic ethanol reported on the Schedule CELL meets the ASTM standard specification.

(3)~~[meet the ASTM specification.]~~ An independent ASTM certified laboratory shall be used to generate the laboratory results that are required by this section.

(4)~~[laboratory or a laboratory designated by the Kentucky Department of Agriculture shall be used to generate the laboratory results.~~

(3)~~]~~ Failure to submit documented laboratory results that certify that the cellulosic ethanol meets the ASTM standard specification with the Schedule CELL shall result in the department disallowing the credit.

(5)(a) A cellulosic ethanol producer shall have the cellulosic ethanol tested as provided by subsection (2) of this section on July 1 and December 31 of each calendar year to determine if the cellulosic ethanol meets the ASTM standard specification.

(b) A copy of the laboratory results for July 1 and December 31 of each calendar year shall be attached to the application, Schedule CELL, submitted to the department as provided by Section 2 of this administrative regulation.~~[(4)(a) Separate proof of the ASTM specification shall be provided to the department by a cellulosic ethanol producer on July 1 and December 31 for each calendar year that a Schedule CELL is submitted.]~~

(c)~~[(b)]~~ Failure to provide proof of meeting the ASTM standard specification on July 1 and December 31 of each calendar year with the application shall result in the denial of the credit for gallons of cellulosic ethanol back to the previous testing date of July 1 or December 31.~~[submit proof of meeting the ASTM specifications on the dates prescribed in this subsection shall result in the denial of the credit.]~~

(d)~~[(c)]~~ If proof is timely submitted and the proof certifies that the cellulosic ethanol does not meet the ASTM standard specification, then all credit claimed for gallons of cellulosic ethanol back to the previous testing date of July 1 or December 31 shall be disallowed.

Section 4. **Filing Requirements.** (1)~~[Use of the Tax Credit. (1) An applicant who is an individual shall apply the tax credit against the tax liability imposed by KRS 141.020.~~

(2) An applicant that is a corporation shall apply the tax credit against the tax liability imposed by KRS 141.040 and 141.0401.

(3) An applicant that is a limited liability pass-through entity shall apply the tax credit against the tax liability imposed by KRS 141.0401.

(4) An applicant that is a pass-through entity not subject to the tax imposed by KRS 141.0401 shall distribute the tax credit to each partner based on the partner's distributive share.

(5) An applicant that is an estate or trust shall apply the tax credit against the tax liability imposed by KRS 141.030, or shall distribute the tax credit to each beneficiary based on the beneficiary's distributive share.

(6)~~]~~ An applicant claiming the tax credit shall attach the credit certificate issued~~[application approved]~~ by the department to the tax return on which the tax credit is claimed.

(2)~~[(7)]~~ A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1: Form 720S, Form number 41A720S(K-1); Form 765, Form number 41A765(K-1); or Form 765GP, Form number 42A765GP(K-1), incorporated by reference in 103 KAR 3:040, to the partner's, member's or shareholder's tax return on which the credit is claimed.

Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity or agricultural cooperative association organized under KRS Chapter 272 claiming the cellulosic ethanol tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

(2) The electronic mail shall contain a separate attachment

in plain format text or plain ASCII format that includes each partner's, member's, or shareholder's:

(a) Name;

(b) Address;

(c) Telephone number;

(d) Identification number; and

(e) Distributive share of the tax credit.~~[The electronic filing shall contain:~~

~~(a) Each partner's, member's, or shareholder's name, address, telephone number, and identification number; and~~

~~(b) Each partner's, member's, or shareholder's distributive share of the tax credit.~~

~~(3) Any information required by subsection (2) of this section shall be filed as a separate document attached to the electronic mail message in plain format text or plain ASCII format.]~~

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at noon

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

FINANCE AND ADMINISTRATION CABINET  
Kentucky Department of Revenue  
Office of Income Taxation  
(As Amended at ARRS, February 8, 2010)

103 KAR 15:140. Biodiesel tax credit.

RELATES TO: KRS 141.010~~[141.040,]~~ 141.020, 141.030, 141.040, 141.0401, 141.422, 141.423, 141.424

STATUTORY AUTHORITY: KRS 141.424, ~~[131.130(1), 141.048,]~~ 141.425

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.423 establishes a nonrefundable tax credit for biodiesel producers, biodiesel blenders, and renewable diesel producers. 141.425 authorizes the department to promulgate administrative regulations necessary to administer the biodiesel tax credit. KRS 141.424 requires the department to promulgate an administrative regulation to establish the manner in which a pass-through entity shall electronically notify the department of who may claim the approved tax credit.~~[as provided by KRS 141.422 to 141.424]~~~~[141.425 regarding the biodiesel tax credit]~~~~[KRS 141.424 requires a biodiesel producer, biodiesel blender, or renewable diesel producer that is a pass-through entity or an agricultural cooperative association to notify the department electronically of all partners, members, shareholders, or beneficiaries who may claim any amount of the approved credit. This administrative regulation establishes guidelines and filing requirements for a biodiesel producer, biodiesel blender, or renewable diesel producer filing a tax credit claim for gallons of biodiesel produced in this state, gallons of biodiesel used in blended biodiesel produced in this state, or gallons of renewable diesel produced in this state]~~~~[the credit].~~

Section 1. Definitions. (1) "Applicant" means a biodiesel producer, biodiesel blender, or renewable diesel producer that files a tax credit claim as provided by KRS 141.423~~[any person who applies for the biodiesel tax credit as allowed in KRS 141.422 -- 141.425].~~

(2) "Application" or "Schedule BIO" means the Schedule BIO, Application and Credit Certificate of Income Tax/LEET Credit Cellulosic Ethanol (Revenue Form 41A720BIO). Incorporated by reference in 103 KAR 3:040, that is used to make~~[means]~~ a tax credit claim~~[filed]~~ with the department for gallons of biodiesel produced in this state, gallons of biodiesel used in blended biodiesel produced in this state, or gallons of renewable diesel produced in this state as provided by KRS 141.423~~(4)~~~~[request for the biodiesel tax credit as allowed in KRS 141.422 -- 141.425].~~

(3) "ASTM" means the American Society for Testing and Mate-

rials.

(4) "Biodiesel" is defined by KRS 141.422(4) ["Blender" means any person who combines biodiesel with petroleum diesel to create a mixture with a minimum of two (2) percent biodiesel].

(5) "Biodiesel blender" means an entity that blends biodiesel with petroleum diesel as provided by KRS 141.422(8) ["Corporation" is defined by KRS 141.010(24)].

(6) "Biodiesel producer" is defined by KRS 141.422(5) ["Department" is defined by KRS 141.010(2)].

(7) "Blended biodiesel" is defined by KRS 141.422(8) ["Distributive share" means the percentage of profits of a general partnership to which a partner is entitled].

(8) "Corporation" is defined by KRS 141.010(24).

(9) "Department" is defined by KRS 141.010(2).

(10) "Identification number" means the:

(a) Social Security number for individuals;

(b) Federal Employer [Employee] Identification Number for general partnerships, estates, and trusts; **and**

(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities.

(11) "Individual" is defined by KRS 141.010(7).

(12) "Limited liability pass-through entity" is defined by KRS 141.010(28).

(13) "Pass-through entity" is defined by KRS 141.010(26).

(14) "Renewable diesel" is defined by KRS 141.422(12).

(15) "Renewable diesel producer" is defined by KRS 141.422(13). [(9) "Person" means any corporation, company, association, partnership, limited liability company, limited liability partnership, other business association, or individual.]

Section 2. Application for Tax Credit. **An applicant shall mail to the department a completed application on or before January 15 for the preceding calendar year.** [(1) An applicant [Any person requesting a biodiesel credit] [shall file an application with the department on] [the] [Schedule BIO (Form number 41A720BIO); incorporated by reference.

(2) Schedule BIO] [All applications for the biodiesel credit] [shall be mailed to the department on or before January 15 for the preceding calendar year.]

Section 3. [Information Required on or attached to the Schedule Bio. The following information shall be required on or attached to the Schedule BIO:

(1) The applicant's name and identification number;

(2) A description of how the applicant is taxed for Kentucky income tax purposes;

(3) The applicant's Kentucky Special Fuels License Dealer Account Number;

(4) The number of gallons of biodiesel produced during the calendar year;

(5) The number of gallons of blended biodiesel produced during the calendar year; and

(6) A copy of the certificate for biodiesel or statement of biodiesel reseller submitted to the Internal Revenue Service for federal tax purposes shall be attached to the Schedule BIO. The certificate for biodiesel or statement of biodiesel reseller submitted shall be the form submitted for the federal tax period that most closely corresponds with the period covered by the Schedule Bio.

Section 4.] Proof of ASTM standard specification [Standard].

(1) A biodiesel producer **or biodiesel blender** shall provide proof the[that] biodiesel gallons reported on the application meet ASTM standard [Schedule BIO meet ASTM] specification D6751 for biodiesel fuel (B100) blend stock distillate fuels [standard D6751-03].

(2) [A biodiesel blender shall provide proof that the biodiesel gallons reported on the Schedule BIO meet] [as part of blended biodiesel meets] [ASTM specification D6751 for biodiesel fuel (B100) blend stock distillate fuels] [standard D6751-03].

(3) A renewable diesel producer shall provide proof that the renewable diesel gallons reported on the application meet ASTM standard [Schedule BIO meet ASTM] specification D396 for fuel oils intended for use in various types of fuel-oil-burning equipment,

D975 for diesel fuel oils suitable for various types of diesel fuel engines, or D1655 for aviation fuels.

(3) [(4)] Proof submitted by a biodiesel producer or a renewable diesel producer [or blender] shall be in the form of documentation of laboratory results that certify that the biodiesel or renewable diesel reported on the Schedule BIO meets the ASTM standard specification.

(4) [(meet)] [meets] [the ASTM specification] [standard]. A biodiesel blender shall obtain from the biodiesel producer a copy of laboratory results that certify that the biodiesel reported on the Schedule BIO meets [meet] the ASTM standard speciation.

(5) [(specification)] [from the producer of the biodiesel that is blended and reported on the Schedule BIO]. An independent **ASTM certified laboratory shall be used to generate the laboratory results that are required by this section.**

(6) [laboratory or a laboratory designated by the Kentucky Department of Agriculture shall be used to generate the laboratory results.

(5) [(4)] Failure to submit documented laboratory results that certify that the biodiesel, renewable diesel, [produced] or the biodiesel used in the blended biodiesel meets the ASTM standard [meet] [meets] [the ASTM] specification with the Schedule BIO [standard] shall result in the department disallowing the credit.

(7) (a) **A biodiesel producer, biodiesel blender, or renewable diesel producer shall have the biodiesel, blended biodiesel, or renewable diesel tested as provided by subsection (4) of this section on July 1 and December 31 of each calendar year to determine if the biodiesel, blended biodiesel, or renewable diesel meets the ASTM standard specification.**

(b) **A copy of the laboratory results for July 1 and December 31 of each calendar year shall be attached to the Schedule BIO submitted to the department as provided by Section 2 of this administrative regulation.** [(6) (a)] [The biodiesel produced or blended shall not be eligible for the tax credit until proof is received that the biodiesel produced or biodiesel that is blended meets the ASTM standard. Gallons produced or blended after a new sample is proved to meet the ASTM standard shall be eligible for the credit, subject to the provisions of KRS 141.422 to 141.424 and this administrative regulation.

(5) (a) [(Separate proof of the ASTM specification)] [standard] [shall be provided to the department by a biodiesel producer biodiesel] [or] [blender, or renewable diesel producer on July 1 and December 31 for each calendar year that a Schedule BIO is submitted. ] [For the calendar year ending December 31, 2006, proof shall be submitted only on December 31, 2006.]

(c) [(b)] Failure to provide proof of meeting the ASTM standard specification on July 1 and December 31 of each calendar year with the application shall result in the denial of the credit claimed for gallons of biodiesel or renewable diesel back to the previous testing date of July 1 or December 31. [submit proof of meeting the ASTM specifications on] [standard by] [the dates prescribed in this subsection shall result in the denial of the credit.]

(d) [(e)] If proof is timely submitted and the proof certifies that the biodiesel or renewable diesel does not meet the ASTM standard specification [standard], then[:

4.] all credit claimed for gallons of biodiesel, renewable diesel, or biodiesel used in the blended biodiesel [gallons] back to the previous testing date of July 1 or December 31 shall be disallowed.]

2. For the calendar year ending December 31, 2006, all credit claimed for biodiesel or blended biodiesel gallons back to July 1, 2006 shall be disallowed; and

3. Subsequent samples submitted after a test sample is proved not to meet the ASTM standard may be submitted at any time during the calendar year that a Schedule BIO is submitted, subject to the provisions of subsection (4) of this section.]

Section 4. [5.] **Filing Requirements** [Use of the Tax Credit]. [(1) An] [Any] [applicant who is an individual shall apply the tax] [any] [credit] [(due)] [against the tax liability imposed by KRS 141.020.

(2) An] [Any] [applicant that is a corporation shall apply the tax] [any] [credit] [(due)] [against the tax liability imposed by KRS

141.040 and 141.0401.

(3) ~~An applicant that is a limited liability pass-through entity shall apply the tax credit against the tax liability imposed by KRS 141.0401, and shall distribute the tax credit to each partner, member, or shareholder based on the partner's, member's, or shareholder's distributive share.~~

(4) ~~An applicant that is a pass-through entity not subject to the tax imposed by KRS 141.0401 shall distribute the tax credit to each partner based on the partner's distributive share.~~

(5) ~~An applicant that is an estate or trust shall apply the tax credit against the tax liability imposed by KRS 141.030, or shall distribute the tax credit to each beneficiary based on the beneficiary's distributive share.~~

(6) ~~An applicant claiming the tax credit shall attach the credit certificate issued [Schedule BIO approved] by the department to its tax return on which the tax credit is claimed.~~

(2)(7) ~~A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1, Form 720S, Form number 41A720S(K-1), Form 765, Form number 41A765(K-1), or Form 765GP, Form number 42A765GP(K-1) incorporated by reference in 103 KAR 3:040, to the partner's, member's, or shareholder's tax return on which the credit is claimed.~~

(3) ~~Any person except partners in a general partnership claiming the biodiesel tax credit shall attach the approved Schedule BIO to the tax return on which the biodiesel credit is claimed.~~

(4) ~~Any partner in a general partnership claiming the biodiesel tax credit shall attach the Schedule BIO K-1, Form number 41A720BIO (K-1), to the tax return on which the biodiesel credit is claimed.~~

Section 5.[6.] Electronic Filings for Pass-through Entities [General Partnerships]. (1) Each pass-through entity [general partnership] claiming the biodiesel tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

(2) **The electronic mail shall contain a separate attachment in plain format text or plain ASCII format that includes each partner's, member's or shareholder's:**

**(a) Name;**

**(b) Address;**

**(c) Telephone number;**

**(d) Identification number; and**

**(e) Distributive share of the tax credit.** [The electronic filing shall contain:

(a) ~~Each partner's, member's, or shareholder's name, address, telephone number, and identification number; and~~

(b) ~~Each [The] [partner's, member's, or shareholder's] distributive share of the tax credit.~~

(3) ~~Any information required by subsection (2) of this section filed as a separate document attached to the electronic mail message shall be in plain format text or plain ASCII format.]~~

[Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Schedule BIO – Application and Credit Certificate of Income Tax Credit Biodiesel (Form 41A720BIO)", October 2005; and

(b) "Schedule BIO (K-1) – Distributive Share of Approved Biodiesel and/or Blended Biodiesel Tax Credit – Form number 41A720BIO (K-1)", October 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at noon

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

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Department of Revenue  
Division of Individual Income Tax  
(As Amended at ARRS, February 8, 2010)**

**103 KAR 18:110. Withholding methods.**

RELATES TO: KRS 141.310, 141.370

STATUTORY AUTHORITY: KRS **131.130(1)** [Chapter 13A], 141.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS **131.130(1)** **authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.370 requires the department to establish the individual income tax withholding tables.** [141.370 requires the department] [cabinet] [to establish individual income tax withholding tables by administrative regulation.] This administrative regulation establishes withholding tables and describes the procedure for supplemental and mechanical withholding. [KRS 141.310 requires the department] [cabinet] [to revise the tables to compensate for] [substantial] [changes in the individual income tax rates] [deductible federal income tax] [These tables reflect the current tax rates] [repeal of the federal income tax deduction].

Section 1. **Withholding Tables. An employer shall withhold Kentucky individual income tax from wages and salaries in accordance with Kentucky Form 42A003(T), Withholding Kentucky Income Tax, as incorporated by reference in 103 KAR 3:040. This material may also be obtained on the Department of Revenue's Web site at <http://revenue.ky.gov>.** [General. The Department of Revenue] [Cabinet] [is required by KRS 141.370 to prescribe tables for withholding Kentucky individual income tax from salaries and wages of employees. These tables withhold the tax levied by KRS 141.020 and reflect the standard deduction] [(\$650)] [prescribed by KRS 141.081. The tables referred to in Section 4 of this administrative regulation are hereby prescribed by the Department of Revenue] [Cabinet].

Section 2. Supplemental Withholding. (1) In addition to tax required to be withheld by the tables in Section 1[4] of this administrative regulation, an employee may authorize his employer to withhold additional Kentucky income tax.

(2) An employee may authorize additional withholding by filing **with the employer** an amended **Form K-4, Kentucky Department of Revenue Employee's Withholding Exemption Certificate (Revenue Form 42A804), incorporated by reference in 103 KAR 3:040.**

(3) Withholding Exemption Certificate (Revenue Form K-4) with his employer. The amended certificate may claim fewer personal exemptions than are [he is] allowed, authorize the employer to withhold a specific amount of additional tax, or both.

Section 3. Mechanical Withholding. **An employer may use the Computer Formula (Optional Withholding Method) contained in Kentucky Form 42A003(T), Withholding Kentucky Income Tax, as incorporated by reference in 103 KAR 3:040 instead of the tables required by Section 1 of this administrative regulation for the determination of the amount to withhold from an employee's wage or salary.** [The department] [cabinet] [provides a computer formula for withholding Kentucky income tax, and any employer with suitable equipment may use the formula in lieu of the tables referred to in Section 4 of this administrative regulation. No other formula or withholding method may be used unless specific written approval is granted by the department] [cabinet].

Section 4. Withholding Tables. Employers shall withhold Kentucky individual income tax from wages and salaries, paid after December 31, 1990, in accordance with the tables filed herein by reference which are obtainable without charge from the Department of Revenue, 501 High Street [Cabinet], [Frankfort, Kentucky 40601. This material incorporated by reference may be inspected] [and copied] [at the Department of Revenue's Web site, <http://revenue.ky.gov>] [Frankfort office of the Revenue Cabinet located on the fourth floor of the Capitol Annex Building. Inspec-



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tions may be made at this office and the Taxpayer Service Centers listed below between the hours of 8 a.m. and 4:30 p.m. (local time).

**Revenue Cabinet Taxpayer Service Centers**

Ashland  
1422 Winchester Avenue  
P. O. Box 687  
Ashland, Kentucky 41105-0687  
(606) 329-9982

Bowling Green  
1502 Westen Avenue  
Bowling Green, Kentucky 42102-2040  
(502) 843-5470

Corbin  
1707 18th Street, Suite 5  
Falls Road Plaza  
P.O. Box 1298  
Corbin, Kentucky 40702-3298  
(606) 528-3322

Frankfort  
Capitol Annex Building  
Fourth Floor, Room 405  
Frankfort, Kentucky 40620  
(502) 564-4580

Hazard  
233 Birch Street  
P. O. Box 419  
Hazard, Kentucky 41701-4194  
(606) 439-2388

Hopkinsville  
Hammond Plaza  
P. O. Box 695  
Hopkinsville, Kentucky 42241-0695  
(502) 887-2521

Lexington  
301 E. Main Street, Suite 500  
Lexington, Kentucky 40507-1556  
(606) 233-3837

Louisville  
620 S. Third Street, Suite 102  
Louisville, Kentucky 40202-2402  
(502) 588-4512

Northern Kentucky  
Kentucky Executive Building  
2055 Dixie Highway, Room 210  
Ft. Mitchell, Kentucky 41011-2648  
(606) 292-6603

Owensboro  
311 W. Second Street  
P. O. Box 628  
Owensboro, Kentucky 42302-0628  
(502) 686-3301

Paducah  
555 Jefferson Street  
P. O. Box 2336  
Paducah, Kentucky 42002-2336  
(502) 444-8148

Pikeville  
1279 N. Mayo Trail  
Pikeville, Kentucky 41501-8230  
(606) 437-4075]

THOMAS MILLER, Commissioner  
APPROVED BY AGENCY: December 15, 2009  
FILED WITH LRC: December 15, 2009 at noon  
CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

**GENERAL GOVERNMENT CABINET  
State Board of Examiners and Registration of  
Landscape Architects  
(As Amended at ARRS, February 8, 2010)**

**201 KAR 10:050. Fees.**

RELATES TO: 323A.060, 323A.070, 323A.100(1), (4)  
STATUTORY AUTHORITY: KRS 323A.060, 323A.100(1), 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: The board is authorized by KRS 323A.060 to promulgate administrative regulations to establish fees for services. This administrative regulation establishes fees for landscape architect licensees.

Section 1. Fees. The following nonrefundable fees shall be paid as applicable:

- (1) Renewal fees:
  - (a) Active license: \$170.
  - (b) Inactive license: \$150.
- (2) Duplicate certificate: twenty-five (25) dollars.
- (3) Issuance of original license by examination or reciprocity [certificate]: \$200.
- (4) Restoration of a suspended license: renewal fee established in subsection (1) of this section, plus an amount calculated pursuant to KRS 323A.100(1).
- (5) Reactivation fee: \$170.
- (6) Reciprocal application fee [issuance of a license on reciprocity basis]: \$200 [\$250].
- (7) Examination:
  - (a) Processing fee. A \$100 nonrefundable processing fee shall be submitted with a new application for examination.
  - (b) Examination sections:
    1. Section C: \$295.
    2. Section E: \$295.

BILLY F. VANPELT, President  
APPROVED BY AGENCY: November 13, 2009  
FILED WITH LRC: November 13, 2009 at 11 a.m.  
CONTACT PERSON: Jane Gardner, Executive Director, Board of Examiners and Registration of Landscape Architects, Spindletop Administrative Building, Suite 106, 2624 Research Park Drive, Lexington, Kentucky 40511, phone (859) 246-2753, fax (859) 246-2754.

**GENERAL GOVERNMENT CABINET  
Board of Physical Therapy  
(As Amended at ARRS, February 8, 2010)**

**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) 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
- (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[additional] evaluation and treatment;
  - (c) Make a recommendation regarding a person's ability to return to work or physical activity; and
  - (d) Provide physical therapy [related] services;
- (2) Evaluate each patient:
  - (a) Prior to initiation of treatment;
  - (b) Upon receipt of a patient from another physical therapy service, facility, or agency; and
  - (c) If requested by a referring professional;
  - (3) 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. 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. During this grace period treatment may continue based upon the previous reassessment or initial evaluation;
    - (c) Reassessing each patient not otherwise noted every thirty (30) days following the initial evaluation or subsequent reassessment;
    - (d) Reassessing a patient whose medical condition has changed:[and]
  - (4) Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;
  - (5)[(4)] Be responsible for the physical therapy record of each patient;
  - (6)[(5)] Provide services that meet or exceed the generally accepted practice of the profession;
  - (7)[(6)] Explain the plan of care to the patient, to others designated by the patient, and to appropriate professionals;
  - (8)[(7)] 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;
  - (9)[(8)] 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.
  - (10)[(9)] Unless prohibited by law, as members of a business entity 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(3)~~~~4(3)(i)-(ii)~~ 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, be limited to:
  - 1. 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 seven (7) consecutive work days shall not constitute a violation of this standard;
- (2) Not delegate procedures or techniques to the physical therapist assistant or supportive personnel if it is outside his or her scope of training, education or expertise.
- (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 available and accessible by telecommunications during the working hours of the physical therapist assistant;
  - (f) Insuring that if supportive personnel provide direct patient care that there is on site supervision by a physical therapist or physical therapist assistant;
  - (g) Insuring that a physical therapy student fulfilling [the] clinical education requirements ~~[of a CAPTE accredited program]~~ shall receive on-site supervision by a physical therapist;
  - (h) Insuring that a physical therapist assistant and student fulfilling [the] clinical education requirements ~~[of a CAPTE accredited program]~~ shall receive on-site supervision of which eighty (80) percent may be by a credentialed physical therapist assistant;
  - (i) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;
  - (j) 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. 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. During this grace period treatment may continue based upon the previous reassessment or initial evaluation;

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(k) ~~Reassessing each patient not otherwise noted every thirty (30) days following the initial evaluation or subsequent reassessment;~~

(l) ~~Reassessing a patient whose medical condition has changed; and~~

(m) Establishing discharge planning for patients who require continued physical therapy.

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, 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 4(3)(i) through (l) 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 that is[data] 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 may write the discharge summary, which shall be 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

(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'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 KLU.S.C.H, Executive Director

APPROVED BY AGENCY: November 10, 2009

FILED WITH LRC: November 13, 2009 at noon

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

**GENERAL GOVERNMENT CABINET**  
**Board of Licensure for Marriage and Family Therapists**  
**(As Amended at ARRS, February 8, 2010)**

**201 KAR 32:035. Supervision of marriage and family therapist associates.**

RELATES TO: KRS 335.320(6), 335.332

STATUTORY AUTHORITY: KRS 335.320(4), (5)

NECESSITY FUNCTION AND CONFORMITY: KRS 335.320(4) requires the board to license applicants who satisfy the experience and educational requirements and who have paid the fee. KRS 335.320(5) requires the board to review and approve supervision contracts between marriage and family therapy associates and their approved supervisors. This administrative regulation establishes the supervision requirements for marriage and family therapy associates and their board-approved supervisors.

Section 1. Definitions. (1) "Group supervision" means supervision of more than two (2) supervisees with the supervisor.

(2) "Qualified mental health professional" means a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker.

(3) "Raw data" means video-taped sessions, live observation, or co-therapy with a board-approved supervisor.

Section 2. Qualifications for Board-Approved Supervisors Status. (1) Effective January 1, 2011[July 1, 2010], 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 candidate;

(c) A marriage and family therapist licensed in Kentucky and in good standing with a minimum of five (5) years of experience in the practice of marriage and family therapy; or

(d) A person licensed and in good standing with a minimum of five (5) years of experience as a marriage and family therapist in another state, and who meets the licensure requirements for Kentucky.

(2) ~~[In order]~~ To obtain initial board-approved supervisor status, an applicant who is not an AAMFT supervisor in good standing~~[a non-AAMFT supervisor in good standing applicant]~~~~[an applicant who is not an AAMFT supervisor in good standing]~~ shall provide proof of completion of six (6) hours of licensure board-approved continuing education courses in supervision.

(a) The course shall be taken within the two (2) years preceding the date of application to become a board-approved supervisor.

(b) This requirement shall be in addition to the fifteen (15) hours of continuing education required by 201 KAR 32:060.

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

1. Kentucky law governing the practice of marriage and family therapy, both administrative regulations and statutes;

2. Theories of supervision;

3. Ethical issues involved in supervision; and

4. Supervisor responsibilities such as logs, treatment, planning and recording. This requirement shall be included in the fifteen (15) hours of continuing education required by 201 KAR 32:060.

~~[(b)1.]~~ A non-AAMFT approved supervisor~~[supervisors]~~ shall complete two (2) hours of continuing education in supervision every year, to maintain board-approved supervisor status. This requirement shall be included in the fifteen (15) hours of continuing education required by 201 KAR 32:060.

~~[a]2.]~~ The approved courses may be live or online and shall include:

1.[a.] Kentucky law governing the practice of marriage and family therapy, both administrative regulations and statutes;

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- 2.[b.] Theories of supervision;
- 3.[c.] Ethical issues involved in supervision; and
- 4.[d.] Supervisor responsibilities such as logs, treatment, planning and recording.

(4) An AAMFT approved supervisor[supervisors] shall complete one (1) hour of continuing education every year in Kentucky law governing the practice of marriage and family therapy, to maintain board-approved supervisor status. The course[courses] may be attended live or on-line. This requirement shall be included in the fifteen (15) hours of continuing education required by 201 KAR 32:060.

Section 3. Clinical Supervision. (1) Clinical supervision shall:

(a) Be equally distributed throughout the qualifying period and shall average at least four (4) hours per month as specified in the supervision contract;

(b) Be clearly distinguishable from psychotherapy, didactic enrichment, or training activities;

(c) Focus on raw data from the supervisee's current clinical work; and

(d) Be direct, face-to-face contact between the supervisor and supervisee, unless an alternative form of supervision has been approved by the board based on undue burden for the supervisor or supervisee.

(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[associates] shall maintain a supervision log which shall document:

(a) The frequency and type of supervision provided; and

(b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.

(2) No more than 100 hours of supervision hours may take place in group supervision. [For purposes of this administrative regulation, individual supervision consists of one (1) or two (2) supervisees with a supervisor.]

Section 7. Number of Supervisees. (1) A board-approved supervisor shall not supervise[have] more than six (6) marriage and family therapist associates [under supervision] at the same, unless approved by the board[any one (1)] time.

(2) A request[Requests] to supervise more than six (6) marriage and family therapist associates [in excess of six (6)] 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[add to the current supervisory load].

Section 8. Temporary Supervision. (1) In extenuating circumstances, if a marriage and family therapist associate is without supervision, the associate may continue working up to ninety (90) calendar days under the supervision of a qualified mental health provider while an appropriate board-approved supervisor[supervision] 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, [and] or the termination of the supervisor's employment.

(2)[4-] 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.[2-] The written plan shall include:

a. The name of the temporary supervisor;

b. Verification of the credential held by the temporary supervisor;

c. An address for the temporary supervisor; and

d. A telephone number for the temporary supervisor.

Section 9. Board-approved Supervisor's Responsibilities to Clients and Supervisees. (1) A board-approved supervisor shall be responsible for ensuring the proper and appropriate delivery of marriage and family therapy services to clients.

(2) A board-approved supervisor shall be responsible for fostering the professional competence and development of the marriage and family therapist associates under his or her supervision.

(3) A board-approved supervisor shall be responsible for compliance with the code of ethics established in 201 KAR 32:050 and take steps to ensure that supervisees comply with the code of ethics as well.

Section 10. Incorporation by Reference. (1) "Diagnostic and Statistical Manual of Mental Disorders", 2009, is incorporated by reference.

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

TONY WATKINS, Board Chair

APPROVED BY AGENCY: September 17, 2009

FILED WITH LRC: October 6, 2009 at 2 p.m.

CONTACT PERSON: Angela Evans, Board Counsel, Assistant Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

**TOURISM, ARTS AND HERITAGE CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, February 8, 2010)**

**301 KAR 1:016. Use of [public] lands and waters on[at department-owned] lakes owned or controlled by the department.**

RELATES TO: KRS [450.025-] 150.090, [450.620-] 150.625, 150.640

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to promulgate administrative regulations governing the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation governs all private structures on property owned or controlled by the department, the private use of public lake water, and permitted and prohibited activities on department-owned or controlled land surround-

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ing department-owned waters. [private boat docks on department-owned property, the use of lake water for domestic purposes and permitted and prohibited activities on department-owned and controlled land surrounding department-owned waters.]

Section 1. Definitions. (1) "Adjacent property owner" means the owner of real property that shares a common boundary with department property.

(2) "Boat dock" means a privately owned floating or fixed structure that is used by an adjacent landowner to moor a boat on department property.

(3) "Boat dock tag" means a metal tag provided by the department that has a unique combination of letters and numbers, and is permanently affixed to an approved boat dock so that it is visible from the lake.

(4) [in-a-lake owned, leased or otherwise controlled by the department.

(3)] "Department property" means lands or waters [owned, leased or otherwise] controlled by the department through ownership, lease, license, easement, or cooperative agreement at the department-owned [public fishing] lakes listed in Section 2 of this administrative regulation.

(5) "Existing structure" means a grandfathered access or non-access structure built on department property prior to **the effective date of this administrative regulation** [July 1, 2009].

(6) [(4)] "Enclosed superstructure" means a roofed structure with solid, glass, screen or similar walls, but does not include dock boxes and similar storage containers less than four (4) feet high.

(5)] "Normal pool" means a water level equal to the elevation of the lake's principal spillway.

(7) "Permanent dwelling" means a private residence on an adjacent landowner's land that is both fixed in location and of durable permanent construction, but does not include tents, motorized vehicles, trailers, camp trailers, or any type of interim construction or residence.

(8) **"Rebuild" means to totally reconstruct.**

(9) "Shoreline use permit" means a permit issued by the department that allows an adjacent landowner to construct a new access structure or to keep or rebuild an existing structure on department land.

Section 2. Boat Docks, Boat Dock Applications, and Boat Dock Construction Approval. (1) A boat dock may be constructed on department property by an adjacent landowner if the adjacent property:

(a) Shares at least a fifty (50) foot boundary with the department property if the adjacent boundary lines were extended to the water's edge; and

(b) Is located at one (1) of the following lakes:

1. Beaver Lake;
2. Boltz Lake;
3. Bullock Pen Lake;
4. Carpenter Lake;
5. Corinth Lake;
6. Elmer Davis Lake;
7. Guist Creek Lake;
8. Kincaid Lake;
9. Kingfisher Lakes; or
10. Lake Malone.

(2) Prior to constructing a boat dock, an adjacent landowner shall submit a completed Boat Dock Application to the department, accompanied by the permit fee for the dock as established in 301 KAR 3:022, except that the fee shall be prorated for every year remaining in the ten (10) year permit period.

(3) Boat dock construction shall not begin until:

(a) An on-site inspection by an authorized department employee has been completed; and

(b) The applicant has obtained written approval from the department to begin construction.

(4) Boat dock construction approval shall be valid for one (1) year from the date of issuance.

(5) A boat dock applicant shall:

(a) Report to the department when construction of a new boat dock is complete, an existing boat dock has been rebuilt, or an

existing dock has been brought into compliance; and

(b) Allow inspection of the boat dock by an authorized department employee.

(6) An adjacent landowner with an existing boat dock on Bullock Pen Lake shall be required to obtain a Boat Dock Permit, but shall not be required to pay the permit fee until 2018.

Section 3. Boat Dock Permits. (1) The department shall issue a Boat Dock Permit and Boat Dock Tag to an adjacent landowner:

(a) Who has satisfied the boat dock application requirements in Section 2 of this administrative regulation;

(b) Who has a boat dock that has passed a final inspection by an authorized department employee;

(c) Whose permit has not been revoked pursuant to Section 8 of this administrative regulation; and

(d) Who remains compliant with all the provisions of this administrative regulation.

(2) The Boat Dock Tag issued with the boat dock permit shall be affixed to the front edge of the dock facing the lake.

(3) A Boat Dock Permit shall:

(a) Be valid for a ten (10) year period, with the current permit period expiring December 31, 2017 and the next permit period beginning January 1, 2018;

(b) Be renewed within ninety (90) days of the termination date by:

1. Paying the fee as established in 301 KAR 3:022; and  
2. Submitting an affidavit that no unauthorized addition or modification has been made to the boat dock;

(c) Be transferable at no additional cost, if ownership changes, for the remainder of the ten (10) year period; and

(d) Not be renewed by the department if the boat dock is out of compliance, except as established in Section 4 or Section 7 of this administrative regulation;

(e) Prohibit the permittee from renting, leasing, or licensing the dock to another person for any purpose.

(4) An adjacent landowner who owns multiple contiguous properties adjacent to department property shall:

(a) Not be issued more Boat Dock Permits than the number of completed permanent dwellings on those properties; or

(b) Qualify for one (1) Boat Dock Permit if there is no completed permanent dwelling on any of the contiguous properties.

(5) An adjacent landowner shall only be eligible for one (1) Boat Dock Permit per adjacent property.

Section 4. Boat Dock Specifications and Requirements. (1) A boat dock constructed or rebuilt after **the effective date of this administrative regulation** [July 1, 2009] shall not exceed:

(a) Eight (8) by sixteen (16) feet in dimension; and

(b) A surface area of more than 128 square feet.

(2) The longest dimension of the boat dock [eight (8) foot or shorter section] shall be positioned perpendicular to the shore.

(3) A boat dock shall not have more than one (1) walkway connecting the boat dock to the shore that shall:

(a) Be positioned perpendicular to the shore;

(b) Be anchored to department property by:

1. A concrete pad no larger than ten (10) square feet; or

2. Two (2) metal posts on each side of the walkway.

(c) Not be wider than four (4) feet;

(d) Be the shorter of:

1. A length sufficient to reach a water depth of two (2) feet when the lake is at normal pool; or

2. Twenty (20) feet in length.

(e) Not be used for boat mooring.

(4) The flotation for a boat dock shall be made from materials manufactured for marine use.

(5) All wooden material on a boat dock shall be kiln-dried lumber that has been commercially pressure-treated with a wood preservative and shall not be painted.

(6) A boat dock shall moor no more than:

(a) Two (2) boats; or

(b) One (1) boat and up to two (2) personal watercraft on Lake Malone and Guist Creek Lake only.

(7) A personal watercraft mooring system that is attached to an approved boat dock at Lake Malone and Guist Creek Lake shall:

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- (a) Be a commercially manufactured floating system;
- (b) Not exceed:
  - 1. Six (6) feet in width and fifteen (15) feet in length if mooring a single personal watercraft; or
  - 2. Twelve (12) feet in width and fifteen (15) feet in length if mooring two (2) personal watercraft; and
- (c) Be attached to one (1) side of the boat dock, but not the front.
- (8) An additional jonboat, canoe, or personal watercraft may be stored on top of a boat dock, except a personal watercraft shall only be stored on top if a commercially manufactured self-loading ramp is used.
- (9) The following items shall be prohibited on boat docks:
  - (a) An enclosed structure;
  - (b) An unenclosed structure; and
  - (c) Any other items, structures, or deviations not identified in a previously obtained waiver, pursuant to Section 7 of this administrative regulation.
- (10) A boat dock that was constructed prior to **the effective date of this administrative regulation**[July 1, 2009] shall be exempt from the requirements established in subsections 1 through 6 of this section for the life of the boat dock.
- (11) A boat dock owner who rebuilds an existing dock, including those exempted by subsection 10 of this section, shall reapply and meet all the requirements established in this section, except as established in Section 7 of this administrative regulation.
- (12) A boat dock permit holder who applies to rebuild an existing, legally permitted boat dock during the ten (10) year permit period shall be exempt from paying the permit fee until permit renewal.
- (13) **A private community boat dock or a private multi-slip boat facility shall not be allowed except as approved by the Finance and Administration Cabinet prior to January 1, 2010.**[The following boat dock repair activities shall be considered rebuilding:
  - (a) Flotation replacement;
  - (b) Joist replacement; or
  - (c) Walkway replacement.]

Section 5. Access Structures and Shoreline Use Permits. (1) A shoreline use permit shall only be issued for the following lakes:

- (a) Beaver Lake;
  - (b) Carpenter Lake;
  - (c) Corinth Lake;
  - (d) Elmer Davis Lake;
  - (e) Guist Creek Lake;
  - (f) Kincaid Lake; and
  - (g) Lake Malone.
- (2) Shoreline Use Permits shall be valid for a fifteen (15) year period beginning January 1, 2010.
- (3) An adjacent landowner with an existing structure shall apply for a Shoreline Use Permit within ninety (90) days following the effective date of this administrative regulation.
- (4) Prior to constructing a new access structure, rebuilding an existing access structure, or permitting an existing structure, an adjacent landowner shall submit to the department:
  - (a) A completed Shoreline Use Permit Application; and
  - (b) The appropriate permit fee if applicable, as established in 301 KAR 3:022, except that the fee shall be prorated to the nearest five (5) year interval that remains in the fifteen (15) year permit period.
- (5) An adjacent landowner shall not begin construction of a new access structure or begin rebuilding an existing access structure until:
  - (a) An authorized department employee conducts an on-site visit and determines the type of access structure necessary for safe passage to the lake; and
  - (b) The adjacent landowner receives written approval from the department.
- (6) Access structure construction approval shall be valid for one (1) year from the date of approval.
- (7) A Shoreline Use Permit shall not be issued unless all shoreline structures have passed final inspection by an authorized department employee.

- (8) A new access structure shall only include the following:
  - (a) A ground level pathway that shall:
    - 1. Only have pretreated lumber or railroad ties as edging;
    - 2. Not consist of asphalt, concrete, or any other permanent surface;
    - 3. Only consist of crushed stone, wood chips, or other removable material as fill between the edging, except that local natural stones or rocks may be used as steps;
    - 4. Not exceed five (5) feet in width including the edging; and
    - 5. Follow the natural contour of the land if possible.
  - (b) A raised ground level pathway that shall:
    - 1. Not exceed eight (8) inches in height.
    - 2. Not exceed forty (40) steps, with each step not exceeding five (5) feet in width and eight (8) feet in length;
    - 3. Only consist of pretreated, unpainted lumber; and
    - 4. Follow the natural contour of the land if possible.
  - (c) A raised staircase that shall:
    - 1. Not exceed four (4) feet in width;
    - 2. Not have more than one (1) landing that does not exceed four (4) feet in width and four (4) feet in length;
    - 3. Not have more than twenty (20) steps if a landing is not used;
    - 4. Not have more than thirty (30) steps if a landing is used;
    - 5. Only consist of pretreated, unpainted lumber; and
    - 6. Conform to prevailing building code standards for stairs for the county of record or, if such standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established by 815 KAR 7:120; or
  - (d) A foot bridge that shall:
    - 1. Not exceed four (4) feet in width and twelve (12) feet in length;
    - 2. Not use a tree as an anchoring device; and
    - 3. Only consist of pretreated, unpainted lumber.
- (9) An adjacent landowner who has an existing access structure that was constructed prior to **the effective date of this administrative regulation**[July 1, 2009], shall be exempt from the requirements of subsection (8) of this section for the life of the structure, if the landowner applies for and maintains a valid Shoreline Use Permit.
- (10) An adjacent landowner who rebuilds an existing access structure, including those grandfathered in subsection (9) of this section, shall **be exempt from the requirements established in subsection 8 of this section provided the landowner maintains a valid Shoreline Use Permit.**[comply with the requirements established in subsection (8) of this section, except as established in Section 7 of this administrative regulation.]
- (11) **An existing access structure:**
  - (a) **May be adequately maintained to extend the life of the structure;**
  - (b) **May be rebuilt with less than or equal to the same number of steps in the original structure;**
  - (c) **May be rebuilt with necessary landings not to exceed 4 ft. x 8 ft. in dimension; and**
  - (d) **Shall conform to prevailing building code standards for the county of record or, if such standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established in 815 KAR 7:120.** [The following access structure repair activities shall be considered rebuilding:
    - (a) Joist replacement;
    - (b) Support beam replacement; or
    - (c) Stringer replacement.]
- (12) A Shoreline Use Permit shall:
  - (a) Be renewed every fifteen (15) years within ninety (90) days of the termination date by:
    - 1. Paying the fee established in 301 KAR 3:022; and
    - 2. Submitting an affidavit that an unauthorized addition or modification has not been made to a permitted structure.
  - (b) Be transferable at no additional cost, if ownership changes, for the remainder of the fifteen (15) year period; and
  - (c) Not be renewed if the access structure is out of compliance, except if the access structure was built prior to **the effective date of this administrative regulation**[July 1, 2009].
  - (d) Be extended, by written request to the department, for an additional twelve (12) months if the property is transferred or the

landowner dies during year fifteen (15) of the permit period.

(13) An existing noncompliant access structure, pursuant to Section 8 of this administrative regulation, shall be removed at the owner's expense.

(14) Nonaccess structures, such as gazebos or storage buildings, excluding existing permanent dwellings, shall be:

(a) Itemized in the adjacent landowner's Shoreline Use Permit; and

(b) **Allowed to be kept and maintained by an adjacent landowner for the life of the structure provided the landowner maintains a valid Shoreline Use Permit.** ~~[Removed at the owner's expense by the year 2025.]~~

(15) The Shoreline Use Permit fee, as established in 301 KAR 3:022, shall be based on the types of access structures established in subsection (8) of this section, and consist of the following three (3) tiers:

(a) A Tier I permitted structure shall include:

1. All compliant access structures pursuant to subsection (8) of this section;

2. An existing access structure with fifteen (15) or less steps that is not compliant, pursuant to subsection (8) of this section;

3. An existing footbridge; or

4. A new footbridge that is compliant, pursuant to subsection 8 of this section.

(b) A Tier II permitted structure shall include:

1. An existing access structure having thirty (30) or less concrete steps; or

2. An existing access structure that does not comply with the requirements established in subsection (8) of this section, and having sixteen (16) to thirty (30) steps.

(c) A Tier III permitted structure shall include:

1. An existing access structure, including a concrete access structure, that does not comply with the requirements established in subsection 8 of this section, and having more than thirty (30) steps;

2. A new access structure that does not comply with the requirements established in subsection (8) of this section, and requires a waiver pursuant to the requirements of Section 7 of this administrative regulation.

3. An existing staircase that has one (1) or more landings that exceed a four (4) feet in width or four (4) feet in length; or

4. An existing nonaccess structure, such as a storage shed or gazebo.

(16) If an adjacent landowner applies for a Shoreline Use Permit for multiple structures that cover more than one (1) tier, then a single permit will be issued at the highest tier level for which the applicant qualifies.

(17) A concrete access structure shall not be rebuilt.

**Section 6. Other Activities on Department Property.** (1) **A person shall not** ~~[No person shall]~~ be permitted to take water from the lakes listed in Section 2 of this administrative regulation, except for:

(a) Residential use by adjacent landowners;

(b) Temporary use in a time of emergency drought; or

(c) An adjacent landowner who has been given the right to do so by deed.

(2) A person, without first obtaining written permission from the department, shall not:

(a) Place or build any unpermitted object or structure;

(b) Plant any vegetation;

(c) Place or use any mechanical equipment;

(d) Take water from any lake listed in Section 2 of this administrative regulation;

(e) Cut, clear, burn, damage, or kill trees or shrubs greater than two (2) inches in diameter measured at ground level; or

(f) Moor a boat to the shoreline for more than forty-eight (48) hours.

**Section 7. Waivers.** (1) An adjacent landowner shall first obtain a waiver from the department for any deviation to the specifications established in this administrative regulation by:

(a) Submitting a written request to the department; and

(b) Providing a detailed plan to the department of any planned deviation.

(2) A person shall not begin construction on a project that includes a planned deviation until the department has approved a waiver.

(3) The department, in deciding whether to grant a waiver for a new access structure, shall consider if:

(a) The deviation is in substantial compliance with the requirements established in this administrative regulation;

(b) The deviation poses a potential safety hazard;

(c) Topographical or other physical features of the land necessitate a deviation;

(d) The waiver request exceeds the staircase landing dimension or step limit by more than twenty (20) percent; and

(e) A new staircase will conform to prevailing building code standards for the county of record or, if **those[such]** standards do not exist, complies with Section 1009 of the Kentucky Building Code Standards for stairs, as established in 815 KAR 7:120.

(4) ~~[The department, in deciding whether to grant a waiver for an existing access structure that is to be rebuilt, shall consider if:~~

~~(a) No other reasonable alternative exists that would comply with the staircase requirements of this administrative regulation; and~~

~~(b) The rebuilt staircase will conform to prevailing building code standards for the county of record or, if such standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established in 815 KAR 7:120.~~

~~(5) [The department, in deciding whether to grant a waiver for a boat dock, shall consider if:~~

~~(a) The deviation is in substantial compliance with the requirements established in this administrative regulation;~~

~~(b) The deviation poses a potential safety hazard; and~~

~~(c) Topographical or other physical features of the land necessitate a deviation.~~

~~(5) [(6)]~~ An adjacent landowner, either individually or as a director or high managerial agent of a business organization, who violates any provision of this administrative regulation shall be denied a waiver for a new or rebuilt structure for a period of two (2) years from the date of the citation, with the waiver denial applying to:

(a) The individual; and

(b) Any business for which the person is a director or high managerial agent.

**Section 8. Noncompliance, Permit Revocation, and Appeals.**

(1) The department shall revoke each Boat Dock Permit and Shoreline Use Permit issued to a person if that permit holder:

(a) Without department approval **rebuid[s]**, ~~renovates, modifies, or makes an addition to~~ an existing:

1. Boat dock;

2. ~~[Boat dock walkway];~~

3. ~~[Access structure; or~~

3. ~~[4.] Nonaccess structure.~~

(b) Constructs or places a new nonaccess structure on department property;

(c) Fails to:

1. Maintain the boat dock, boat dock walkway, access structure, or nonaccess structure in a structurally sound condition; or

2. Renew the Boat Dock or Shoreline Use Permit within ninety (90) days of expiration.

(2) An adjacent landowner who has a noncompliant boat dock, boat dock walkway, access structure, or nonaccess structure shall be notified in writing by the department that the landowner has sixty (60) days to come into compliance, to remove the boat dock, walkway, or structure, or to make an appeal as established in subsection 6 of this section.

(3) If the requirements of subsection (2) of this section are not met within sixty (60) days, the department shall have the authority to remove the noncompliant structure at the owner's expense and the structure shall become the property of the department.

(4) If an adjacent landowner, either individually or as a director or high managerial agent of a business organization, violates any provision of this administrative regulation for a second time, then the department shall revoke for a period of three (3) years from the date of the second citation all Boat Dock Permits and Shoreline Use Permits issued to:

(a) The adjacent landowner;

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(b) Any business organization for whom the individual adjacent landowner is a director or high managerial agent; and

(c) Any director or high managerial agent of the adjacent landowner who is a business organization.

(5) The following shall apply for any adjacent landowner whose permit is revoked pursuant to subsection (4) of this section:

(a) All structures shall be removed at the owner's expense within thirty (30) days of revocation if an appeal is not filed.

(b) If the structures are not removed by the owner within thirty (30) days and no appeal is filed, then the department shall have the authority to remove the structure at the owner's expense; and

(c) All structures removed pursuant to paragraph (b) of this subsection shall become the property of the department.

(6) An adjacent landowner whose waiver request is denied or whose permit is denied or revoked may appeal the decision in accordance with the provisions of KRS Chapter 13B.

(a) The department shall appoint a hearing officer and conduct the hearing in accordance with the provisions of KRS Chapter 13B;

(b) The hearing officer shall make a recommendation to the Department of Fish and Wildlife Resources' Commission;

(c) The commission shall make a decision by majority vote; and

(d) An appeal of the Commission's decision shall be in accordance with the provisions of KRS Chapter 13B; and

(e) At the conclusion of all appeals or at the expiration of any appeal period for which an appeal has not been made:

1. The owner shall remove any unauthorized structure within ten (10) days, at the owner's expense;

2. An unauthorized structure that has not been removed by the owner within ten (10) days shall be removed by the department at the owner's expense; and

3. Each structure removed pursuant to subparagraph (2) of this paragraph shall become the property of the department.

Section 9. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Boat Dock Permit Application, 2010";

(b) "Shoreline Use Permit Application, 3/2010."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Fisheries Division, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Boat Dock Permits. (1) An adjacent property owner may construct a boat dock on department property if his property:

(a) Would be lake-front property if not for the intervening department property;

(b) Shares at least a fifty (50) foot boundary with department property; and

(c) Is located at one (1) of the following lakes:

1. Beaver;

2. Boltz;

3. Carpenter;

4. Corinth;

5. Elmer Davis;

6. Guist Creek;

7. Kincaid;

8. Kingfisher; or

9. Malone.

(2) A boat dock permit:

(a) Shall entitle the holder to construct one (1) boat dock meeting the specifications described in Section 4 of this administrative regulation.

(b) Shall be renewed every ten (10) years within ninety (90) days of the termination date by:

1. Paying the fee as specified in 301 KAR 3:022; and

2. Submitting an affidavit that an unauthorized addition or modification has not been made to the dock or walkway.

(c) Shall not give the permitted dock owners the ability to rent, lease, or license to another individual or use the dock for purposes other than mooring of the permittee's boat;

(d) Shall be transferable at no additional cost, if ownership changes, for the remainder of the ten (10) year period; and

(e) Shall not be renewed if the boat dock is out of compliance.

(3) A person who owns multiple contiguous properties adjacent

to department property shall:

(a) Not be issued more boat dock permits than the number of dwellings on those properties; and

(b) Be entitled to one (1) boat dock permit if there is no dwelling on his contiguous properties.

(4) A person who constructed a boat dock under a permit issued before July 1, 1996 shall be permitted to have a boat dock that exceeds:

(a) The single dimension limit specified in Section 4 of this administrative regulation by two (2) feet; or

(b) The square footage limit specified in Section 4 of this administrative regulation by thirty-two (32) square feet.

Section 3. Constructing Boat Docks. (1) A person wishing to construct a boat dock shall:

(a) Submit a boat dock application on forms provided by the department, accompanied by:

1. The permit fee; and

2. Proof that the applicant's property is adjacent to department lands;

(b) Not begin construction until he or she has been issued a construction permit from the department. This permit shall be in addition to other required building permits.

1. A construction permit shall not be issued until an on-site visit by department personnel has been completed.

2. A construction permit shall be valid for one (1) year from the date of issuance.

(c) Inform the department when:

1. Construction of the new dock is complete; or

2. An existing dock has been brought into compliance.

(d) Allow inspection of the dock by a department employee.

(2) The department shall issue a boat dock permit and tag to a boat dock owner whose dock passes a final inspection for compliance with the provisions of this administrative regulation.

(3) The dock owner shall affix the tag issued with the permit to the edge of the dock facing the lake.

(4) A reconstructed boat dock shall meet specifications specified in Section 4 of this administrative regulation.

Section 4. Boat Dock and Walkway Specifications. (1) A person shall not construct a boat dock that:

(a) Measures more than sixteen (16) feet in any dimension;

(b) Has a surface area of more than 128 square feet;

(c) Has enclosed superstructures;

(d) Has unenclosed superstructures or other features not specified in the boat dock permit; or

(e) Contains metal drums, styrofoam blocks, or other home-made flotation devices. Only flotation material that has been manufactured for marine use may be used.

(2) A walkway connecting the bank and the dock shall:

(a) Be perpendicular to the shoreline.

(b) Be anchored to department property at the shoreline using either:

1. A concrete pad no larger than ten (10) square feet; or

2. Two (2) metal posts at each side of the walkway.

(c) Not be wider than four (4) feet.

(d) Be the shorter of:

1. A length sufficient to reach a water depth of two (2) feet when the lake is at normal pool; or

2. Twenty (20) feet in length.

(e) Not be used for boat mooring.

Section 5. Revocation of Permits. (1) The department shall cancel a boat dock permit if the permit holder:

(a) Makes an addition or modification to the dock or walkway without written permission from the department; or

(b) Fails to:

1. Renew the boat dock permit within ninety (90) days of expiration; or

2. Maintain the dock or walkway in a structurally sound condition.

(2) An owner of a noncompliant boat dock shall be notified in writing by the department that the owner has sixty (60) days to bring the boat dock into compliance or remove the boat dock,



walkway, or other structure.

(3) If the boat dock has not been brought into compliance following the sixty (60) day notification period, the department shall have the authority to remove the noncompliant boat dock, walkway, or other structure.

Section 6. Use of Water. (1) A person shall not take water from the lake without the written consent of the department.

(2) The department shall not grant permission to take water from lakes other than:

- (a) For the residential use of adjacent property owners; or
- (b) For temporary emergency use in times of drought.

Section 7. Cutting Weeds or Grass. An adjacent property owner may cut weeds or grass, or clear underbrush less than two (2) inches in diameter, from department lakefront property which joins his property.

Section 8. Structures or Equipment on Department Property.

(1) A person shall not place a road, ramp, building, steps, fence, garden, or structure on department property.

(2) Without written permission from the department, a person shall not:

- (a) Place an object or structure at the water's edge to stabilize the bank; or
- (b) Place or use mechanical equipment on department property.

(3) The department shall not issue a permit for mechanical equipment or bank stabilization unless it is in the best interest of the lake, the public, and other adjacent property owners.

Section 9. Waivers and Appeals. (1) A person with a noncompliant dock, walkway, or other structure that was in place prior to December 31, 1996 may apply to the department for a waiver.

(2) In deciding whether to grant or deny a waiver, the department shall consider:

(a) Whether the dock, walkway, or other structure:

1. Is in substantial compliance with this administrative regulation;

2. Poses a potential safety hazard;

3. Is in sound structural or mechanical condition;

(b) The geological or other physical features of the lake and the specific location; and

(c) The applicant's history of compliance with previous administrative regulations governing boat docks and structures on department property.

(3) A person whose waiver request is denied may request a hearing.

(a) The department shall appoint a hearing officer and conduct the hearing in accordance with the provisions of KRS Chapter 13B.

(b) The hearing officer shall make his recommendations to the Department of Fish and Wildlife Commission.

(c) The commission shall make its decision by majority vote.

(d) An appeal of the commission's decision shall be in accordance with the provisions of KRS Chapter 13B.

Section 10. Incorporation by Reference. (1) "Dock Application" form, 2007, Department of Fish and Wildlife Resources, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Fisheries, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

BENJY KINMAN, Deputy Commissioner

For JONATHAN GASSETT, Commissioner

MARCHETTA SPARROW, Secretary

APPROVED BY AGENCY: August 14, 2009

FILED WITH LRC: December 15, 2009 at 8 a.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.

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Corrections**  
**Sex Offender Risk Assessment Advisory Board**  
**(As Amended at ARRS, February 8, 2010)**

**501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders.**

RELATES TO: KRS 17.550-17.991

STATUTORY AUTHORITY: KRS 17.554(1), 17.564

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(1) requires the Sex Offender Risk Assessment Advisory Board to approve providers to conduct court-ordered comprehensive sex offender presentence evaluations and treatment of sex offenders. This administrative regulation establishes approval requirements for providers.

Section 1. Definitions. (1) "Approved provider" is defined by KRS 17.550(3).

(2) "Board" is defined by KRS 17.550(1).

(3) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the factors listed in KRS 17.554(2).

(4) "Corrective action plan" means a plan submitted by the approved provider and accepted by the board or a plan imposed by the board that requires an approved provider to take specific steps to be in compliance with this administrative regulation.

(5) "Sex offender" is defined by KRS 17.550(2).

(6) "Victim" is defined by KRS 17.550(4).

Section 2. Qualifications of Approved Providers. To qualify as an approved provider, an applicant shall, in addition to meeting the requirements of KRS 17.550(3):

(1) Have completed forty (40) hours of specialty training provided or approved by the board under Section 8 of this administrative regulation including the following:

(a) Characteristics and offense patterns of sex offenders;

(b) Treatment modalities used with sex offenders;

(c) Legal and ethical issues in the risk assessment of sex offenders;

(d) Victim's issues, not to exceed two (2) hours of credit against the total requirement;

(e) Issues related to the assessment of juvenile and female sex offenders; and

(f) Use of the appropriate actuarial or evaluation instruments;

(2) Be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status; and

(3) Have a minimum of 250 hours documented experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:

(a) Sixty (60) hours documented experience conducting sex offender evaluations or completion of a practicum as described in Section 6 of this administrative regulation; and

(b) 190 hours documented clinical contact conducting sex offender treatment or completion of a practicum as described in Section 6 of this administrative regulation.

Section 3. Duties. (1) If an approved provider performs a comprehensive sex offender presentence evaluation for a sex offender, he shall not provide treatment for personal financial gain for the sex offender for six (6) months following that assessment.

(2) If an approved provider has provided treatment for a sex offender, he shall not perform a comprehensive sex offender presentence evaluation for personal financial gain for the sex offender for six (6) months following the treatment.

(3) An approved provider shall:

(a) Submit the first four (4) evaluations prepared after becoming an approved provider for review by the board;

(b) Comply with the ethical standards of professional practice

as promulgated by the Kentucky licensing or certifying body under which he has professional status; ~~and~~

(c) Provide the board with the following contact information:

1. Mailing address that may be included on approved provider list sent to courts;

2. Mailing address to be used by board for contact with approved provider if different than address included on approved provider list sent to courts;

3. Phone number that may be included on approved provider list sent to courts;

4. Email address, if approved provider has one, that may be included on approved provider list sent to courts;

(d) Provide the board with changes in the contact information listed in **paragraph (c) of this subsection** ~~the subsection above~~ within thirty (30) days of a change in information; and

(e) Complete eight (8) hours of continuing education approved or provided by the board by December 31 in each calendar year following the year in which the individual becomes an approved provider.

1. The board may grant an extension of six (6) months in which to complete hours of continuing education if:

a. Requested by the approved provider for good cause shown; and

b. A plan to make up uncompleted hours has not been requested or approved by the board for the approved provider for either of the two (2) preceding calendar years.

2. [upon request for good cause shown.] To request an extension, an approved provider shall:

a. Submit a plan detailing how the uncompleted hours will be obtained within the next six (6) months ~~if a plan to make up uncompleted hours has not been requested or approved by the board for the approved provider for either of the two (2) preceding calendar years~~;

b. Submit a plan detailing how the next year's eight (8) hours will be obtained within the next calendar year; and

c. State the reasons for the request for extension.

3. [2.] The request shall:

a. Be made in writing;

b. Include the number of hours that need to be completed for the calendar year;

c. Include proof of any hours that were completed; and

d. Be postmarked on or before December 31 of the calendar year for which the hours were required.

(4) An approved provider shall not:

(a) Identify himself as an approved provider as credentialed by the Sex Offender Risk Assessment Advisory Board under the provisions of KRS 17.550 through 17.991 ~~if~~ when performing an evaluation that is not of an individual convicted of a felony sex crime as defined by KRS 17.500.

(b) Refer to an individual being evaluated or treated as a sex offender if the individual does not meet the definition of a sex offender as established in KRS 17.550.

Section 4. Approval Procedures. (1) The board shall approve an applicant as an approved provider if he meets the applicable qualifications specified in Section 2 of this administrative regulation and is not otherwise disqualified by the provisions of Section 5 of this administrative regulation.

(2) An individual may apply to the board for approval status as an approved provider by submitting:

(a) A written request for approval, which shall include the following:

1. Full name;

2. Business address;

3. Home address;

4. Daytime telephone number;

5. Fax number, if available; and

6. Social Security number;

(b) Documentary evidence of his qualifications; and

(c) Evidence that he has remedied the cause for the denial or revocation, if approval was previously denied or revoked under Section 5 of this administrative regulation.

(3) The board shall determine that an application is incomplete if:

(a) The documentation of qualifications is insufficient to meet the required qualifications in Section 2 of this administrative regulation;

(b) The board is unable to verify the authenticity of the documentation of qualifications; or

(c) Any of the information required in subsection (2) of this section is not submitted.

(4) If the board determines that an application is incomplete, the board shall specify to the applicant additional documentation or information that is required or identify the information that cannot be verified.

(5) The board shall notify the applicant of its intent to approve or deny the application for approval in writing no later than ninety (90) days after receiving a complete application for approval.

(6) Unless approval has been revoked in accordance with Section 5 of this administrative regulation, the board shall renew the approval status of an approved provider upon request if:

(a) He submits documentation of completion of at least eight (8) hours per year of continuing education provided or approved by the board under Section 8 of this administrative regulation; and

(b) The approved provider continues to meet the requirements of this administrative regulation and KRS Chapter 17 for approved provider status.

(7) The board shall maintain a list of approved providers to be submitted to the Administrative Office of the Courts annually.

Section 5. Denial or Revocation of Approval. (1) The board shall deny, suspend or revoke approval if an applicant or an approved provider has:

(a) Been convicted of or pled guilty to a felony criminal offense or a misdemeanor offense against a person;

(b) Had a domestic violence protective order issued against him within the previous five (5) years;

(c) Failed to meet the qualifications for approval set forth in Section 2 of this administrative regulation;

(d) Failed to be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status;

(e) An alcohol or drug abuse problem as defined in KRS 222.005(3);

(f) Falsified any information or documentation, or has concealed a material fact, in his request for approval;

(g) Failed to implement a corrective action plan imposed by the board in accordance with Section 7 of this administrative regulation;

(h) Three (3) or more evaluations which the board finds are below standard upon review;

(i) Failed to comply with the comprehensive sex offender presentence evaluation procedure established in 501 KAR 6:200;

(j) Shown an inability to conduct an evaluation with reasonable skill;

(k) Accepted a gift or favor from a sex offender being assessed, from the family of the sex offender being assessed, or from their agent;

(l) Provided a gift or favor to a sex offender being assessed, to the family of the sex offender being assessed, or to their agent;

(m) Failed to comply with an order of the board; or

(n) Failed to comply with instructions of the board during an investigation.

(2) The board may deny, suspend, or revoke approval if an applicant or an approved provider has:

(a) Been convicted of or pled guilty to any misdemeanor criminal offense that is not against a person;

(b) Had a sanction applied against his mental health professional licensure or certification at any time in the past two (2) years;

(c) Failed to comply with the duties set forth in Section 3 of this administrative regulation;

(d) Less than three (3) evaluations that the board finds are below standard upon review;

(e) Failed to comply with the treatment requirements established in 501 KAR 6:220;

(f) Failed to comply with the evaluation procedure established in 501 KAR 6:200;

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(g) Failed to comply with the requirements set forth by the board for the practicum or to successfully complete the practicum, if so required by Section 2 of this administrative regulation;

(h) Identified himself as an approved provider as credentialed by the Sex Offender Risk Assessment Advisory Board under the provisions of KRS 17.550 through 17.991 ~~if~~<sup>if/when</sup> performing an evaluation that is not of an individual convicted of a felony sex crime as defined by KRS 17.500; or

(i) Referred to an individual being evaluated or treated as a sex offender if the individual does not meet the definition of sex offender established in KRS 17.550.

(3) If the board intends to deny, suspend or revoke approval, it shall:

(a) Serve a notice of intent to deny, suspend, or revoke approval to the applicant or approved provider; and

(b) Notify the applicant or approved provider of his hearing rights, in accordance with KRS 17.560.

(4) An approved provider who has had his approval revoked shall be ineligible to apply to be an approved provider until the second anniversary of the date his approval was revoked unless his revocation was for failure to obtain the required eight (8) hours of continuing education and the required hours have been obtained.

Section 6. Practicum Requirements. (1) A practicum required by Section 2 of this administrative regulation shall be conducted by an approved provider who shall:

(a) Have a minimum of 2000 hours of experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:

1. 500 hours conducting sex offender evaluations; and

2. 1,500 hours of clinical contact in sex offender treatment;

(b) Be an approved provider in good standing with the board;

(c) Submit a request to conduct a practicum for each participant and be approved by the board to conduct the practicum;

(d) Directly observe the practicum participant's clinical practice in person or through video or audio tape;

(e) Examine and approve all comprehensive sex offender presentence evaluations performed by the practicum participant; and

(f) Give written notice to the board if he determines that the practicum participant's performance does not comply with the provisions of this administrative regulation, 501 KAR 6:200, or 6:220.

(2) To complete a practicum required by this administrative regulation, the participant shall:

(a) Have a minimum of four (4) hours of face-to-face contact with the approved provider conducting the practicum each month, which shall include case discussion, review of reading assignments, skill building, and review of audio or video tape of actual clinical practice;

(b) Obtain a minimum of sixty (60) hours experience conducting sex offender evaluations;

(c) Obtain a minimum of 190 hours of clinical experience with face-to-face contact conducting sex offender treatment;

(d) Participate in the practicum for a minimum of six (6) months; and

(e) Meet the requirements of the practicum within a maximum of eighteen (18) months.

(3) If an applicant has a portion of the minimum hours required to qualify as an approved provider in Section 2(3) of this administrative regulation, he shall participate in the practicum as described in subsections (1) and (2) of this section and may obtain only the hours needed to meet the minimum qualifications in Section 2(3) of this administrative regulation.

Section 7. Monitoring. (1) The board may:

(a) Investigate a formal complaint, verified by affidavit, concerning an approved provider, if the complaint alleges a failure to comply with the provisions of this administrative regulation, 501 KAR 6:200, or 6:220;

(b) Refer a complaint against an approved provider, which relates to an unethical practice or practice which may be outside the approved provider's scope of practice, to the appropriate Kentucky licensure or certification board; and

(c) Investigate and evaluate an approved provider's adherence to the provisions of this administrative regulation, 501 KAR 6:200, or 502 KAR 6:220, on its own initiative.

(2) The board or staff that assists the board may monitor an approved provider by the following activities:

(a) Interviewing a sex offender or victim, if consent is given by the sex offender or victim for the interview;

(b) Reviewing evaluation or treatment records maintained by an approved provider on a sex offender;

(c) Direct observation of the evaluation or treatment of a sex offender; or

(d) Interviewing judicial, correctional, law enforcement officials or other individuals that interact with an approved provider in relation to comprehensive sex offender presentence evaluations or treatment of sex offenders.

(3) If an approved provider fails to comply with provisions of this administrative regulation, 501 KAR 6:200, or 6:220, the board shall notify him in writing of its determination and may:

(a) Require the approved provider to submit a corrective action plan for approval by the board;

(b) Impose a corrective action plan; or

(c) Revoke approval in accordance with Section 5 of this administrative regulation.

(4) If the board requires an approved provider to comply with a corrective action plan, it shall review plan compliance within ninety (90) days.

Section 8. Approval of Specialty Training and Continuing Education. (1) Specialty training.

(a) Specialty training, as required in Section 2 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance.<sup>[.]</sup>

(b) An applicant seeking approval of a specialty training course shall submit to the board the following:

1. A certificate of attendance which shall include the number of hours of training received; or

2.a. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and

b. An agenda from the training seminar that describes topics and length of time spent on each topic.

(c) The board may require the applicant to provide course materials from the training seminar or additional information, if it is unable to adequately determine the nature or relevance of the training provided at the seminar from the materials submitted under subsection (1)(b) of this section.

(2) Continuing education.

(a) Continuing education, as required in Section 3 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance.<sup>[.]</sup>

(b) An approved provider seeking approval of continuing education hours shall submit to the board the following:

1. A certificate of attendance that shall include the number of hours of education received; or

2.a. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and

b. An agenda from the seminar, which describes topics and length of time spent on each topic.

(c) The board may require the applicant to provide course materials from the seminar or additional information, if it is unable to adequately determine the nature or relevance of training provided at the seminar from the materials submitted under subsection (2)(b) of this section.

This is to certify that the Sex Offender Risk Assessment Advisory Board approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a) as reflected by the signature above.

JAMES J. VAN NORT, Chairperson

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: November 20, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

CONTACT PERSON: Amy V. Barker, Justice and Public Safe-

ty Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

**TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Motor Vehicle Licensing  
(As Amended at ARRS, February 8, 2010)**

**601 KAR 1:220. Theft of motor fuel; procedures to obtain motor vehicle record.**

RELATES TO: KRS 61.874(3), 187.310, 411.402, 411.406; 18 U.S.C. 2721

STATUTORY AUTHORITY: KRS 411.406(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 411.406(1) requires the cabinet to promulgate administrative regulations to implement procedures by which a motor fuel retailer or association of motor fuel retailers may obtain the name and mailing address of a vehicle owner who has been identified as having committed an offense under KRS 411.402. This administrative regulation establishes the procedures by which a motor fuel retailer or association of motor fuel retailers may obtain the name and mailing address of a vehicle owner who has been identified as having committed an offense under KRS 411.402.

Section 1. Procedures for Obtaining Motor Vehicle Record. (1) A motor fuel retailer or association of motor fuel retailers who wish to obtain the name and mailing address of a vehicle owner who has violated KRS 411.402 shall submit a notarized Request for Motor Vehicle Record That Includes Personal Information, Transportation Cabinet Form 96-16 and ten (10) dollars to the Department of Vehicle Regulation, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622 for each request for information.

Section 2. Incorporation by Reference. (1) Form TC 96-16, "Request for Motor Vehicle Record That Includes Personal Information", November 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Vehicle Regulation, Division of Motor Vehicle Licensing, Second Floor, Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8a.m. to 4:30 p.m.

MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: December 14, 2009

FILED WITH LRC: December 15, 2009 at 10 a.m.

CONTACT PERSON: D. Ann D'Angelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

**EDUCATION CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, February 8, 2010)**

**702 KAR 6:100. Appeal procedures for nutrition and health services programs.**

RELATES TO: KRS 156.070(5), 156.160(1)(f), 7 C.F.R. 210.18(q), 215.11, 220.13(f)(2), 225.13, 226.6(k), 42 U.S.C. 1761, 1766(e), 1772

STATUTORY AUTHORITY: KRS[156.029(7),] 156.070(5), 7 C.F.R. 210.18(q), 225.13

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(5) requires the Kentucky Board of Education to promulgate administrative regulations governing the operation of programs within the Department of Education, 7 C.F.R. 210.18(q) and 225.13 require the board to establish an impartial and fair appeals procedure for the federal nutrition program. This administrative regulation establishes the appeals procedure for a sponsor of a

federal nutrition program.

Section 1. Actions that May be Appealed. (1) A school food authority that sponsors the National School Lunch Program, the Special Milk Program or the School Breakfast Program may appeal the [following adverse actions:

(a) denial of all or part of a claim for reimbursement arising from administrative or follow-up review activity[; or

(b) ~~Withholding payment arising from administrative or follow-up review activity].~~

(2) A sponsor of the Child and Adult Care Food Program, including an independent center or sponsoring organization on behalf of a facility under its jurisdiction, and responsible principals and responsible individuals, may appeal the following adverse actions:

(a) Denial of a new or renewing institution's application for participation;

(b) Denial of an application submitted by a sponsoring organization on behalf of a facility or site;

(c) Notice of proposed termination of participation of an institution or facility or site;

(d) Suspension of an institution's agreement;

(e) Denial of an institution's application for start-up payments;

(f) Denial of an advance payment;

(g) Denial of all or part of a claim for reimbursement;

(h) Notice of proposed disqualification of a responsible principal or a responsible individual;

(i) Recovery of all or part of an advance in excess of the claim for the applicable period;

(j) Decision by the Department of Education not to forward to Food and Nutrition Service (FNS) an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim;

(k) Demand for the remittance of an overpayment; or

(l) Any other action of the Department of Education affecting the participation of an institution in the program or the institution's claim for reimbursement.

(3) A program sponsor or a food service management company (FSMC) participating in the Summer Food Service Program for Children may appeal the following adverse actions:

(a) Denial of an application for participation;

(b) Denial of a sponsor's request for an advance payment;

(c) Denial of a sponsor's claim for reimbursement;

(d) Refusal of a state agency to forward to FNS an exception request for payment of a late claim or a request for an upward adjustment to a claim;

(e) A claim against a sponsor for remittance of a payment;

(f) Termination of the sponsor or a site;

(g) Denial of a sponsor's application for a site; or

(h) Denial of a food service management company's application for a registration or the revocation of a food service management company's registration.

Section 2. Filing An Appeal. (1) A program sponsor, responsible principal, or responsible individual aggrieved by an adverse action of the Division of Nutrition and Health Services (the "division") may appeal the action by filing a timely request for an appeal. The request shall be filed with the Director, Division of Nutrition and Health Services, Department of Education, 2545 Lawrenceburg Road, Frankfort, Kentucky 40601.

(2) The request shall be in writing and clearly state:

(a) The name and address of the program sponsor;

(b) The name and title of the person who signed the request;

(c) The adverse action being appealed, the basis of the appeal, and the relief or remedy sought;

(d) The date of the letter or other written communication from the division notifying the program sponsor of the proposed adverse action, and the name and title of the division official who signed the letter or communication; and

(e) If a hearing before a hearing officer is desired, the desire for a hearing.

(3)(a) An appellant program sponsor may submit written information in support of its position when it files its appeal and request for a hearing. Except as provided in paragraph (b) of this subsec-

tion, it may also submit additional written information to the designated hearing officer up to thirty (30) calendar days after receipt of the division notice of adverse action.

(b) If the appellant program sponsor is the Summer Food Service Program, it may submit additional written information in support of its position up to seven (7) calendar days after filing the appeal and request for a hearing.

Section 3. Appeal Timelines. (1) The request for appeal shall be postmarked or received by the division prior to midnight of the fifteenth calendar day (or tenth working day if the Summer Food Service Program) after receipt of the notice of adverse action. If the 15th day (or tenth working day if the Summer Food Service Program) falls on a Saturday, Sunday, or federal legal holiday, the request shall be timely if it is postmarked or received the next day which is not a Saturday, Sunday, or federal legal holiday.

(2) The division shall acknowledge receipt of the request for an appeal within ten (10) days of its receipt of the request.

(3) Any information on which the division's action was based shall be available for inspection by the institution and the responsible principal and responsible individual from the date of receipt of the request for an appeal.

Section 4. Appeal Procedures. (1) The division shall forward any request for appeal to the Director, Division of Administrative Hearings, Office of the Attorney General. The request for appeal shall be accompanied by a copy of the notice of adverse action sent by the division.

(2) During the appeal process, a program sponsor, responsible principal, responsible individual or food service management company shall:

- (a) Self-represent;
- (b) Be represented by legal counsel; or
- (c) Be represented by another person.

(3) The fair and impartial administrative hearing procedures of KRS Chapter 13B shall apply.

(4) If a hearing is requested:

(a) Except as provided in subsection (7) of this section, the institution, the responsible principal and responsible individual, and the Department of Education shall be provided with at least ten (10) days advance notice of the time and place of the hearing;

(b) If the institution's representative or the responsible principal and responsible individual or their representative fail to appear at the scheduled hearing, the right to a personal appearance before the designated hearing officer shall be waived unless the designated hearing officer agrees to reschedule the hearing; and

(c) A representative of the state agency shall be allowed to attend the hearing to respond to the testimony of the institution and the responsible principal and responsible individual and to answer questions posed by the designated hearing officer.

(5) The designated hearing officer shall make a determination based solely on the information provided by the state agency, the institution, and the responsible principal and responsible individual and based on federal and state laws, administrative regulations, and policies and procedures governing the program.

(6) Except as provided in subsection (7) of this section, within sixty (60) days of the Department of Education's receipt of the request for an appeal, or ten (10) days if the matter under appeal is a suspension of participation, the designated hearing officer shall inform the Department of Education, the institution's executive director and chairman of the board of directors, and the responsible principal and responsible individual of the outcome of the appeal.

(7) If the appellant is the Summer Food Service Program:

(a) The notice of the time and date of the hearing shall be provided at least five (5) days prior to the hearing, with the notice sent by certified mail, return receipt requested;

(b) The hearing shall be held within fourteen (14) days of the date of receipt of the request for an appeal and hearing, but not before the appellant's written documentation is received;

(c) Within five (5) working days after the appellant's hearing, or within five (5) working days after receipt of written documentation if no hearing is to be held, the designated hearing officer shall make a determination based on a full review of the administrative record,

and inform the appellant of the outcome of the appeal by certified mail, return receipt requested; and

(d) The Department of Education's action shall remain in effect during the appeal process except if it is an appeal of termination. If it is an appeal of termination:

1. Participating Summer Food Service Program sponsors and sites may continue to operate the program during the appeal, except as provided by subparagraph 3 of this paragraph;

2. Reimbursement shall be paid for meals served during the appeal process if the appeal results in the overturning of the Department of Education's decision; and

3. Continued program operation shall not be allowed if the Department of Education's action is based on imminent danger to the health or welfare of children. If the Summer Food Service Program sponsor or site has been terminated for this reason, the Department of Education shall specify this in its notice of adverse action.

**(8)** Pursuant to 7 C.F.R. 210.18(q)(9), 220.13(f)(2), 225.13(b)(12) and **226.6(k)(5)(x)**[226.6(k)(5)(vii)], the decision of the hearing officer shall be the final administrative determination.

**(9) [(8)]** If an application to participate in the program was denied, the determination of the hearing officer shall either sustain the denial or shall direct that the appellant be approved for limited or full participation.

**(10) [(9)]** If all or part of a claim for reimbursement, start-up payment, advance payment, or demand for refund of any overpayment was denied, the determination of the hearing officer shall either sustain the action under appeal or specify the amount of the claim for reimbursement, start-up payment, advance payment, or refund of overpayment to be paid.

**(11) [(40)]** If an appellant's participation in the program was terminated, the determination of the hearing officer shall either sustain the termination or shall direct that the appellant be permitted to continue participation in the program.

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 HOLIDAY, Commissioner  
JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: December 14, 2009

FILED WITH LRC: December 14, 2009 at 3 p.m.

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Department for Libraries and Archives**  
**Public Records Division**  
**(As Amended at ARRS, February 8, 2010)**

**725 KAR 1:020. Recording and reproducing[Reproduction of] public records.**

RELATES TO: KRS 61.870, **141.420(3)**, 171.450(1)(c), 171.600, 171.670

STATUTORY AUTHORITY: KRS [61.870.][171.420(3).] 171.450(1)(c), 171.660[-,171.670]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450(1)(c) requires the department to establish standards and procedures for recording, managing and preserving public records, and for the reproduction of public records. KRS 171.660 requires that a state and local agencies shall reproduce and preserve public records according to administrative regulations promulgated by the department. **KRS 171.420(3) provided that the State Archives and Records Commission shall be the final authority for the disposition of all public records in Kentucky.** This administrative regulation establishes the standards to be followed for the recording or reproducing public records.[by photographic or microphotographic process.]

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Section 1. ~~[Due to the rapid changes being brought about in technology, the Department for Libraries and Archives does not approve or disapprove of one method of recording by photographic or microphotographic process over another.] [In order to safeguard the present and future interests of the people of the Commonwealth, all agencies of state and local government shall ensure the safety, security, and preservation of public records and adequate documentation of government agencies by following this regulation and related procedures issued by the Department for Libraries and Archives concerning recording, reproduction, and reformatting of records.] [should obtain advice from the Public Records Division prior to changing their methods of recording.] [Section 2.] Recording shall [may] be done on paper, microfilm, or in a [an approved] digital format [photostats, electrostatic, thermographic or on film] [in accordance with KRS 171.450 and 171.660, and with policies and procedures of the Department for Libraries and Archives].~~

Section 2. ~~[3.] If the recording is done on paper, it shall [must] be done on thirty-two (32) weight, 100 percent linen paper or its equivalent in accordance with specifications established by the National Institute of Standards and Technology [National Bureau of Standards].~~

Section 3. ~~[4.] If the recording is done on microfilm, [mini print, microcard,] microfiche, or some other type of microform, the agency shall follow the standards and procedures in ["]Microfilming and Digital Imaging: A Procedural Guide["]. [If done on photostats, electrostatic or thermographic methods, it must be done on thirty-two (32) weight stock of proven permanency.]~~

Section 4. ~~[5.] If the recording is in a [an approved] digital format or reformatted to digital image, the agency shall [use an approved digital format and] follow the standards [and] [procedures] in [the] ["]Microfilming and Digital Imaging: A Procedural Guide,["] ["]Policy Memorandum on the Storage of Public Records as Scanned Images["], and ["]Ensuring the Long-term Accessibility and Usability of Records Stored as Digital Images: Guidelines for State and Local Government Officials["]. [done on microfilm, mini print, microcard, microfiche, or some other type of microform, the following safeguards must be observed to obtain approval of the Department for Libraries and Archives:~~

~~(1) A security copy (negative or positive in 16mm or 35mm) roll form must be provided the Public Records Division for security storage. This film shall be provided at no cost.~~

~~(2) Filming in a series should not be continued after the first roll until a test of the film has been completed. The Public Records Division shall be the principal microfilm advisory authority.~~

~~(3) The security and use copies of microfilm should be tested for resolution, density, and hypo-residue. The security film shall be physically inspected every five (5) years for mold, spots, or other evidences of deterioration.~~

~~(4) The security copy shall not be used or handled in any way to cause the film to be scratched or damaged.~~

~~(5) The Public Records Division shall be responsible, where necessary, for supervising appropriate tests of microfilm, which shall follow the standards of the United States Government Bureau of Testing and National Microfilm Association.]~~

Section 5. ~~(1) A [6. No original records may be destroyed by any] state or local agency shall not destroy any original records after the records are [being] microfilmed, digitized, [or otherwise] duplicated, or reformatted without written approval of the State Archivist and Records Administrator as established in 725 KAR 1:030.~~

~~(2) A state or local agency shall follow [following] the retention and disposition schedules established [enacted] by the State Archives and Records Commission [and established] in 725 KAR 1:061 [and the policies and procedures of the Department for Libraries and Archives].~~

Section 6. ~~[7.] [The State Archives and Records Commission shall be the final authority in the executive branch of government for the disposition of all public records in Kentucky] [and shall make decisions on records retention and disposition through the~~

~~records scheduling process, in consultation with the Department for Libraries and Archives and the agencies involved] [The Department for Libraries and Archives and the State Archivist and Records Administrator shall [will] carry out the decisions of the commission.~~

Section 7. ~~[8.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Microfilming and Digital Imaging of Public Records: A Procedural Guide", January 2010 [October, 2009];~~

~~(b) "Policy Memorandum on the Storage of Public Records as Scanned Images, PM 2010-01", January 2010 [09-01, " June, 2009]; and~~

~~(c) "Ensuring the Long-term Accessibility and Usability of Records Stored as Digital Images: Guidelines for State and Local Government Officials", January 2010 [June, 2004].~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Public Records Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [(state, county, and city) but shall not make any decisions without consultation with the agencies involved who shall participate in the decision making.]~~

WAYNE ONKST, Commissioner

APPROVED BY AGENCY: January 15, 2010

FILED WITH LRC: January 15, 2010 at 10 a.m.

CONTACT PERSON: Wayne Onkst, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, phone (502) 564-8300 ext. 312, fax (502) 564-5773.

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Libraries and Archives Public Records Division (As Amended at ARRS, February 8, 2010)

#### 725 KAR 1:025. Transfer of public records.

RELATES TO: KRS 61.878, 171.420, 171.470, 171.480, 171.500, 171.520, 171.550, 171.580, 171.590

STATUTORY AUTHORITY: KRS 171.520(1), (3), 171.560 [61.8715, 61.878, 171.420, 171.470, 171.480, 171.500, 171.520, 171.550, 171.560, 171.580, 171.590]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.560 **requires the department to promulgate administrative regulations governing the transfer of public records. This administrative regulation establishes the requirements for the transfer of public records from governmental agencies to the department.** [171.520 and 171.580 require the department to insure maintenance and security of records appropriate for preservation and access, to facilitate segregation and disposal of records of temporary value, to direct and effect transfer of public records, and to use space economically and efficiently to maintain, store, and service, and provide access for records.]

Section 1. **Definitions. (1) "Intellectual custody" means legal ownership and responsibility for governing access to materials, regardless of their physical location.**

**(2) "Physical custody" means actual care and control of records for storage, security, and preservation.**

**(3) "Public record" is defined by KRS 171.410(1).**

**(4) "Transmittal documentation" means a list of records being transferred from an agency to the State Archives or the State Records Center.** [In order to safeguard the present and future interests of the people of the Commonwealth, all agencies of state and local government shall ensure the safety, security, and preservation of public records and adequate documentation of government agencies by following this administrative regulation and related procedures issued by the Department for Libraries and Archives concerning the transfer of public records.]

Section 2. Transfer of records may occur from state, local, or judicial agencies to the State Archives, the State Records Center,

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and the Electronic Archives, all maintained by the Department for Libraries and Archives, in accordance with KRS 171.560 and 171.580, and with policies and procedures of the Department for Libraries and Archives.]

Section ~~2.~~~~[3.]~~ For physical transfer of public records from government agencies to one (1) of the facilities of the Department for Libraries and Archives, the agency shall follow the standards and procedures in ~~["]~~Transfer of Public Records: A Procedural Guide.~~["]~~ Transmittal documentation shall confirm~~[confirms]~~ the transfer of government records in all instances.

Section ~~3.~~~~(1)~~~~[4.]~~ Intellectual custody of records in the physical custody of the State Records Center shall remain~~[remains]~~ with the originating agency.

~~(2)~~ Physical and intellectual custody of records in the State Archives and the Electronic Archives shall be~~[is]~~ transferred to the Department for Libraries and Archives upon accession into the Archives, in accordance with KRS 171.590.

(3) Records fifty (50) years or older that are not in the department's custody may be directed for transfer for continuing preservation and public access in accordance with KRS 171.580(2), subject to the exemptions of KRS 61.878.

Section 4.~~[171.580.~~ Any records fifty (50) years or older that are not in the department's custody may be directed for transfer for continuing preservation and public access, subject to exemptions in the Open Records Law.

Section 5. The State Archives and Records Commission shall be the final authority in the executive branch of government for the disposition of all public records in Kentucky, and shall make decisions on records retention and disposition through the records scheduling process, in consultation with the Department for Libraries and Archives and the agencies involved. These decisions govern the transfer of records, the locations to which records are transferred, and the use of records after transfer. The Department for Libraries and Archives and the State Archivist and Records Administrator will carry out the decisions of the commission.

Section ~~6.]~~ Incorporation by Reference. (1) "Transfer of Public Records: A Procedural Guide", January 2010~~[October 2009]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Public Records Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WAYNE ONKST, Commissioner

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

CONTACT PERSON: Wayne Onkst, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, phone (502) 564-8300 ext. 312, fax (502) 564-5773.

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Libraries and Archives Field Services Division (As Amended at ARRS, February 8, 2010)

#### 725 KAR 2:070. Certification renewal of public librarians.

RELATES TO: KRS 171.250, 171.260, 171.270

STATUTORY AUTHORITY: KRS 171.250~~(2)~~,~~[171.260,~~ 171.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.250(2) authorizes the board to establish the requirements for certificate renewals for public librarians. This administrative regulation establishes the requirements for certificate renewals for public librarians.

Section 1. Definitions. (1) "Board" means the Kentucky State

Board for the Certification of Librarians.

(2) "Contact hour" means~~[refers to]~~ a unit of measuring continuing education training with one (1) hour of training equal to~~[equals]~~ one (1) contact hour.~~[Certification renewal point" means a unit of measurement which is the equivalent of ten (10) contact hours of learning activity.]~~

(3)~~["Continuing education unit" or "CEU" means educational offerings that provide credit through a certified program.~~

~~(4) "Full-time" means working more than 100 hours per month.~~

~~(4)~~~~(5) "Learning activity" means a class, institute, seminar, or workshop[,] that is planned, coordinated, administered, and evaluated in terms of learning objectives.~~

~~(5)~~~~(6) "Library information services" mean duties performed by library employees that require special skills and knowledge to be performed properly.~~

~~(6)~~~~(7) "Library work experience" means employment in a library that includes administration, collection development, technical services, public services, or support for public service areas, and excludes secretarial, custodial, grounds keeping, security, food service, driver, and messenger duties.~~

~~(8) "Professional library association" means an organization of librarians and persons interested in libraries.~~

Section 2. Required Certification Renewal by Public Library Position. (1) A library director serving a population of more than 15,000 shall renew the professional certificate every five (5) years. 100 contact hours of continuing education~~[Ten (10) certification renewal points]~~ shall be accumulated within the five (5) year period.

(2) A library director serving a population of 15,000 and less shall renew at least the paraprofessional certificate every five (5) years. 100 contact hours of continuing education~~[Ten (10) certification renewal points]~~ shall be accumulated within the five (5) year period.

(3) An assistant director, bookmobile librarian, branch head, or department head shall renew at least the paraprofessional certificate every five (5) years. 100 contact hours of continuing education~~[Ten (10) certification renewal points]~~ shall be accumulated within the five (5) year period.

(4) Any other full-time position providing library information services, as assigned by local library personnel,~~[All other full-time positions providing library information services as determined by local library policy]~~ shall renew the library experience certificate every five (5) years. Fifty (50) contact hours of continuing education~~[Five (5) certification renewal points]~~ shall be accumulated within the five (5) year period.

Section 3. Types of Certificates. The following certificates may be renewed for a period of five (5) years:

- (1) Professional Certificate I;
- (2) Professional Certificate II;
- (3) Professional Certificate III;
- (4) Professional Certificate IV;
- (5) Paraprofessional Certificate;
- (6) Library experience certificate.

Section 4. Sources of Learning Activities that Provide Contact Hours~~[Certification Renewal Points]~~. (1) The board shall accept job-related coursework or continuing education offerings from an institution of higher education as follows:

- (a) Classes;
- (b) Institutes;
- (c) Seminars;
- (d) Workshops;
- (e) Conferences;
- (f) Lecture series;
- (g) Internships; or
- (h) Courses taken for academic credit.~~[, institutes, seminars, workshops, conferences, lecture series, or internships; or]~~
- (b) Courses taken for academic credit.

(2) The board shall accept activities in a professional library association as follows:

- (a) Participation in:
  1. Seminars;

**2. Workshops;**

**3. Conferences; or**

**4. Lecture series; or** ~~seminars, workshops, conferences or lecture series; or~~

(b) The holding of an association office, with a statement specifying the learning activity and derived educational benefit.

(3) The board shall accept participation in seminars, workshops, conferences, or lecture series sponsored by the Kentucky Department for Libraries and Archives.

(4) The board shall accept participation in workshops, lecture series, or training programs that shall be documented as job related. These activities may be sponsored by individual libraries.

(5) The board shall accept self-directed learning activities, beyond expected job duties, as follows:

(a) Writing reviews of library materials or library-related books, articles, or chapters that are published in statewide, regional, or national publications ~~regardless of format~~ and selected through an editorial process;

(b) Writing or editing an article for ~~or editing~~ a library publication with statewide, regional, or national distribution ~~regardless of format~~ and selected through an editorial process; ~~Editing a library publication with statewide, regional or national distribution;~~

(c) Writing a book on a library-related topic selected for publication by a publishing company and published following an editorial process; ~~Making a prepared library-related presentation to library staff, library school students or library trustees; or~~

(d) Developing and presenting library-related instructional training for library staff, library school students, or library trustees;

(e) Preparing ~~for~~ and teaching a library related course, workshop, seminar, or institute; or

(f) Listening to or viewing an audio or video recording of a job related workshop presentation or conference program and, then, submitting a written review indicating what was learned and how it relates to their job ~~to serve as documentation of the learning activity~~. ~~Preparing for and teaching a course, workshop, seminar or institute.~~

(6) The board shall require documentation that each learning activity incorporates new subject matter.

Section 5. (1) ~~One (1) contact hour equals one (1) continuing education unit.~~ certification renewal point shall be equal to:

(a) ~~Ten (10) contact hours; or~~

(b) ~~One (1) continuing education unit.~~

~~[(2)]~~ The conversion calculations for a type of activity to the number of contact hours ~~certification renewal points~~ shall be determined in accordance with the Certification Contact Hours ~~Renewal~~ Points Conversion Chart.

Section 6. Application for public librarian certification renewal shall be made to the board by submitting a completed Renewal Application for Certification ~~Certificate~~ of Librarianship.

Section 7. A fee of twenty (20) ~~five (5)~~ dollars shall be charged for each certificate renewal issued.

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

(a) "Certification Contact Hours ~~Renewal Points~~ Conversion Chart", January 8, 2010 ~~December 15, 2008~~ ~~January 29, 1992~~; and

(b) "Renewal Application for Certification ~~Certificate~~ of Librarianship", December 15, 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40602-0537, Monday through Friday, 8 a.m. to 4:30 p.m.

WAYNE ONKST, Commissioner

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

CONTACT PERSON: Wayne Onkst, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, phone (502) 564-8300 ext. 312, fax (502) 564-5773.

**FINANCE AND ADMINISTRATION CABINET**

**Office of the Secretary**

**(As Amended at ARRS, February 8, 2010)**

**750 KAR 1:010. Commission procedures.**

RELATES TO: KRS 157.420, 157.440, 157.611, 157.615, 157.617, 157.620, 157.622, **Pub.L. 111-5**

STATUTORY AUTHORITY: KRS 157.617(1), 157.622(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.617(1) authorizes the School Facilities Construction Commission (SFCC) to promulgate administrative regulations for the orderly conduct of its affairs, including assisting local school districts to meet the school construction needs of the state. KRS 157.622(4) requires the SFCC to promulgate an administrative regulation governing allocations of state funds to eligible school districts. This administrative regulation establishes the procedures the SFCC utilizes in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project, and allocating savings from refinancing.

Section 1. Definitions. (1) "Available local revenue" is defined by KRS 157.615(1).

(2) "Daily interest" means the total interest divided by the number of days in the first coupon.

(3) "Eligible district" is defined by KRS 157.615(16).

(4) "Level repayment schedule" means a repayment schedule in which the combined annual amount of principal and interest payments for each issue of bonds remains relatively constant over the life of the issue.

(5) "Maximum annual repayment amount" means the maximum aggregate total of SFCC annual payments for all bonds issued for a particular school district in which the SFCC has participated. If a bond series has been refunded, the original issue and debt schedule shall be the one used in making this computation.

(6) "Offer of assistance" means the amount available for a school district from a current biennium along with any allocation available from a prior period which has not expired according to KRS 157.622(5) and (6).

(7) "SFCC" means the School Facilities Construction Commission.

(8) "Total interest" means the first gross interest payment of the debt service for the SFCC portion of the schedule.

Section 2. Eligibility. (1) The SFCC shall use the statement of need and available local revenue as certified by the Kentucky Board of Education in determining the rate of participation of each school district in any given biennium. Eligibility for participation as established in KRS 157.620(1) shall be certified by the Kentucky Board of Education.

(2) A school district retaining capital outlay funds in its current expense general fund under the provisions of KRS 157.420 in the year preceding the biennium in which funds are available or during the biennium shall be ineligible to participate in the SFCC Program during that funding period.

Section 3. Rate of Participation. (1) The rate of participation of each eligible district shall be determined by dividing the unmet needs of that district by the total unmet needs of all eligible districts and multiplying that fraction times the total new debt service budgeted for the biennium.

(2) If there are insufficient funds budgeted in the first year of the biennium to fund all the requests, bond sales shall be scheduled in the order in which the SFCC receives requests for approval of bond sales.

(3) All bond sales may proceed after January 1 of the first year of the biennium.

Section 4. Offer of Assistance. Upon certification of the rate of participation by the SFCC, the Executive Director of the SFCC shall notify each eligible district of its entitled rate of participation



and the requirements to be met if it wishes to accept the offer of assistance. These requirements shall include:

- (1) The amount of local revenue to be expended as certified by the Kentucky Board of Education;
- (2) The priority order of facilities to be built as certified by the Kentucky Board of Education; and
- (3) The sequence of events and deadlines to be met if the local school district accepts the offer of assistance.

Section 5. Acceptance of Offer of Assistance. (1) Within thirty (30) days of receipt of the offer of assistance, the local board of education shall notify the SFCC of acceptance or rejection of the offer of assistance. The local district response shall indicate the amount of the offer it plans to commit to construction or renovation immediately and the amount it wishes to count as cumulative credit.

(2) A district not responding within thirty (30) days shall be declared ineligible and the offer of assistance shall be withdrawn and redistributed to the eligible recipients. In extenuating circumstances and upon written request within the original thirty (30) day period, a single thirty (30) day extension shall be granted by the Executive Director of the SFCC.

Section 6. Review of Building Plans. The review and approval of building plans shall be the responsibility of the Kentucky Department of Education.

Section 7. Allowable Expenditures of Funds. (1) Funds available from available local revenue shall be expended before funds generated by bond sales authorized by the SFCC.

(2) Funds available for a project shall be expended for the purpose of major renovation or construction of the identified project except that the balance of funds remaining after the completion of the project may be expended on the next project on the approved facilities plan of the respective districts.

(3) Project costs may include site acquisition, providing architectural and engineering services, financial and legal services, and equipment.

(a) The site acquisition cost shall be limited to the lesser of:

1. The actual cost of acquiring a site; or
2. The fair market value of the site as determined by a qualified appraisal obtained by the SFCC and charged to the project account.

(b) Construction costs shall not include the cost of supplies. An item shall be considered a supply if the item:

1. Does not retain its original shape, appearance, and character with use;
2. Loses its identity through fabrication or incorporation into a different or more complex unit;
3. Is expendable. An item shall be expendable if it is more feasible to replace, rather than repair, an item that has been damaged or has lost or worn parts;
4. Is expected to serve its principal purpose for less than ten (10) years, even with reasonable care and maintenance;
5. Is not an integral part of the building. An item shall be an integral part of a building if it:

- a. Is permanently fastened or attached to the building;
- b. Functions as part of the building, meaning that the item is essential for the building or site to be used for its intended purpose; or

c. Will cause appreciable damage to the building if removed; or

6. Does not enhance the value of a bondholder's collateral or the project.

(4) SFCC funds or funds from the restricted account shall not be used to:

(a) Purchase a site not approved by the Kentucky Department of Education in accordance with 702 KAR 4:050; or

(b) Reimburse the local board of education for a site acquired before enactment of KRS 157.611.

Section 8. Bond Issuance Procedures. (1) Upon acceptance of an offer of assistance by a local school district, the SFCC shall determine if the local school district or the SFCC shall issue the bonds. Local school districts may request authority from the SFCC

to issue the bonds through a city, county, or other agency and instrumentality of the Board of Education.

(2) If the SFCC grants permission to issue bonds at the local level, the procedures for issuing the bonds shall be as follows:

(a) The local board of education shall obtain the services of a financial advisor;

(b) The contract with the financial advisor shall be submitted to the SFCC for final approval after signature by the local school district and the financial advisor; and

(c) The local board of education shall obtain the services of a licensed trustee, paying agent, and registrar.

(3) If the size of the bond issues is less than \$1,000,000 or there is no local participation in the repayment, the SFCC may determine that it is in the best interests of the SFCC and the local school board for the SFCC to manage the bond sale procedures. If the SFCC determines that it is in the best interest of the SFCC and the local school board for the SFCC to manage the bond sale procedures:

(a) The bonds shall be sold in the name of the SFCC;

(b) The SFCC shall obtain the services of a financial advisor;

(c) The SFCC may combine multiple projects into single bond issues; and

(d) The SFCC shall obtain the services of a licensed trustee, paying agent, and registrar.

(4) The following procedures shall be followed by all participating districts in construction of SFCC debt service schedules:

(a) The SFCC's portion of the bond sale shall be limited to a twenty (20) year issue, with a level repayment schedule. The maximum annual repayment amount shall not exceed the offer of assistance from the SFCC.

1. The debt service schedule shall have twenty (20) years of payments based on six (6) month intervals or forty (40) payments. If the payments begin so that only one (1) payment is made in the first fiscal year of the schedule, payments may extend over twenty-one (21) fiscal years, if the amounts of the first and last payments combined do not exceed the amount of one (1) annual payment.

2. Annual payments shall be based on a fiscal year. The fiscal year of the SFCC shall begin on July 1 and end the following June 30. All schedules shall be prepared in a way that annual amounts based on a fiscal year are presented in a clear, easy-to-read format while each interest and principal payment is both segregated and totaled by payment period.

(b) The local school district's portion of the bond sale shall be structured to meet the unique financial needs of the district. Debt service on the bonds issued shall include the minimum amount required for eligibility to participate in the program as certified by the Kentucky Board of Education. The minimum term of the local bond issue to meet eligibility criteria shall be twenty (20) years. At the discretion of the local board of education, the bond issue may include a local contribution to debt service in excess of the minimum required, and the length of the local portion of the repayment schedule may exceed twenty (20) years.

(c) Interest collected and accrued on funds derived from the bond sale shall be allocated to the debt service schedules of the school district and the SFCC in the same proportions as its respective participation in the bond issue.

1. For allocation purposes, each month shall be calculated as thirty (30) days.

2. The accrued interest allocated to the SFCC shall be calculated by multiplying the number of days times the daily interest.

3. The number of days shall be calculated from the issue date of the bonds to the day the bonds are delivered, excluding the day of settlement.

4. If local payments are involved in the bond issue, the accrued interest available to the local district shall be calculated as required by subparagraph 2 of this paragraph.

(d) The proceeds of the bond sale shall be continually invested until expended on the project or until the project is completed. Any remaining proceeds or investment income received after completion of the project shall be applied to the debt service. Credit against the district's and the SFCC's debt service schedule shall be applied in the same percentage as the participation in the bond issue or, if permitted by the bond resolution or indenture, excess funds may be applied to an approved project next in order priority.

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(e) A certificate of project completion shall be filed with the SFCC by the local school district. The certification shall summarize the application of the bond proceeds, investment earnings, and any remaining funds from either source. The certificate shall also verify the use of cash contribution as may be required for eligibility by the local school district.

(f) Fees paid to a financial advisor shall be in accordance with this paragraph. A fee that exceeds this schedule shall be paid by the local board of education.

1. The maximum fee for services and expenses of a fiscal agent shall be the highest amount according to the following schedule:

- a. \$7,500, for any amount of bonds issued;
  - b. \$11 per \$1,000, if the bond amount is under \$1 million;
  - c. \$10 per \$1,000, if the bond amount is between \$1 million and \$2 million; or
  - d. \$4 per \$1,000, if the bond amount is over \$2 million.
2. The fee shall:
- a. Be based upon the amount of bonds actually issued;
  - b. Include attorney fees, printing of bonds and official statements, advertising the bond issue, travel of the fiscal agent, and other normal expenses related to the bond closing; and
  - c. Not include a title search or rating service.

Section 9. Cumulative Credit. Any eligible district which fails in any budget period to receive an allocation of state funds sufficient to fund the first priority project on the approved facilities plan of the district may request the approval of the SFCC to accumulate credit subject to the availability of funds, for its unused state allocation for a period not to exceed eight (8) years. Districts which receive funds in excess of those required to complete the first project may apply those funds to the next priority project on their approved facilities plan. If there are insufficient funds to complete the next project, those funds may accumulate as previously outlined. All fund credit accumulated in this manner shall be forfeited at any time that the local district fails to accept an offer of assistance tendered to the district.

Section 10. Refinancing Savings. Savings that occur as the result of a refinancing in which the SFCC was a participant shall be divided as follows and in the following order or priority:

(1) If the SFCC's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service can be maintained on behalf of the SFCC, it shall be maintained at the same annual amount; therefore, lowering the local district's account for annual debt service payments by the amount of the total savings on the refinancing. Consequently, the bonding capacity of the local district shall be increased allowing the district to pursue its next facility priority. Any accrued interest shall be deemed a part of the total savings.

(2) If the SFCC's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service paid on behalf of the SFCC is greater than the annual debt service of the refinanced bond issue debt, annual savings generated shall be added to that school district's cumulative credit with the SFCC. These credits shall not have an~~have no~~ expiration time period for their use.

Section 11. Notwithstanding any other provision of this administrative regulation that conflict with the provisions of this section, and pursuant to the applicable provisions of the American Recovery and Reinvestment Act of 2009, (ARRA), Pub.L. 111-5, and Notices 2009-30 and 2009-35 issued by the U.S. Department of the Treasury, the SFCC shall be authorized to take advantage of any and all provisions to maximize and realize benefits and favorable treatment related to the structuring of financial bond transactions to or on behalf of the eligible school districts even if portions of the prospective financing arrangements conflict with any other provision of this administrative regulation.

JONATHAN MILLER, November 12, 2009

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009 at noon

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of

General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and**  
**Health Education and Training**  
**(As Amended at ARRS, February 8, 2010)**

**803 KAR 2:300. General.**

RELATES TO: KRS 339.015, 29 C.F.R. 1910.3-1910.7, 1910.9, EO 2009-537

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, EO 2009-537

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1910.3-1910.7 and 1910.9 establish occupational safety and health standards found to be national consensus standards or established federal standards [to be enforced by the Department of Workplace Standards in general industry]. EO 2009-537, effective June 12, 2009, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by~~in~~ KRS 338.015(2).

(5) "Employer" is defined by~~in~~ KRS 338.015(1).

(6) "Established federal standard" is defined by~~in~~ KRS 338.015(10).

(7) "National consensus standard" is defined by~~in~~ KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by~~is defined in~~ KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.3-1910.7, revised July 1, 2009[2008]; and

(2) 1910.9, revised July 1, 2009; and

(3) The revisions to 29 C.F.R. 1910.6 as published in the August 11, 2009 Federal Register, Volume 74, Number 153 and confirmed in the November 10, 2009 Federal Register, Volume 74, Number 216.

~~[The addition of section 29 C.F.R. 1910.9 as published in the December 12, 2008 Federal Register, Volume 73, Number 240.]~~

J.R. GRAY, Chairman

APPROVED BY AGENCY: December 3, 2009

FILED WITH LRC: December 10, 2009 at 10 a.m.

CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

## VOLUME 36, NUMBER 9 – MARCH 1, 2010

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and**  
**Health Education and Training**  
**(As Amended at ARRS, February 8, 2010)**

### 803 KAR 2:307. Hazardous materials.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1910.101 - 1910.126

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.101-1910.126 establishes federal requirements relating to hazardous materials. EO 2009-537[2008-472], effective June 12, 2009[16, 2008], established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor. This administrative regulation establishes hazardous materials standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by[in] KRS 338.015(2).

(4) "Employer" is defined by[in] KRS 338.015(1).

(5) "Standard" means "occupational safety and health standard" as defined by[is defined in] KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation and the requirements established in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) C.F.R. 1910.101-1910.126, revised July 1, 2009; and

(2) The revisions to 29 C.F.R. 1910.102 as published in the August 11, 2009 Federal Register, Volume 74, Number 153 and confirmed in the November 10, 2009 Federal Register, Volume 74, Number 216.[2008]

Section 3. Automotive Service Station. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.106(a)(3).

(2) Automotive service station, or service station, shall include[means] that portion of property where flammable or combustible liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and shall include any facilities available for the sale and service of tires, batteries, or[and] accessories, and for minor automotive maintenance work, and shall also include private stations not accessible or open to the public such as those used by commercial, industrial, or governmental establishments. This section shall not apply to agriculture.

J.R. GRAY, Chairman

APPROVED BY AGENCY: December 3, 2009

FILED WITH LRC: December 10, 2009 at 19 a.m.

CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Code Enforcement**  
**(As Amended at ARRS, February 8, 2010)**

### 815 KAR 7:120. Kentucky Building Code.

RELATES TO: KRS 132.010(9), (10), 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990, 227.300, 227.550(7), EO 2009-535

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. EO 2009-535, effective June 12, 2009 [2008-507, effective June 16, 2008], reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Executive director" is defined by KRS 198B.010(9).

(4) "Farm" means property:

(a) Located outside the corporate limits of a municipality on at least ten (10) acres;

(b) Used for purposes set forth in the definitions of "agricultural land" and "horticultural land", established in KRS 132.010(9) and (10), respectively; and

(c) Qualified by and registered with the property valuation administrator in that county.

(5) "Fire Code Official" means the State Fire Marshal, fire chief, or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety as established in 815 KAR 10:060.

(6) "Industrialized building system" or "building system" is defined by KRS 198B.010(16).

(7) "KBC" means the Kentucky Building Code as established in this administrative regulation.

(8) "Kentucky Residential Code" means the International Residential Code, 2006, as amended for application in Kentucky by 815 KAR 7:125.

(9) "Kentucky Standards of Safety" means the requirements established in 815 KAR 10:060, which serve as the fire prevention code for existing buildings as well as a supplement to this code.

(10) "Manufactured home" is defined by KRS 227.550(7).

(11) "Modular home" means an industrialized building system, which is designed to be used as a residence and that is not a manufactured or mobile home.

(12) "Office" is defined by KRS 198B.010(11)

(13) "Ordinary repair" is defined by KRS 198B.010(19).

(14) "Single-family dwelling" or "one (1) family dwelling" means a single unit which:

(a) Provides[providing] complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) [and Which] shall not be connected to any other unit or building.

(15) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(16) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Administration and Enforcement of the Building Code. (1) Notwithstanding the requirements of the International Building Code 2006, the Kentucky changes established in the 2007

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Kentucky Building Code shall be mandatory and shall supersede any conflicting provision of the international code.

(2)(a) Except as provided in paragraph (b) of this subsection and as superseded by the provisions of this administrative regulation and the 2007 Kentucky Building Code, the International Building Code 2006, shall be the mandatory state building code for Kentucky for all buildings.

(b) One (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 7:125.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the office.

(1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings.

(a) The office's inspection fees shall be calculated by:

1. Multiplying the total building area under construction by the cost per square foot of each occupancy type as listed in subsection (3) of this section; and

2. Computing the square footage by the outside dimensions of the building.

(b) The fee for buildings with multiple or mixed occupancies ~~shall~~may be calculated using the cost per square foot multiplier of the predominant use.

(3) Table 121.3.1, Basic Office Fee Schedule. The basic plan review or inspection fee shall be:

(a) Assembly occupancies, fourteen (14) ~~[eight and one-half (8.5)]~~ cents;

(b) Business occupancies, thirteen (13) ~~[seven and one-half (7.5)]~~ cents;

(c) Day care centers, thirteen (13) ~~[seven and one-half (7.5)]~~ cents;

(d) Educational occupancies, thirteen (13) ~~[seven and one-half (7.5)]~~ cents;

(e) ~~[Frozen food plants, six and one-half (6.5) cents;~~

~~(f) High hazard occupancies, twelve (12) [seven and one-half (7.5)] cents;~~

~~(g) Industrial factories, twelve (12) [six and one-quarter (6.25)] cents;~~

~~(h) Institutional occupancies, fourteen (14) [eight and one-half (8.5)] cents;~~

~~(i) Mercantile occupancies, thirteen (13) [seven and one-half (7.5)] cents;~~

~~(j) Residential occupancies, thirteen (13) [seven and one-half (7.5)] cents;~~

~~(k) Storage, eleven (11) [(k) Warehouses, five and one-half (5.5)] cents; or~~

~~(l) Utility and miscellaneous, eleven (11) [(l) All other nonresidential, six and one-half (6.5)] cents.~~

(4) Additions to existing buildings.

(a) Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition.

(b) The minimum fee for review of plans under this subsection shall be \$250 ~~[\$200]~~.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions.

(b) The minimum fee for review of plans under this subsection

shall be \$250 ~~[\$200]~~.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of:

1. Multiplying the cost for the alterations or repairs by 0.0025; or

2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans under this subsection shall be \$275 ~~[\$200]~~.

(7) Specialized fees. In addition to the fees listed in subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule:

1. An inspection of four (4) through 200 sprinklers shall be a fee of \$275 ~~[\$150]~~;

2. An inspection of 201 through 300 sprinklers shall be a fee of \$300 ~~[\$175]~~;

3. An inspection of 301 through 400 sprinklers shall be a fee of \$350 ~~[\$240]~~;

4. An inspection of 401 through 750 sprinklers shall be a fee of \$400 ~~[\$250]~~; and

5. An inspection of over 750 sprinklers shall be a fee of \$400 plus thirty (30) ~~[\$250 plus twenty (20)]~~ cents per sprinkler over 750.

(b) Fire detection system review fee:

1. Zero to 20,000 square feet shall be \$275 ~~[\$150]~~; and

2. Over 20,000 square feet shall be \$275 plus thirty (30) ~~[\$150 plus twenty (20)]~~ dollars for each additional 10,000 square feet in excess of 20,000 square feet.

(c) The standpipe plan review fee shall be \$275 ~~[\$150]~~. The combination stand pipe and riser plans shall be reviewed under the automatic sprinkler review fee schedule.

(d) Carbon dioxide suppression system review fee:

1. One (1) through 200 pounds of agent shall be \$275 ~~[\$150]~~; and

2. Over 200 pounds of agent shall be \$275 plus five (5) ~~plus two (2)]~~ cents per pound in excess of 200 pounds.

(e) Clean agent suppression system review fee:

1. a. Up to thirty-five (35) pounds of agent shall be \$275 ~~[\$150]~~ and;

b. Over thirty-five (35) pounds shall be \$275 plus ten (10) ~~plus six (6)]~~ cents per pound in excess of thirty-five (35) pounds.

2. The fee for gaseous systems shall be ten (10) ~~[five (5)]~~ cents per cubic foot and not less than \$150.

(f) Foam suppression system review fee.

1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed under the automatic sprinkler review fee schedule.

3. The fee for review of plans under subparagraph 1 of this paragraph shall not be less than \$275 ~~[\$150]~~ or more than \$1,500.

(g) The commercial range hood review fee shall be \$225 ~~[\$150]~~ per hood.

(h) Dry chemical systems review fee (except range hoods). The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be \$275 ~~[\$150]~~; and

2. Over thirty (30) pounds of agent shall be \$275 ~~[\$150]~~ plus twenty-five (25) cents per pound in excess of thirty (30) pounds.

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and over-fill detection, cathodic protection, or associated components.

(j) Boiler and unfired pressure vessel fees. Plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.

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Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "International Building Code, 2006", First Edition, International Code Council, Inc.; and

(b) "2007 Kentucky Building Code", Ninth Edition, 2007, revised ~~October~~ June 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 29, 2009

FILED WITH LRC: October 1, 2009 at 8 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

### **PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Plumbing (As Amended at ARRS, February 8, 2010)**

#### **815 KAR 20:050. Installation permits.**

RELATES TO: KRS 318.030, 318.134, 318.160, EO 2009-535

STATUTORY AUTHORITY: KRS[318.030;] 318.134(3), EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.134(3) requires the office to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the fees and charges for plumbing installation permits in Kentucky.

Section 1. Issuance of Permits. (1) Permits to construct, install, or alter plumbing, sewerage, or drainage shall be issued only to licensed master plumbers except as provided by subsection (3) of this section.

(2) Journeyman plumbers shall not construct, install, or alter plumbing, sewerage, or drainage unless the work is performed under the supervision of a licensed master plumber.

(3) Permits to construct, install, or alter plumbing, sewerage, or drainage ~~shall~~ may be issued to homeowners who desire to install plumbing in homes actually occupied by them or in a home to be constructed by them for their own personal residential use, if all the following requirements are met:

(a) Application is made for the permit prior to the beginning of the work;

(b) The homeowner files with ~~the~~ his application an affidavit stating that ~~the homeowner~~ he shall abide by the terms of this section;

(c) All work shall be performed in compliance with the state plumbing code;

(d) All the work shall be personally performed by the ~~homeowner~~ owner; and

(e) The homeowner shall not have obtained another homeowner permit for construction of a new home issued within the last five (5) years. ~~[Only one (1) homeowner permit for construction of a new home shall be issued to an individual in a five (5) year period.]~~

(4) A permit shall not be required for:

(a) The repairing of the following:

1. Leaks;
2. Cocks; or
3. Valves; or
- (b) ~~For~~ Cleaning out waste or sewer pipes.

Section 2. When a Permit is Required. A plumbing installation permit shall be required for the following:

(1) ~~For all~~ New plumbing installations;

(2) ~~For all~~ Existing plumbing installations if a fixture, soil, or waste opening or conductor is to be moved or relocated;

(3) ~~For~~ Each individual unit of a multistory building if there is more than one (1) unit;

(4) ~~For~~ Buildings which are considered separate if:

(a) The connection between them is not a necessary part of the structure of either building; or

(b) ~~if~~ They are not under a continuous roof;

(5) ~~For~~ A new house sewer or ~~for~~ a house sewer that is to be replaced;

(6) ~~For~~ A new water service or ~~for~~ a water service that is to be replaced;

(7) ~~For~~ The addition of a backflow prevention device to an existing water service;

(8) ~~For~~ A new water heater installation or ~~for~~ a water heater installation that is to be replaced; or

(9) ~~For~~ Taking over a plumbing installation originally permitted to another master plumber or ~~for~~ assuming responsibility to correct and test an installation made by someone else.

Section 3. Plumbing Installation Permit Fees. (1) The base fee for each plumbing installation permit for residential, one (1) and two (2) family units, shall be ~~forty-five (45)~~ thirty-five (35) dollars plus:

(a) ~~Seven (7)~~ Five (5) dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) ~~Seven (7)~~ Five (5) dollars for each domestic water heater; and

(c) ~~Seven (7)~~ Five (5) dollars for each separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(2) The base fee for each plumbing installation permit for other than residential, one (1) and two (2) family units, shall be ~~forty-five (45)~~ thirty-five (35) dollars plus;

(a) ~~Ten (10)~~ Seven (7) dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) ~~Ten (10)~~ Seven (7) dollars for each domestic water heater;

(c) ~~Ten (10)~~ Seven (7) dollars for each conductor opening; and

(d) ~~Ten (10)~~ Seven (7) dollars for each separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(3) If only one (1) new domestic water heater is installed or replaced within a single building, the only fee for the plumbing installation permit shall be ~~forty-five (45)~~ thirty-five (35) dollars. Alternatively, if more than one (1) water heater is replaced within a building, a permit shall be issued under Sections 1 or 2 of this administrative regulation.

(4) If the application for permit does not include any new installation but is to make corrections to or ~~to~~ provide testing for an installation made by someone else, the permit fee shall be limited to the base fee of ~~forty-five (45)~~ thirty-five (35) dollars only.

Section 4. Inspection Fees. (1) All persons securing plumbing permits shall be entitled to five (5) plumbing inspections at no additional cost.

(2) All plumbing inspections in excess of five (5) shall be charged at the rate of fifty (50) dollars per inspection and shall be paid prior to the final inspection.

(3) Inspection fees shall not apply if the cost of the permit exceeds \$200.

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Section 5. Expiration of Permits. (1) Except as provided in subsection (2) of this section, all plumbing installations permits issued under this administrative regulation shall expire one (1) year after the date of issuance.

(2) If construction is begun within one (1) year after the date the permit is issued, the permit shall not expire until completion of the planned plumbing inspection.

Section 6. Plumbing Inspection Fees for Public Buildings. The schedule of fees for inspection of the construction, installation, or alteration of plumbing in public buildings shall be the same as specified in Section 4 of this administrative regulation.

RICHARD MOLONEY, Chairman  
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 29, 2009

FILED WITH LRC: October 1, 2009 at 8 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

### **PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Plumbing (As Amended at ARRS, February 8, 2010)**

#### **815 KAR 20:055. Water heater devices.**

RELATES TO: KRS 318.200, EO 2009-535

STATUTORY AUTHORITY: KRS 318.200, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.200 requires, regardless of the class of city or county in which the sale occurs in Kentucky, that all retailers, wholesalers, and installers of water heating devices ~~to~~ forward the name and address of ~~each~~ the purchaser along with the serial number of the device purchased to the office or to the appropriate agency of county or city government having jurisdiction within thirty (30) days of the purchase. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the requirements for submitting the information to the department[office].

Section 1. Reporting Requirements. (1) If required by KRS 318.200 to submit information to the ~~department[office]~~, rather than to a local jurisdiction, a wholesaler, retailer, or installing contractor selling a water heating device ~~[manufacturers, [wholesalers, retailers, and installing contractors selling water heating devices]]~~ shall submit to the ~~Department[Office]~~ of Housing, Buildings and Construction, Division of Plumbing, the name and address of each purchaser ~~[purchasers]~~, including the serial number of the water heater, on Form PLB-94, Water Heater Report Form.

(2) An installing contractor shall be ~~is~~ exempt from the reporting requirements of subsection (1) of this section the contractor has if [they have] purchased an installation permit for the water heater. The permit shall serve as the reporting requirement for the Division of Plumbing as required by KRS 318.200.

Section 2. Incorporation by Reference. (1) Form PLB-94, "Water Heater Report Form", December 2009 ~~[May-2006]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the ~~Department[Office]~~ of Housing, Buildings and Construction, Division of Plumbing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 430 p.m.

RICHARD MOLONEY, Commissioner  
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 11, 2009

FILED WITH LRC: December 14, 2009 at noon

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 EXT. 144, fax (502) 573-1057.

### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Operations Support (As Amended at ARRS, February 8, 2010)**

#### **910 KAR 3:030. Traumatic brain injury trust fund operations program.**

RELATES TO: KRS Chapter 13B, 42.320(2)(d), [f]] 45A.075, 45A.080, 189A.050(3)(d)1, 205.900(3), 211.470-211.478, [EO 2004-726]

STATUTORY AUTHORITY: KRS 211.474(1), EO 2009-541 [EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: EO 2009-541 transferred the functions and funds of KRS 189A.050(3)(d)1 to the Department for Aging and Independent Living. KRS 211.474(1) requires the Traumatic Brain Injury Trust Fund Board of Directors to promulgate administrative regulations necessary to carry out the provisions of KRS 211.470 through 211.478. This administrative regulation establishes the Traumatic Brain Injury Trust Fund Operations Program. ~~NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Mental Health and Mental Retardation under the Cabinet for Health and Family Services. KRS 211.474(1) requires the Traumatic Brain Injury Trust Fund Board of Directors to promulgate administrative regulations necessary to carry out the provisions of KRS 211.470 through 211.478. This administrative regulation establishes the operating procedures of the Traumatic Brain Injury Trust Fund Board of Directors, procedures for the selection of a benefit management program, the duties of the benefit management program, the procedure for obtaining Traumatic Brain Injury Trust Fund services, and the procedure for appealing a denial of an application for benefits.]~~

Section 1. Definitions. (1) "Applicant" means a person:

(a) Who applies for the program, including a legal representative on behalf of an applicant;

(b) Who participates in the development of, and agrees to, a service plan for the use of the program; and

(c) For whom a completed service plan is submitted to the program.

(2) "Benefit" means financial assistance provided to a recipient to cover the cost of services approved by the service plan review committee.

(3) "Benefit management program" or "program" means the entity recommended by the board that provides case management services and facilitates distribution of trust fund monies.

(4) "Board" is defined in KRS 211.470(1).

(5) "Cabinet" is defined by KRS 211.470(2) [means the Cabinet for Health and Family Services].

(6) "Case management" means managing a recipient's case for traumatic brain injury services including:

(a) Assisting and developing a service plan for the recipient;

(b) Knowledge of resources for a recipient;

(c) Assisting with accessing local resources for a recipient;

(d) Education of an applicant, recipient, or family member regarding the program and available resources; and

(e) Monitoring of the services received by a recipient as part of an approved service plan.

(7) "Case manager" means a person who provides case management services to applicants and recipients.

(8) "Community residential services" means retraining and rehabilitation of a recipient in a nonemergency situation in a community setting.

(9) "Companion services" means nonmedical supervision and

socialization services for the purpose of:

(a) Preventing the need for institutionalization; and  
(b) Assisting a recipient in maintaining community placement based upon an approved service plan.

(10) "Department" means the Department for Aging and Independent Living.

(11) "Environmental modification" means a physical adaptation to a recipient's home:

(a) For the purpose of helping a recipient function with greater independence in the recipient's own home; or

(b) Which is necessary to accommodate medical equipment and supplies required for the recipient's welfare.

(12) "Fund" or "trust fund" is defined by KRS 211.470(4).

(13) "Good cause" means a circumstance beyond the control of a recipient that affects the recipient's ability to access an approved benefit, including:

(a) Illness or hospitalization of the individual that is expected to last thirty (30) days;

(b) Death or incapacitation of the primary caregiver; or

(c) Unavailability of a service provider that is expected to last thirty (30) days.

(14) "Integrated environment" means other individuals in a nonresidential setting integrated with those individuals who have a brain injury and in which both are being served to improve community living skills.

(15) "Medical records" means records documenting an applicant's or recipient's traumatic brain injury including:

(a) Hospital records; or

(b) Diagnostic imaging reports as related to KRS 211.470(3).:]

(16) "Noncrisis behavior programming" means an individually-designated nonemergency service plan intended to increase a recipient's adaptive social behavior.

(17) "Occupational therapist" is defined by KRS 319A.010(3).

(18) "Occupational therapy" means the therapeutic use of self-care, work, and leisure activities to enhance independent functioning or skill development.

(19) "Personal care assistance services" is defined by KRS 205.900(3).

(20) "Prevocational service" means a service designed to develop a prerequisite skill necessary to prepare a recipient for paid or unpaid employment provided beyond other external program resources.

(21) "Psychological and mental health services" means services provided by a mental health professional licensed by the state which are:

(a) Designed to help a recipient to resolve personal issues or interpersonal problems resulting from a traumatic brain injury; or

(b) Provided to a recipient's direct caregiver to preserve the stability of a recipient's community living situation, as part of an approved service plan.

(22) "Recipient" means an applicant or legal representative on behalf of the recipient with an approved service plan who receives a benefit.

(23) "Respite care" means a skilled or unskilled service provided to a recipient on a short-term basis if there is an absence or need for relief of a recipient's caregiver.

(24) "Service plan" means a document that itemizes the goals, services, equipment, or items which are subject to review by the service plan review committee.

(25) "Service plan review committee" means a committee composed of persons with traumatic brain injuries or their family members and professionals in the field of brain injury as outlined in Section 4(5)(b).

(26) "Specialized medical equipment and supplies" means items which are of direct medical or remedial benefit to a recipient and assist the recipient to maintain community placement.

(27) "Speech-language pathologist" is defined by KRS 334A.020(3).

(28) "Speech and language therapy" means an intervention designed to maximize a recipient's language, pragmatic, and cognitive skills.

(29) "Structured day program services" means a service:

(a) Provided by a certified or licensed entity; and

(b) Performed in a nonresidential setting which is designed to

develop and improve a recipient's skills through activities and skill trainings in areas of:

1. Personal well being;

2. Social and community living; and

3. Independent living management.

(30) "Supported employment services" means supervision and training of a recipient in a work site at which persons without disabilities are employed and for a recipient who:

(a) Is unlikely to obtain competitive employment at or above minimum wage; or

(b) Needs ongoing support to perform competitive employment.

(31) "Traumatic brain injury" is defined in KRS 211.470(3).

(32) "Unit" means a billed service calculated in fifteen (15) minute increments.

(33) "Wrap-around service" means a service, equipment, or item, not excluded by KRS 211.474(2)(e), which will enhance a recipient's ability to live in the community, consistent with the recipient's overall service plan.

Section 2. Board Operating Procedures. (1)(a) A board member shall adhere to the bylaws of the board and the confidentiality requirements as specified in KRS 211.474(3).

(b) If a member fails to act in accordance with the bylaws, the chair of the board shall recommend to the governor the dismissal of that member.

(2) A board member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

1. Personal;

2. Professional; or

3. Financial; or

(b) Directly assist another individual, regardless of where the person resides, to apply for benefits from the fund, except a board member:

1. May refer another individual but not directly assist another individual to apply for benefits from the fund; and

2. Shall not refer himself or an eligible family member or receive benefits from the fund at the same time as being a member of the board.

(3) The board shall review a quarterly report of the program's activities in accordance with Section 4(8) of this administrative regulation.

(4) The board shall direct the department to issue a request for proposal for the benefit management program.

Section 3. Department Duties. (1) The department may issue a request for proposal:

(a) If directed by the board; and

(b) In accordance with KRS 45A.080.

(2) The department shall:

(a) Review each proposal properly submitted in accordance with the request for proposal issued;

(b) Determine an entity to operate the program under contract based upon:

1. The boards' recommendation; and

2. Consideration of the:

a. Experience of the entity in the provision of services to individuals with traumatic brain injury;

b. Priority of services to individuals with traumatic brain injury within the entity's overall operation;

c. Expertise of the entity's staff in the provision of services to individuals with traumatic brain injury;

d. Experience in the provision of the entity's case management services;

e. Capacity of the entity to provide case management services to individuals with traumatic brain injury statewide;

f. Experience in and the capacity of the entity to develop community resources for individuals with traumatic brain injury statewide;

g. Capacity of the entity to distribute benefits from the fund to recipients;

h. Capacity of the entity to manage applicant, recipient, benefit, and program evaluation data;

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- i. Fiscal policies and practices and the financial stability of the entity;
  - j. Accessibility of the entity to individuals with traumatic brain injury throughout the state;
  - k. Entity's proposed cost to operate the program; and
  - l. Entity's proposed procedures for evaluating the program; and
- (c) Contract with a qualified entity:
- 1. At the direction of the board; and
  - 2. Contingent on the availability of funds.

Section 4. Duties of the Program. The program shall:

- (1) Establish a toll free telephone number for the purpose of enabling individuals with a traumatic brain injury to apply for benefits from the fund;
- (2) Engage in public information activities for the purpose of informing individuals with a traumatic brain injury about the availability of case management services and benefits from the fund and other sources;
- (3) Review an applicant's documentation of the applicant's diagnosed brain injury and Kentucky residency to determine eligibility as specified in Section 5 of this administrative regulation;
- (4) Assign a case manager within two (2) business days of the determination;
- (5) Establish a service plan review committee:
- (a) For the purpose of reviewing proposed service plans for approval or denial;
- (b) Which shall:
- 1. Include a minimum of one (1) person with a traumatic brain injury or the guardian or advocate of a person with a traumatic brain injury;
  - 2. Include a minimum of one (1) professional with expertise in the field of traumatic brain injury; and
  - 3. Not have two (2) individuals from the same agency or family serve consecutive terms; and
- (c) In which a member shall be limited to serve twelve (12) consecutive months but may be reappointed to the service plan review committee twelve (12) months after the date of the expiration of the member's most recent term of service on the committee;
- (6) Accept a request for benefits from the fund;
- (7) Distribute benefits to a recipient based upon an approved service plan;
- (8) Submit a list of approved or denied service plans in a quarterly report to the department; and
- (9) Provide case management services:
- (a) To applicants and recipients statewide, including the provision of assistance in accessing a needed support or service, regardless of funding source; and
- (b) By the following individuals licensed in Kentucky with two (2) or more years experience working in the brain injury field:
- 1. A registered nurse;
  - 2. A practical nurse; or
  - 3. An individual who has a bachelor's or higher degree in the human services field and who meets applicable requirements of the individual's particular field including a degree in:
    - a. Psychology;
    - b. Sociology;
    - c. Social work; or
    - d. Rehabilitation counseling; and
  - 4. That requires the individuals specified in subparagraphs 1 through 3 of this paragraph to have six (6) additional hours of continuing education within the field of traumatic brain injury annually.

Section 5. Eligibility. (1) An applicant shall be eligible for a benefit from the fund:

- (a) In accordance with:
- 1. KRS 211.470(3); and
  - 2. KRS 211.472(2)(a) and (c); and
- (b) If the applicant is a legal resident of Kentucky.
- (2) A resident of an institution or hospital shall not be eligible for benefits from the fund:
- (a) Unless the resident is within two (2) weeks of discharge and the benefits facilitate a discharge to the community; and
- (b) If funding is available.
- (3) An applicant shall provide medical records of the appli-

cant's traumatic brain injury to the program.

(4) An applicant shall document that the applicant has no other public or private payor source, other than the trust fund, which covers the type of service the applicant is requesting.

Section 6. Procedures for Obtaining a Benefit From the Fund.

(1)(a) A benefit for assistance from the fund shall be directly related to an applicant's brain injury or care of the applicant.

(b) A referral for benefits may be made by, or on behalf of, an eligible person by contacting the program in the following manner:

- 1. Telephone;
- 2. In person;
- 3. In writing;
- 4. Facsimile; or
- 5. Email.

(2) Upon receipt of referral, the program shall notify the recipient or referral source of the documentation needed to determine eligibility as specified in Section 5 of this administrative regulation.

Section 7. Benefits Available from the Fund. (1) An applicant may apply for one (1) or more benefits from the fund as follows:

- (a) Noncrisis behavior programming;
- (b) Case management;
- (c) Community residential services, which shall include at least

the following:

- 1. Dressing;
- 2. Oral hygiene;
- 3. Hair care;
- 4. Grooming;
- 5. Bathing;
- 6. Housekeeping;
- 7. Laundry;
- 8. Meal preparation;
- 9. Shopping;
- 10. Room and board; or
- 11. Twenty-four (24) hour supervision of a recipient;

(d) Companion services;

(e) Environmental modification;

(f) Occupational therapy provided by an occupational therapist;

(g) Prevocational service, which shall include at least the following:

- 1. Assisting a recipient to understand the meaning, value, and demands of work;
  - 2. Assisting a recipient to learn or reestablish skills, attitudes, and behaviors necessary for employment; or
  - 3. Assisting the individual to improve functional capacities;
- (h) Psychological and mental health services, which shall include at least the following:

- 1. Training to improve interpersonal skills;
- 2. Social skills;
- 3. Problem-solving skills;
- 4. Training to remediate a cognitive problem resulting from the traumatic brain injury;
- 5. Treatment for a substance abuse problem related to the traumatic brain injury;
- 6. Psychological assessment; and
- 7. Neuropsychological evaluation;

(i) Respite care in:

- 1. The recipient's own home;
  - 2. Another personal residence; or
  - 3. Another setting, if approved by the program;
- (j) Specialized medical equipment and supplies;

(k) Speech and language therapy provided by a speech-language pathologist which shall include at least the following:

- 1. Articulation therapy;
  - 2. The design of and instruction in the use of augmentative communication strategies or devices; or
  - 3. Cognitive retraining strategies;
- (l) Structured day program services, which shall include at least the following:

- 1. Direct supervision of the recipient;
- 2. Specific training to allow a recipient to improve functioning and to reintegrate into the community;
- 3. Social skills training;



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- 4. Sensory skill development;
- 5. Motor skill development;
- 6. Teaching of concepts and skills necessary for the increased independence of the recipient; and
- 7. Other services to increase:
  - a. Adaptive behavioral responses; and
  - b. Community reintegration;
- (m) Supported employment services;
- (n) Personal care assistance services; or
- (o) Wrap-around services, which shall include at least the following:
  - 1. Assistance in transporting a recipient, such as to and from a:
    - a. Medical appointment;
    - b. Therapy appointment; or
    - c. Counseling appointment;
  - 2. Dental services by a licensed professional;
  - 3. Vision services by an Optometrist, Ophthalmologist, or Optician;
  - 4. Other destinations in the community as specified in the recipient's service plan;
  - 5. Vehicle modification for accessibility; or
  - 6. A one (1) time expenditure of funds for the payment of the recipient's health insurance expenses, for a period not to exceed three (3) months.
- (2) Wrap-around funds shall not be expended for payment of:
  - (a) Attorney fees;
  - (b) Court costs or fines assessed as a result of a conviction for a criminal offense;
  - (c) The cost of incarceration; or
  - (d) Other court ordered monetary judgments.

Section 8. Case Management Services. (1) Following the program's determination of eligibility, the assigned case manager shall contact a recipient no later than three (3) business days and complete the following responsibilities:

- (a) Identify the recipient's needs for service and supports;
- (b) Identify potential resources to meet the applicant's need for services and supports;
- (c) Assist the applicant in obtaining needed services and supports regardless of funding source;
- (d) Determine that the fund is the payor of last resort;
- (e) Coordinate, arrange, and document identified service needs of the recipient;
- (f) Develop an individualized service plan that shall:
  - 1. Relate to an assessed problem;
  - 2. Identify goals to address the assessed problem;
  - 3. Identify a scope, duration, and unit of service required to address goals;
  - 4. Identify a source of service utilized in this administrative regulation;
  - 5. Include a plan for reassessment of the identified problem; and
  - 6. Be signed by the recipient or recipient's representative and case manager, with a copy provided to the recipient;
- (g) Assist in the identification of local resources for individuals with traumatic brain injury;
- (h) Document all contacts with the recipient in the recipient's case record including time in and out and mileage, if applicable;
- (i) Monitor a recipient's active caseload:
  - 1. Upon available funding, at a minimum one (1):
    - a. Face-to-face contact at least every other month;
    - b. Face-to-face at place of residence at least annually; and
    - c. Phone contact during any month a face-to-face contact does not occur; and
  - 2. Document in the case record each contact made with the recipient including the visit's time in and out and mileage, if applicable; and
- (j) Complete a proposed service plan which shall specify:
  - 1. The name, address, and telephone number of the applicant;
  - 2. The Social Security number of the applicant;
  - 3. Medical documentation of the recipient's traumatic brain injury;
  - 4. The applicant's own identification of needed services and supports;

- 5. The requested benefit from the fund;
- 6. Documentation of the recipient's lack of a payor source for the requested service including:
  - a. An explanation of circumstances leading to the need to request funding; and
  - b. Attempts to find other funding such as:
    - (i) An agency denial or documentation of a noncovered service by insurance or other entity;
    - (ii) Department for Medicaid Services denial; or
    - (iii) Community action programs denial;
- 7. The relationship of receipt of the benefit to the applicant's ability to live in the community, consistent with the recipient's overall service goals;
- 8. Establishment of long term planning goals of how the applicant shall maintain stability after the benefit has been received;
- 9. The signature of the applicant, or the applicant's conservator or guardian, indicating agreement with the terms of the service plan; and
- 10. The mechanism for distribution of benefits from the fund.
- (2) The case manager shall submit the proposed service plan to the service plan review committee for approval.

Section 9. Service Plan Review Committee Duties. (1) The service plan review committee shall:

- (a) Verify the trust fund is payor of last resort of the submitted service plan specified in Section 8(1)(g) of this administrative regulation;
- (b) Verify eligibility of an applicant or recipient's service plan in accordance with Section 5 of this administrative regulation;
- (c) Consider a service plan in the documented order in which it is received;
- (d) Review the service plan to determine if:
  - 1. The applicant is eligible for benefits from the fund in accordance with KRS 211.470(3) and 211.474(2) and with Section 5 of this administrative regulation;
  - 2. The benefit requested from the fund meets the requirements of KRS 211.474(2)(d); and
  - 3. The requested services are coordinated by a case manager;
- (e) Approve or deny an applicant or recipient's service plan;
- (f) Approve the rates of reimbursement for the delivery of services according to a recipient's approved service plan; and
- (g) Notify the program of an approved or denied service plan.
- (2) The service plan review committee may:
  - (a) Approve the proposed service plan, for a period not to exceed twelve (12) months;
  - (b) Amend the proposed service plan; or
  - (c) Make recommendations to the applicant and the applicant's assigned case manager about other available resources or means to meet the applicant's need for services and supports.
- (3) If the applicant disagrees with an amendment by the service plan review committee, the applicant may appeal the decision in accordance with Section 15 of this administrative regulation.
- (4) The service plan review committee shall not approve the distribution of a benefit to a recipient in excess of \$15,000 within any twelve (12) month period and \$60,000 per lifetime pursuant to KRS 211.474(2)(c).
- (5) The service plan review committee shall not approve the distribution of benefits to an applicant:
  - (a) Who does not meet the eligibility requirements established in Section 5 of this administrative regulation;
  - (b) If the requested benefits are intended for a purpose other than the welfare of the applicant;
  - (c) If the applicant fails to demonstrate a good faith effort that no other payor source is available to obtain the requested benefit;
  - (d) If other resources are available to the applicant to substantially meet a reasonable need for which the benefit is requested; or
  - (e) If the benefit requested is for the purpose of reimbursing the recipient for expenses incurred prior to approval of a service plan by the service plan review committee.
- (6) A service plan shall be signed by the director of the program or the director's designee, and the applicant or the applicant's conservator or guardian.

Section 10. Approved Service Plan. (1) A recipient shall re-

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ceive a copy of an approved service plan from the case manager.

(2) A recipient with an approved service plan may change a service provider within an approved service category if there is no increased cost of the service.

(3) A recipient may make a permitted change by informing the case manager by:

- (a) Telephone;
- (b) Email;
- (c) Facsimile; or
- (d) In writing.

(4) The case manager may approve a service provider change in a service plan made without review by the service plan review committee.

(5) Involuntary termination and loss of approved benefits shall be initiated if an individual fails to access the approved benefits as outlined in the service plan within thirty calendar (30) days of notification of approval of the service plan without good cause shown.

(a) The recipient or his legal representative shall have the burden of providing documentation of good cause as to the reason services cannot be accessed within the thirty calendar (30) days, including:

1. A statement signed by the recipient or legal representative;
2. A copy of letters to providers;
3. A copy of letters from providers; and
4. A copy of documentation from physicians or other health care professionals.

(b) Upon receipt of documentation of good cause, the program shall grant one (1) sixty (60) day extension in writing.

**Section 11. Provider Duties.** (1) Upon notification of an approved service plan, the provider shall:

(a) Accept the rate approved in Section 9(1)(f) of this administrative regulation as payment in full;

(b) Not require additional payment from a recipient; and

(c) Submit an invoice for payment to the program entity ninety (90) days from date of service.

(2) A request for payment submitted after ninety (90) days of the date of service delivery shall not be:

- (a) Reimbursed by the Benefit Management Program; or
- (b) Billed to the board or recipient.

**Section 12. Procedures for Distribution of Benefits from the Fund.** (1) The program shall distribute the fund to a service provider, contractor, or retailer for services rendered.

(2) The payment mechanism shall be specified in the service plan.

(3) The service provider or recipient shall provide to the program, on a monthly basis, documentation of the delivery of a service or benefit to a recipient.

(4) A service shall be reimbursed or paid if it is delivered in accordance with a recipient's approved service plan.

(5) An expenditure not included in an approved service plan shall not be paid by the provider, board, or cabinet.

(6) The cost of providing case management services to an applicant or recipient shall be exempt from the benefit limits established in Section 9(4) of this administrative regulation.

**Section 13. Procedures for Placement on a Waiting List.** (1) The program may establish a waiting list for benefits from the fund if it determines that no further funding is available during the fiscal year.

(2) The waiting list shall be implemented as follows:

(a) An applicant or recipient shall be placed on the waiting list upon receipt of a referral for assistance from the fund.

(b) The order of placement on the waiting list shall be determined chronologically by date and time of the referral for assistance from the fund.

(c) A written notification of the date and placement on the waiting list shall be mailed to the individual or his legal representative.

(3) The applicant shall be removed from the waiting list if:

(a) After a documented attempt, the program is unable to locate the applicant or his legal representative as specified in Section 14(1)(f) of this administrative regulation;

(b) The applicant secures requested benefit through another

resource;

(c) The applicant refuses a benefit in an approved service plan, unless the individual has made a permitted change in accordance with Section 10(2) through (4) of this administrative regulation;

(d) The applicant is deceased; or

(e) The applicant is discharged from the program in accordance with Section 15 of this administrative regulation.

(4) The removal from the waiting list shall not prevent the submission of a new application at a later date for the applicant.

(5) If the applicant is removed from the waiting list, the program shall notify the applicant, or his legal representative in writing within ten (10) business days from the removal.

**Section 14. Discharge Criteria.** (1) A recipient shall be discharged from the Brain Injury Trust Fund Program if:

(a) The recipient reaches the maximum \$60,000 lifetime benefit, except if the board waives the expenditure in accordance with KRS 211.474(2)(c);

(b) A service plan is completed for an approved timeframe and if no other program is needed;

(c) A requested service plan is denied;

(d) The recipient is noncompliant with a plan of care;

(e) The recipient chooses to be terminated from participation in the program;

(f) Contact cannot be made with the recipient by the program within three (3) months of last case management contact;

(g) The recipient, caregiver, family or guardian threatens or intimidates a case manager or other program staff;

(h) Services accessed are referred and provided by another agency for continued service, if applicable;

(i) No case management services are provided within six (6) months; or

(j) The recipient is deceased.

**(2) Recipients may reapply to the program without submittal of medical records except in accordance with subsection (1)(a) of this section.**

**(3) All discharges shall be appealable in accordance with Section 15, except in accordance with subsection (1)(a) of this subject.** [If a recipient is appropriately discharged from the program in accordance with subsection (1)(a) through (c), (f), and (h) of this section, the recipient may reapply to the program without submittal of medical records.]

**Section 15. Procedures for Appealing the Denial of an Application for Benefits from the Fund.** (1)(a) The program shall notify the applicant in writing if the service plan review committee does not approve a requested benefit.

(b) Notification shall be made within five (5) business days of the committee's decision.

(2) If an applicant is determined to be ineligible for benefits from the fund because medical records do not provide documentation of a traumatic brain injury, the applicant may submit:

(a) Medical documentation to support the diagnosis of the injury; or

(b) Additional medical opinions about the disability.

(3) The program or the board shall not be liable for the cost of a medical opinion obtained by an applicant.

(4) An applicant who wishes to appeal the denial of benefits shall notify the program, in writing, within thirty (30) days of notification of the denial.

(5) Upon receipt of a written appeal, the program shall encumber funds in the amount requested until final resolution of the appeal.

(6) The program shall acknowledge receipt of a written appeal to the applicant, in writing, within three (3) business days of receipt.

(7) The program shall provide an opportunity for an informal dispute resolution for an applicant or his representative:

(a) To appear before the executive committee board to present facts or concerns about the denial of benefits; and

(b) Within ten (10) business days of receipt of written appeal.

(8) The program shall inform an applicant, in writing, of the decision resulting from the informal dispute resolution within ten (10) business days of the review.

(9) An applicant dissatisfied with the result of the informal dis-

pute resolution may appeal to the Division of Administrative Hearings of the Office of Communications and Administrative Review. The appeal shall be:

- (a) In writing;
- (b) Made within thirty calendar (30) days of receipt of the decision by the program; and
- (c) Submitted to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(10) The department shall request the Division of Administrative Hearings of the Office of Communications and Administrative Review to conduct a hearing pursuant to KRS Chapter 13B, [Section 1. Definitions. (1) "Applicant" means a person who applies for a benefit, participates in the development of and agrees to a service plan for the use of the benefit, and for whom a completed service plan is submitted to the benefit management program.

(2) "Behavior programming" means an individually-designed strategy intended to increase a recipient's adaptive social behavior.

(3) "Benefit" means financial assistance provided to a recipient to cover the cost of services approved by the service plan review committee.

(4) "Benefit management program" or "program" means an entity incorporated to do business in the Commonwealth of Kentucky that contracts with the Cabinet for Health and Family Services, Department for Mental Health and Mental Retardation Services, at the recommendation of the board, to operate the Traumatic Brain Injury Trust Fund Program.

(5) "Board" is defined in KRS 211.470(1).

(6) "Cabinet" means the Cabinet for Health and Family Services.

(7) "Case management" means:

- (a) Assistance to develop a service plan;
- (b) Resource coordination;
- (c) Development of local resources;
- (d) Education of an applicant, recipient, or family member; and
- (e) Monitoring of the services received by a recipient as part of an approved service plan.

(8) "Case manager" means a person who provides case management services to applicants and recipients.

(9) "Community residential services" means retraining and rehabilitation of a recipient in a nonemergency situation to perform home care and home management tasks.

(10) "Companion services" means nonmedical supervision and socialization services designed to prevent institutionalization and to assist a recipient in maintaining community placement.

(11) "Department" means the Department for Mental Health and Mental Retardation Services or its designee.

(12) "Environmental modification" means a physical adaptation to a recipient's home to help a recipient function with greater independence in the recipient's own home or which is necessary to accommodate medical equipment and supplies required for the recipient's welfare.

(13) "Fund" or "trust fund" is defined by KRS 211.470(4).

(14) "Good cause" means a circumstance beyond the control of a recipient that affects the recipient's ability to access an approved benefit, including:

- (a) Illness or hospitalization of the individual that is expected to last sixty (60) days or less;
- (b) Death or incapacitation of the primary caregiver; or
- (c) Unavailability of a service provider that is expected to last sixty (60) days or less.

(15) "Occupational therapy" means the therapeutic use of self-care, work, and leisure activities to enhance independent functioning or skill development.

(16) "Prevocational service" means a service designed to develop a prerequisite skill necessary to prepare a recipient for paid or unpaid employment.

(17) "Psychological and mental health services" means services designed to help a recipient to resolve personal issues or interpersonal problems resulting from a traumatic brain injury, or services provided to a recipient's direct caregiver to preserve the stability of a recipient's community living situation, as part of an approved service plan.

(18) "Recipient" means an applicant with an approved service

plan who receives a benefit.

(19) "Respite care" means a service provided to a recipient on a short-term basis if there is an absence or need for relief of a recipient's caregiver.

(20) "Service plan" means a document that itemizes the goals, services, equipment, or items which have been approved for payment by the service plan review committee.

(21) "Service plan review committee" means a committee composed of persons with traumatic brain injuries or their family members and professionals in the field of brain injury that has the responsibility to review each applicant's proposed service plan for the purpose of approving or denying approval of the requested benefits.

(22) "Specialized medical equipment and supplies" means items which are of direct medical or remedial benefit to a recipient and which help a recipient to maintain community placement.

(23) "Speech and language therapy" means an intervention designed to maximize a recipient's language, pragmatic, and cognitive skills.

(24) "Structured day program services" means a service performed in a nonresidential setting which is designed to develop and improve a recipient's community living skills.

(25) "Supported employment services" means supervision and training of a recipient in a work site at which persons without disabilities are employed, for a recipient who is unlikely to obtain competitive employment at or above minimum wage and who needs ongoing support to perform competitive employment.

(26) "Traumatic brain injury" is defined in KRS 211.470(3).

(27) "Wrap-around service" means a service, equipment, or item, not excluded by KRS 211.474(2)(e), which will enhance a recipient's ability to live in the community, consistent with the recipient's overall service goals.

Section 2. Board Operating Procedures. (1) A board member shall adhere to:

- (a) The bylaws of the board; and
- (b) The confidentiality requirements as specified in KRS 211.474(3).

(2) If a member fails to act in accordance with the bylaws, the chair of the board shall recommend to the governor the dismissal of that member.

(3) A board member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

- 1. Personal;
- 2. Professional; or
- 3. Financial;

(b) Be present during a meeting at which time an applicant's request is discussed or voted on, if the member has a conflict of interest identified in paragraph (a) of this subsection; or

(c) Assist another individual, regardless of where the person resides, to complete an application for benefits from the fund, except a board member may so assist for himself, if eligible, or for an eligible family member.

Section 3. Procedures for Selection of the Program. (1) The board shall issue a request for proposal in accordance with KRS 45A.080.

(2) The board shall review each proposal properly submitted in accordance with the request for proposal issued and shall recommend to the department an entity to operate the program under contract with the department.

(3) The board shall recommend an entity based upon consideration of:

(a) The experience of the entity in the provision of services to individuals with traumatic brain injury;

(b) The priority of services to individuals with traumatic brain injury within the entity's overall operation;

(c) The expertise of the entity's staff in the provision of services to individuals with traumatic brain injury;

(d) The experience in the provision of case management services;

(e) The capacity of the entity to provide case management services to individuals with traumatic brain injury throughout the

state;

(f) The experience in and the capacity of the entity to develop community resources for individuals with traumatic brain injury throughout the state;

(g) The capacity of the entity to distribute benefits from the fund to recipients;

(h) The capacity to manage applicant, recipient, benefit, and program evaluation data;

(i) The fiscal policies and practices and the financial stability of the entity;

(j) The accessibility of the entity to individuals with traumatic brain injury throughout the state;

(k) The entity's proposed cost to operate the program; and

(l) The entity's proposed procedures for evaluating the program.

(4) The department shall contract with the entity recommended by the board contingent on the availability of funds, unless the department determines that:

(a) The board failed to adhere to the requirements of subsection (3) of this section; or

(b) That a board member has violated a requirement of Section 2(3) of this administrative regulation.

(5) The contract between the department and the entity recommended by the board shall be in accordance with KRS 45A.075.

#### Section 4. Duties of the Program. (1) The program shall:

(a) Establish a toll free telephone number for the purpose of enabling individuals with traumatic brain injury to apply for benefits from the fund;

(b) Engage in public information activities for the purpose of informing individuals with traumatic brain injury about the availability of case management services and benefits from the fund and other sources;

(c) Provide case management services to applicants and recipients statewide, including the provision of assistance in accessing a needed support or service, regardless of funding source;

(d) Accept applications for benefits from the fund and distribute benefits to recipients based upon an approved service plan;

(e) Establish a service plan review committee for the purpose of reviewing proposed service plans for approval;

(f) Approve the rates of reimbursement for the services of a provider for the delivery of services to a recipient as a part of an approved service plan; and

(g) Assist in the development of local resources for individuals with traumatic brain injury.

(2) The provider of a service shall accept the rate approved in accordance with subsection (1)(f) of this section as payment in full, and shall not require additional payment from a recipient.

(3) The provider of an approved service shall submit an invoice for payment to the Benefit Management Program within twelve (12) months of the date of service delivery. A request for payment submitted after twelve (12) months of the date of service delivery shall not be reimbursed by the Benefit Management Program and shall not be the financial responsibility of the board or the recipient.

#### Section 5. Service Plan Review Committee Requirements. (1) The program shall establish a benefit review committee which shall include a minimum of:

(a) One (1) person with a brain injury or the guardian or advocate of a person with a brain injury; and

(b) One (1) professional with expertise in the field of traumatic brain injury.

(2) Membership on the service plan review committee shall be limited to twelve (12) consecutive months.

(3) A person who has served the term specified in subsection (2) of this section may be reappointed to the service plan review committee six (6) months after the date of the expiration of the person's most recent term of service on the committee.

#### Section 6. Eligibility. (1) An applicant shall be eligible for a benefit from the fund in accordance with:

(a) KRS 211.470(3); and

(b) KRS 211.474(2)(a) and (c).

(2) A resident of an institution or hospital shall not be eligible

for benefits from the fund.

(3) An applicant shall provide medical documentation of the applicant's traumatic brain injury, including:

(a) A signed document from the applicant's physician stating that the applicant has a brain injury; or

(b) A copy of a medical report which documents that the applicant has a traumatic brain injury.

(4) An applicant shall document that the applicant has no funding source, other than the trust fund, which covers the type of service the applicant is requesting.

#### Section 7. Benefits Available from the Fund. (1) Except as provided in subsection (2), (3), or (4) of this section, an applicant may apply for one (1) or more benefits from the fund, as follows:

(a) Behavior programming;

(b) Case management;

(c) Community residential services, which may include:

1. Dressing;

2. Oral hygiene;

3. Hair care;

4. Grooming;

5. Bathing;

6. Housekeeping;

7. Laundry;

8. Meal preparation;

9. Shopping;

10. The cost of room and board; or

11. Twenty-four (24) hour supervision of a recipient;

(d) Companion services;

(e) Environmental modification;

(f) Occupational therapy;

(g) Prevocational service, which may include:

1. Assisting a recipient to understand the meaning, value, and demands of work;

2. Assisting a recipient to learn or reestablish skills, attitudes, and behaviors necessary for employment; or

3. Assisting the individual to improve functional capacities;

(h) Psychological and mental health services, which may include:

1. Training to improve interpersonal skills;

2. Social skills;

3. Problem-solving skills;

4. Training to remediate a cognitive problem resulting from the brain injury;

5. Treatment for a substance abuse problem related to the brain injury;

6. Psychological assessment; and

7. Neuropsychological evaluation;

(i) Respite care, which may be provided in:

1. The recipient's own home;

2. A residence; or

3. Another setting, if approved by the program;

(j) Specialized medical equipment and supplies;

(k) Speech and language therapy, which may include:

1. Articulation therapy;

2. The design of and instruction in the use of augmentative communication strategies or devices; or

3. Cognitive retraining strategies;

(l) Structured day program services, which may include:

1. Supervision;

2. Specific training to allow a recipient to improve functioning and to reintegrate into the community;

3. Social skills training;

4. Sensory skill development;

5. Motor skill development;

6. Teaching of concepts and skills necessary for the increased independence of the recipient; and

7. Other services to increase:

a. Adaptive behavioral responses; and

b. Community reintegration;

(m) Supported employment services; or

(n) Wrap-around service, which may include one (1) expenditure of funds for:

1. The repair, maintenance, or purchase of a vehicle, not to

exceed \$3,000 if the recipient:

- (a) Has a valid Kentucky driver's license;
- (b) Has the financial ability to obtain and maintain insurance on the vehicle according to Kentucky law; and
- (c) Has no other available public or private transportation to substantially meet a reasonable need for which the vehicle is requested;
- 2. The payment of a recipient's rent, mortgage, or utility expenses, for a period not to exceed three (3) months;
- 3. The payment of the recipient's health insurance expenses, for a period not to exceed three (3) months; and
- 4. The purchase of a computer and related equipment and software for use by the recipient not to exceed \$1,500, if an evaluation results in a finding that the recipient has the functional ability to operate the computer, related equipment, and software;
- (2) The cost of an evaluation to determine a recipient's ability to operate a motor vehicle or a computer, related equipment, or software shall be included in the recipient's benefit.
- (3) A recipient who receives a benefit specified in subsection (1)(n) of this section shall not be eligible to apply for an additional expenditure of funds for the same purpose.
- (4) Wrap around funds shall not be expended for payment of:
  - (a) Attorney fees;
  - (b) 1. Court costs;
  - 2. Fines assessed as a result of a conviction for a criminal offense;
  - (d) The cost of incarceration; or
  - (e) Other court ordered monetary judgments.

#### Section 8. Procedures for Obtaining a Benefit from the Fund.

- (1) A referral for assistance from the fund may be made by, or on behalf of, an eligible person by contacting the program by:
  - (a) Telephone;
  - (b) In person; or
  - (c) In writing.
- (2) Upon receipt of a referral, the program shall assign a case manager to assist the applicant. The case manager shall:
  - (a) Assess the applicant's eligibility for a benefit;
  - (b) Identify the applicant's needs for service and supports;
  - (c) Identify potential resources to meet the applicant's need for services and supports;
  - (d) Assist the applicant in obtaining needed services and supports regardless of funding source;
  - (e) Determine that the fund is the payor of last resort; and
  - (f) Complete a proposed service plan which shall specify:
    - 1. The name, address, and telephone number of the applicant;
    - 2. The Social Security number of the applicant;
    - 3. Medical documentation of the applicant's traumatic brain injury;
    - 4. Documentation of the applicant's lack of a payor source for the requested service;
    - 5. The requested benefit from the fund;
    - 6. The relationship of receipt of the benefit to the applicant's ability to live in the community, consistent with the recipient's overall service goals;
    - 7. The applicant's own identification of needed services and supports;
    - 8. The mechanism for distribution of benefits from the fund; and
    - 9. The signature of the applicant, or the applicant's conservator or guardian, indicating agreement with the terms of the service plan.
- (3) The case manager shall submit the proposed service plan to the service plan review committee for approval.
- (4) The service plan review committee shall review the proposed service plan to determine if:
  - (a) The applicant is eligible for benefits from the fund in accordance with KRS 211.470(3) and 211.474(2) and with Section 6 of this administrative regulation;
  - (b) The benefit requested from the fund meets the requirements of KRS 211.474(2)(d); and
  - (c) The requested services are appropriately coordinated by a case manager.
- (5) The service plan review committee may:

- (a) Approve the proposed service plan, for a period not to exceed twelve (12) months; or
- (b) Amend the proposed service plan; and
- (c) Make recommendations to the applicant and the applicant's assigned case manager about other available resources or means to meet the applicant's need for services and supports.
- (6) If the applicant disagrees with an amendment by the service plan review committee, the applicant may appeal the decision in accordance with Section 12 of this administrative regulation.
- (7) The service plan review committee shall not approve the distribution of a benefit to a recipient in excess of \$15,000 within any twelve (12) month period and \$60,000 per lifetime, except in accordance with Section 9(9) and 9(10) of this administrative regulation.
- (8) The service plan review committee shall not approve the distribution of benefits to an applicant:
  - (a) Who does not meet the eligibility requirements established in Section 6(1) and (2) of this administrative regulation;
  - (b) If the requested benefits are intended for a person other than the applicant;
  - (c) If the applicant fails to demonstrate that no other payor source is available to obtain the requested benefit;
  - (d) If other resources are available to the applicant to substantially meet a reasonable need for which the benefit is requested; or
  - (e) If the benefit requested is for the purpose of reimbursing the recipient for expenses incurred prior to approval of a service plan by the service plan review committee, unless the request meets the criteria established in Section 9(4) of this administrative regulation.
- (9) A service plan shall be signed by the director of the program or the director's designee, and the applicant or the applicant's conservator or guardian.
- (10) The service plan review committee shall consider a service plan in the order in which it is received.
- (11) A recipient shall receive a copy of the approved service plan from the case manager.
- (12) The service plan review committee shall submit a list of approved service plans to the board.
- (13) A recipient with an approved service plan may change a service provider within an approved service category if there is no increased cost of the service.
- (14) A recipient may make a permitted change by informing the case manager by telephone or in writing.
- (15) The case manager may approve a change in service plan made in accordance with subsections (13) and (14) of this section without review by the service plan review committee.
- (16) Involuntary termination and loss of approved benefits shall be initiated if an individual fails to access the approved benefits as outlined in the service plan within ninety (90) days of notification of approval of the service plan without good cause shown.
  - (a) The recipient or his legal representative shall have the burden of providing documentation of good cause as to the reason services cannot be accessed within the ninety (90) days, including:
    - 1. A statement signed by the recipient or legal representative;
    - 2. A copy of letters to providers;
    - 3. A copy of letters from providers; and
    - 4. A copy of documentation from physicians or other health care professionals.
  - (b) Upon receipt of documentation of good cause, the program shall grant one (1) sixty (60) day extension in writing.

#### Section 9. Procedures for Obtaining a Benefit in Exceptional Circumstances. (1) A request for emergency assistance from the fund may be made by or on behalf of an eligible applicant by contacting the program by telephone or in writing.

- (2) A written service plan shall not be required when a request for emergency assistance is made.
- (3) The program shall convene a meeting of the service plan review committee to consider a request for emergency assistance within two (2) working days from receipt of the request.
- (4) The service plan review committee may approve a request for emergency assistance under the following circumstances:
  - (a) The loss of the eligible applicant's or recipient's caregiver;
  - (b) The imminent loss of the eligible applicant's or recipient's

home or community placement;

(c) The loss of the eligible applicant's or recipient's service provider, if that loss results in an immediate threat to the health, welfare, or safety of the eligible applicant or recipient; or

(d) An immediate threat to the health, welfare, or safety of the eligible applicant or recipient.

(5) An immediate family member may be paid from the fund to provide care to a recipient in an emergency for a period not to exceed sixty (60) days in any twelve (12) month period. Payment to the immediate family member in this circumstance shall not exceed:

(a) \$1,000 in a thirty (30) day period; or

(b) \$2,000 for a sixty (60) day period.

(6) In an emergency, the service plan review committee may approve the distribution of benefits from the fund not to exceed \$2,000.

(7) If benefits are distributed from the fund in an emergency, the program shall assign a case manager to:

(a) Develop a written service plan which meets the requirements of Section 8(2)(f) of this administrative regulation; and

(b) Submit a written service plan to the service plan review committee no later than three (3) working days after the decision of the service plan review committee to approve an emergency request.

(8) The service plan review committee shall review the emergency service plan no later than two (2) working days after receipt.

(9) The board may waive the limits on expenditures required by Section 8(7) of this administrative regulation in an emergency, subject to the availability of funds, if it determines that:

(a) The benefit from the fund is essential to ensure the immediate health, welfare, and safety of a recipient;

(b) The fund request is included in a service plan approved by the service plan review committee; and

(c) The approved service plan includes a provision for other funding after the exception to the limit expires.

(10) A recipient shall be eligible for only one (1) lifetime exception to the benefit limit, not to exceed \$7,500, and shall not be eligible to apply for an additional waiver after one (1) has been approved.

(11) The service plan review committee shall not approve the distribution of benefits in violation of KRS 211.474(2)(e).

Section 10. Procedures for Distribution of Benefits from the Fund. (1) Distribution from the fund may be made to:

(a) A recipient, to enable the recipient to purchase a service;

(b) The guardian or conservator of a recipient, to purchase a service;

(c) A local service provider; or

(d) To a combination of the individuals specified in paragraphs (a), (b) and (c) of this subsection.

(2) The payment mechanism shall be specified in the service plan.

(3) A recipient shall be liable to the service provider for the payment of a service or other benefit delivered to the recipient under an approved service plan unless funds are distributed to a service provider in accordance with subsection (1)(c) of this section. An unapproved expenditure or cost remaining unpaid shall be the responsibility of the recipient and shall not be paid by the program or the board.

(4) The service provider or recipient shall provide to the program, on a monthly basis, documentation of the delivery of a service or benefit to a recipient.

(5) A service shall be reimbursed or paid if it is delivered in accordance with a recipient's approved service plan.

(6) A service shall not be reimbursed in the absence of an approved service plan, except in accordance with Section 9 (6) and (7) of this administrative regulation.

(7) An expenditure not included in an approved service plan shall not be paid by the program, the board, the department, or the cabinet.

(8) The cost of providing case management services to an applicant or recipient shall be exempt from the benefit limits established in Section 8(7) of this administrative regulation.

Section 11. Procedures for Placement on a Waiting List. The board may establish a waiting list for benefits from the fund if it determines that no further funding is available during the fiscal year. The waiting list shall be implemented in accordance with this section:

(1) The benefit management program shall implement and maintain the waiting list at the request of the board.

(2) An applicant or recipient shall be placed on the waiting list upon receipt of a referral for assistance from the fund.

(3) The order of placement on the waiting list shall be determined chronologically by date of the referral for assistance from the fund unless the applicant or recipient meets the criteria established in Section 9(4) of this administrative regulation.

(4) Emergency referrals for assistance from the fund shall be considered chronologically by date of the emergency referral.

(5) Emergency referrals for assistance shall be considered prior to consideration of all other referrals for assistance from the fund.

(a) If multiple referrals for assistance from the fund are received on the same arrival date, each referral shall be placed chronologically on the waiting list according to the time of receipt; and

(b) A written notification of the date and placement on the waiting list shall be mailed to the individual or his legal representative.

(6) The criteria for removal from the waiting list shall be:

(a) After a documented attempt, the benefit management program is unable to locate the individual or his legal representative;

(b) The individual refuses a benefit in an approved service plan, unless the individual has made a permitted change in accordance with Section 8(13) through (15) of this administrative regulation; or

(c) The individual is deceased.

(7) The removal from the waiting list shall not prevent the submission of a new application at a later date for the applicant or recipient.

(8) If the applicant or recipient is removed from the waiting list, the benefit management program shall notify the applicant or recipient, or his legal representative in writing.

Section 12. Procedures for Appealing the Denial of an Application for Benefits from the Fund. (1) The program shall notify the applicant in writing if the service plan review committee does not approve a requested benefit. Notification shall be made within five (5) working days of the committee's decision.

(2) If an applicant is determined to be ineligible for benefits from the fund because medical records do not provide documentation of a traumatic brain injury, the applicant may submit additional medical data, medical records, or medical documentation to support the diagnosis of the injury, or additional medical opinions about the disability.

(3) The program may obtain an independent medical opinion at its own expense.

(4) The board may obtain an independent medical opinion at its own expense.

(5) The program or the board shall not be liable for the cost of a second opinion obtained by an applicant, except in accordance with subsections (3) and (4) of this section.

(6) An applicant who wishes to appeal the denial of benefits shall notify the program, in writing, within thirty (30) days of notification of the denial.

(7) Upon receipt of a written appeal, the program shall encumber funds in the amount requested until final resolution of the appeal.

(8) The program shall acknowledge receipt of a written appeal, in writing, within three (3) working days of receipt and shall perform a review of the denial within ten (10) working days of receipt.

(9) The program shall assure that the staff members who review the denial have not been involved in the original decision regarding an applicant's eligibility or request for benefits.

(10) The program shall provide an opportunity for an applicant or his representative to appear before a representative of the program to present facts or concerns about the denial of benefits.

(11) The program shall inform an applicant, in writing, of the decision resulting from the review of the denial within ten (10)

working days of the decision.

~~(12) An applicant dissatisfied with the result of the appeal to the program may appeal to the board. An appeal to the board shall be:~~

~~(a) In writing;~~

~~(b) Made within thirty (30) days of receipt of the decision by the program; and~~

~~(c) Submitted to the Brain Injury Services Branch of the department.~~

~~(13) The Brain Injury Services Branch shall acknowledge receipt of a written appeal, in writing, and shall notify the chair of the board, in writing, of the appeal within five (5) working days after receipt of the appeal.~~

~~(14) The board shall direct the Brain Injury Services Branch to request the Division of Administrative Hearings of the Office of Legislative and Public Affairs to conduct a hearing pursuant to KRS Chapter 13B.~~

~~(15) The case manager and other representatives of the program shall be available to testify and shall be subject to cross-examination concerning the basis of the decision on an appeal.~~

~~(16) The parties may submit exceptions to the recommended order of the hearing officer to the Brain Injury Services Branch.~~

~~(17) The board shall review the recommended order and any exceptions filed and shall render a final decision in accordance with KRS 13B.120. The final order shall make clear reference to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.]~~

DEBORAH ANDERSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 11, 2009

FILED WITH LRC: December 14, 2009 at noon

PUBLIC HEARING AND COMMENT PERIOD: CONTACT

PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40602, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Income Support  
Child Support Enforcement  
(As Amended at ARRS, February 8, 2010)**

**921 KAR 1:380. Child Support Enforcement Program application and interstate process.**

RELATES TO: KRS 205.705, 205.710-205.800, 205.992, 213.046(4), 403.211, 405.430(5), 405.520, 405.467, 406.021, 406.025, 407.5101-407.5902, 610.170, 45 C.F.R. 301.1, 302.30, 302.31, [303.69] 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.15, 303.30-303.31, 303.69, 303.70, 42 U.S.C. 651-654, 657, 663, 666

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 (1), 205.795, and 405.520 authorize the secretary to promulgate administrative regulations to operate the Child Support Enforcement Program (CSEP) in accordance with federal law and regulations. 45 C.F.R. 303.2 requires[~~access to~~] the child support application process to be accessible[~~provided~~] to the public. This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an interstate case.

Section 1. Child Support Enforcement Case Types. (1) Kentucky Transitional Assistance Program (K-TAP) or Kinship Care.

(a)1. An applicant for, or recipient of, K-TAP or Kinship Care shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1) and 921 KAR 2:006.

2. The assignment shall:

a. Include members of the case for whom support rights apply; and

b. Be completed when applying for K-TAP or Kinship Care

benefits using the application form incorporated by reference in 921 KAR 3:030.

(b) An applicant or recipient shall cooperate in all phases of child support activity that shall, if known, include:

1. The name of the noncustodial parent or obligor;

2. The Social Security number of the noncustodial parent or obligor;

3. Information to assist in the:

a. Location of the noncustodial parent or obligor;

b. Enforcement of a child support order; or

c. Review or modification of a child support order;

4. Establishment of:

a. Paternity, if paternity has not been established; and

b. An assigned support obligation;

5. Enforcement of:

a. An assigned support obligation; and

b. A spousal support order if the cabinet is collecting for a child who resides with the spouse or former spouse; and

6. Forwarding any child support payment received to the cabinet's centralized collection unit.

(2) Foster Care.

(a) The CSEP shall collect and disburse child support on behalf of a child for whom:

1. The state is making a foster care maintenance payment as required by 42 U.S.C. 657 and an assignment of rights has been made; or

2. The cabinet has custody, and there is an order for the child's parent or parents to pay child support to the cabinet pursuant to KRS 610.170.

(b) The child's benefit worker with responsibility for the foster care child shall:

1. Cooperate with the CSEP;

2. Review and approve a foster care child support referral;

3. Complete a change of status if a change occurs that relates to the child support process; and

4. Forward to the CSEP a copy of the child support court documents.

(c)[4.] If a child with special needs is adopted in accordance with 922 KAR 1:100 and reenters the custody of the cabinet, the cabinet shall:

1.[a.] Determine that good cause exists in accordance with Section 2(3) of this administrative regulation; or

2.[b.] Establish a child support obligation if[~~pursuant to subparagraph 2 of this paragraph.~~]

2. The cabinet shall pursue the establishment of a child support obligation if:]

a. A child with special needs adopted in accordance with 922 KAR 1:100 has reentered the custody of the cabinet due to the child's maltreatment or abandonment; and

b. The commissioner or designee recommends the establishment of child support.

(3) Medicaid only.

(a) If a Medicaid-only referral is made, the CSEP shall obtain the following information, if available:

1. Medicaid case number;

2. Name of the noncustodial parent or obligor;

3. Social Security number of the noncustodial parent or obligor;

4. Name and Social Security number of the child;

5. Home address of the noncustodial parent or obligor; [and]

6. Name and address of the noncustodial parent or obligor's place of employment; and

7. Whether the noncustodial parent has a health insurance policy and, if so, the policy name and number and name(s) of the person(s) covered.

(b) An application for Medicaid shall include an assignment of rights for medical support, pursuant to 907 KAR 1:011, Section 9, which shall be completed by using the application form incorporated by reference in 921 KAR 3:030.

(c) Except for a custodial parent who is pregnant or in her postpartum period, pursuant to 907 KAR 1:011, a custodial parent shall cooperate in all phases of medical support activity.

(d) A Medicaid-only recipient desiring full child support services, in addition to the medical support services, shall complete and submit to the CSEP the CS-140, Assignment of Rights and

## VOLUME 36, NUMBER 9 – MARCH 1, 2010

### Authorization to Collect Support.

#### (4) Nonpublic Assistance.

(a) In accordance with KRS 205.721, the CSEP shall make child support services available to any individual who:

1. Assigns rights for medical support only;
2. Applies for services pursuant to paragraph (c) of this subsection; or
3. Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance.

(b) The CSEP shall notify the family no longer eligible for public assistance, within five (5) working days, that child support services shall continue unless the CSEP is notified to the contrary by the family.

#### (c) Application Process for a Nonpublic Assistance Individual.

1.[a.] Upon the request of a nonpublic assistance applicant, the CSEP shall give an application packet to the applicant.

#### 2.[b.] If the request is:

a.[(i)] Made in person, the packet shall be provided the same day; or

b.[(ii)] Not made in person, the packet shall be sent to the applicant within five (5) working days of the request.

#### 3.[2.] The application packet shall include the:

- a. CS-33, Non-K-TAP Application;
- b. CS-168, Application for Direct Deposit; and
- c. CS-11, Authorization and Acknowledgement of No Legal Representation.

4.[3.] In order to receive child support services, the applicant shall complete and return the:

- a. CS-33, Non-K-TAP Application; and
- b. CS-11, Authorization and Acknowledgement of No Legal Representation.

(d) Except for a putative father and location-only case, services provided to a nonpublic assistance client through the CSEP shall be those services listed in Section 2 of this administrative regulation.

(e) If a case involves a putative father, services provided shall be those identified in Section 2(1)(b) and (c) of this administrative regulation.

(f) The CSEP shall obtain the following information from a nonpublic assistance applicant, if available:

1. Name, date of birth, and social security number of the child;
2. Name of the custodial and noncustodial parent or obligor;
3. Social Security number of the custodial and noncustodial parent or obligor;
4. Date of birth of the custodial and noncustodial parent or obligor;
5. Home address or last known address of the custodial and noncustodial parent or obligor; and
6. Name and address of the custodial and noncustodial parent's or obligor's employer or last known employer.

Section 2. General Services and Good Cause for All Case Types. (1) The CSEP shall provide child support services for a case type described in this administrative regulation in accordance with 42 U.S.C. 654. The services shall include:

- (a) Location of the noncustodial parent or obligor;
- (b) Location of the custodial parent for establishment of paternity;

#### (c) Establishment of paternity based upon the receipt of either:

1. A court order; or
2. An affidavit from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(d) Establishment of a child support or medical support obligation by:

1. Petitioning the court or administrative authority to establish child support pursuant to the Kentucky Child Support Guidelines; and

2. Petitioning the court or administrative authority to include private health insurance pursuant to 45 C.F.R. 303.31(b)(1) in new or modified court or administrative orders for support; or

3. Petitioning the court or administrative authority to include cash medical support in new or modified orders until such time as health insurance that is accessible and reasonable in cost, as de-

finied in KRS 403.211(8)(a) and (b), becomes available;

#### (e) Enforcement of a:

1. Child support or medical support obligation; and
2. Spousal support obligation if the:
  - a. Client is the spouse or ex-spouse;
  - b. Child lives with the spouse or ex-spouse; and
  - c. Cabinet is collecting support on behalf of the child;
- (f) Review and modification of an assigned support obligation in accordance with 921 KAR 1:400;

(g) Collection and disbursement of current and past-due support payments resulting from an assigned support obligation, less an annual twenty-five (25) dollar fee assessed against a custodial parent who has never received assistance, as defined in 42 U.S.C. 654(6)(b)(ii), during each Federal fiscal year in which \$500 has been disbursed for the case; and

(h) Submit application to health plan administrator to enroll the child if the parent ordered to provide health insurance coverage is enrolled through the insurer and has failed to enroll the child. [For a Medicaid-only case type, application for health insurance coverage through an employer for the child if court or administratively ordered but not provided by either parent.]

(2) The CSEP shall open a case and determine needed action and services within twenty (20) calendar days of receipt of a:

- (a) referral from the public assistance agency;
- (b) Foster care referral; or
- (c) nonpublic assistance application in accordance with Section 1(4)(c) of this administrative regulation.

#### (3) Good cause.

(a)1. If an applicant or client states that good cause for noncooperation exists, the applicant or client shall have the opportunity to establish a claim pursuant to 921 KAR 2:006.

2. Evidence for determination of good cause shall be pursuant to 921 KAR 2:006.

3. For a foster care child, good cause for nonenforcement of child support shall be determined to exist if evidence and criteria are met pursuant to 921 KAR 2:006 or 922 KAR 1:530.

(b) If the CSEP has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1), the CSEP shall not attempt location, establishment, modification, or enforcement of an assigned support obligation.

Section 3. Parent Locator Service and Associated Fee for Service. (1) Unless the cabinet has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1) or 921 KAR 2:006, Section 24, location shall be attempted for a:

- (a) Public assistance case referred to the CSEP; or
- (b) Nonpublic assistance case for which child support services are being provided.

(2) The CSEP shall attempt to locate a noncustodial parent or obligor and the noncustodial parent's or obligor's employer, sources of income, assets, property, and debt, if necessary, for a public assistance case or nonpublic assistance case assigned to the CSEP pursuant to KRS 205.712 and 205.730(5) 45 C.F.R. 303.69 or 303.70.

(3) In accordance with KRS 205.730(4), location services shall be provided in a parental kidnapping case.

(4) The CSEP shall provide location services to a putative father in accordance with KRS 205.730(2) and (4).

Section 4. Interstate Process for Child Support Enforcement Services. In accordance with KRS 205.712, 407.5101-407.5902, and 45 C.F.R. 303.7[303.70], the CSEP shall:

(1) Extend to an interstate child support case the same services available to an intrastate case; and

(2) Provide an agency in a responding state with sufficient and accurate information and documentation on the appropriate interstate transmittal forms, the:

- (a) CS-98, General Testimony;
- (b) CS-99, Affidavit in Support of Establishing Paternity; and
- (c) CS-100, Uniform Support Petition.

Section 5. Public Awareness. The effort, pursuant to KRS 205.712(2)(g), to publicize the availability of the CSEP's services



and encourage their use may include:

- (1) Public service announcements;
- (2) Posters;
- (3) Press releases;
- (4) Videos;
- (5) Annual reports;
- (6) Newsletters;
- (7) Mail inserts;
- (8) Pamphlets; [and]
- (9) Letters; and
- (10) Internet.

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

- (a) "CS-11, Authorization and Acknowledgement of No Legal Representation", edition 4/10[4/09];
  - (b) "CS-33, Non-KTAP Application", edition 4/10[4/09];
  - (c) "CS-98, General Testimony", edition 1/09;
  - (d) "CS-99, Affidavit in Support of Establishing Paternity", edition 1/09;
  - (e) "CS-100, Uniform Support Petition", edition 1/09;
  - (f) "CS-140, Assignment of Rights and Authorization to Collect Support", edition 4/10[4/09]; and
  - (g) "CS-168, Application for Direct Deposit", edition 1/09.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENNO, Deputy Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 11, 2009

FILED WITH LRC: December 14, 2009 at noon

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(As Amended at ARRS, February 8, 2010)**

**921 KAR 2:055. Hearings and appeals.**

RELATES TO: KRS Chapter 13B, 45.237, 205.211, 205.231, 205.237, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 1381-1383f, 8621-8630, 45 U.S.C. 231-231v

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 601 to 619 requires states receiving Temporary Assistance for Needy Families (TANF) grants to provide a grievance procedure for TANF participants and outline this procedure in the TANF state plan. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth, and KRS 205.231(5) requires[allows] the cabinet to promulgate administrative regulations for the hearing process. This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), or the State Supplementation Program (SSP).

Section 1. Hearing Information. **(1) A participant shall be informed of:**

**(a) The right to a hearing:**

**(b) The procedures for requesting a hearing, as defined in Section 3 of this administrative regulation; and**

**(c) Who may represent the participant in a hearing as defined in Section 2 of this administrative regulation.**

**(2) When the participant files an application, the cabinet shall inform the participant of the right to hearing both orally and in writing.**

**(3) When an action is taken which affects the benefits of the participant, the cabinet shall inform the participant of the right to hearing in writing.** A participant shall be informed of:

- (1) The right to a hearing:
  - (a) Orally, at the time of application; and
  - (b) In writing:
    1. At the time of application; and
    2. When an action is taken which affects the benefits of the participant;
- (2) The procedures for requesting a hearing, as defined in Section 3 of this administrative regulation; and
- (3) Who may represent the participant in a hearing as defined in Section 2 of this administrative regulation.

Section 2. Request for a Hearing. (1) An individual shall request a hearing by:

- (a) Completing and submitting a PAFS-78, [?]Request for Hearing, Appeal, or Withdrawal[?];
  - (b) Submitting a written request; or
  - (c) Making an oral request.
- (2) The hearing request may be:
- (a) Submitted to the local department for community based services office; or
  - (b) Sent to the Cabinet for Health and Family Services, Division of Administrative Hearings, Families and Children Administrative Hearings Branch, 275 East Main, Frankfort, Kentucky 40621.
- (3) The reason for the hearing shall be included in the hearing request.

Section 3. Timeframe for Hearing Request. (1) A written or oral request for a hearing shall be considered timely if received by the cabinet within:

- (a) Forty (40) days of the date of the advance notice of adverse action;
- (b) Thirty (30) days of the notice of:
  1. Denial of an application; or
  2. Decrease or discontinuance of an active case; or
- (c) The time period the action is pending if the hearing issue is a delay in action.

(2) If a hearing officer determines an appellant meets good cause criteria in accordance with subsection (3)[3] of this section, the appellant may be granted up to an additional thirty (30) days to submit a hearing request.

- (3) An appellant may be granted good cause by the cabinet:
  - (a) For:
    1. A delay in requesting a hearing;
    2. A delay in requesting a continuation of benefits;
    3. Failure to appear for a hearing; or
    4. Postponement of a scheduled hearing; and
  - (b) If the appellant:
    1. Was away from home during the entire filing period;
    2. Is unable to read or to comprehend the right to request a hearing on an adverse action notice;
    3. Moved, resulting in delay in receiving or failure to receive the adverse action notice;
    4. ~~Had a~~[Or][A] household member **who was seriously ill**[~~had a serious illness~~]; or
    5. Was not at fault for the delay of the request, as determined by the hearing officer.

Section 4. Continuation of Assistance Program Benefits. (1) ~~If~~[When] a hearing is requested, benefits shall remain inactive or reduced pending the issuance of a final order unless the appellant requests a continuation of benefits.

(2) Benefits shall be reinstated to the benefit level that was received prior to the adverse action being taken if the request for a continuation of benefits is received within:

- (a) Ten (10) days of the date on the notice of adverse action; or
- (b) Twenty (20) days of the date on the notice of adverse action or notice if the reason for delay meets the good cause criteria contained in Section 3(3)[4(3)] of this administrative regulation.
- (3) If the program benefit has been reduced or discontinued as a result of a change in law, administrative regulation, or policy of the cabinet, subsection (2) of this section shall not apply.
- (4) If the action taken by the agency is upheld, continued, or reinstated benefits shall be:
  - (a) Considered overpayments as defined in KRS 205.211; and
  - (b) Collected in accordance with KRS 45.237.

Section 5. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge a hearing request.

(2) In accordance with KRS 13B.050, the notice of the hearing shall contain information regarding the:

- (a) Hearing process, including the right to case record review prior to the hearing;
- (b) Right to representation;
- (c) Availability of free representation by legal aid or assistance from other organizations within the community; and
- (d) Time and location of the hearing.

Section 6. Withdrawal or Abandonment of Request. (1) The appellant may withdraw a hearing request prior to the:

- (a) Hearing; or
- (b) Final order being issued if the hearing has already been conducted.

(2) The cabinet shall consider a hearing request abandoned if the appellant or authorized representative fails to:

- (a) Appear for the scheduled hearing without notifying the cabinet prior to the hearing; and
- (b) Establish good cause for failure to appear, in accordance with the criteria specified in Section 3(3)[4(3)] of this administrative regulation, within ten (10) days of the scheduled hearing date.

Section 7. Appellant's Hearing Rights. (1) In addition to the rights described in Section 6[(2)] of this administrative regulation, the appellant shall have the right to submit additional information in support of the claim.

(2) The appellant shall have the right to a medical assessment at the expense of the cabinet by a person not associated with the original action if the hearing:

- (a) Involves medical issues; and
- (b) The hearing officer considers it necessary.
- (3) If a request for a medical assessment at cabinet expense is received and denied by the hearing officer, the denial shall:
  - (a) Be in writing; and
  - (b) Specify the reason for the denial.

Section 8. Postponement of a Hearing. (1) An appellant shall be entitled to a postponement of a hearing if the:

- (a) Request for the postponement is made prior to the hearing; and
- (b) Need for the delay is due to an essential reason beyond the control of the appellant in accordance with good cause criteria contained in Section 3(3)[4(3)] of this administrative regulation.
- (2) The hearing officer shall decide if a hearing is postponed.
- (3) The postponement of a hearing shall not exceed thirty (30) days from the date of the request for postponement.

Section 9. Conduct of a Hearing. (1) A hearing shall be:

- (a) Scheduled by the hearing officer; and
- (b) Conducted in accordance with KRS 13B.080 and 13B.090.
- (2) A hearing officer shall make an effort to conduct a hearing at a location within the state that is convenient for the appellant and other parties involved.
- (3) To secure all pertinent information on the issue, the hearing officer may:
  - (a) Examine each party or witness who appears; and
  - (b) If necessary, collect additional evidence from a party.
- (4) Parties to a telephonic hearing shall:

(a) Submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the hearing being convened; and

(b) Within the timeframe specified by the hearing officer, mail the hearing officer and opposing party any documents or written materials that:

- 1. Are introduced as evidence into the hearing record; and
- 2. Have not been supplied to the opposing party prior to the hearing.
- (5) If evidence addressed in subsection (4) of this section is not provided to the hearing officer and the opposing party, the evidence may be excluded from the hearing record.

Section 10. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order which:

- (a) Summarizes the facts of the case;
- (b) Specifies the:
  - 1. Reasons for the recommended order; and
  - 2. Address to which a party in the hearing may send an exception to the recommended order; and
- (c) Identifies the:
  - 1. Findings of fact;
  - 2. Conclusions of law;
  - 3. Supporting evidence; and
  - 4. Applicable state and federal regulations.
- (2) A copy of the recommended order shall be sent to the:
  - (a) Appellant or representative; and
  - (b) Local Department for Community Based Services office.

Section 11. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the recommended order, the party may file a written exception with the Commissioner of the Department for Community Based Services or designee.

- (2) A written exceptions or rebuttal shall:
  - (a) Be filed within fifteen (15) days of the date the recommended order was mailed;
  - (b) Be based on facts and evidence presented at the hearing;
  - (c) Not refer to evidence that was not introduced at the hearing; and
  - (d) Be sent to each other party involved in the hearing.

Section 12. Final Order. Unless the issue is remanded to the hearing officer for further action, the commissioner or designee shall issue a final order within forty-five (45) days of receipt of the recommended order.

Section 13. Appeal of the Final Order. (1) A participant or authorized representative may appeal a final order by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3).

(2) A request for appeal of a final order shall be submitted either orally or in writing to the:

(a) Local Department for community Based Services office; or

(b) Appeal board.[(a)1. Orally; or

2. In writing; and

(b) To the:

1. Local Department for Community Based Services office; or

2. Appeal board.]

(3) The date a request is received by the cabinet is considered the date the request is filed.

(4) An appeal request shall be considered timely if the request is received within:

- (a) Twenty (20) days of the date the final order was mailed; or
- (b) Thirty (30) days of the date the final order was mailed if good cause, in accordance Section 3(3)[4(3)] of this administrative regulation, is met.

Section 14. Appellant's Rights Prior to Appeal Board Consideration. (1) An appeal to the appeal board shall be acknowledged in writing to the appellant and authorized representative.

(2) The acknowledgment shall:

- (a) Advise the appellant that:
  - 1. A brief may be filed; or

**2. New evidence or exhibits may be submitted in accordance with Section 15(1)(b) of this administrative regulation; and**  
~~and~~[Upon the appeal board approval, new or additional evidence may be submitted; and]

(b) State the tentative date on which the board shall consider the appeal.

Section 15. Appeal Board Review. (1) The appeal board shall consider:

(a) The records of the hearing; and  
(b) New evidence or exhibits introduced before the appeal board in accordance with subsection (2), (3), or (4) of this section.

**(2) The appeal board shall provide an appellant opportunity to submit new evidence or exhibits available since the hearing.**

**(3) If an appeal is being considered on the record, the parties may:**

**(a) Submit written arguments; and**

**(b) Be permitted to present oral arguments if a party provides justification to the board that the party cannot present new evidence or exhibits available since the hearing in writing. Telecommunications may be utilized for the presentation of oral arguments.**

**(4) New evidence or exhibits shall be accepted by the board after a party to the hearing has been given seven (7) days' notice of the opportunity to:**

**(a) Object to the introduction of new evidence or exhibits; or**

**(b) Rebut or refute any new evidence or exhibits.**~~[If an appeal is being considered on the record, the parties may:~~

~~(a) Present written arguments; and~~

~~(b) At the board's discretion, be allowed to present oral arguments.~~

~~(3) If needed, the appeal board may request additional evidence to resolve the appeal.~~

~~(4) Additional evidence shall be accepted by the board after a party to the hearing has been given seven (7) days' notice of the opportunity to:~~

~~(a) Object to the introduction of additional evidence; or~~

~~(b) Rebut or refute any additional evidence.]~~

Section 16. The Appeal Board Decision. (1) The decision of the appeal board shall be in accordance with KRS 205.231.

(2) The appeal board shall be allowed to reverse the decision in subsection (1) of this section if the following criteria are met:

(a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and

(b) Within twenty (20) days of the appeal board decision, the appellant, or household member whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:

1. Supplemental Security Income pursuant to 42 U.S.C. 1381-1383f;~~[security income;]~~

2. Retirement, Survivors, and Disability Insurance, pursuant to 42 U.S.C. 401-434;~~[disability insurance;]~~

3. Federal Black Lung Benefits pursuant to 30 U.S.C. 901-944~~[black lung benefits];~~

4. Railroad Retirement Benefits pursuant to 45 U.S.C. 231-231v~~[retirement benefits]; or~~

5. Veterans Administration Benefits based on 100 percent disability pursuant to 38 U.S.C. 1101-1163 or 1501-1525.

Section 17. Payments of Assistance. (1) Payments of assistance shall be made within ten (10) days of the receipt of a final order or a decision of the appeal board and shall include:

(a) The month of application; or

(b) If it is established that the appellant was eligible during the entire period in which assistance was withheld, a month in which incorrect action of the cabinet adversely affected the appellant.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of a final order or a decision of the appeal board.

Section 18. Limitation of Fees. (1) The cabinet shall not be responsible for payment of attorney fees.

(2) Pursuant to KRS 205.237, an attorney representing an appellant shall not charge more than the following amounts for his services:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the appeal board;

(c) \$175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court; or

(d) \$300 for preparatory work, briefs, and other materials related to an appeal to the Court of Appeals.

(3) The cabinet shall approve the amount of a fee, if the:

(a) Appellant and legal counsel agree to the fee; and

(b) Fee is within the maximums specified in subsection (2) of this section.

(4) Collection of an attorney fee shall:

(a) Be the responsibility of the counsel or agent; and

(b) Not be deducted from the benefits provided to an appellant.

Section 19. Incorporated by Reference. (1) The form, "PAFS-78, Request for Hearing, Appeal, or Withdrawal, edition 4/10[6/06]", is incorporated by reference.

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

PATRICIA WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 11, 2009

FILED WITH LRC: December 14, 2009 at noon

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
Office of Property Valuation  
(Amended After Comments)

103 KAR 5:180. Procedures for Sale of Certificates of Delinquency by County Clerks.

RELATES TO: KRS 134.128

STATUTORY AUTHORITY: KRS 134.128(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.128(2) requires the Department of Revenue to promulgate administrative regulations to establish a process for the purchase and sale of certificates of delinquency to third parties. In compliance with this subsection, this new administrative regulation establishes a statewide schedule for the sale of certificates, prohibits payment of certificates by a third party prior to the sales, prohibits payment of certificates known to be involved in litigation or for which a payment agreement has been agreed to, establishes a process for determining the order in which third-parties select certificates for purchase, requires prior registration with the county clerk, requires review of the qualifications of the registered purchasers by the county clerk or the Department of Revenue, establishes deposit requirements for purchaser, establishes a registration fee for purchasers, and establishes payment methods and requirements.

Section 1. Definitions. (1) "Clerks fees" means any fee required to be collected by a County Clerk for the filing, recording, release, processing, or other handling of a certificate of delinquency or a lien created by a certificate of delinquency.

(2) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, twenty-five (25) percent or more of a class of voting securities or voting interests of a registrant or applicant, or a person in control of a registrant or applicant;

(b) The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a registrant or applicant;

(c) The power to exercise influence, directly or indirectly, over the management or policies of a registrant or applicant;

(d) Holding the position of an officer, director, general partner, or managing member of the registrant or the applicant or in a position of similar status or performing similar duties and functions of the registrant or the applicant; or

(e) Being entitled to receive twenty-five (25) percent or more of the profits from the registrant or applicant.

(3) "Current certificate of delinquency" means a certificate of delinquency which relates to the most recent tax year and which has not been offered in a prior year's county clerk's sale.

(4) "Department" means the Kentucky Department of Revenue.

(5) "Person" means any individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government and any subdivision, agency or instrumentality thereof, or any other legal or commercial entity.

(6) "Priority Certificate of Delinquency" means a current certificate of delinquency which relates to a property on which a potential purchaser already owns a prior year certificate of delinquency.

(7) "Protected Certificate of Delinquency" means a certificate of delinquency which is:

(a) Currently involved in litigation;

(b) Part of an ongoing bankruptcy proceeding of which the County Clerk has received actual notice; or

(c) The subject of an agreed payment plan in good standing.

(8) "Related entities" and "related interests" means a relationship between two persons in which a person:

(a) Can exercise control or significant influence over another person;

(b) Is related by blood, adoption, or marriage to another person;

son;

(c) Controls or is controlled by another person; or

(d) Is an agent or affiliate of another person.

(9) "Sale" means the annual [bulk] sale by the county clerk of certificates of delinquency to third party purchasers.

Section 2. Establishing Sale Date. (1) The Department of Revenue shall develop a preliminary statewide schedule for certificate of delinquency sales and shall notify each county clerk on or before May 1 of each year of the proposed date of the county's sale. A county clerk may, within five (5) business days of notification of the preliminary schedule, make a written request to the department to change the proposed sale date for his or her county. Date changes shall be made solely in the discretion of the department. Any adjustments shall be made after consultation with the county clerk and shall be completed on or before May 15 of the/that same year. The department shall publish the final sale schedule as soon as practicable after May 15 of each year.

(2) The county clerk shall notify the county attorney of the sale date as soon as practicable after May 15 of each year. No earlier than fifteen (15) days before and no later than ten (10) days prior to the sale date the county attorney shall provide the county clerk a list of all protected certificates of delinquency. No certificate of delinquency included on the protected list shall be sold at the county clerk's sale.

(3) Except as provided in KRS 134.127, the county clerk shall not assign any current certificate of delinquency prior to the sale.

Section 3. Purchaser's Registration with the County Clerk. (1) A third party purchaser shall register with the county clerk prior to participating in the county's sale. A new registration shall be required for each year's sale.

(2) ~~The county clerk shall establish a registration deadline at least ten (10) but no more than twenty-one (21) days prior to the county's sale. The registration deadline shall be included in all advertisements required by KRS 134.128(5).~~

~~(3)]~~ A third party purchaser's registration shall include:

(a) The purchaser's name, physical address, mailing address and phone number;

(b) The purchaser's DOR registration number as required by 103 KAR 5:190; and

(c) A list of the priority certificates of delinquency the purchaser intends to purchase. This list shall be clearly marked and shall include the total amount due for all priority certificates of delinquency listed and the following information for each priority certificate of delinquency listed:

1. The current year's tax bill number;

2. The taxpayer name;

3. The amount due on the current certificate of delinquency;

4. The prior year certificate of delinquency's tax bill number;

5. The prior year certificate of delinquency's tax year;

6. The book and page numbers where the prior year certificate of delinquency is filed, if applicable;

7. The account or parcel identification number if the county uses such a number to identify specific properties; and

8. If requested by the county clerk, a copy of the prior year certificate of delinquency.

(d) A list of the current certificates of delinquency the purchaser intends to purchase. This list shall be clearly marked and shall include the total amount due for all certificates of delinquency listed and the following information for each certificate of delinquency listed;

1. The taxpayer name;

2. The amount due on the certificate of delinquency;

3. Lists shall be provided in the format and order required by the county clerk.

(e) the following sworn statement, "I hereby certify that I am not participating in this sale in conjunction with any related person or related entity to obtain any advantage over other potential purchasers at the sale."

(f) the deposit required by the clerk pursuant to Section 4 of this administrative regulation; and

(g) Payment of the registration fee of five (5) dollars for each certificate of delinquency included on the purchaser's list of priority certificates of delinquency and ten (10) dollars for each certificate of delinquency included on the purchaser's list of current certificates of delinquency. The total registration fee shall not exceed \$250.

**(3) The deposit required by Section 4 of this administrative regulation shall be submitted to the County Clerk no later than five (5) days prior to the sale. The list of current certificates of delinquency required by subsection (2)(d) of this section shall be submitted to the County Clerk no later than ten (10) days prior to the sale. The remainder of the registration shall be submitted to the County Clerk no later than fifteen (15) days prior to the sale. The County Clerk shall include these deadlines in all advertisements required by KRS 134.128(5).**

(4) Prior to the sale, the county clerk shall:

(a) Review each registration and confirm that each registrant has complied with KRS 134.129 and that no related entities or related interests are participating or attempting to participate in the sale in a manner designed to subvert the fairness of the sale or to deprive other participants from an equitable opportunity to purchase certificates of delinquency at the sale. If the clerk determines that a purchaser has violated or has attempted to violate this section, the clerk shall notify the county attorney and the Department of Revenue of the violation or attempted violation;

(b) Review all the lists of priority certificates of delinquency for purchase submitted by purchasers to verify that the registrant has a priority right to purchase the listed certificates of delinquency; [and]

(c) Review the submitted priority purchase lists to identify multiple purchasers interested in the certificates of delinquency on the same property and, based upon the information submitted, determine the registrant that holds the prior year claim for the most recent tax year; and

**(d) No later than forty-eight (48) hours prior to the sale, make available to each third party purchaser registered for the sale, copies of all lists of priority certificates submitted pursuant to subsection (2)(c) of this section.**

Section 4. Deposit Requirement. (1) A purchaser shall deposit funds with the County Clerk at the time of registration in the following amounts:

(a) 100% of the value of each certificate of delinquency included on the purchaser's list of priority certificates of delinquency;

(b) All clerk's fees associated with each certificate of delinquency included on the purchaser's list of priority certificates of delinquency;

(c) An amount determined by the county clerk, not to exceed twenty-five (25) percent of the value of each certificate of delinquency included on the purchaser's list of current certificates of delinquency. A purchaser shall not be required to pay an additional deposit if the certificate of delinquency is included on both lists, and if both lists clearly indicate that the certificate is included on both lists. A purchaser may deposit more than the minimum amount required by the county clerk.

(2) The county clerk may apply the deposit to payment of any certificate of delinquency purchased at the sale.

(3) The county clerk shall refund any unused portion of the deposit to the purchaser **no later than ten (10) business days**[as soon-as-practicable] after the completion of the sale.

(4) Payment of the deposit shall be made in a form acceptable to the county clerk. **The County Clerk may accept cash, but shall not require deposits to be made in cash.**

**(5) The deposit shall be calculated based upon the value of the certificates of delinquency included on the third party purchaser's lists on the date of the completion of the transfer of the tax bills from the Sheriff to the County Clerk pursuant to KRS 134.122.**

**(6) If the County Clerk determines that a third party purchaser has submitted an inadequate deposit, the County Clerk shall allow the third party purchaser a reasonable opportunity to submit additional funds to reach the correct deposit**

# **amount.**

Section 5. Payment. (1) Payment of any outstanding balance, after application of all deposits, shall be made at a time determined by the county clerk, but no later than ten (10) business days after the sale. The total amount due shall include all clerk's fees for all certificates of delinquency purchased at the sale.

(2) Payment shall be made in a form acceptable to the county clerk. The county clerk shall include a list of the acceptable forms of payment in all advertisements for the sale. **The County Clerk may accept cash, but shall not require payments to be made in cash.**

(3) If full payment is not made for the certificates of delinquency at the time designated by the county clerk, the county clerk shall not assign any certificate of delinquency for which full payment has not been received and such certificates of delinquency shall be available for payment pursuant to KRS 134.127(1)(b). The county clerk shall have discretion as to how to allocate partial payments. If the purchaser's failure to make payment results in additional cost or expense to the county clerk, the clerk may forfeit the purchaser's deposit to cover those additional costs and expenses.

Section 6. Conduct of the Sale. (1) The county clerk may sell the requested priority certificates of delinquency to the purchasers who submitted a list prior to the sale at the beginning of the sale, or as soon as practicable after the sale. The purchaser holding a certificate of delinquency from the most recent tax year shall have priority. If a purchaser holding a certificate of delinquency from the most recent tax year declines to purchase the priority certificate of delinquency, the purchaser holding a prior certificate of delinquency from the next most recent year shall be allowed to purchase the certificate of delinquency if included on their list of priority certificates of delinquency.

(2) The remaining certificates of delinquency **at the time of the sale** shall be sold **as set forth in subsection (3) of this section**[in-lots]. The order of selection of lots by registered purchasers shall be determined by a random drawing on the day of the sale. The purchaser who draws the lowest number during the random drawing shall have the first turn to choose a lot for purchase. Thereafter, purchasers shall select lots to purchase in order based on the random drawing from lowest to highest. Purchasers who are not present for the random drawing shall be placed at the bottom of the selection list behind the purchasers who were present for the random drawing.

(3) The remaining certificates of delinquency **at the time of sale** shall be sold in lot sizes as follows:

(a) In counties with 500 or fewer certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of up to five (5);

(b) In counties with more than 500 and less than 1,000 certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of up to ten (10);

(c) In counties with at least 1,000 and not more than 2,500 certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of up to twenty-five (25);

(d) In counties with at least 2,500 and not more than 7,500 certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of up to fifty (50);

(e) In counties with more than 7,500 certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of no more than fifty (50) for the first four (4) rounds, and, for all subsequent rounds, may be sold in lots not to exceed two (2) percent of the total number of current certificates of delinquency included in the pool for the sale;

(f) Notwithstanding the lot sizes established by paragraphs (a) through (e) of this subsection, if, for any round of a sale, there are more certificates of delinquency to be sold than purchasers participating in the sale, the lot size used for that round shall not create fewer lots than the number of purchasers participating.

(5) The county clerk may set a reasonable time limit for purchasers to make their selections.

(6) A purchaser may withdraw from the sale at any time prior to completion of the sale. If a purchaser withdraws from the sale, he or she may not make any further purchases in any later round of

the sale. No other purchaser may take the place of the withdrawing purchaser.

(7) A purchaser may purchase less than a full lot of certificates of delinquency. If a purchaser purchases less than a full lot in three (3) consecutive rounds, the purchaser may[shall] be considered to have withdrawn from the sale after the partial lot purchase.

(8) The county clerk shall apply the purchaser's deposit to the total amount due for the certificates of delinquency purchased. The purchaser shall pay any additional funds required on or before the payment deadline established by the county clerk pursuant to Section 4 of this administrative regulation. The total amount due shall include all clerk's fees for all certificates of delinquency purchased at the sale. Any amount of deposit remaining after the sale shall be refunded to the purchaser.

(9) Purchasers shall only purchase those certificates of delinquency listed on the registration required by Section 3 of this administrative regulation.

(10) Any questions or controversies relating to the sale shall be addressed by the county clerk.

Section 7. Department of Revenue Oversight. (1) The Commissioner of the Department of Revenue or his or her duly appointed representative shall have access to all sales and shall be permitted to review or audit any and all records relating to the sale of certificates of delinquency.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: February 11, 2010

FILED WITH LRC: February 11, 2010 at 1 p.m.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures for the bulk sale of Certificates of Delinquency to third party purchasers by the County Clerks. It set scheduling, registration, deposit and payment requirements for participants in the sale and sets the procedures to be used during the sale.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures to be used by County Clerks for the sale of Certificates of Delinquency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 134.128(2) requires the Department of Revenue to promulgate administrative regulations to establish procedures for these sales and standards for registration, deposits, payment, scheduling and conduct of the sales.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide County Clerks the necessary standards and procedures to conduct these sales.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not applicable.

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this regulation:

(c) How the amendment conforms to the content of the authorizing statute:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all 120 County Clerks and all 120 County Attorneys. In addition, it will affect all off the third-party purchasers who purchase Certificates of Delinquency.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative

regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: These sales are currently conducted by sheriffs. HB 262 shifted the duty to conduct these sales to the County Clerks. This administrative regulation sets the specific procedures and standards for the clerks to implement as required by KRS 134.128(2). KRS 124.128 (2) requires County Attorneys to provide information regarding "protected" Certificates of Delinquency to County Clerks. This administrative regulation sets the deadline before which the County Attorneys must provide this information to the County Clerks. Finally, this administrative regulations sets the registration, registration fee, deposit and payment requirements which apply to participants in these sales.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): County Clerks: unknown. County Attorneys: minimal cost to identify certificates of delinquency involved in litigation or in payment agreements. Participants: Registration fee of \$250 per county.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each will benefit from a fair and equitable process for sale of certificates designed to insure that all participants have an equal chance to purchase certificates.

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

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registration fees set in the 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: A registration fee of \$250 per county.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes an registration fee of \$250 per county.

(9) TIERING: Is tiering applied? Tiering is applied. Holders of prior certificates of delinquency are give priority to purchase later certificates on the same property. This is necessary to protect the holder of the certificates and to prevent the property holder from having to contact and pay multiple certificate-holders.

#### 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 Revenue, all County Clerks and all County Attorneys 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 134.128(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? Specific dollar amounts cannot be determined for the increase in receipts that will be generated because of this administrative regulation, but the registration fees for the sales should generate sufficient revenue to offset the cost of holding the sales.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Specific dollar amounts cannot be determined, however, the impact

should be substantially similar to that experienced in the first year.

(c) How much will it cost to administer this program for the first year? There will be an additional cost to the County Clerks to hold these sales, however, it is anticipated that these costs will be offset by the registration fees to be paid by the participants.

(d) How much will it cost to administer this program for subsequent years? There will be an additional cost to the County Clerks to hold these sales, however, it is anticipated that these costs will be offset by the registration fees to be paid by the participants.

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amended After Comments)**

**501 KAR 16:001. Definitions for 501 KAR Chapter 16.**

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.220, 431.240, 431.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the definitions used in 501 KAR Chapter 16.

Section 1. Definitions. (1) "Cabinet" is defined in KRS 196.010(1) and 197.010(1).

(2) "Clergy witness" means the member of clergy designated in writing by the condemned person to witness the execution pursuant to KRS 431.250.

(3) "Commissioner" means:

(a) Commissioner as defined in KRS 196.010(2); or

(b) The commissioner's designee.

(4) "Condemned person" is defined in KRS 431.213(1).

(5) "Department" is defined in KRS 196.010(3) and 197.010(3).

(6) **"Designated medical professional" means the physician designated by the department to monitor the clinical activities, assessments and examinations involving the condemned person during the fourteen (14) days prior to execution.**

(7) "Designated victim's family" means the three (3) members of the victim's family designated by the Commissioner to witness the execution pursuant to KRS 431.250.

(8) [(7)] "Electrocution" means the method of execution described in KRS 431.220(1)(b).

(9) **"Electrocution equipment" means the device at the penitentiary that was specifically manufactured to cause death by electrocution.**

(10) **"Execution building" means the dedicated structure at the Kentucky State Penitentiary containing the execution chamber.**

(11) [(8)] "Execution chamber" means the room or area of the Kentucky State Penitentiary designated by the Warden to conduct an execution.

(12) [(9)] "Execution order" means:

(a) A mandate from the Supreme Court of Kentucky; or

(b) An Executive Order for execution signed by the Governor that:

1. Is entered in the Executive Journal maintained by the Secretary of State; and

2. May be commonly known as a Death Warrant.

(13) [(40)] "Execution team" means the persons appointed by the Warden to carry out the execution of the condemned person and may include the IV team if execution is by lethal injection.

(14) **"Headgear" means the leather device used to hold the electrode and sponge to the condemned person's head.**

(15) [(44)] "IV team" means the persons on the execution team who site and insert intravenous, or IV, lines in the condemned person.

(16) [(42)] "Lethal injection" means the method of execution

described in KRS 431.220(1)(a).

(17) [(43)] "Media ~~representative~~[representatives]" means **one (1) of the nine (9) representatives of the news media as identified in KRS 431.250 and selected in accordance with 501 KAR 16:300.**

(18) [(44)] "Minister of record" means the spiritual advisor designated by the condemned person in writing to visit him after the execution order is received.

(19) [(45)] "Penitentiary" means the Kentucky State Penitentiary.

(20) **"Personal visitor" means a visitor who is listed on the condemned person's visitation list or other visitor who is not the:**

**(a) Media;**

**(b) Minister of record; or**

**(c) Clergy who is providing religious services to the condemned person.**

(21) **"Security risk" means as determined in the Warden's discretion a potential threat to:**

**(a) The security of:**

**1. The institution;**

**2. An inmate;**

**3. A department employee; or**

**4. Any other person; or**

**(b) The order of the institution.**

(22) **"Special notes" mean specifically designated entries made in the electronic medical record that contain information concerning the condemned person from the period of time stated in 501 KAR 16:310(1)(1).**

(23) **"Testing device" means the device that was specifically manufactured to simulate an execution for purposes of testing the functioning of the electrocution equipment.**

(24) [(46)] "Victim's family" means the individuals who are eligible for designation by the Commissioner to witness the execution in accordance with KRS 431.250.

(25) **"Volunteer" means a death sentenced inmate who requests to be executed before he has completed the available legal challenges to his conviction or sentence.**

(26) [(47)] "Warden" means the Warden of the Kentucky State Penitentiary or the Warden's designee.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: February 15, 2010

FILED WITH LRC: February 15, 2010 at noon

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice and 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 V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the definitions used in 501 KAR Chapter 16.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish clear and concise definitions for terms used in 501 KAR Chapter 16 regarding the procedures for conducting an execution.

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

This administrative regulation establishes the definition of terms used in the administrative regulations used to administer legal executions in this Commonwealth, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes clear and concise definitions of terms

used by the Department in administrative regulations for the conduct of executions in this Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: 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: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately \$17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately \$17,000.

(6) What is the source of funding to be used for the implemen-

tation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

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? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

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. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.).

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 promulgation of this administrative regulation will not generate any revenue for the Department of Corrections.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, and \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of



this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-): The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amended After Comments)**

**501 KAR 16:290. Preliminary and post execution procedures concerning condemned person.**

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 - 431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes preliminary and post execution procedures concerning the condemned person.

Section 1. Initial Steps After Receipt of Execution Order. After the Warden receives the execution order, the Warden shall:

- (1) Read the execution order to the condemned person;
- (2) Determine if the condemned person received his death sentence prior to March 31, 1998; and
- (3) Ask the condemned person to designate in writing his choice of the method of execution pursuant to KRS 431.220(1), if the condemned person received his death sentence prior to March 31, 1998.

**(4) For any designation required to be made in writing in this administrative regulation, if the condemned person cannot see, read, or write sufficiently to complete his designation, then a staff person at the penitentiary shall:**

- (a) Ask the condemned person to state his designation;**
- (b) Write the designation stated by the condemned person;**
- (c) Read the designation as written to the condemned person; and**
- (d) Ask the condemned person to make his mark on the document.**

Section 2. Condemned Person's Designation of Witnesses. (1) The Warden shall ask the condemned person to designate in writing his clergy witness and the three (3) other individuals who may witness the execution pursuant to KRS 431.250.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately at the time that the Warden reads the execution order.

**(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the**

**condemned person.**

Section 3. Condemned Person's Designation Concerning Property, Funeral, and Disposition of Body. (1) The Warden shall ask the condemned person to designate in writing the person who may:

(a) Collect the condemned person's personal property after his death;

- (b) Take charge of the condemned person's body; and
- (c) Make necessary funeral arrangements.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply at least forty-eight (48) hours prior to the time scheduled for the execution.

**(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.**

**(4) If the condemned person fails or refuses to designate a person to take charge of his body burial shall be in accordance with KRS 431.270.**

Section 4. Visitation Designation. (1) After an execution order has been issued, the Warden shall ask the condemned person to designate in writing:

- (a) His attorney of record; and
- (b) His minister of record.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately at the time that the Warden reads the execution order.

**(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.**

Section 5. Limitations on Condemned Person's Clothing, State-issued Items, and Personal Property. Notwithstanding 501 KAR 6:020, CPP 17.1, **CPP 14.2**, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the Warden may limit the condemned person's clothing, state-issued items, and personal property to the following:

- (1) One mattress;
- (2) Two sheets;
- (3) One pillow;
- (4) One pillow case;
- (5) One pair of scrub-type pants;
- (6) One scrub-type shirt;
- (7) One pair of underwear;
- (8) One pair of socks;
- (9) One toothbrush;
- (10) One tube of toothpaste;
- (11) One bar of soap;
- (12) One bath towel; and
- (13) One wash cloth.

**Section 6. Limitations on Condemned Person's Clothing, State-issued Items, and Personal Property for Females.**

**(1) Notwithstanding 501 KAR 6:020, CPP 17.1, CPP 14.2, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the Warden may limit the condemned person's clothing, state-issued items, and personal property for a female to the items in Section 5 of this administrative regulation and the following:**

- (a) One bra;**
- (b) Sanitary napkins; and**
- (c) Tampons.**

**(2) The bra shall be white and if it contains stays or underwire, they shall be plastic.**

**(3) The supply of sanitary napkins and tampons shall be in a sufficient quantity to allow the individual to maintain an ac-**

ceptable level of personal hygiene.

**Section 7. Transfer of Female Condemned Person. (1) If the condemned person is female, she shall be transferred to the penitentiary for execution. The date of the transfer shall be determined by the Warden.**

Section **8.[5-]** Securing Condemned Person's Personal Property Prior to Execution. (1) The Warden shall inventory and secure any personal property of the condemned person prior to the execution.

(2) The Warden shall set the time for the removal of all personal property.

Section **9.[6-]** Post-execution Steps. (1) The return on the judgment shall be made in accordance with KRS 431.260 within seven (7) days of the execution.

(2) If the condemned person does not make other arrangements, the Department shall make arrangements for the delivery or burial of the body pursuant to KRS 431.270.

(3) The penitentiary shall call the person designated by the condemned person to pick up his personal property within three (3) days of the execution. If the person cannot be reached by phone, notice may be mailed to the person.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: February 15, 2010

FILED WITH LRC: February 15, 2010 at noon

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice and 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 V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures to be carried out in preparation for an execution including the designation of witnesses, disposition of the condemned person's property, and preparation of the condemned for execution. It also establishes the procedures to be carried out upon the conclusion of the execution including arrangements for delivery or burial of the body.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the procedures that must be carried out before and after an execution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures that must be carried out before and after an execution, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes clear procedures that designate the tasks that must be performed by certain Corrections personnel in preparation for and conclusion of a legal execution.

(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: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above will have take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with these procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist personnel of the Department of Corrections in the administration of their duties before and after an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately \$17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately \$17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

(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? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

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. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, - S.W.3d-, 2009 WL 4117353 (Ky.).

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 promulgation of this administrative regulation will not generate any revenue for the state and local entities listed in the response to Question #2 above.

(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 promulgation of this administrative regulation will not generate any revenue for the state and local entities listed in the response to Question #2 above.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, and \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-): The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amended After Comments)

#### 501 KAR 16:300. Execution procedures concerning witnesses, visitors, and demonstrators.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.220, 431.224, 431.240, 431.250, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. KRS 431.250 establishes persons who may attend the execution. This administrative regulation establishes preliminary and post execution procedures concerning witnesses, visitors, and demonstrators.

#### Section 1. Designation of Victim's Family to Witness Execution.

(1) The commissioner shall mail a letter to any of the victim's family described in KRS 431.250 for whom the commissioner has received an address.

(2) The letter sent to the victim's family shall:

(a) State the scheduled execution date; and

(b) Request the victim's family member contact the commissioner to notify him in writing if he wants to be considered for designation as a witness to the execution.(3) The commissioner may seek an address for the victim's family by:

(a) Review of the condemned person's file; or

(b) Request made to the Commonwealth's Attorney who maintains information concerning the victims of the crime committed by the condemned person.

(4) The commissioner shall designate pursuant to KRS 431.250 the three (3) members of the victim's family who may witness the execution.

(5) A letter stating the commissioner's designation shall be mailed to each member of the victim's family who is designated to witness the execution.

#### Section 2. Additional Notifications Concerning Execution. (1)

The department shall mail a letter that states:

(a) The time that the person shall arrive to witness the execution; and

(b) The location where the person shall go.

(2) The letter shall be mailed to the:

(a) Designated victim's family;

(b) Condemned person's clergy witness and his other three (3) designated witnesses;

(c) Media representatives selected pursuant to section 3 of this administrative regulation;

(d) Coroner of the county where the execution is to be conducted; and

(e) Sheriff of the county where the condemned person was convicted.

Section 3. Media Representative Procedures. (1) The department shall send notice to the three news organizations specifically identified in KRS 431.250 as being allowed to have one (1) representative. The notice shall request the identity of the repre-

sentative who the news organization will designate to attend and witness the execution. The three (3) news organizations shall send the names of the representatives in writing at least fourteen (14) days prior to the execution, unless notice from the department indicates a different time to send the names of the representatives. The notice may request additional information about the representative as needed for security or management.

(2) The Kentucky Press Association may select by lottery three (3) representatives for the newspapers within the state as authorized by KRS 431.250. The Kentucky Press Association shall send the names of the representatives in writing at least fourteen (14) days prior to the execution, unless notice from the department indicates a different time to send the names of the representatives. The department may request additional information about the representatives as needed for security or management.

(3) Selection of the three (3) representatives for broadcast media identified in KRS 431.250 shall be made in the following manner:

(a) The Central Office Public Information Officer shall send a press release advising broadcast media that they may nominate a representative of their organization to attend and serve as an official media witness to the execution. The nomination shall be sent to the commissioner's office in writing at least fourteen (14) days prior to the execution unless notice from the department indicates a different time to send the names for nomination.

(b) A drawing shall be held to select the three (3) representatives [witnesses] for broadcast media in the office of the commissioner.

(4) After media representatives to the execution are separated from other media in preparation for transfer to the witness room, media representatives [The department may establish a media staging area where scheduled press briefings may be held prior to the execution. Reporters may submit written questions at each press briefing for response at a subsequent briefing, except for the final briefing.

(5) Media witnesses to the execution] shall not be permitted to use:

(a) Any item at the execution other than a pen or pencil and paper which shall be provided by the department; and

(b) Audio or video recording devices [on the grounds of the penitentiary where the execution is held].

Section 4.[5:] Visitors. (1) Notwithstanding 501 KAR 6:020, CPP 16.1 and 501 KAR 6:040, KSP 16-01-01, visits to the condemned person after receipt of the execution order shall be governed by this administrative regulation.

(2) [Prior to the day of execution:

(a) Attorneys and paralegals may seek daily visits;

(b) Personal visitors who are listed on the condemned person's visitation list may seek daily visits;

(c) The minister of record may seek visits daily on weekdays; and

(d) Members of the news media may seek visits daily on weekdays.

(3) The visitor shall call the Kentucky State Penitentiary in advance of the requested visit to schedule the visit.

(3) (4) The Warden [penitentiary] shall designate the location of the visit.

(4) For any visit allowed in this administrative regulation on the day of execution, the condemned person shall not have more than one (1) visitor at a time.

(5) [An attorney, paralegal, member of the clergy, or member of the news media shall not bring any item into the penitentiary, unless prior approval is given by the Warden. A personal visitor shall not bring any item into the penitentiary.

(6) Visitors shall be limited to four (4) at a time.

(7) The condemned person may refuse any visitors.

(6) (8) The Warden may approve a request from the condemned person for a visitor that is not on the visitation list.

(7) (9) A pat down search may be performed on all visitors before and after the visit.

(8) Media visitors.

(a) Prior to the day of the execution, a member of the media:

1. Shall not bring any item into the penitentiary, unless prior approval is given by the Warden;

2. Shall make any request to bring items into the penitentiary at the time of the call to request an appointment to visit; and

3. May request daily visits on weekdays.

(b) On the day of the execution:

1. The department may establish a media:

a. Staging area where media shall be directed to gather before entering into the penitentiary; and

b. Assembly room where scheduled press briefings may be held prior to the execution. Reporters may submit written questions at each press briefing for response at a subsequent briefing, except for the final briefing.

2. Media shall not be allowed visits.

(c) Seven (7) days prior to the execution, the department Communication Director may issue a press advisory stating the date and approximate time of the pending execution.

(9) Clergy visitors and minister of record visits.

(a) A member of the clergy or the minister of record may request to bring religious items into the penitentiary by making the request to the penitentiary chaplain. The chaplain shall notify the Warden of the request. The Warden shall:

1. Give due consideration to any request to bring religious items into the penitentiary; and

2. Not deny a religious item needed for an end-of-life ceremony unless it poses a significant operational problem or security risk.

(b) Prior to the day of execution, a member of the clergy or the minister of record may request daily visits.

(c) On the day of the execution:

1. Clergy visits shall not be allowed, except for the minister of record;

2. The minister of record shall call for an appointment for the visit prior to the day of execution;

3. The minister of record may visit for thirty (30) minutes up to three (3) hours before the execution;

4. The visit shall not be a contact visit, unless a religious ceremony, sacrament, or rite accepted by the religion being practiced by the condemned person requires contact to be accomplished; and

5. If a contact visit is necessary pursuant to subparagraph 4 of this paragraph, then the need for a contact visit shall be stated in the call for the appointment.

(10) Personal visitors.

(a) Prior to the day of execution:

1. A personal visitor who is listed on the condemned person's visitation list may request daily visits; and

2. Personal visitors shall be limited to four (4) at a time.

(b) A personal visitor shall not bring any item into the penitentiary.

(c) On the day of execution, a personal visitor shall not be allowed a visit.

(11) Attorneys defending the condemned person and staff employed by the defense attorneys' office.

(a) An attorney defending the condemned person or staff employed by the defense attorneys' office:

1. May bring into the penitentiary:

a. Pens;

b. Pads of paper without metal; and

c. Legal documents for a visit with the condemned person. The legal documents and other items shall be searched, but shall not be read by staff performing the search;

(b) Prior to the day of execution, an attorney defending the condemned person or staff employed by the defense attorneys' office:

1. Shall be allowed a visit daily between 7:30 a.m. and 2:30 p.m.;

2. May request daily visits; and

3. May request that visits be contact visits.

(c) On the day of execution, an attorney defending the condemned person:

1. Shall be allowed a visit between 7:30 a.m. and 2:30 p.m.

2. May request additional visits until four (4) hours prior to

the execution.

**(d) The Warden shall notify the condemned person of all requests from an attorney defending the condemned person or staff employed by the defense attorneys' office for a phone call from the condemned person.**

**(e) Visits shall be noncontact, unless there is a need for the condemned person to sign a document. If a document needs to be signed, the visitor shall be allowed to obtain the signature of the condemned person in a location designated by the Warden.** [(10) On the day of execution:

(a) The attorney of record may call for an appointment for any visit or phone call;

(b) The minister of record may call for an appointment for any visit;

(c) Personal visitors and media shall not be allowed visits;

(d) Items shall not be brought into the penitentiary, except for legal documents by the attorney of record;

(e) The condemned person shall not have more than one (1) visitor at a time; and

(f) Visits shall be noncontact.]

Section **5.[6.]** Security and Management Issues. (1) Witnesses may be staged at the discretion of the Warden.

(2) The Warden may deny entrance to the Kentucky State Penitentiary to any person, including a witness, media representative, or visitor, who is determined to be a security risk or who becomes disruptive while at the penitentiary.

(3) The Warden may limit the:

(a) Items brought onto the grounds of the penitentiary;

(b) Areas where persons may enter or remain at the penitentiary; and

(c) Time allowed in an area or on the grounds of the penitentiary.

(4) The Warden may set rules regarding any other matter deemed necessary for the security or management of the penitentiary.

**(5) In extenuating circumstances, the Warden shall have the authority in his discretion to alter limitations on visitors in Section 4 of this administrative regulation.**

Section **6.[7.]** Demonstrator Procedures. (1) The Warden may designate an area for demonstrators.

(2) A press **advisory**[release] shall be issued to identify the locations for demonstrators and the time allowed for demonstrations.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice and 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 V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures for the designation of witnesses to an execution, allowance of visitors to the condemned person, and designation of an area for demonstrators.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the department to establish clear and concise procedures for the designation of witnesses to the execution, visitors to the condemned person, and the demonstration area.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation establishes the procedures for the designation of witnesses to the execution, visitors to the condemned person, and the demonstration area, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures to be utilized by department of Corrections personnel for the designation of witnesses to the execution, visitors to the condemned person, and the demonstration area.

(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: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections personnel will do the preparation for and carrying out of the execution, as well as the post-execution procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist the entities listed above in the proper administration of their duties during the execution process.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately \$17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately \$17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

(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? 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 primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

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. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, - S.W.3d-, 2009 WL 4117353 (Ky.).

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 promulgation of this administrative regulation will not generate any revenue for the state and local entities listed in the response to Question #2 above.

(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 promulgation of this administrative regulation will not generate any revenue for the state and local entities listed in the response to Question #2 above.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase

in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, and \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-): The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amended After Comments)

##### 501 KAR 16:310. Pre-execution medical actions.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes medical actions to be performed after receipt of the execution order and prior to the execution.

Section 1. Pre-execution Medical Actions after Receipt of Execution Order. (1) For the fourteen (14) days prior to an execution, or for the remaining days if an execution order is received less than fourteen (14) days prior to an execution:

(a) All medical documentation shall be made in special notes in the condemned person's medical record.

(b) The department shall arrange for nurse visits and checks on the condemned person during each shift daily. The contacts and observations from these nurse visits and checks shall be recorded in the special notes of the medical record referenced in paragraph (a) of this subsection. **The nurse notes shall state the presence or absence of signs of physical or emotional distress observed.**

(c) A **licensed psychologist** [mental health professional] shall:

1. Personally observe and evaluate the condemned person five (5) days per week on Monday through Friday; and

2. Document his observations and evaluations in the condemned person's medical record immediately after personal contact with the condemned person.

(d) The designated medical professional [or his designee] shall review and initial the nursing documentation referenced in paragraph (b) of this subsection daily.

(e) A psychiatrist [medical professional] shall review the nursing documentation referenced in paragraph (b) of this subsection and doctor's documentation weekly.

(2) For the seven (7) days prior to an execution, or for the remaining days if an execution order is received less than seven (7) days prior to an execution:

(a) A doctor or advanced registered nurse practitioner [medical professional] shall:

1. Complete a physical examination; and  
2. Place the documentation of the physical in the condemned person's medical record upon completion.

(b) A psychiatric interview and evaluation shall be:

1. Completed;  
2. Placed in the condemned person's medical record; and  
3. Sent to the Warden.

(3) The designated medical professional [~~or his designee~~] shall:

(a)[1-] Personally observe and evaluate the condemned person's medical condition weekly; and

(b)[2-] Document his observations and evaluations in the special notes of the condemned person's medical record immediately after personal contact with the condemned person.

(4) All Kentucky State Penitentiary medical and mental health staff shall be instructed to immediately notify the Warden and the designated professionals of any change in the condemned person's medical or psychiatric condition.

**Section 2. Pregnancy Testing for Female Condemned Persons. (1) If the condemned person is female, a pregnancy test shall be administered.**

**(2) If the execution order is received at least fourteen (14) days prior to the scheduled date of execution, a pregnancy test shall be administered:**

**(a) Fourteen (14) days prior to the scheduled date of execution; and**

**(b) Seven (7) days prior to the scheduled date of execution.**

**(3) If the execution order is received less than fourteen (14) days prior to the scheduled date of execution, a pregnancy test shall be administered as soon as practicable. A physician shall determine if a second pregnancy test is feasible given the date the execution order is received and when the initial pregnancy test is taken.**

**(4) If a pregnancy test is positive, then:**

**(a) Medical staff shall notify the Warden of the positive test;**

**(b) The Warden shall notify the commissioner of the positive test; and**

**(c) The commissioner shall notify the Governor's Office or court issuing the mandate.**

**Section 3. Insanity Issues. (1) If the Warden receives information from medical or mental health staff that the condemned person may be insane as defined in KRS 431.213(2), the Warden shall inform the designated medical professional.**

**(2) The designated medical professional shall determine if the information is:**

**(a) The opinion of the psychiatrist; or**

**(b) If the information is sufficient to indicate that an additional psychiatric evaluation needs to be performed on the condemned person.**

**(3) The designated medical professional shall order an additional psychiatric evaluation if he determines one is needed.**

**(4) The designated medical professional shall notify the Warden and the commissioner if a department psychiatric evaluation determines that the condemned person may be insane as defined in KRS 431.213(2).**

**(5) If a department psychiatric evaluation determines that the condemned person may be insane as defined in KRS 431.213(2):**

**(a) The Warden shall immediately notify the commissioner; and**

**(b) The commissioner shall notify the Governor's Office or**

**court issuing the mandate.**

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: February 15, 2010

FILED WITH LRC: February 15, 2010 at noon

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice and 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 V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures for medical and psychological examination and evaluation prior to execution.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the procedures for examination and evaluation of the condemned person's medical and psychological status prior to an execution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures for examination and evaluation of the condemned person's medical and psychological status prior to an execution, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes clear procedures which will better assist personnel of the Department of Corrections to perform the examination and evaluation of a condemned person prior to execution.

(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: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

(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:

## VOLUME 36, NUMBER 9 – MARCH 1, 2010

(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: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately \$17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately \$17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

(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? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

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. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.).

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 promulgation of this administrative regulation will not generate any revenue for the Department of Corrections.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, and \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-): The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amended After Comments)

#### 501 KAR 16:320. Execution team qualifications.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation



establishes the qualifications for the execution team.

**Section 1 Selection of Execution Team. (1) The Warden of the Kentucky State Penitentiary shall be a member of the execution team by virtue of his official position.**

**(2) The Warden shall designate a deputy Warden to be a member of the execution team.**

**(3) All other members of the execution team shall not be required to serve as a member of the execution team without their consent.**

**(4) An execution team member shall read and understand the execution procedures. A review of the execution procedures shall be conducted by the Warden annually.**

**Section 2. IV Team Qualifications. (1) At least two (2) members of the execution team shall be designated as the IV Team for an execution by lethal injection. An IV team shall not be part of the execution team for an execution by electrocution.**

**(2) A member of the IV team shall be a:** [The following people may serve on the IV team:]

- (a) Phlebotomist;
- (b) Emergency Medical Technician;
- (c) Paramedic; or
- (d) Military Corpsman.

**(3) A member**[(2) Members] of the IV Team shall:

**(a) Have at least one (1) year of professional experience in his specialty;**

**(b) Remain certified in his specialty or profession; and**

**(c) Fulfill all continuing education requirements in his specialty or profession.** [their specialty:]

**(4)**[(3)] Prior to participating in an execution, a[the] member of the IV team shall have participated in at least two (2) **execution practices receiving step-by-step instructions from an existing IV Team member.**

**(5) The Warden shall review annually the training and current certification, as appropriate, of each IV Team member to ensure compliance with the required qualifications and training.** [practices:]

(4) Members of the IV team shall:

- (a) Remain certified in their profession; and
- (b) Fulfill any continuing education requirements in their profession.]

**Section 3. [2.] Execution Practice. (1) Each practice shall include a complete walk through of an execution.**

**(2) For execution by lethal injection:**

**(a) The execution team shall practice the lethal injection execution process at least ten (10) times during the course of one (1) calendar year; and**

**(b) Each practice shall include the siting of two (2) IVs into a person who serves voluntarily** [volunteer].

**(3) For execution by electrocution:**

**(a) [.] The execution team shall practice the electrocution [execution] process at least two (2) times during the course of one (1) calendar year; and**

**(b) During each practice of execution by electrocution, the execution team shall:**

**1. Visually inspect the:**

**a. Headgear and electrode;**

**b. Strap and electrode for the leg;**

**c. Leather straps on the chair; and**

**d. Cables to the electrocution equipment; and**

**2. Use a testing device placed in the chair and connected to the cables of the electrocution equipment to simulate an electrocution.**

**(4) The Warden shall maintain a record of all execution team training documenting the:**

**(a) Date of practice;**

**(b) Type of execution practiced; and**

**(c) Names of the participants.**

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: February 15, 2010

FILED WITH LRC: February 15, 2010 at noon

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice and 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 V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the qualifications, experience, and practices required for participants on the execution team.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the qualification, experience, and practices required for participants on the execution team to ensure that each execution is carried out in a humane and painless manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for participants on the execution team, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes clear requirements for the qualifications and experience required of participants on the execution team.

(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: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately \$17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately \$17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

(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? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

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. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.).

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 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 promulgation of this administrative regulation will not generate any revenue for the Department of Corrections.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, and \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-): The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amended After Comments)

##### 501 KAR 16:330. Lethal injection protocol.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocol for execution by lethal injection.

Section 1. **Procurement, Storage, and Accountability of Chemicals.** (1) **Upon receipt of an execution order, the Warden shall check the supply of chemicals and the expiration dates of the chemicals on hand. If it is determined that additional chemicals are needed, the Warden shall place an order to obtain the necessary chemicals for an execution by lethal**

injection.

**(2) The Warden shall transport the chemicals from the point of procurement and place them in a secured area of the penitentiary in locked containers. Pancuronium bromide shall be stored separately from the other chemicals in its own locked container, which shall be refrigerated at a temperature of at least forty (40) degrees Fahrenheit. The Warden shall maintain control to the keys to the secured areas and containers at all times. A duplicate set of keys shall not be made.**

**(3) A log shall be maintained in the storage containers which shall record:**

**(a) New supplies of chemicals received and added to inventory;**

**(b) Chemicals removed for use;**

**(c) Disposal of chemicals due to expiration; and**

**(d) Any other reason that a chemical is removed or deducted from inventory.**

**Section 2. Preliminary Steps. (1) If the condemned person is to be executed by lethal injection:**

**(a) If male, his chest shall be shaved by a designated member of the execution team for heart monitor leads on the day of [the] execution; and**

**(b) The IV team shall complete an examination of the condemned person's veins within twenty-four (24) hours prior to the execution to determine possible locations of the IV sites.**

**(2) On the day of execution the Warden shall provide to the IV Team sufficient amounts of each chemical listed in Section 3 of this administrative regulation to prepare two (2) complete sets of syringes. One (1) set shall serve as the primary set of syringes shall be the primary set. The other set of syringes shall be a back-up set.**

**(3) At the execution building, each chemical shall be prepared in accordance with the manufacturer's instructions and drawn into the two (2) sets of syringes by one (1) member of the IV Team designated by the Warden. The other member of the IV Team shall observe preparation of the chemicals and verify that the instructions and procedures have been carried out correctly.**

**(4) Any syringes that are loaded with lethal injection chemicals that are not used during the execution shall:**

**(a) Not be used;**

**(b) Be returned to the Warden; and**

**(c) Be destroyed and documented in the log maintained in accordance with Section 1(3) of this administrative regulation.**

**(5) Any unused chemicals that were not mixed in preparation of the lethal injection shall be:**

**(a) Returned to the Warden;**

**(b) Locked in the storage container; and**

**(c) Documented in the log maintained in accordance with Section 1(3) of this administrative regulation.**

**(6) [(2)] The Warden shall order the condemned person escorted to the execution chamber and strapped to the gurney.**

**(7) [(3)] The IV team shall run the IV lines to the condemned person by the following:**

**(a) Site and insert one (1) primary IV line; and**

**(b) Site and insert one (1) backup IV line.**

**(8) [(4)] The location of the IV sites on the body of the condemned person shall be determined by the IV team members. The insertion site of preference shall be the following order:**

**(a) Arms;**

**(b) Hands;**

**(c) Ankles; or**

**(d) Feet; or**

**(e) Neck].**

**(9) [(5)] To best ensure that a needle is inserted properly into a vein, the IV team members shall look for the presence of blood in the valve of the sited needle.**

**(10) [(6)] If the IV team cannot secure two (2) IV [one (1) or more] sites within one (1) hour, the Commissioner shall contact the Governor's Office and request that the execution be scheduled for a later date.**

**(11) [(7)] If the IV team is able to establish the two IV lines, the team shall start a saline flow.**

**(12) [(8)] The execution team shall:**

**(a) Securely connect the electrodes of the cardiac monitor to the condemned person; and**

**(b) Ensure the equipment is functioning.**

**(13) [(9)] Counsel assigned by the office of the cabinet and counsel assigned by the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.**

**(14) [(10)] The viewing curtain shall be opened.**

**(15) [(11)] The Warden shall announce the execution to the witnesses.**

**(16) [(12)] The Warden shall ask the condemned person if he wants to make a final statement. If a statement is made by the condemned person, it shall be limited to two (2) minutes. The witnesses shall be allowed to hear the condemned person's statement.**

**(17) [(13)] The Warden shall order the execution to proceed.**

**Section 3.[2-] Sequence of Chemicals. (1) At the Warden's order to proceed, a designated execution team member shall begin a rapid flow of lethal chemicals in the following sequence:**

**(a) Three (3) gm of Sodium Thiopental;**

**(b) Twenty-five (25) milligrams of Saline;**

**(c) Fifty (50) milligrams of Pancuronium Bromide;**

**(d) Twenty-five (25) milligrams of Saline;**

**(e) 240 milliequivalents of Potassium Chloride; and**

**(f) Twenty-five (25) milligrams of Saline.**

**(2) If it appears to the Warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the Warden shall stop the flow of Sodium Thiopental in the primary site and order that the backup IV be used with a new flow of Sodium Thiopental. and the other chemicals listed in subsection (1) of this section.**

**(3) If it appears to the Warden based on his visual inspection that the condemned person is unconscious after the injection of Sodium Thiopental, the Warden shall order the designated team member to continue the injections of the other chemicals listed in subsection (1) of this section through the primary IV.**

**(4) [(3)] A designated execution team member shall start a stopwatch once the lethal injections are complete.**

**(5) [(4)] A designated execution team member shall:**

**(a) Observe the heart monitor; and**

**(b) Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.**

**(6) [(5)] The viewing curtain shall be drawn before the:**

**(a) Coroner enters the chamber to declare death; and**

**(b) Physician enters the chamber to certify the cause of death.**

**(7) [(6)] The Warden shall order an additional set of lethal chemicals to be administered if the:**

**(a) Heart monitor does not indicate a flat line after ten (10) minutes;**

**(b) Coroner is not able to declare death; and**

**(c) Physician unable to certify the cause of death during the ten (10) minute period.**

**(8) [(7)] The process established in subsection (1) of this section shall continue until death has occurred.**

**(9) During the execution by lethal injection the Warden and Deputy Warden shall watch the primary IV site for failure, leakage, the catheter coming out of a vein, or any other problem. In the event that an IV fails, leaks, if the catheter comes out of the vein, or any other problem arises, the execution team shall be instructed to switch to the backup IV.**

**Section 4.[3-] Post Lethal Injection Steps. (1) If the Coroner declares death, the Warden shall be informed.**

**(2) The Warden shall announce the completion of the execution to the witnesses. The viewing curtain shall be open during the Warden's announcement.**

**(3) The witnesses shall be escorted out of the witness room.**

**Section 5.[4-] Stabilization Procedure. (1) Before an execution commences:**

(a) The Warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and

(b) A medical crash cart and defibrillator shall be located in the execution building.

(2) If at any time during the execution process the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

**Section 6. Volunteer. (1) If a condemned person, who is a volunteer, tells department staff that he does not wish to continue with the execution process, the staff shall tell the Warden.**

**(2) If the execution is in process, the execution team shall stop the execution.**

**(3) The Warden shall allow the condemned person to contact his attorney.**

**(4) The Warden shall notify the commissioner.**

**(5) The commissioner shall notify the Governor's Office or court issuing the mandate.**

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: February 15, 2010

FILED WITH LRC: February 15, 2010 at noon

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice and 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 V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the protocol for conducting an execution by lethal injection.

(b) The necessity of this administrative regulation: KRS Chapter 431.220 establishes lethal injection as one of the methods of carrying out the death penalty. KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the process for carrying out an execution by lethal injection.

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

This administrative regulation establishes the lethal injection process, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a clear procedure for execution by lethal injection in this Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: 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: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals

and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately \$17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately \$17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

(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? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

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. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, - S.W.3d-, 2009 WL 4117353 (Ky.).

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 promulgation of this administrative regulation will not generate any revenue for the Department of Corrections.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, and \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-): The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amended After Comments)

501 KAR 16:340. Electrocution protocol.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 - 431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocol for execution by electrocution.

Section 1. Preliminary Steps. (1) The electrocution equipment shall be designed to deliver approximately five (5) to ten (10) amps depending upon the condemned person's physique at the designed voltage.

(2) The electrocution equipment shall be checked within forty-eight (48) hours of the time scheduled for an execution by electrocution.

(3) A sodium chloride solution shall be made by a member of the execution team within five (5) hours prior to the time scheduled for an execution by electrocution.

(4) Natural sea sponges for the head and leg electrodes shall be prepared by soaking them in the sodium chloride solution.

(5) If the penitentiary does not have power at the time of the execution, the generator for the execution building shall be started.

(6) The condemned person's head and one (1) leg shall be shaved on the day of [the] execution.

(7) [(2)] The Warden shall order the condemned person escorted to the execution chamber and strapped in the chair.

(8) [(3)] The Warden shall order the viewing curtain opened.

(9) [(4)] The Warden shall announce the execution to the witnesses.

(10) [(5)] The Warden shall ask the condemned person if he wants to make a final statement. If a statement is made by the condemned person, it shall be limited to two (2) minutes. The witnesses shall be allowed to hear the condemned person's statement.

(11) [(6)] The Warden shall announce the final preparations for the execution to the witnesses.

(12) [(7)] The viewing curtain shall be closed.

(13) [(8)] The execution team members shall:

(a) Attach the chin strap to the condemned person;

(b) Attach the head gear to the condemned person;

(c) Attach the leg band to the condemned person;

(d) Adjust the back board;

(e) Attach the cables from the electrocution equipment to the head and leg electrodes with the nuts sufficiently tightened to ensure a firm connection; [Make electrical connections to the condemned person's head and leg;]

(f) Wipe any salt water released from the sponges from condemned person's head and leg; and

(g) Secure the condemned person's leather face covering.

(14) [(9)] The Warden shall make a visual check of connections and straps.

(15) [(10)] The execution team shall exit the execution chamber.

(16) [(11)] The viewing curtain shall be opened.

(17) [(12)] The Warden shall:

(a) Announce the execution of the condemned person to the witnesses; and

(b) Pull the face covering over the condemned person's face.

(18) [(13)] All persons except the condemned person shall exit the execution chamber.

(19) [(14)] Counsel assigned by the Cabinet and counsel assigned by the Attorney General shall be asked whether any stays,

orders, pardons, or commutations of sentence have been received.

Section 2. Execution. (1) The Warden shall order the execution to proceed.

(2) The execution equipment shall be activated for a two (2) minute cycle. The cycle shall consist of:

(a) Approximately 1600–] 2,400 volts for a period of fifteen (15) seconds; and

(b) Approximately 240 volts for the remainder of the two (2) minute cycle.

(3) **If the Warden sees evidence of a malfunction, he shall press the stop button on the electrocution equipment to end the cycle.**

(4) At the end of the two (2) minute cycle:

(a) The viewing curtain shall be closed; and

(b) The Warden shall observe the condemned person for signs of life for five minutes, which at a minimum shall include pulse and respiration.

(5) [(4)] If the Warden observes signs of life during the five (5) minute observation period:

(a) The viewing curtain shall be opened; and

(b) The Warden shall order the execution cycle stated in subsection (2) of this section be repeated.

(6) [(5)] If the Warden observes signs of life again, the execution **shall be stopped. The commissioner shall contact the Governor's Office and request that the execution be suspended** [steps in subsections (3) and (4) of this section shall be repeated until death].

(7) [(6)] If the Warden does not observe signs of life:

(a) The coroner shall check the condemned person to declare death, which at a minimum, shall include pulse and pupils; and

(b) The physician shall certify the cause of death.

Section 3. Post Execution Steps. (1) The Warden shall announce the completion of the execution to the witnesses. The viewing curtain shall be open during the Warden's announcement.

(2) The witnesses shall be escorted out of the witness room.

Section 4. Stabilization Procedure. (1) Before an execution commences:

(a) The Warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and

(b) A medical crash cart and defibrillator shall be located in the execution building.

(2) If **at any time during the execution process** the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

**Section 5. Volunteer. (1) If a condemned person, who is a volunteer, tells department staff that he does not wish to continue with the execution process, the staff shall tell the Warden.**

**(2) If the execution is in process, the execution team shall stop the execution.**

**(3) The Warden shall allow the condemned person to contact his attorney.**

**(4) The Warden shall notify the commissioner.**

**(5) The commissioner shall contact the Governor's Office and request that the execution be suspended.**

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: February 15, 2010

FILED WITH LRC: February 15, 2010 at noon

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice and 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 V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the protocol for conducting an execution by electrocution.

(b) The necessity of this administrative regulation: KRS Chapter 431.220 establishes electrocution as one of the methods of carrying out the death penalty. KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the process for carrying out an execution by electrocution.

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

This administrative regulation establishes the process for execution by electrocution, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a clear procedure for execution by electrocution in this Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: 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: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000

for the Office of the Kentucky State Medical Examiner, \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately \$17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately \$17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

(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? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2.What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

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. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.).

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 promulgation of this administrative regulation will not generate any revenue for the Department of Corrections.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately \$17,000 for the Department of Corrections, \$2,200 for the Kentucky State Police, \$450 for the Kentucky Department of Fish and Wildlife, \$2,000 for the Office of the Kentucky State Medical Examiner, and \$500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-): The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

#### JUSTICE AND PUBLIC SAFETY CABINET

##### Department of Juvenile Justice (Amended After Comments)

**505 KAR 1:160. Department of Juvenile Justice Policies and Procedures: treatment program for juvenile sexual offenders~~[juveniles with sexual behavior problems and offenses]~~.**

RELATES TO: KRS 15A.065, 15A.067, 200.080-120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095~~[-635.100(7)]~~, 635.095, 635.500, 635.505(1), 635.515, 635.520, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, 635.520, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

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

(a) "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Sexual Offender Treatment Program ~~[for Juveniles with Sexual Behavior Problems and Offenses]~~", **February 15, 2010**~~[November 13, 2009]~~~~[January 9, 2007]~~, which includes the following:

VOLUME 36, NUMBER 9 – MARCH 1, 2010

800 Treatment Program for Juvenile Sexual Offenders~~[Juveniles with Sexual Behavior Problems and Offenses]~~ (Amended 2/15/10~~[11/13/09]~~~~[1/9/07]~~);

[801 Intake and Assessment (Amended 1/9/07);

802 Sex Offender Specific Treatment Protocol (Amended 1/9/07);]

803 Polygraph Examinations (Amended 02/15/10~~[11/13/09]~~~~[1/9/07]~~);

[804 Juvenile Sexual Offender Registry (Amended 1/9/07);

805 Youthful Offenders (Amended 1/9/07);]

806 Juvenile Sexual~~[Sex]~~ Offender Treatment and Assessment Professional Approval Process~~[Provider]~~ (Amended 02/15/10~~[11/13/09]~~~~[1/9/07]~~).

(b) The "Standard Operating Procedures Manual for the Treatment of Juvenile Sexual Offenders"~~[Program for Juveniles with Sexual Behavior Problems and Offenses]~~; (Amended 2/15/10~~[11/13/09]~~~~[1/9/07]~~);

(c) The "Estimate of Risk of Adolescent Sex Offense Recidivism (ERASOR)", 08/15/06; [and]

(d) The "Juvenile Sex Offender Assessment Protocol (J-SOAP)", 08/15/06;

(e) The "Juvenile Sexual Offender Tracking system Initial Reporting Form Part I", 2/15/10~~[11/13/09]~~; and

(f) The "Juvenile Sexual Offender Tracking System Reporting Form Part II", 2/15/10~~[11/13/09]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

J. RONALD HAWS, Commissioner

APPROVED BY AGENCY: February 15, 2010

FILED WITH LRC: February 15, 2010, 11 a.m.

CONTACT PERSON: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joslyn Olinger Glover, Staff Attorney

(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 Department of Juvenile Justice sex offender treatment program, including the rights and responsibilities of the Department of Juvenile Justice employees, treatment providers and the residential and community population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, 635.500, 635.505(1); 635.515 and 635.520 and to specifically provide a treatment protocol for juvenile sexual offenders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the sexual offender treatment protocol of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise sexual offender treatment protocol to the Department of Juvenile Justice employees, treatment providers and the residential and community 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 amendment will provide a uniform written sexual offender treatment protocol for all youth committed to the Department of Juvenile Justice and declared juvenile sexual offenders, and reflect the treatment and practice of the agency.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, 635.500, 635.505(1), 635.520, and 635.515.

(c) How the amendment conforms to the content of the authorizing statutes: It provides for the operation, policies and procedures

governing the Department of Juvenile Justice sexual offender treatment program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the Department of Juvenile Justice to treat juvenile sexual offenders more efficiently and uniformly.

(3) List type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 youth annually, 20 treatment providers, and Department personnel.

(4) Provide analysis of how the entities identified in question (3) will be impacted by the implementation of this regulation, if new, or by the change, if it is an amendment, including: By providing and implementing a clear and concise sexual offender treatment protocol for the Department of Juvenile Justice employees, treatment providers, and the residential and community population, the juvenile sexual offender treatment program will be managed more effectively and consistently. The revised treatment program will be structured to meet the individual youth's treatment needs.

(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 youth who participate in the juvenile sexual offender treatment program will be provided with specific information regarding the required treatment protocol and the steps that shall be expected of them to complete the treatment program. Treatment providers and DJJ employees will provide assessments and treatment in accordance with the treatment protocol as outlined in the regulation and the materials incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with this administrative regulation no monetary costs will be incurred by the youth, the treatment providers, or the DJJ employees. All costs of implementation of this treatment protocol will be paid out of budgeted monies by the Department of Juvenile Justice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth who receive treatment in the juvenile sexual offender treatment program shall be more effectively and consistently served. The treatment providers and the DJJ employees who administer the assessments and the treatment protocol shall provide treatment tailored to the youth's individual needs.

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

(a) Initially: \$5,000 for training staff.

(b) On a continuing basis: \$5,000 for training staff.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice 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: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) Tiering: Is tiering applied? No. Tiering 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 the 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? Department of Juvenile Justice.

3. Identify each state or federal statute or federal regulation



that requires or authorizes the action taken by the administrative regulation. KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 200.115, 605.150, 635.095, 635.100(7), 635.500, 635.505(1), 635.520, 635.515, 640.120, and 645.250.

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? See narrative provided below.

(d) How much will it cost to administer this program for subsequent years? See narrative provided below.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation will provide a uniform written sexual offender treatment protocol for all youth committed to the Department of Juvenile Justice who are declared juvenile sexual offenders, and reflect the treatment and practice of the agency. The only expense regarding this regulation is the cost of staff training, which for the first year is approximately \$5,000.

# CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amended After Comments)

## 906 KAR 1:180. Operation and services; personal services agencies.

RELATES TO: KRS Chapter 13B, 209.030(2), (3), 216.710-216.716, 216B.015, 620.030(1)

STATUTORY AUTHORITY: KRS 216.712(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.712(1) provides that no personal services agency shall be operated, maintained, or advertised without obtaining certification from the Cabinet for Health and Family Services. KRS 216.712(4) requires the cabinet Secretary to promulgate administrative regulations to implement KRS 216.712 through 216.716. This administrative regulation establishes standards for the certification of personal services agencies.

Section 1. Definitions. (1) "Adverse action" means action taken by the cabinet's Office of Inspector General (OIG) to deny or revoke the certification of a personal services agency.

(2) "Cabinet" is defined by KRS 216.710(1).

(3) "Certification" means that a person, business entity, corporation, or association, either for-profit or not-for-profit, has been issued a certificate by the Office of Inspector General to operate a personal services agency.

(4) "Client" is defined by KRS 216.710(2).

(5) "Designated representative" is defined by KRS 216.710(5).

(6) "Direct service" is defined by KRS 216.710(6).

(7) "Employee" means an individual who is:

(a) Directly employed by a personal services agency;

(b) An agent of a personal services agency;

(c) An independent contractor who has a contractual arrangement with a personal services agency to provide personal services; or

(d) Referred by another person or other agency that has an ownership or financial interest that is realized from the delivery of personal services rendered by the individual for whom the referral is made.

(8) "Facilitate the self-administration of medication" means the client or the client's guardian, healthcare surrogate

as defined by KRS 311.621(15), or attorney-in-fact as appointed by a durable power of attorney authorizing the attorney-in-fact to make health care decisions for the client, has executed a written consent designating the persons or entities authorized to prepare or direct the client's medications and authorizing the personal services agency to facilitate the self-administration of medication which shall be limited as follows:

(a) A client's medication shall:

1. Be prepared or directed in accordance with KRS 216.710(7)(a)2 by:

a. The client's designated representative; or

b. A licensed health-care professional who is not an owner, manager, or employee of the personal services agency;

2. Except for ointments, be preset in a medication organizer or be a single dose unit; and

3. Include the client's name on the medication organizer or container in which the single dose unit is stored;

(b) A personal services agency direct care staff person may:

1. Remind a client when to take medications and observe to ensure that the client takes the medication as directed;

2. Hand the client's medication to the client. If the client is unable to open the medication, the staff person may open the unit dose or medication organizer, remove the medication from a medication organizer, and close the medication organizer for the client;

3. Assist a client in consuming oral medication, including tablets, capsules, or liquid medication, by:

a. Placing the dose in a container and placing the container to the mouth of the client;

b. Placing the medication in the client's hand or mouth; or

c. Following the written instructions of the client's designated representative or licensed health care professional for how to enable the client to take his or her medication; or

4. Steady or guide a client's hand while applying ointments; and

(c) Facilitating the self-administration of medication shall not include:

1. Instilling eye, ear, or nasal drops;

2. Mixing, compounding, converting, or calculating medication doses;

3. The preparation of syringes for injection or the administration of medications by any injectable route;

4. Administration of medications through intermittent positive pressure breathing machines or a nebulizer;

5. Administration of medications by way of a tube inserted in a cavity of the body;

6. Administration of parenteral preparations;

7. Administration of irrigations or debriding agents used in the treatment of a skin condition; or

8. Administration of rectal, urethral, or vaginal preparations. [(8) "Facilitate the self-administration of medication" means:

(a) Reminding the client to take medications;

(b) Reading the medication's label;

(c) Confirming that medication is being taken by the client for whom it is prescribed;

(d) Opening the dosage packaging or medication container but not removing or handling the actual medication;

(e) Storing the medication in a manner that is accessible to the client; and

(f) Making available the means of communicating with the client's physician and pharmacy for prescriptions by telephone, facsimile, or other electronic device.]

(9) "Parent personal services agency" is defined by KRS 216.710(9).

(10) "Personal services" is defined by KRS 216.710(7).

(11) "Personal services agency" is defined by KRS 216.710(8).

(12) "Provisional certification" means that the Office of Inspector General (OIG) has issued a ninety (90) day preliminary certificate to operate a personal services agency to a person, business entity, corporation, or association, either for-profit or not-for-profit, which:

(a) Has three (3) or fewer employees at the time of initial application; and

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(b) Indicated on the application that it intends to hire additional employees within ninety (90) calendar days of the date of the application.

(13) "Significant financial interest" means lawful, direct or indirect ownership of a personal services agency or health care facility licensed pursuant to KRS Chapter 216B in an amount equal to or greater than twenty-five (25) percent total ownership of the personal services agency or health care facility.

Section 2. Certification of Personal Services Agencies. (1) To operate a personal services agency, a person or entity shall obtain certification from the Office of Inspector General.

(2) If an out-of-state personal services agency operates a branch office in Kentucky, the out-of-state agency shall be required to obtain separate certificates for each of its branch offices in Kentucky~~[establish a parent personal services agency in Kentucky to obtain certification].~~

(3) A branch office of a parent personal services agency shall be owned and controlled by the parent personal services agency.

(4) A "health facility" or a "health service" as defined by KRS 216B.015 or a health-care practitioner licensed, certified, or regulated by local, state, or federal statutes or regulations shall not be required to obtain certification to provide personal services pursuant to KRS 216.710(7)(b)9.

Section 3. Initial Application, Provisional Certification, and Approval. (1)~~[(a) Except for an entity that operates a personal services agency in Kentucky prior to December 31, 2009,]~~ No person, entity, corporation, or association shall provide personal services prior to obtaining certification.~~[(b) Pursuant to KRS 216.712(1), an entity that operates a personal services agency in Kentucky prior to December 31, 2009, shall have until that date to file an application as described in subsection (2) of this section.]~~

(2) An applicant for initial certification, including provisional certification, shall submit to the OIG:

(a) An initial application fee of \$500 made payable to the Kentucky State Treasurer;

(b) A completed Application for Certification to Operate a Personal Services Agency, OIG - 1180, November 2009, incorporated by reference in Section 16 of this administrative regulation; and

(c) Documentation required by Section 3.A if applicable, and Section 6 of the application.

(3) Approval of initial certification shall be contingent on:

(a) Submission of the initial application fee of \$500;

(b) The applicant's demonstration of compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

(c) Submission of the documentation required by Section 3.A if applicable, and Section 6 of the application.

(4)(a) Approval of provisional certification shall be contingent on:

1. Submission of the initial application fee of \$500;

2. The applicant's demonstration of compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

3. Submission of the documentation required by Section 3.A if applicable, and Section 6 of the application.

(b) A personal services agency operating under provisional certification shall, no later than fourteen (14) calendar days prior to expiration of the provisional certificate, submit employee information required by Section 6, paragraph 2 of the Application for Certification to Operate a Personal Services Agency, OIG - 1180 for each employee hired by the agency after submission of the application for initial certification.

(c) If a personal services agency operates under provisional certification prior to approval of initial certification, the initial certification period shall expire one (1) year from the date of the provisional certificate.

Section 4. Annual Recertification. (1) At least sixty (60) calendar days prior to expiration of certification, the personal services agency shall submit to the OIG:

(a) An annual recertification fee of \$350 made payable to the Kentucky State Treasurer;

(b) A completed Application for Certification to Operate a Personal Services Agency, OIG - 1180, November 2009, incorporated by reference in Section 16 of this administrative regulation; and

(c) Documentation required by Section 6 of the application.

(2) Approval of recertification shall be contingent on:

(a) Submission of the annual recertification fee of \$350;

(b) The applicant's demonstration of continued compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

(c) Submission of documentation required by Section 6 of the application.

Section 5. Change of Status. (1) Within thirty (30) calendar days after a change in an ownership interest of more than twenty-five (25) percent of a personal services agency, the following shall be submitted to the OIG:

(a) An Application for Certification to Operate a Personal Services Agency, OIG - 1180;

(b) Documentation required by Section 3.A if applicable, and Section 6 of the application;

(c) A fee of \$350 made payable to the Kentucky State Treasurer; and

(d) A bill of sale or comparable document which includes:

1. The name and signature of the new owner or corporation;

2. The name and signature of the buyer and the seller; and

3. The effective date of the transaction.

(2) Following a change of ownership reported in accordance with subsection (1) of this section, certification shall be effective for a period of one (1) year from the date the change of ownership is approved by the OIG.

(3) A personal services agency shall notify the OIG in writing within thirty (30) calendar days after the effective date of:

(a) A change of name;

(b) A change in the location of the parent personal services agency or a branch office;

(c) The opening of a new branch office in Kentucky; or

(d) The closing of the parent personal services agency or an existing branch office within the state.

Section 6. Staff Requirements. (1)(a) A personal services agency shall employ an individual to act as the personal services agency's manager.

(b) The manager shall be responsible for the organization and daily operation of the personal services agency.

(c) The manager shall designate in writing one (1) or more individuals to act on behalf of, or to perform any or all of the manager's responsibilities during the time in which the manager is unavailable to perform daily managerial duties for at least three (3) consecutive business days.

(2) Prior to acting as a personal services agency's manager, or prior to providing direct services to a client, an applicant for employment in a personal services agency shall submit to, and have completed a:

(a)~~[4.]~~ Criminal record check conducted by the Justice and Public Safety Cabinet, ~~[or the]~~ Administrative Office of the Courts, or a company that conducts a search of criminal record information maintained by the Justice and Public Safety Cabinet or Administrative Office of the Courts~~]; or~~

2. Criminal record check conducted by means of a fingerprint check of the National Crime Information Database];

(b) Check of the nurse aide and home health aide abuse registry established pursuant to 906 KAR 1:100;

(c) Substance abuse test; and

(d) 1. A tuberculosis (TB) risk assessment performed and reported by a physician, advanced registered nurse practitioner, physician's assistant, or registered nurse.

2. If the TB risk assessment indicates that the applicant for employment is at increased risk for developing tuberculosis infection, or for progressing to active TB disease if infected, the individual shall submit to the following for purposes of employment:

a. Follow-up tuberculin skin test (TST); or

b. Blood assay for M. tuberculosis (BAMT).

3. An individual who has a positive TST result or a positive BAMT result:

a. Shall have a medical evaluation for possible active TB and receive a chest x-ray; and

b. Shall not provide direct services to a client until evidence is provided to the personal services agency documenting that the individual is free of active TB as verified through a health professional's statement, signed by a physician, advanced registered nurse practitioner, physician's assistant, or registered nurse.

**(3) A personal services agency may, at its discretion, request that its manager or an employee who provides direct services to a client submit to any of the following background checks after the date of initial hire:**

**(a) Criminal record check conducted by the Justice and Public Safety Cabinet, Administrative Office of the Courts, or a company that conducts a search of criminal record information maintained by the Justice and Public Safety Cabinet or Administrative Office of the Courts;**

**(b) Check of the nurse aide and home health aide abuse registry; or**

**(c) Substance abuse test.**

**(4) A personal services agency shall not employ or retain an individual to serve as a manager or provide direct services to a client if the individual:**

**(a) Has been convicted of a crime defined by KRS 216.710(3) as verified through a criminal record check conducted pursuant to subsection (2)(a) or (3)(a) of this section;**

**(b) Appears on the nurse aide and home health aide abuse registry as verified through a check of the nurse aide and home health aide abuse registry conducted pursuant to subsection (2)(b) or (3)(b) of this section;**

**(c) Tests positive for the presence of an illegal drug as verified through a substance abuse test conducted pursuant to subsection (2)(c) or subsection (3)(c) of this section; or**

**(d) Fails to provide upon initial employment pursuant to subsection (2)(d) or annually pursuant to subsection (5) of this section:**

1. A copy of the results of a health professional's statement documenting that the individual is free of active tuberculosis;
2. Documentation of a negative TST; or
3. Documentation of a negative BAMT.

**(5)(a)(4) A personal services agency shall require its manager and each employee who provides direct services to a client to submit annually to a, and have completed a:**

- (a)1. Criminal record check conducted by the Justice and Public Safety Cabinet or the Administrative Office of the Courts; or**
- 2. Criminal records check conducted by means of a fingerprint check of the National Crime Information Database;**

**(b) Check of the nurse aide and home health aide abuse registry established pursuant to 906 KAR 1:100; and**

**(c)1. Tuberculosis risk assessment performed and reported by a physician, advanced registered nurse practitioner, physician's assistant, or registered nurse.**

**(b)2. If a determination is made from the annual tuberculosis risk assessment that the employee is at increased risk for developing tuberculosis infection, or for progressing to active TB disease if infected, the employee shall submit to a follow-up TST or BAMT.**

**(c)3. An employee who has a positive TST result or a newly positive BAMT shall have a medical evaluation for possible active TB and receive a chest x-ray.**

**(d)4. If the annual tuberculosis screening reveals that the employee is recently infected, the employee shall not provide direct services to a client until evidence is provided documenting that the employee is free of active tuberculosis as verified through a health professional's statement signed by a physician, advanced registered nurse practitioner, physician's assistant, or a registered nurse.**

**(6)(5) A personal services agency shall maintain documentation of the following in employee records:**

**(a) The results of each criminal record check conducted pursuant to subsections (2)(a) and (4)(a) of this section;**

**(b) The results of each check of the nurse aide and home health aide abuse registry conducted pursuant to subsections**

**(2)(b) and (4)(b) of this section;**

**(c) The results of the substance abuse test conducted pursuant to subsection (2)(4)(c) of this section; and**

**(d) Documentation from a health professional that the employee is free of active TB and, if applicable, documentation of a follow-up TST or BAMT, chest x-ray, or medical evaluation.**

**(7)(6) A personal services agency shall:**

**(a) Maintain employee records for a period of at least five (5) years; and**

**(b) Ensure that the records of current employees are:**

1. Maintained on the premises of the agency; or
2. Accessible via a central computer file.

**(8)(7) No personal services agency or agency employee shall be, or apply to be a client's:**

- (a) Guardian;
- (b) Power of attorney;
- (c) Conservator;
- (d) Limited conservator;
- (e) Limited guardian;
- (f) Standby guardian; or
- (g) Testamentary guardian.

Section 7. Staff training and Competency. (1) Prior to providing direct services to a client, each employee shall receive training from the personal services agency regarding the following:

(a) Procedures for reporting abuse, neglect, or exploitation of an adult pursuant to KRS 209.030(2) and (3), or child abuse or neglect pursuant to KRS 620.030(1);

(b) Procedures for facilitating the self-administration of medications **if personal services agency staff facilitate the self-administration of medication**, which prohibits an employee from:

1. Removing medication from its packaging or medication container; or
2. Handling medication for a client; and

(c) Effective communication techniques tailored to individual client needs.

(2)(a) A personal services agency shall evaluate the competency of each employee who will provide direct services to a client.

(b) The agency's evaluation to determine competency shall pertain to each personal services task the agency chooses to have the employee perform.

(3)(a) An employee's evaluation and a determination by the personal services agency that the employee is competent to perform a personal services task shall occur before the employee performs the task for a client without direct agency supervision.

(b) The content of the employee's training and evaluation shall:

1. Be documented and maintained in the employee's record, which shall be retained for a period of at least five (5) years; and
2. Include the date and the signature of the:
  - a. Person who conducted the training and evaluation; and
  - b. Employee who received the training and evaluation.

Section 8. Service Agreement. (1) Each personal services agency shall provide a written service agreement to the client or the client's designated representative that includes the following:

(a) The charge for each service provided by the personal services agency;

(b) The personal services agency's policy for notifying the client or client's designated representative of any change in the charge for services. Notice of an increase in the charge for services shall be given to a participating client or client's designated representative at least thirty (30) calendar days in advance of the effective date of the increase **and any increase in the amount billed to the client shall be documented on the client's service plan in accordance with Section 9(3) of this administrative regulation**;

(c) The hours the personal services agency's office is open for business;

(d) The procedure for contacting the personal services agency's manager or the manager's designee;

(e) The procedure and telephone number to call for the purpose of filing a grievance with the personal services agency as described in Section 10 of this administrative regulation;

(f) An explanation of whether the personal services agency:

1. Directly employs the individual who will be providing person-

al services to the client;

2. Provides bonded protection for the client; and

3. Pays workers compensation or other benefits for the individual who will be providing personal services to the client;

(g) Name of the personal services agency's owner, including anyone with a significant financial interest in the agency;

(h) The procedure for changing or terminating a client's service plan; and

(i) A statement of client rights, which shall include the following:

1. The client has the right to have the client's property treated with respect;

2. The client has the right to request a change in his or her service plan, including the temporary suspension, permanent termination, temporary addition, or permanent addition of a service;

3. The client has the right to file a grievance as described in Section 10 of this administrative regulation regarding services, employee conduct, or the lack of respect for property and not be subject to discrimination or reprisal for filing the grievance; and

4. The client has the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.

(2) A personal services agency shall report to the cabinet an incident of suspected:

(a) Abuse, neglect, or exploitation of an adult pursuant to KRS 209.030(2) and (3); or

(b) Child abuse or neglect pursuant to KRS 620.030(1).

Section 9. Service Plan. (1) A personal services agency's manager or the manager's designee shall prepare a service plan. The initial service plan shall:

(a) Be in writing, dated, and signed by the:

1. Individual who prepared it; and

2. Client or client's designated representative;

(b) List the types and schedule of services to be provided to the client; and

(c) Identify the charge per service or charge per hour, whichever method the agency uses to bill clients.

(2) If a client or the client's designated representative requests a change in the type of service, duration of the service, or an increase or decrease in the number of visits, the personal services agency manager or manager's designee shall document on the client's service plan the:

(a) Requested change;

(b) Name of the person who requested the change; and

(c) Date the request was made. [and total amount that will be billed to the client.

(2)(a) A change in the provision of any service shall be documented in the written service plan.

(b) If a change in services results in a change in the amount billed to the client, the revised service plan shall include an explanation of the new charges to the client and be signed and dated by:

1. The personal services agency employee who documented the change in the plan; and

2. The client or the client's designated representative.

(c) If a change in services does not result in any change in the amount billed to the client, the revised service plan shall not require a second signature by the client or the client's designated representative.]

(3) A personal services agency shall provide a copy of the service plan to the client within ten (10) calendar days of the date that:

(a) The agency begins providing initial services; or

(b) A change in the provision of a service is documented in the written service plan].

Section 10. Client Grievances. (1) A personal services agency shall investigate a grievance made by a client or the client's designated representative alleging:

(a) An issue with a service that is furnished;

(b) Failure to furnish a service listed in the service plan;

(c) Failure to provide thirty (30) day advance notice of an increase in the amount the agency charges for its services;

(d) Inappropriate conduct of an employee while the individual is providing services to the client; or

(e) A violation of the client's rights.

(2)(a) A personal services agency shall:

1. Document how the agency investigated each grievance; and

2. Maintain on file for a period of at least five (5) years a written record documenting the outcome of the agency's investigation, including any action taken by the agency.

(b) Upon completing an investigation of a grievance, the personal services agency shall document that it notified the individual who reported the grievance of the outcome of the investigation and any action the agency plans to take as a result.

Section 11. Complaint Investigations. (1) The OIG shall investigate a:

(a) Report of any business that provides personal services without receiving certification [~~A report received prior to December 31, 2009, of a business that provides personal services without certification shall not be accepted for investigation~~];

(b) Report of any business that markets its services as a personal services agency without receiving certification [~~A report received prior to December 31, 2009, of a business that markets its services as a personal services agency without certification shall not be accepted for investigation~~];

(c) Complaint against a certified personal services agency in which the agency is alleged to be in noncompliance with the requirements of this administrative regulation or KRS 216.712;

(d) Complaint against a certified personal services agency in which an agency employee is alleged to have abused or neglected a client, or misappropriated a client's property; or

(e) Complaint against a certified personal services agency in which an agency employee is alleged to have provided services to a client that exceed the scope of personal services [~~or facilitated the self-administration of medication in a manner that fails to comply with the criteria established pursuant Section 1(8) of this administrative regulation~~].

(2)(a) A certified personal services agency or a business that is the subject of a complaint investigation shall not deny access to a representative of the OIG, after proper identification, to make an inspection for determining compliance with the requirements of this administrative regulation or KRS 216.712.

(b) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the OIG to enter the agency or deny access to records related to an inspection or investigation shall result in revocation of a personal services agency's certification.

Section 12. Request for Additional Information and Plans of Correction. (1) [~~An entity that applies for initial certification prior to December 31, 2009, shall submit, within sixty (60) calendar days from the date the OIG receives the entity's Application for Certification to Operate a Personal Services Agency, OIG - 1180, documentation that its manager and each employee who provides direct services have submitted to, and completed the:~~

~~(a) Substance abuse test required by Section 6(2)(c) of this administrative regulation; and~~

~~(b) Tuberculosis screening required by Section 6(2)(d) of this administrative regulation.~~

~~(2) If an entity fails to submit documentation as required by subsection (1) of this section within sixty (60) calendar days from the date the application is received by the OIG, the application shall be considered incomplete and certification shall not be approved.~~

~~(3)(a) The OIG shall notify an applicant or certified personal services agency in writing after:~~

~~1. Receipt of an incomplete or illegible application for initial certification or recertification;~~

~~2. Receipt of an application for initial certification or recertification in which additional information is needed by the OIG to verify that the applicant or personal services agency is in compliance with the requirements of this administrative regulation and KRS 216.712; or~~

~~3. Completion of a complaint investigation pursuant to Section 11 of this administrative regulation.~~

(b) The OIG's written notification specified in paragraph (a) of this subsection shall request that the applicant or certified personal services agency submit the following within ten (10) calendar days

of the date of the notice:

1. Additional information needed by the OIG to deem an initial or recertification application as complete or legible. ~~An exemption to the ten (10) day submission requirement shall apply if the personal services agency has been granted a sixty (60) calendar day extension to submit evidence of substance abuse testing or tuberculosis screening in accordance with subsection (1) of this section;~~

2. Additional information needed by the OIG to make a determination of compliance with the requirements of this administrative regulation and KRS 216.712; or

3. A written plan of correction if the OIG has found upon completion of a complaint investigation that the certified personal services agency is in violation of this administrative regulation or KRS 216.712. A plan of correction shall:

a. Be signed by the personal services agency's owner or manager;

b. Specify the date by which the agency intends to have corrected the violation;

c. Identify the specific measures the agency intends to use to correct the violation; and

d. Identify the specific measures the agency plans to use to ensure the violation will not recur.

(c) The OIG shall review additional information or a written plan of correction submitted pursuant to paragraph (b) of this subsection and notify the applicant or certified personal services agency in writing of the decision to:

1. Approve or not approve an application;

2. Accept or not accept a plan of correction; or

3. Deny or revoke certification for a violation of this administrative regulation or KRS 216.712.

(d) If the OIG determines that a plan of correction is not acceptable and makes a written request for an amended plan of correction, the certified personal services agency shall submit the amended plan of correction within ten (10) calendar days of the date of the OIG's written request. The OIG shall review an amended plan of correction and notify the personal services agency in writing of the decision to:

1. Accept the amended plan of correction;

2. Deny or revoke certification for a violation of this administrative regulation or KRS 216.712; or

3. Require the agency to submit an acceptable plan of correction.

(e) A certified personal services agency that fails to submit an acceptable plan of correction or acceptable amended plan of correction shall have its certification revoked.

~~(2)(4)~~ The OIG may impose fines in accordance with KRS 216.714(1) or (2).

Section 13. Denial and Revocation. (1) Initial certification shall be denied if an applicant:

(a) Has a significant financial interest in the entity applying for certification and held a significant financial interest in a personal services agency or health facility licensed pursuant to KRS Chapter 216B in which the agency's certification or facility's licensure was revoked during the three (3) years immediately preceding the filing of the application;

(b) Knowingly misrepresents or submits false information on the application; or

(c) Submits an application which fails to validate the entity's compliance with the requirements of this administrative regulation and KRS 216.712.

(2) Certification shall be revoked if a personal services agency:

(a) Fails to apply for annual recertification pursuant to Section 4(1) of this administrative regulation;

(b) Knowingly misrepresents or submits false information on the application at the time of annual recertification;

(c) Submits an application for annual recertification which fails to validate the agency's compliance with the requirements of this administrative regulation and KRS 216.712;

(d) Fails to comply with the background check and employment requirements of Section 6(2), ~~[(3), and]~~ (4), and (5) of this administrative regulation;

(e) Knowingly retains an employee who is:

1. Found by the cabinet to have abused or misappropriated a client's property; or

2. Convicted of, or pleads guilty, to a crime as defined by KRS 216.710(3);

(f) Fails to submit an acceptable plan of correction or acceptable amended plan of correction pursuant to Section 12~~(1)(b)3(3)(b)2~~ or (d) of this administrative regulation;

(g) Interferes with a cabinet representative's ability to perform an official duty; or

(h) Provides services that are beyond the scope of personal services as defined by KRS 216.710(7).

(3) Written notice of adverse action shall be provided at least thirty (30) calendar days prior to the effective date of the denial or revocation.

(4) The adverse action notice shall:

(a) Explain the reason for the denial or revocation of certification;

(b) Specify that the personal services agency shall cease operation prior to the effective date of the adverse action;

(c) Advise the personal services agency of the right to request an appeal prior to the effective date of the adverse action;

(d) Specify that denial or revocation shall be stayed if an appeal is requested; and

(e) Require the agency to surrender the certificate of operation to OIG when the denial or revocation becomes effective.

Section 14. Closure of a Personal Services Agency. If a personal services agency closes voluntarily or as the result of adverse action, the agency shall relinquish to the OIG its certificate to operate as a personal services agency immediately after the effective date of the closure.

Section 15. Appeals. (1) A personal services agency that submits a written request for appeal within thirty (30) calendar days of the date the agency receives a notice of adverse action shall be afforded a hearing in accordance with KRS Chapter 13B.

(2) If a hearing officer's final order does not uphold revocation of certification, the personal services agency may resume providing personal services.

Section 16. Incorporation by Reference. (1) "OIG - 1180, Application for Certification to Operate a Personal Services Agency", edition November 2009, is incorporated by reference:

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY REINLE BEGLEY, Inspector General

JANIE MILLER, Secretary

APPROVED BY AGENCY: February 13, 2010

FILED WITH LRC: February 15, 2010 at 11 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the certification of personal services agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the certification of personal services agencies as mandated by the passage of SB 22, 2009 GA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216.710 – 216.716 by establishing standards for the certification of personal services agencies.

(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 setting forth the certification requirements for personal services agencies.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation, required by SB 22, 2009 GA. Upon consideration of comments received during the public comment period, the amended after comments regulation differs from the ordinary administrative regulation as follows: Adds language consistent with KRS 216.710(8) to the definition of "employee" to ensure that individuals referred to render personal services are subject to the same background check and training requirements as individuals directly employed by personal services agencies; Amends the definition of "facilitate the self-administration of medication" by allowing personal services agency staff to handle medication that is prepared by the client's designated representative or licensed health-care professional, and is stored in a medication organizer or is a single dose unit; Adds language to clarify that out-of-state personal services agencies which operate a branch office in Kentucky must obtain separate certification for each branch located in the state; Removes all references to the December 31, 2009 deadline for submission of applications for certification and related references; Deletes the requirement for a "fingerprint check of the National Crime Information Database" as an option for obtaining criminal background checks, and clarifies that a personal services agency may use a company which conducts a search of criminal record information which includes information maintained by the Justice and Public Safety Cabinet or the Administrative Office of the Courts; Removes the requirement for annual criminal record checks and nurse aide abuse registry checks; and Clarifies that a change in the type of service, duration of the service, or increase or reduction in the frequency of services must be documented on the client's service plan, and deletes the requirement that the service plan be signed anytime a change results in a change to the amount billed.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation, required by SB 22, 2009 GA.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation, required by SB 22, 2009 GA.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation, required by SB 22, 2009 GA.

(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 any entity that applies for certification as a personal services agency.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities interested in obtaining certification as a personal services agency will be required to submit an application to the Office of Inspector General (OIG). Upon approval by the OIG, certified personal services agency staff will be required to submit to the following: criminal record checks at the time of initial hire; a check of the nurse aide and home health aide abuse registry at the time of initial hire; a substance abuse test at the time of initial hire; and tuberculosis screening at the time of initial hire and annually. Personal services agencies will be required to provide training to staff and evaluate employee competency. Personal services agencies will also be required to maintain written service plans with clients. (Service plans include the types and schedule of services provided to the client, and the charge per service including the total amount billed to the client.) Personal services agencies will be required to conduct internal investigations of certain grievances made by clients, such as alleged failure to furnish a service listed in the service plan, alleged inappropriate employee conduct, or an allegation that a client's rights have been violated by staff. Additionally, personal services agencies will be subject to on-site inspection by the OIG only upon receipt of a complaint alleging

the following: noncompliance with the requirements of this administrative regulation or KRS 216.712; possible abuse or neglect of a client, or misappropriation of a client's property by a personal services agency employee; or complaint that an employee has provided services to a client that exceed the scope of personal services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An applicant for initial certification as a personal services agency will be required to pay an initial application fee of \$500 and an annual recertification fee of \$350 annually thereafter. A fee of \$350 will be imposed for a change in an ownership interest of more than twenty-five (25) percent of the personal services agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As mandated by SB 22, 2009 GA, an entity that demonstrates compliance with this administrative regulation will be approved for certification as a personal services agency.

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

(a) Initially: The cabinet anticipates that it will cost approximately \$35,100 during the first year of implementation of the personal services agency certification program. This figure was based on several factors including the number of hours the Office of Inspector General anticipates its survey staff may spend investigating complaints, the number of hours needed for staff to review and process initial certification applications, annual recertification applications, and change of ownership applications, supervisory review, technical assistance, travel costs, postage and supplies, and other indirect costs.

(b) On a continuing basis: Approximately \$35,100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation includes the Kentucky personal services agency fund, which is created by KRS 216.716 and made up of certification fees and fines collected pursuant to KRS 216.712 and 216.714.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes an initial certification fee of \$500 and an annual recertification fee of \$350. A fee of \$350 will be imposed for a change in an ownership interest of more than twenty-five (25) percent of the personal services agency.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial certification fee of \$500 and an annual recertification fee of \$350. A fee of \$350 will be imposed for a change in an ownership interest of more than twenty-five (25) percent of the personal services agency.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? An entity seeking certification to operate a personal services agency.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.710 – 216.716.

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 cabinet

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anticipates collecting approximately \$37,500 in fees during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The cabinet anticipates collecting approximately \$30,000 in fees during subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet anticipates that it will cost approximately \$35,100 during the first year of implementation of the certification program for personal services agencies.

(d) How much will it cost to administer this program for subsequent years? Approximately \$35,100.

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:

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, FEBRUARY 15, 2010

STATE BOARD OF ELECTIONS  
(Amendment)

**31 KAR 6:010. State-based administrative complaint procedure.**

RELATES TO: KRS Chapter 13B, 117.015(1), 42 U.S.C. 15512

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties in the administration of the election laws. The Help America Vote Act of 2002, 42 U.S.C. 15512, Section 402(a), requires the establishment of a state-based administrative complaint procedure[procedures] to remedy grievances in elections for federal offices. This administrative regulation establishes an administrative complaint procedure to remedy grievances in elections for federal offices.

Section 1. Definitions. (1) "Board" means the State Board of Elections or their designee as defined in KRS 117.015 and 117.025.

(2) "Complainant" means the person who files a complaint under this administrative regulation.

(3) "Federal election" means a primary, general, or special election at which a federal office appears on the ballot.

(4) "Presiding officer" means the person appointed by the executive director of the board to conduct a hearing on a complaint.

(5) "Respondent" means any state or local election official whose actions are alleged, in a written complaint, to be in violation of Title III of the Help America Vote Act of 2002, 42 U.S.C. 15481.

(6) "State or local election official" means the Secretary of State, the State Board of Elections, a county clerk, a county board of elections, or any officer, agent, or appointee thereof.

(7) "Title III" means Title III of the Help America Vote Act of 2002, Pub.L. 107-252, codified at 42 U.S.C. 15481.

Section 2. Applicability. This administrative regulation shall be applicable to elections for federal office.

Section 3. Complaint Process. (1) Any person who believes there has been a violation of any provision of Title III of the Act by any election official may file a written complaint with the executive director of the board.

(2) All complaints shall:

(a) Be limited to violations of the requirements placed upon the states by Title III, which are limited to claims for violations of the following[specifically]:

1. Standards for voting systems;
2. Requirements for provisional voting and voting information; and
3. Requirements for computerized statewide voter registration lists and for voters who register by mail.

(b) Be submitted in writing on the Complaint and Affidavit for Violation of Title III of the Help America Vote Act of 2002, and signed by the complainant under oath or affirmation before an officer authorized to administer oaths.

(c) Include the full name, address, and telephone number of the complainant.

(d) Include a description of the alleged violation sufficient to apprise the board and the respondent of the nature and specific allegations[specifies] of the complaint.

(e) Be sent by mail or by delivery to the Offices of the State Board of Elections at 140 Walnut Street, Frankfort, Kentucky 40601.

(f) Be filed within ninety (90) days of the alleged violation of Title III.

Section 4. Processing the Complaint and Response. (1) The executive director of the board may refuse to accept a complaint if the complaint does not comply with the requirements of Section 3

of this administrative regulation[, except the board shall dismiss a complaint that does not state on its face a violation of Title III].

(2) If a complaint does not comply with Section 3 of this administrative regulation, the executive director of the board shall, within three (3) days of receipt of the complaint, send the complainant a notice explaining the areas of noncompliance in the complaint.

(3) The complainant shall correct a deficiency within seven (7) days of receipt of notice of the deficiency. If the complainant fails to correct a deficiency or fails to state a violation of Title III, the board shall dismiss the complaint.

(4) If a complaint complies with Section 3 of this administrative regulation and states on its face a Title III violation, the board shall accept the complaint and the complaint shall be deemed filed on the date of receipt at the offices of the board.

(5)[(4)] Upon receipt of a complaint, the board shall send a copy to the respondent along with a request for a response.

(6)[(5)] The respondent shall send a response to the board within ten (10) days of the date the respondent received notice from the board of the filed complaint.

(7)[(6)] Upon receipt of the respondent's response, the board shall within three (3) days, send the complainant a copy of the respondent's response and a notice explaining the complaint may be resolved informally by agreement of the parties or the complainant may request a hearing [may be requested]. The complainant shall have ten (10) days from the date the notice is received to request an informal resolution or a hearing.

(8)[(7)] The executive director of the board shall be responsible for arranging the date, time, and place for hearings, and appoint a qualified individual to serve as the presiding officer.

(9) If at any time during the proceedings, the board believes that the person appointed by the executive director of the board is not performing his or her duties as presiding officer in the interest of justice and to ensure the fair administration of the Act, the board may withdraw the appointment of the presiding officer and appoint another qualified individual to serve as presiding officer.

(10) The executive director shall send a notice of the identity of the presiding officer, time, date, and location of the hearing to the parties at least seven (7) days before the date scheduled for the hearing.

(11) The board shall make a final determination of the complaint within ninety (90) days of the receipt of the complaint, unless the complainant agrees in writing to an extension.

Section 5. Consolidation. Upon its own motion, or upon motion of any party, the [(8)-The] board or presiding officer may consolidate multiple complaints into a single proceeding if there exist common parties, common questions of law or fact, or both, or such other circumstances as justice and the administration of the Act require. [feasible and if the complaints arise out of the same fact situation and have common questions of law and facts].

(9) The board shall make a final determination of the complaint within ninety (90) days of the date the complaint is filed unless the complainant agrees in writing to an extension.]

Section 6. Severance. Upon its own motion, or upon motion of any party, the board or the presiding officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 7.[5-] Hearings. (1) Hearings shall be conducted in accordance with KRS Chapter 13B.

(2) Hearings shall be [tape] recorded. A[and-a] transcript of the hearing shall not be made except upon request of a party who shall bear the cost of transcription. Any other party may request a copy of the transcript at his or her[their] own expense.

(3) Hearings may be held and testimony taken by teleconference or video conference with notice to the parties.

(4) If any party fails, without good cause, to attend the hearing, they may be held in default and have a determination made against them.

(5) All testimony shall be taken under oath or affirmation.

(6) The complainant shall have the burden of proof.



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Section 8. Presiding Officer's Findings of Fact, Conclusions of Law, and Recommended Order.~~[6. Final Determination.]~~ (1) Within fourteen (14) days of the completion of the hearing,~~[If]~~ the presiding officer shall issue a findings of fact, conclusions of law, and recommended order to the board ~~setting~~~~[determines that there was a past, present, or potential violation of Title III, shall then the final determination shall set]~~ forth any findings of a past, present, or potential~~[the facts of the]~~ violation~~[, the specific violation]~~ of Title III, if supported by the evidence presented, and ~~[provide]~~ a recommended remedy.

(2) The recommended remedy ~~[awarded]~~ shall be directed at the improvement of processes or procedures governed by Title III, consistent with federal and state law.

(3) The recommended remedy ~~[provided]~~ shall not include money damages, costs, or attorney fees and shall be limited to bringing the election practice or election system referred to in the complaint~~[complained of]~~ into compliance with Title III.

Section 9. Final Determination. (1) The board shall review the presiding officer's findings of fact, conclusions of law, and recommended order at the next scheduled meeting of the board.

(2) The board may adopt the presiding officer's findings of fact, conclusions of law, and recommended order as its final determination or issue its own findings of fact, conclusions of law, and final determination based on the evidence presented.

(3) The board shall issue a final determination within thirty (30) days of receipt of the recommended order or within ninety (90) days of receipt of the complaint, whichever is shorter, unless the complainant agrees in writing to an extension of time.

Section 10.~~[Section 7.]~~ Alternative Dispute Resolution. (1) If a final determination of a complaint is not made within ninety (90) days of the filing of the complaint, and the complainant did not agree to an extension, then the complaint shall be referred to a review panel comprised of three (3) members of the board.

(2) The review panel shall issue a final determination on the complaint within sixty (60) days of the referral.

(3) The review panel shall make its determination on the record of the hearing conducted under this administrative regulation and shall not conduct any further proceedings.

(4) If the hearing was not conducted or completed, then the review panel shall conduct a hearing under this administrative regulation.

Section 11.~~[8.]~~ Publication of Final Determinations. All final determinations shall be posted on the internet homepage of the board~~[, www.kysos.com/Index/Main/electdiv.asp,]~~ and retained in the permanent archival records of the board by attaching to the minutes of the monthly meeting of the board for the month the final determination was issued.

Section 12.~~[9.]~~ Incorporation by Reference. (1) "Complaint and Affidavit for Violation of Title III of the Help America Vote Act of 2002," SBE 21, December 2003~~[(12/03)]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Offices of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30~~[4]~~ p.m.

TREY GRAYSON, Chair

APPROVED BY AGENCY: February 8, 2010

FILED WITH LRC: February 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on March 22, 2010, at 10 a.m. local time at the State Board of elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by March 15, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the 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 amendment to the 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 amendment to the administrative regulation. Written comments shall be accepted until March 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed amendment to the administrative regulation to:

CONTACT PERSON: Kathryn H. Gabhart, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements placed upon the states by Section 402(a) of the Help America Vote Act of 2002, 42 U.S.C. 15512, for a state-based administrative complaint process for elections for federal office.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Section 402(a) of the Help America Vote Act of 2002, 42 U.S.C. 15512, and to qualify for federal election assistance payments to the state and units of local government under Parts 1 and 2 of subtitle D of the Act and the state plan requirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the board to promulgate administrative regulations governing the conduct of elections. The administrative regulation provides the state-based administrative complaint process required by 42 U.S.C. 15512.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides an administrative process by which voters may bring complaints against election officials citing what they believe to be a violation of a provision of Title III of the Help America Vote Act of 2002 that has occurred, is occurring, or is about to occur. This process helps to ensure that voters will have better access to the polls and an efficient mode to cast their ballots in elections for federal office.

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

(a) How the amendment will change this existing administrative regulation: This amendment will clarify the hearing process and ensure that the hearing process follows the requirements of KRS 13B and 42 U.S.C. 15512.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the hearing process in the regulation and ensure that the hearing process follows the requirements of KRS 13B and 42 U.S.C. 15512.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the requirements of 42 U.S.C. 15512 by clarifying the process by which an individual may bring a complaint and the hearing process concerning that complaint.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a clarification of the hearing process, ensure that the hearing process follows the requirements of KRS Chapter 13B, and ensure that the complaint process is in compliance with 42 U.S.C. 15512.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local election officials and voters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment requires no action on the part of state and local election officials except follow the timing requirements for providing a response to a complaint when an action is initiated. Any voter who desires to file a complaint will

have to follow the requirements of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may costs to the State Board of Elections for compensation to the individual appointed as the presiding officer. There are minimal costs associated with printing the Complaint form. There is no cost to local election officials and voters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All state and local election officials and voters will benefit from a clarified process that ensures compliance with KRS Chapter 13B and 42 U.S.C. 15512.

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

(a) Initially: Due to a low volume of forms on hand, ordinary printing costs already anticipated in budget.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: State Board of Elections' operating budget.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all individuals affected.

#### 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 State Board of Elections and county election officials.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 117.015(1)(a) and 42 U.S.C. 15512.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of the 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 any revenue.

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

(c) How much will it cost to administer this program for the first year? The costs associated with this administrative regulation are minimal and are already allocated in the State Board of Elections' operating budget.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this administrative regulation are minimal and are already allocated in the State Board of Elections' operating budget.

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

Revenues (+/-): N/A  
Expenditures (+/-): N/A  
Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 15512.

(2) State compliance standards: KRS 117.015(1)(a) authorizes the board to promulgate administrative regulations governing the conduct of elections.

(3) Minimum or uniform standards contained in the federal mandate: 42 U.S.C. 15512 requires the states to establish a state-based administrative complaint procedures to remedy grievances as a condition of receiving funds. The statute requires the procedures to be uniform and nondiscriminatory, allow a complainant to file a complaint alleging a violation of Title III of the Help America Vote Act of 2002, allow for a hearing of the complaint, and allow for the state to provide an appropriate remedy with a final determination within 90 days.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: None

#### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

#### 401 KAR 5:045. Biochemically degradable wastes; treatment.

RELATES TO: KRS 224.10-100[(1), (5), (15), (19), (21), (23)], 224.70-100, 224.70-110

STATUTORY AUTHORITY: KRS [224.01-110(6),] 224.10-100(19), (21)[(47)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19) requires the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into waters of the Commonwealth. KRS 224.10-100(21) authorizes the cabinet to require technological levels of treatment and effluent limitations. This administrative regulation is necessary to implement KRS 224.10-100(1), (5), (15), (19), (21), (23), 224.70-100 and 224.70-110. It requires a minimum of secondary treatment or best conventional pollutant control technology for a facility that receives [where applicable for all facilities which received] biochemically degradable wastes, and additional treatment in certain situations. The administrative regulation requires that such treatment facilities receiving such wastes reapply to the cabinet 150 days prior to the expiration of the current permit for a permit to continue operating].

Section 1. [Definitions. The following definitions and conditions apply to terms used in Sections 3 and 4 of this administrative regulation:

(1) "Grab sample" means a single instantaneous portion of the effluent.

(2) "Composite sample" means:

(a) Not less than four (4) effluent portions collected at regular intervals over a period of eight (8) hours and combined in proportion to flow;

(b) Not less than four (4) combined equal volume effluent portions collected over a period of eight (8) hours at intervals proportional to flow;

(c) An effluent portion collected continuously over a period of twenty-four (24) hours at a rate proportional to the flow; or

(d) An effluent portion consisting of a minimum of four (4) combined equal volume grab samples taken approximately two (2) hours apart.

(3) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sample days.

(4) "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate

days in a seven (7) day period.

(5) the samples for determining a values of biochemical oxygen demand and suspended solids shall be composite samples. The samples for determining the values of fecal coliform bacteria and pH shall be grab samples and taken at the applicable frequency as noted in subsections (3) and (4) of this section.

(6) "Day" means a twenty-four (24) hour period.

(7) "Cabinet" means the Environmental and Public Protection Cabinet.

Section 2.] Applicability. (1) A facility that receives[All facilities discharging into waters of the Commonwealth which receive] an influent that[which] is biochemically degradable and discharges into waters of the Commonwealth shall provide a minimum of secondary treatment to that influent prior to its discharge.

(2) A facility[if other constituents are present, additional treatment may be required. Those facilities] subject to [best conventional pollutant control technology] treatment requirements established in[pursuant to] 401 KAR 5:080, Section 2[1(2)(a)2b] shall be exempt from the requirements of this administrative regulation.

Section 2. Secondary Treatment.[3.—]Secondary treatment shall be the[is that] degree of treatment that[which] results in an effluent quality that[which] meets the [following] minimum requirements:

(1) Biochemical oxygen demand, five (5) days.

(a) The arithmetic mean of the values for effluent samples collected during a period of thirty (30) consecutive days shall not exceed thirty (30) milligrams per liter.

(b) The arithmetic mean of the values for effluent samples collected during a period of seven (7) consecutive days shall not exceed forty-five (45) milligrams per liter.

(2) Suspended solids. [These requirements shall be achieved except as provided for in subsection (3) of this section.]

(a) The arithmetic mean of the values for suspended solids in effluent samples collected during a period of thirty (30) consecutive days shall not exceed thirty (30) milligrams per liter.

(b) The arithmetic mean of values for suspended solids in effluent samples collected during a period of seven (7) consecutive days shall not exceed forty-five (45) milligrams per liter.

Section 3. Continuation of a Permit. A[(3) Suspended solids requirements for waste stabilization ponds which are employed as the sole process for secondary treatment and have a maximum facility design capacity of 2,000,000 gallons per day or less and where operation and maintenance data indicate that the requirements of subsection (2)(a) and (b) of this section cannot be achieved shall be equal to that which is achievable with best waste stabilization pond technology. Best waste stabilization pond technology is defined as the effluent concentration achieved ninety (90) percent of the time within the Commonwealth of Kentucky or appropriate contiguous geographical area by waste stabilization ponds that are achieving the levels of effluent quality established for biochemical oxygen demand in subsection (1) of this section. This suspended solids value will be determined by the cabinet.

Section 4. Additional requirements for all facilities discharging into the waters of the Commonwealth which receive an influent which is biochemically degradable is that degree of treatment which results in an effluent quality which meets the following minimum requirements:

(1) Fecal coliform bacteria.

(a) The geometric mean of the value for fecal coliform bacteria in samples collected during a period of thirty (30) consecutive days shall not exceed 200 colonies per 100 milliliters.

(b) The geometric mean of the values for fecal coliform bacteria in samples collected during a period of seven (7) consecutive days shall not exceed 400 colonies per 100 milliliters.

(c) For operational purposes paragraphs (a) and (b) of this subsection need only be met during the recreational season of May 1 through October 31. In other months the values stipulated in 401 KAR 5:031, Section 7(2)(a), shall be met.

(2) pH. The values for pH shall not be less than six (6) units nor more than nine (9) units.

Section 5. Treatment in excess of that required under Section 2 of this administrative regulation for influents which are biochemically degradable shall be required for a continuous facility discharge where:

(1) The cabinet determines that the receiving waters will not satisfy applicable water quality standards as a result of a facility discharge or discharges from multiple facilities.

(2) The cabinet determines that a facility lacks the sophistication of process to consistently produce the required effluent quality.

Section 6. (1) Any] person responsible for an existing facility that[as described in Section 2 of this administrative regulation which] receives biochemically degradable influent and discharges into waters of the Commonwealth shall apply[shall 150 days prior to the expiration of the current permit make application to the cabinet] for a permit to continue to discharge to the waters of the Commonwealth 180 days prior to the expiration of the current permit. [(2) If the cabinet determines, from available information or information requested from the applicant, that an existing facility does not or may not produce an effluent with parameter measurements equal to or less than that specified in Sections 3 and 4 of this administrative regulation, it shall require the applicant to submit plans and specifications or other data showing how the facility will be brought into compliance.

(3) If the facility's effluent parameters are equal to or less than that required in Sections 3 and 4 of this administrative regulation, an operating permit shall be issued to the applicant.

(4) If the facility's effluent does not satisfy the requirements of Sections 3 and 4 of this administrative regulation, the cabinet may issue the applicant a permit to upgrade the facility, provided:

(a) No such permit shall be issued unless the cabinet has received and approved a compliance schedule to bring a facility into compliance at the earliest date.

(b) A compliance schedule shall contain a commitment from the applicant to achieve increments of progress to be completed on specified dates.

(c) At a minimum, the increments shall include a date for submitting any additional plans and specifications required for construction, a date for commencement of construction and a date for completion of construction.

(d) Upon request from the cabinet, the applicant shall provide the cabinet with periodic reports regarding progress towards compliance schedule increments.

(5) Failure to meet the dates set forth in a compliance schedule shall constitute a violation of KRS 224.70-110 unless an alternate date has been negotiated by the person responsible for a facility and has been approved in writing by the cabinet.]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: February 9, 2010

FILED WITH LRC: February 11, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2010 at 5 p.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2010, 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 March 31, 2010. 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: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email: Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter T. Goodmann, Assistant Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires a minimum of secondary treatment or best conventional pollutant control technology for a facility that receives biochemically degradable wastes.

(b) The necessity of this administrative regulation: KRS 224.10-100(19) authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.10-100(21) authorizes the cabinet to require technological levels of treatment and effluent limitations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(19)(c) authorizes the cabinet to issue permits for the establishment or construction and the operation or maintenance of waste disposal sites and facilities. KRS 224.10-100(21) authorizes the cabinet to require technological levels of treatment and effluent limitations. This regulation establishes the minimum of secondary treatment or best conventional pollutant control technology for a facility that receives biochemically degradable wastes under the authority granted the cabinet by those statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes clear guidelines for acceptable minimum levels of secondary treatment or best conventional pollutant control technology for facilities that receive biochemically degradable wastes.

(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 revises ambiguous terms in accordance with KRS Chapter 13A and corrects inconsistencies with other regulations in this chapter. The primary change in requirements is that the regulated entity must apply to continue a permit 180 before it expires, instead of 150 days. This is consistent with the requirements of other KPDES and KNDOP regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment will clarify ambiguous terms and establish clear guidelines for minimum secondary treatment or best conventional pollutant control technology that is internally consistent with other cabinet regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100(19)(c), which authorizes the cabinet to issue permits for the establishment or construction and the operation or maintenance of waste disposal sites and facilities, and KRS 224.10-100(21), which authorizes the cabinet to require technological levels of treatment and effluent limitations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will aid in carrying out the goals of KRS Chapter 224. The amendment removes ambiguities within the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES and KNDOP permitting programs. This administrative regulation potentially affects approximately 2,000 existing permitted entities. The primary change in requirements is that the regulated entity must apply to continue a permit 180 before it expires, instead of 150 days. This is consistent with the requirements of other KPDES and KNDOP regulations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any additional action to comply with this administrative regulation. The amendments to this administrative regulation remove inconsistencies between this regulation and other state regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in question (3) is expected to incur additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community affected by this regulation will not be confused by inconsistencies between this regulation and other state regulations.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, general funds, and EPA funds. This amendment does not change any source of funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to impact 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? None

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Water  
(Amendment)**

**401 KAR 5:070. Provisions of the KPDES permit.**

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 122[et seq.] 403, 33 U.S.C. 1251-1387[et seq.]

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050(1),

(4), 224.70-110, 40 C.F.R. 122.[see:] 403, 33 U.S.C. 1251-1387[et seq., 1342]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.16-050(1) ~~authorizes the cabinet to~~[provides that the Environmental and Public Protection Cabinet may] issue federal permits pursuant to 33 U.S.C.[U.S.C. Section] 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1257-1387[U.S.C. Section 1251 et seq.] subject to the conditions established[imposed] in 33 U.S.C.[Sections] 1342(b) and (d). KRS 224.16-050(1) requires that any exemptions granted in the issuance of these[NPDES] permits shall be pursuant to 33 U.S.C.[Sections] 1311, 1312, and 1326(a). [Further,] KRS 224.16-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this section any effluent limitation, monitoring requirement, or other condition ~~that~~[which] is more stringent than the effluent limitation, monitoring requirement, or other condition ~~that~~[which] would have been applicable under the federal regulation if the permit were issued by the federal government. This administrative regulation contains the basis for provisions, terms, and effect of a KPDES permit, including permit duration, schedule of compliance, and basis for permit modification or revocation and reissuance.

Section 1. Duration of Permits. The duration of a KPDES permit shall be as established in 40 C.F.R. 122.46, effective July 1, 2009.[(1) KPDES permits shall be effective for a fixed term not to exceed five (5) years. Except as provided in 401 KAR 5:060, Section 1(5)(c), the term of a permit shall not be extended by modification beyond this maximum duration. The cabinet may issue a permit for a duration that is less than the full five (5) year term.]

(2) A permit may be issued for the full term if the permit includes effluent limitations and a compliance schedule to meet the requirements of 401 KAR 5:080, Section 1(2) whether or not applicable federal effluent limitations guidelines have been promulgated or approved.]

Section 2. Schedules of Compliance. A schedule of compliance for KPDES permit shall be as established in 40 C.F.R. 122.47, effective July 1, 2009.[(1) The permit may, if appropriate, specify a schedule of compliance leading to compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.]

(a) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible. In addition, schedules of compliance shall require compliance not later than the applicable deadline specified in 401 KAR 5:080.

(b) The first KPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only if necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three (3) years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only if necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three (3) years before recommencement of discharge.

(c) Interim dates. Except as provided in subsection (2)(a)2 of this section, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

1. The time between interim dates shall not exceed one (1) year.

2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) Reporting. The permit shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the cabinet in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(2) Alternative schedules of compliance. A KPDES permit ap-

plicant or permittee may cease conducting regulated activities, by termination of direct discharge for KPDES sources, rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which shall ensure timely compliance no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the cabinet shall issue or modify a permit to contain two (2) schedules as follows:

1. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

2. One (1) schedule shall lead to timely compliance no later than the deadline contained in 401 KAR 5:080;

3. The second schedule shall lead to cessation of regulated activities by a date which shall ensure timely compliance no later than the deadline specified in 401 KAR 5:080; and

4. Each permit containing two (2) schedules shall include a requirement that after the permittee has made a final decision under subparagraph 1 of this paragraph it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the cabinet, such as a resolution of the board of directors of a corporation.]

Section 3. Requirements for Recording and Reporting of Monitoring Results. The requirements for recording and reporting of a monitoring result shall be as established in 40 C.F.R. 122.48, effective July 1, 2009.[All permits shall specify:

(1) Requirements concerning the proper use, maintenance, and installation, if appropriate, of monitoring equipment or methods, including biological monitoring methods if appropriate;

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, if appropriate, continuous monitoring; and

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in 401 KAR 5:065, Sections 1 and 2. Reporting shall not be less frequent than specified in Section 2 of this administrative regulation.]

Section 4. Effect of a Permit. (1) Except for a[any] toxic effluent standard or prohibition established[standards and prohibitions included] in 401 KAR 5:065, Section 2[1(4)(b)], compliance with a KPDES permit during its term shall constitute compliance, for purposes of enforcement, with the KPDES program.

(2) A permit may be modified, revoked and reissued, or revoked during its term for cause as established[set forth] in Sections 6 and 7 of this administrative regulation.

(3)[(2)] The issuance of a permit shall not convey [any] property rights [of any sort,] or [any] exclusive privilege.

(4)[(3)] The issuance of a permit shall not authorize [any] injury to persons or property, [or] invasion of other private rights, or [any] infringement of state or local law or administrative regulations.

Section 5. Transfer of Permits. Transfer of a KPDES permit shall be as established in 40 C.F.R. 122.61, effective July 1, 2009.[(1) Transfers by modification. Except as provided in subsection (2) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified

or revoked and reissued, under Section 6 of this administrative regulation, or if a minor modification has been made to identify the new permittee and incorporate other requirements as may be necessary under the KPDES administrative regulations.

(2) Automatic transfers. As an alternative to transfers under subsection (1) of this section, any KPDES permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the cabinet at least thirty (30) days in advance of the proposed transfer date in paragraph (b) of this subsection;

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(c) The cabinet does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under Section 6(3) of this administrative regulation. If this notice is not received, the transfer shall be effective on the date specified in the agreement mentioned in paragraph (b) of this subsection.]

Section 6. Modification or Revocation and Reissuance of Permit. (1) The modification or revocation and reissuance of a KPDES permit shall be as established in 40 C.F.R. 122.62, effective July 1, 2009.

(2) A minor modification of a KPDES permit shall be as established in 40 C.F.R. 122.63, effective July 1, 2009. [If the cabinet receives any information, the cabinet may determine whether or not one (1) or more of the causes, listed in subsections (1) and (2) of this section for modification or revocation and reissuance or both, exist. If cause exists, the cabinet may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. If a permit is modified, only the conditions subject to modification shall be reopened. If a permit is revoked and reissued, the entire permit shall be reopened and subject to revision and the permit shall be reissued for a new term. If cause does not exist under this section, the cabinet shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in subsection (3) of this section for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit shall be prepared and other procedures in 401 KAR 5:075 shall be followed.

(1) Causes for modification. The following shall be causes for modification but not revocation and reissuance of permits unless the permittee agrees to revocation and reissuance as well as modification of a permit:

(a) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance, the alterations may justify the application of permit conditions that are different or absent in the existing permit.

(b) Information. If the cabinet has received information, cause may exist for modification. KPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, except for revised administrative regulations, guidance, or test methods which would have justified application of different conditions at the time of permit issuance. In addition, the applicant shall show that the information would have justified the application of different permit conditions at the time of issuance. For KPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New administrative regulations. If the standards or administrative regulations on which the permit was based have been changed by promulgation of amended standards or administrative regulations or by judicial decision after the permit was issued, then cause may exist for modification. The permit shall be modified only as follows:

1. For promulgation of amended standards or administrative regulations, if:

a. The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards of 401 KAR 5:031, or the secondary treatment administrative regulations of 401 KAR 5:045;

b. EPA has revised, withdrawn, or modified that portion of the

federal regulation or effluent limitation guideline or has approved a cabinet action with regard to a water quality standard on which the permit condition was based; and

c. A permittee requests modification in accordance with 401 KAR 5:075, Section 2, within ninety (90) days after the amendment, revision, or withdrawal is promulgated.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated effluent limitation guidelines, if the remand and stay concern that portion of the guidelines on which the permit condition was based and a request is filed by the permittee in accordance with 401 KAR 5:075, Section 2, within ninety (90) days of judicial remand.

(d) Compliance schedules. A permit may be modified if the cabinet determines good cause exists for modification of a compliance schedule, based on an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy. A KPDES compliance schedule shall not be modified to extend beyond an applicable statutory deadline in 401 KAR 5:080.

(e) For a small municipal separate storm sewer system (MS4), to include an effluent limitation requiring implementation of minimum control measures as specified in 401 KAR 5:060, Section 12(9)(b), if:

1. The permit does not include these measures based upon the determination that another entity was responsible for implementation of the requirements; and

2. The other entity fails to implement measures that satisfy the requirements.

(f) In addition the cabinet may modify a permit:

1. If the permittee has filed a request for any variance under 401 KAR 5:055, Section 7, or 401 KAR 5:080, Section 3, and the cabinet processes the request under the applicable provisions.

2. If required to incorporate applicable toxic effluent standard or prohibition under 401 KAR 5:065, Section 2(2).

3. If required by the "reopener" conditions in a permit, which are established in the permit under 401 KAR 5:065, Section 2(3), for toxic effluent limitations, or 401 KAR 5:065, Section 2 (40 C.F.R. Section 403.10(e), pretreatment program).

4. Upon request of a permittee who qualifies for a change in effluent limitations based on pollutants in intake water under 401 KAR 5:065, Section 3(7).

5. If a discharger is no longer eligible for net limitations, as provided in 401 KAR 5:065, Section 3(7).

6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for development of a pretreatment program.

7. If the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c).

8. If the permittee begins or expects to begin to use or manufacture as an intermediate or final product or by-product any toxic pollutant which was not reported in the permit application under 401 KAR 5:060, Section 2.

9. To establish a "notification level" as provided in 401 KAR 5:065, Section 2(6).

10. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility, for a POTW which has received a grant under CWA Section 202(a)(3), 33 U.S.C. Section 1282(a)(3) for 100 percent of the cost to modify or replace facilities constructed with a grant for innovative or alternative wastewater technology under CWA Section 202(a)(2), 33 U.S.C. Section 1282(a)(2). Without exception, the compliance schedule shall not be modified to extend beyond an applicable statutory deadline for compliance indicated in 401 KAR 5:080.

11. Upon failure of the cabinet to notify an affected state whose waters may be affected by a discharge from Kentucky.

12. If the permit becomes final and effective on or after August 19, 1981, if the permittee shows a good cause for the modification, to conform to changes respecting the following administrative regulation: 401 KAR 5:065, Section 1(3) and (4).

13. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

14. If the discharger has installed the treatment technology considered by the cabinet in setting effluent limitations imposed under 401 KAR 5:080, Section 1 and CWA Section 402(a)(1), 33 U.S.C. Section 1342(a)(1) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. If this occurs, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

15. If the permit becomes final and effective on or after March 9, 1982, and the permittee applies for the modification no later than January 24, 1985, if the permittee shows good cause in its request and that it qualifies for the modification, to conform to changes respecting the following administrative regulations: 401 KAR 5:055, Section 6(2) and 401 KAR 5:065, Section 3(2) and (3).

(2) Causes for modification or revocation and reissuance. The following shall be causes to modify or, alternatively revoke and reissue a permit:

(a) Cause exists for revocation under Section 7 of this administrative regulation and the cabinet determines that modification or revocation and reissuance is appropriate.

(b) The cabinet has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but shall not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) Minor modifications of permits. Upon the consent of the permittee, the cabinet shall modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 401 KAR 5:075. Any permit modification not processed as a minor modification under this section shall be made for cause and with a 401 KAR 5:075 draft permit and public notice as required under this section. Minor modifications shall only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, if the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirements;

(d) Allow for a change in ownership or operational control of a facility if the cabinet determines that no other change in the permit is necessary, if a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the cabinet;

(e) Change the construction schedule for a discharger which is a new source;

(f) Delete a point source outfall if the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 401 KAR 5:057 or a modification thereto that has been approved in accordance with the procedures in 401 KAR 5:057 as enforceable conditions of the POTW's permits.]

Section 7. Revocation of Permit. The causes and procedure for revoking a KPDES permit shall be as established in 40 C.F.R. 122.64, effective July 1, 2009.

#### Section 8. Substitutions, Exceptions, and Additions to Cited Federal Regulations.

(1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the authority to administer the federal regulations cited in this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the cabinet has been delegated the authority to implement federal regulations cited in this administrative regulation. [(1) The following shall be causes for revoking a permit during its term, or for denying a renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time; or

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or revocation.

(2) KPDES permits may be modified or revoked if there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit for example, plant closure or termination of discharge by connection to a POTW.

(3) The cabinet shall follow the applicable procedures in 401 KAR 5:075 in revoking any KPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW, but not by land application or disposal into a well, the cabinet may revoke the permit by notice to the permittee. Revocation by notice shall be effective thirty (30) days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the cabinet shall follow 401 KAR 5:075, Section 2, revocation procedures. Expedited permit revocation procedures shall not be available to permittees that are subject to pending enforcement actions including citizen suits brought under KRS Chapter 224 and the Clean Water Act, 33 U.S.C. 1365. If requesting expedited permit revocation procedures, a permittee shall certify that it is not subject to any pending enforcement actions including citizen suits brought under KRS Chapter 224.

Section 8. Federal Regulation Adopted Without Change. The following federal regulation governs the subject matter of this administrative regulation and is hereby adopted without change. 40 C.F.R. Section 403.10(e), "State Pretreatment Program in Lieu of POTW Program", revised as of July 1, 2001. The federal regulation is available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky. Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: February 9, 2010

FILED WITH LRC: February 11, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2010 at 5 p.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2010, 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 March 31, 2010. 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: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email: Abigail.Powell@ky.gov

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter T. Goodmann, Assistant Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation contains the basis for provisions, terms, and effect of a KPDES permit, including permit duration, schedule of compli-

ance, and basis for permit modification or revocation and reissuance.

(b) The necessity of this administrative regulation: KRS 224.16-050 (1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a). Further, KRS 224.15-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement or other condition that is more stringent than the effluent limitation, monitoring requirement or other condition that would have been applicable under the federal regulation if the permit were issued by the federal government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.16-050(1) provides that the cabinet may issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the basis for provisions of a KPDES permit.

(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 revises ambiguous terms in accordance with KRS Chapter 13A and provides federal citations and strikes the federal language reproduced in the body of the state administrative regulation. The amendment also corrects incorrect citations to other regulations in the chapter.

(b) The necessity of the amendment to this administrative regulation: This amendment will correct and update the regulation to make it consistent with the corresponding federal and state regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-150, which authorizes the cabinet to implement the Federal Water Pollution Control Act.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will aid in carrying out the goals of KRS Chapter 224. The amendment removes discrepancies between current state and federal regulations. The cabinet also believes that citing federal regulations will allow future federal changes in regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This administrative regulation affects over 10,000 existing permitted entities including individuals, businesses, and governmental organizations. After analysis of the current types of permits, the administrative regulation is expected to impact the following number of entities: Individuals:

a. The number of permits issued to an individual under this regulation other than for a business or organization is insignificant.

b. Businesses: 1600 per year, primarily through industrial permits, nonpublic entity sanitary wastewater permits, and stormwater coverage issuances.

c. Organizations: 100 per year, primarily through individual sanitary permits issued to nonpublic organizations such as churches, summer camps, and private social or sporting clubs.

d. State or Local Government: 30 per year, primarily through permits for Public-Owned Treatment Works (POTWs).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any additional action to comply with this administrative regulation. The amendments to this administrative regulation are simply a change in style and remove any potential inconsistency between the state and corresponding federal regulation.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): None of the entities identified in question (3) is expected to incur additional costs. This amendment implements requirements that are already in federal regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and the updated federal regulations.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, general funds, and EPA funds. This amendment does not change any source of funding.

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

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

(9) TIERING: Is tiering applied? Permit requirements are tiered based upon the nature and size of the wastewater discharge.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 224 and the Clean Water Act, 33 U.S.C. 1251-1387.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to impact 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? None

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 122 and 33 U.S.C. 1387

2. State compliance standards. KRS 224.10-100, 224.16-050

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act (33 U.S.C. 1251-1387).

4. Will this administrative regulation impose stricter require-



ments, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Environmental Protection**  
**Division of Water**  
**(Amendment)**

**401 KAR 5:075. Cabinet review procedures for KPDES permits.**

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.10-420, 224.10-440, 224.10-470, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 124, 33 U.S.C. 1251-1387[et seq.]

STATUTORY AUTHORITY: KRS 224.10-100(19), 224.16-050, 224.70-110, 33 U.S.C. 1251-1387[et seq., 1342]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19) authorizes the [Environmental and Public Protection] cabinet to issue, continue in effect, revoke, modify, suspend or deny [under such conditions as the cabinet may prescribe,] permits to discharge into any waters of the Commonwealth. KRS 224.16-050(1) authorizes[establishes that] the cabinet to[may] issue federal permits pursuant to 33 U.S.C.[Section] 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387[(33 U.S.C. Section 1251 et seq.)] subject to the conditions imposed in 33 U.S.C.[Section] 1342(b) and (d). This administrative regulation establishes[sets forth] the procedures for[through which the cabinet will follow in] receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits.

Section 1. Review of the Application. An application for a KPDES permit shall be submitted and reviewed as established in 40 C.F.R. 124.3, effective July 1, 2009. [(1) Any person who requires a permit under the KPDES program shall complete, sign, and submit to the cabinet an application for the permit as required under 401 KAR 5:060, Section 1. Applications shall not be required for KPDES general permits. Operators who elect to be covered by a general permit shall submit written notification to the cabinet at the time the cabinet indicates in Section 3 of this administrative regulation.

(2) The cabinet shall not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by 401 KAR 5:060, Section 1.

(3) Permit applications shall comply with the signature and certification requirements of 401 KAR 5:060, Section 9.

(4) The cabinet shall review for completeness every application for a KPDES permit. Each application submitted by a KPDES new source or KPDES new discharger shall be reviewed for completeness by the cabinet within thirty (30) days of its receipt. Each application for a KPDES permit submitted by an existing source shall be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. If the application is for an existing source, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information. The cabinet shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the cabinet may request additional information from an applicant if necessary to clarify, modify, or supplement previously submitted material. Requests for the additional information shall not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(6) If the cabinet decides that a site visit is necessary for any reason in conjunction with the processing of an application, the cabinet shall notify the applicant and a date shall be scheduled.

(7) The effective date of an application shall be the date on which the cabinet notifies the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source, or major facility new discharger, the cabinet shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the cabinet intends to:

- (a) Prepare a draft permit;
- (b) Give public notice;
- (c) Complete the public comment period, including any public hearing;
- (d) Issue a final permit; and
- (e) Complete any formal proceedings under this administrative regulation.

(9) Conflicts of interest.

(a) Any person who issues a permit shall be subject to the conflict of interest provisions of KRS 11A.020 and 11A.030. The director of the Division of Water shall not receive or have received during the previous two (2) years, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(b) Any person aggrieved by the issuance of a permit under the KPDES administrative regulations may challenge the permit pursuant to Section 13 of this administrative regulation if paragraph (a) of this subsection has been violated.

(c) The hearing officer shall remand any permit issued in violation of paragraph (a) of this subsection to the cabinet for reconsideration.

(d) Following remand, any cabinet employee who reconsiders the permit shall be subject to the conflict of interest provisions set forth in paragraph (a) of this subsection. The reconsideration shall require a new public comment period and public hearing only if information offered during earlier permit proceedings was excluded by the cabinet as a direct result of a conflict of interest.]

Section 2. Review Procedures for Permit Modification, Revocation and Reissuance, or Revocation. A KPDES permit modification, revocation and reissuance, or revocation shall be as established in 40 C.F.R. 124.5, effective July 1, 2009. [(1) Permits may be modified, revoked and reissued, or revoked either at the request of any interested person, including the permittee, or upon the cabinet's initiative. Permits may only be modified, revoked and reissued, or revoked for the reasons specified in 401 KAR 5:070, Sections 6 or 7. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the cabinet decides the request is not justified, the cabinet shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or revocation shall not be subject to public notice, comment, or hearings.

(3) If the cabinet tentatively decides to modify or revoke and reissue a permit under 401 KAR 5:070, Section 6, the cabinet shall prepare a draft permit under Section 3 of this administrative regulation incorporating the proposed changes. The cabinet may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the cabinet shall require the submission of a new application.

(a) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. If a permit shall be revoked and reissued under this section, the entire permit is reopened as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as described in 401 KAR 5:070, Section 6(3) shall not be subject to the requirements of this section.

(4) If the cabinet preliminarily decides to revoke a permit under 401 KAR 5:070, Section 7, the cabinet shall issue a notice of intent to revoke. A notice of intent to revoke shall be a type of draft permit which follows the same procedure as any draft permit prepared under Section 3 of this administrative regulation.]

Section 3. Draft Permits. Preparation or denial of a draft permit shall be as established in 40 C.F.R. 124.6, effective July 1, 2009. [(1) Once an application is complete, the cabinet shall preliminarily decide whether to prepare a draft permit or to deny the application.

(2) If the cabinet makes a preliminary decision to deny the permit application, the cabinet shall issue a notice of intent to deny. A notice of intent to deny the permit application shall be a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the cabinet's determination under Section 11 of this administrative regulation is that the preliminary decision to deny the permit application was incorrect, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (4) of this section.

(3) If the cabinet makes a preliminary decision to issue a KPDES general permit, the cabinet shall prepare a draft general permit in accordance with subsection (4) of this section.

(4) If the cabinet decides to prepare a draft permit, the cabinet shall prepare a draft permit that contains the following information:

- (a) All conditions under 401 KAR 5:065, Section 1;
- (b) All compliance schedules under 401 KAR 5:070, Section 2;
- (c) All monitoring requirements under 401 KAR 5:070, Section 3; and

(d) Effluent limitations, standards, prohibitions, and conditions under 401 KAR 5:057, 401 KAR 5:060, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080 and all variances that are to be included.

(5) All draft permits prepared by the cabinet under this section shall be accompanied by a fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The cabinet shall give notice of opportunity for a public hearing, issue a final decision, and respond to comments. A demand for a hearing may be made pursuant to KRS 224.10-420 and Section 13 of this administrative regulation following the issuance of a final decision.]

Section 4. Fact Sheets. A fact sheet shall be prepared as established in 40 C.F.R. 124.8, effective July 1, 2009. [(1) A fact sheet shall be prepared for every draft permit for a major KPDES facility or activity, for every KPDES general permit, for every KPDES draft permit that incorporates a variance or requires an explanation under subsection (3) of this section, and for every draft permit which the cabinet finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The cabinet shall send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet shall include, if applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) A quantitative and qualitative description of the discharges described in the application;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 5 of this administrative regulation and the address where comments will be received;

2. Procedures for requesting a hearing and the nature of that hearing;

3. Any other procedures under KRS 224.10-420 and Section 13 of this administrative regulation by which the public may participate in the final decision;

(f) Name and telephone number of a person to contact for additional information; and

(g) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guidelines or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were

developed.

(3)(a) If the draft permit contains any of the following conditions, an explanation of the reasons why the conditions are applicable:

1. Limitations to control toxic pollutants under 401 KAR 5:065, Section 2(5);

2. Limitations on internal waste streams under 401 KAR 5:065, Section 3(8);

3. Limitations on indicator pollutants under 401 KAR 5:080, Section 1(2)(a);

4. Limitations set on a case-by-case basis under 401 KAR 5:080, Section 1(2)(c)2; or

5. Limitations to meet the criteria for permit issuance under 401 KAR 5:055, Section 2(7).

(b) For every permit to be issued to a treatment works owned by a person other than the Commonwealth or its subdivisions, an explanation of the cabinet's decision on regulation of users under 401 KAR 5:065, Section 2(12):

(4) If appropriate, a sketch or detailed description of the location of the discharge described in the application.

(5) Justification for waiver of any application requirements under 401 KAR 5:060, Section 5.]

Section 5. Public Notice of Permit Actions and Public Comment Period. Public notice of a permit action and the public comment period shall be as established in 40 C.F.R. 124.10, effective July 1, 2009. [(1) Scope.

(a) The cabinet shall give public notice that the following actions have occurred:

1. A permit application has been preliminarily denied under Section 3(2) of this administrative regulation;

2. A draft permit has been prepared under Section 3(4) of this administrative regulation;

3. A hearing has been scheduled under Section 7 of this administrative regulation; or

4. A KPDES new source determination has been made in accordance with the definition in 401 KAR 5:002.

(b) Public notice shall not be required if a request for permit modification, revocation and reissuance, or revocation is denied under Section 2 of this administrative regulation. Written notice of that denial shall be given to the requester and to the permittee.

(c) Public notices may describe more than one (1) permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (1) of this section shall allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.

(3) Methods. Public notice of activities described in subsection (1)(a) of this section shall be given by the following methods:

(a) The cabinet shall mail a notice to the persons listed in subparagraphs 1 through 5 of this paragraph. Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.

1. The applicant, except for KPDES general permittees, and Region IV, EPA.

2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Kentucky Historical Society and other appropriate government authorities, including any affected states;

3. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

4. Any user identified in the permit application of a privately owned treatment works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such

publications as newsletters, environmental bulletins, or state law journals. The cabinet may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who fails to respond to that request.

(b) For major permits and KPDES general permits, the cabinet shall publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Kentucky law; and

(d) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices. All public notices issued under this administrative regulation shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except for KPDES draft general permits under 401 KAR 5:055, Section 5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for KPDES general permits if there is no application;

4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, fact sheet, and the application;

5. A brief description of the comment procedures required by Sections 6 and 7 of this administrative regulation and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. A general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement shall be satisfied by a map or description of the permit area; and

7. Any additional information considered necessary or proper.

(b) Public notices for hearings. In addition to the general public notice described in paragraph (a) of this subsection, the public notice for a permit hearing under Section 7 of this administrative regulation shall contain the following information:

1. Reference to the date of previous public notices, relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under 401 KAR 5:055, Section 7(4). In addition to the information required under subsection (4)(a) of this section, public notice of a KPDES draft permit for a discharge if a 401 KAR 5:055, Section 7(4) request has been filed under 401 KAR 5:055, Section 3, shall include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under 401 KAR 5:065, Section 2(1) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under CWA Sections 301 or 306 (33 U.S.C. Sections 1311 or 1316); and

2. A statement that a 401 KAR 5:055, Section 7(4), request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

(5) In addition to the general public notice described in subsection (4)(a) of this section all persons identified in subsection (3)(a)1, 2, 3, and 4 of this section shall be mailed a copy of the fact sheet, the permit application (if any) and the draft permit (if any).]

Section 6. Public Comments and Requests for Public Hearings. Provisions for public comments and requests for a public hearing shall be as established in 40 C.F.R. 124.11, effective July 1, 2009.[During the public comment period provided under Section

5 of this administrative regulation, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Section 12 of this administrative regulation.]

Section 7. Public Hearings. A public hearing shall be conducted as established in 40 C.F.R. 124.12, effective July 1, 2009. [(4) The cabinet shall hold a public hearing if a significant degree of public interest in a draft permit is found on the basis of requests. The cabinet also may hold a public hearing if, for instance, a hearing might clarify one (1) or more issues involved in the permit decision.

(2) Public notice of the hearing shall be given as specified in Section 5 of this administrative regulation.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Section 5 of this administrative regulation shall automatically be extended to the close of any public hearing under this section. The cabinet may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.]

Section 8. Obligation to Raise Issues and Provide Information During the Public Comment Period. An obligation to raise issues and provide information during the public comment period shall be as established in 40 C.F.R. 124.13, effective July 1, 2009.[All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the cabinet's preliminary decision to deny an application, revoke a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under Section 5 of this administrative regulation. All supporting materials shall be included in full and may not be incorporated by reference, unless they consist of state or federal statutes and regulations, EPA or the cabinet's documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the record available to the cabinet as directed by the cabinet. A comment period longer than thirty (30) days may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods, which may be established under Section 5 of this administrative regulation. Nothing in this section shall be construed to prevent any person aggrieved by a final permit decision from filing a demand for a hearing under KRS 224.10-420 and Section 13 of this administrative regulation.]

Section 9. Conditions Requested by the Corps of Engineers and Other Government Agencies. Conditions requested by the Corps of Engineers or another government agency shall be as established in 40 C.F.R. 124.59, established July 1, 2009. [(1) If during the comment period for a KPDES draft permit, the district engineer of the Corps of Engineers advises the cabinet in writing that anchorage and navigation of any of the waters of the Commonwealth would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the district engineer advises the cabinet that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the cabinet shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and shall not be made through the procedures provided in this administrative regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in

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the KPDES permit for the duration of that stay.

(2) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the cabinet may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of KRS Chapter 224.

(3) In appropriate cases the cabinet may consult with one (1) or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the fact sheet or the draft permit.]

Section 10. Reopening of the Public Comment Period. The public comment period shall be reopened as established in 40 C.F.R. 124.14, effective July 1, 2009. [(1) If any data information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the cabinet may take one (1) or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under Section 3 of this administrative regulation;

(b) Prepare a revised fact sheet under Section 4 of this administrative regulation and reopen the comment period; or

(c) Reopen and extend the comment period under Section 5 of this administrative regulation to give interested persons the opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 5 of this administrative regulation shall define the scope of the reopening.

(3) Public notice of any of the above actions will be issued under Section 5 of this administrative regulation.]

Section 11. Issuance and Effective Date of Permit. The issuance and effective date of a KPDES permit shall be as established in 40 C.F.R. 124.15, effective July 1, 2009. [(1) After the close of the public comment period under Section 5 of this administrative regulation, the cabinet shall issue, deny, modify, revoke and reissue, or revoke a permit. The cabinet shall notify the applicant and each person who has submitted written comments or requested notice of that determination. This notice shall include reference to the procedures for appealing the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or revoke a permit.

(2) A final permit decision shall become effective thirty (30) days after the service of notice of the decision under subsection (1) of this section, unless:

(a) A later effective date is specified in the decision;

(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or

(c) No comments requested a change in the draft permit, and if that occurs, the permit shall become effective immediately upon issuance.

(3) The determination which is a condition precedent to demanding a hearing under KRS 224.10-420(2) and Section 13 of this administrative regulation shall be the final permit decision. The thirty (30) day appeal period shall begin on the date the determination is entered by the cabinet and shall not begin on the date the permit decision becomes effective.]

Section 12. Response to Comments. Response to comments shall be as established in 40 C.F.R. 124.17, effective July 1, 2009. [(1) When any final permit decision is issued under Section 11 of this administrative regulation the cabinet shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. This response shall fully consider all comments resulting from any hearing conducted under this administrative regulation.

(2) The response to comments shall be available to the public. Any demand for a hearing on this response shall be filed according to procedures specified in KRS 224.10-420, 224.10-440, 224.10-470 and any administrative regulations promulgated pursuant thereto.]

Section 13. Hearings pursuant to[under] KRS 224.10-420. (1) A determination pursuant to[under] Section 11 of this administrative regulation [when issued by the cabinet] shall be subject to a demand for a hearing pursuant to KRS 224.10-420(2).

(2) A[Any] person aggrieved by the issuance of a final permit may request[demand] a hearing pursuant to KRS 224.10-420(2).

(3) A[Any] hearing held pursuant to this section shall be subject to the provisions of KRS 224.10-440 and 224.10-470.

(4) Failure to raise an issue[issued] pursuant to Section 8 of this administrative regulation shall not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.10-420(2).

Section 14. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in this administrative regulation.

(2) "Cabinet" shall be substituted for "Director", "EPA", and "Regional Administrator" if the authority to administer the federal regulations cited in this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the cabinet has been delegated authority to implement the federal regulations cited in this administrative regulation.

(4) "Mail", as used in 40 C.F.R. 124.10 and cited in Section 5 of this administrative regulation, shall include electronic transmission.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: February 9, 2010

FILED WITH LRC: February 11, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2010 at 5 p.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2010, 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 March 31, 2010. 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: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email: Abigail.Powell@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter T. Goodman, Assistant Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for receiving permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits.

(b) The necessity of this administrative regulation: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.16-050(1) authorizes the cab-

inet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387 subject to the conditions imposed in 33 U.S.C.1342(b) and (d).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the guidelines for processing permit applications for permits to discharge into waters of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises ambiguous terms in accordance with KRS Chapter 13A and provides federal citations and strikes the federal language reproduced in the body of the state administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment will correct and update the regulation to make it consistent with the corresponding federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-150, which authorizes the cabinet to implement the Federal Water Pollution Control Act.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will aid in carrying out the goals of KRS Chapter 224. The amendment removes discrepancies between current state and federal regulations. The cabinet also believes that citing federal regulations will allow future federal changes in regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This administrative regulation affects over 10,000 existing permitted entities including individuals, businesses, and governmental organizations. After analysis of the current types of permits, the administrative regulation is expected to impact the following number of entities:

a. Individuals: The number of permits issued to an individual under this regulation other than for a business or organization is insignificant.

b. Businesses: 1600 per year, primarily through industrial permits, nonpublic entity sanitary wastewater permits, and stormwater coverage issuances.

c. Organizations: 100 per year, primarily through individual sanitary permits issued to nonpublic organizations such as churches, summer camps, and private social or sporting clubs.

d. State or Local Government: 30 per year, primarily through permits for Public-Owned Treatment Works (POTWs).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any additional action to comply with this administrative regulation. The amendments to this administrative regulation are simply a change in style and remove any potential inconsistency between the state and corresponding federal regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in question (3) is expected to incur additional costs. This amendment implements requirements that are already in federal regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and the updated federal regulations

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation? Existing permit fees, general funds, and EPA funds. This amendment does not change any source of funding.

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

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

(9) TIERING: Is tiering applied? Permit requirements are tiered based upon the nature and size of the wastewater discharge.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 224 and the Clean Water Act, 33 U.S.C. 1251-1387

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to impact 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? None

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 124 and 33 U.S.C. 1387

2. State compliance standards. KRS 224.16-050

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act (33 U.S.C. 1251-1387).

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.

**TRANSPORTATION CABINET  
Department of Highways  
Division of Maintenance  
(Amendment)**

**603 KAR 4:045. Cultural and recreational supplemental guide signs and boundary signs.**

RELATES TO: KRS [477.037,] 189.337, 23 C.F.R. 1.23, 23 U.S.C. 162[Subpart F]

STATUTORY AUTHORITY: KRS [477.037,] 189.337(2), 23 U.S.C. 162

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.337(2) [and 477.037] authorize the Transportation Cabinet to promulgate standards and specifications for the uniform system of traffic control devices. This administrative regulation sets forth standards to be used in the erection and maintenance of cultural and recreational supplemental guide signs [and boundary signs].

Section 1. Definitions. (1) "Adventure tourism" means an activity designed for participatory outdoor recreational activities that involves at least two (2) of the following:

(a) Outdoor physical activity such as horseback riding, kayaking, spelunking, bicycling, and hunting;

(b) A cultural or recreational outdoor activity; or

(c) Engagement with nature such as wildlife viewing and nature study. "Boundary" means the official beginning or end of any political subdivision, national scenic byway that is recognized by a state or national publication including but not limited to maps and get-away guides.]

(2) "Boundary sign" means a sign placed on or off right-of-way that marks the boundaries of a city, town, community, unincorporated urban place, or national scenic byway and may include events or accomplishments important to that area and may also honor the birthplace of a person important to that area.

(3) "Clear zone" means the area between the edge of the driving lane of a public road and an imaginary line running parallel to the road a certain distance from the edge of the traveled way as specified by the AASHTO Roadside Design Guide.

(3)[(4)] "Cover" means a protective shield over a cultural and recreational supplemental guide sign which prohibits viewing of the sign.

(4)[(5)] "Cultural and recreational supplemental guide sign" means an official sign placed within the highway right-of-way with one (1) attraction message.

(5)[(6)] "Cultural or recreational" means a public or private activity that[which] provides to the traveling public a tourist attraction, or a cultural, historical, recreational, agricultural, educational, or entertainment activity[cultural or recreational activity to the traveling public].

(7) "Cultural or recreational activity" means a cultural, historical, recreational, agricultural, educational or entertainment activity.

(8) "Department" is defined by KRS 189.010(1).]

(6)[(9)] "Eligibility distance" means the distance from the location of the entrance driveway of the activity to the point where the information panel is located [to the entrance driveway to the activity].

(7)[(10)] "Illegal sign" means an advertising device that[which] has been determined by the Transportation Cabinet to be illegal as established in[according to the provisions of] 603 KAR 3:080.

(8)[(11)] "Information panel" means one (1) to a maximum of four (4) cultural and recreational guide signs.

(9)[(12)] "Intersection" is defined by KRS 189.010(4).

(10)[(13)] "Interstate or parkway" means a highway that has fully-controlled access and is part of the National Interstate and Defense System of Highways or is now, or once was, a toll road.

(11)[(14)] "MUTCD" means the Federal Highway Administration's ["]Manual on Uniform Traffic Control Devices["] incorporated by reference in 603 KAR 5:050.

(12) "Pictograph" means a pictorial representation used to identify a governmental jurisdiction, a governmental agency, a military base or branch of service, a government approved university or college, a toll payment system, or a government approved institution. For purposes of this administrative regulation only, a

"pictograph" shall be restricted to an official symbol adopted by a state or federal governmental agency to designate an activity of cultural, recreational or historic interest that shall be placed on the opposite side from the directional arrow on a cultural and recreational sign.

(13)[(15)] "Public road" means a[all] state-maintained road other than an interstate or parkway[roads other than interstate and parkways].

(14)[(16)] "Ramp" means the on- or off-access road from an interstate highway or parkway to or from the first public road.

(15)[(17)] "Temporary agritourism site" means a seasonal, agricultural-related tourism activity held on a working farm.

(16)[(18)] "Trailblazing" means to provide directional guidance to a particular cultural or recreational site from other highways in the vicinity.

(17) "Themed trail" means any roadway where a significant portion of the roadway that has a beginning and ending point and contains sites providing interconnected experiences of a historic, cultural, or educational nature, follows the route directly correlated to the historic, cultural or educational events or activities and includes historic, cultural, or educational sites that are consistent with the theme of the trail.

(18) "Trail site" means a beginning, ending, or access point adjacent to a primary or secondary roadway providing access to opportunities for off-road activities that are pertinent to nonmotorized and motorized vehicle use, including access to pedestrians, bicycles, mountain bicycles, boats, horses, all-terrain vehicles (ATVs), or off-highway vehicles (OHVs), on designated lands and waters in Kentucky.

Section 2. General Provisions. The Department of Highways shall control the erection and maintenance of cultural and recreational supplemental guide signs in accordance with the MUTCD and this administrative regulation.

Section 3. Applications and Contracts for Cultural and Recreational Supplemental Guide Signs. (1) An applicant for the following supplemental guide signs:

(a) [application for]Cultural and recreational;

(b) Themed trail;

(c) Adventure tourism; and

(d) Temporary agritourism [supplemental guide signs] shall submit the appropriate forms from the Cultural and Recreational Forms Packet that includes Tourist Signage Program Application, TC Form 99-201; Temporary Agritourism Site Application, TC Form 99-202; Attraction Eligibility Information, Form TC 99-203; Signing Incentives Program Application, TC Form 99-204; and Encroachment Permit, TC Form 99-1E, to the Transportation Cabinet, Division of Maintenance.

(2) The Division of Maintenance shall submit the completed forms from the Cultural and Recreational forms packet to the Transportation-Tourism Interagency Committee for review and approval or denial [be made to the Department of Highways by the city or community preparing the signage program].

(3) An application for a pictograph shall be reviewed by the Division of Maintenance Permits Branch and the Director of Adventure Tourism for the Tourism Arts and Heritage Cabinet who shall each make a recommendation to approve or deny the application to the Transportation-Tourism Interagency Committee.

(4)[(2)] An application for temporary agritourism sites[sties] shall be approved or denied by the Kentucky Department of Agriculture pursuant to 302 KAR 39:010.

Section 4. Information Panels for Cultural and Recreational Supplemental Guide Signs. (1) General requirements for information panels.

(a) The information panels shall be located to:

1. Take advantage of natural terrain;
2. Have the least impact on the scenic environment; and
3. Avoid visual conflict with other signs within the highway right-of-way.

(b) Information panels for cultural and recreational supplemental guide signs shall not be erected:

1. On interstates or parkways;

2. On the on ramp or off ramp of an interstate or parkway except in conjunction with Limited Supplemental Guide Signs;

3. Where there is insufficient space to locate both other traffic control devices and the information panels; or

4. So that the traffic is directed onto an interstate or parkway.

(c) Unprotected information panel supports located within the clear zone shall be of a breakaway design.

(d) An information panel may be located laterally outside the normal longitudinal alignment of other traffic control signs, but shall be erected within the highway right-of-way.

(e) The location of any other traffic control device shall at all times take precedence over the location of an information panel.

(f) A cultural and recreational activity shall have trailblazing from the source to the activity or destination.

(2) Intersection approach information panels.

(a) An information panel shall be placed~~panels may be erected~~ on the approach to an intersection on a public road.

(b) Except as provided in paragraph (g) of this subsection, each intersection approach information panel shall be located at least 200 feet from the intersection.

(c) Except as provided in paragraph (g) of this subsection, an intersection approach information panel shall be spaced at least 200 feet from any other traffic control device including another intersection approach information panel.

(d) A separate information panel shall be installed for each of the directions of traffic on an approach to an intersection at which a cultural and recreational supplemental guide sign~~signs~~ will be placed for the identification of a cultural and recreational activity~~activities~~. The directions of traffic and the order of placement for separate information panels shall be~~are~~ the following:

1. A left turn;

2. A right turn; and

3. No turn, if the activity or attraction is located ahead and if allowed by the provisions established~~set forth~~ in Section 6 of this administrative regulation.

~~(e) [In the direction of traffic, the order of placement for separate information panels shall be for facilities to the left, to the right and straight ahead.~~

~~(f) If the "AHEAD" legend is used pursuant to the provisions of Section 6 of this administrative regulation, an attempt shall be made to locate it to the far right corner of the intersection, but it shall not obstruct the driver's critical viewing of other traffic control devices.~~

~~(f) [(g)] The spacing requirements established~~set forth~~ in paragraphs (b) and (c) of this subsection may be waived by the State Highway Engineer's Office if, based on sound engineering judgment, it is determined that the intersection can safely accommodate the reduced spacing.~~

Section 5. Cultural and Recreational Supplemental Guide Sign Design and Composition. (1) Each cultural and recreational supplemental guide sign shall:

(a) Be rectangular in shape;

(b) Have a white legend and border on a brown background;

(c) Have reflective legends, arrows, backgrounds and borders; and

(d) Contain the name of the attraction in not more than two (2) lines of legend which shall not include promotional advertising.

(2) Each cultural and recreational supplemental guide sign on an intersection approach information panel shall have:

(a) A separate directional arrow as set forth in Section 2D-8 of the MUTCD;

~~(b) [The distance to the activity or attraction may be shown beneath the arrow;~~

~~(c) Arrows pointing to the right at the extreme right of the cultural and recreational supplemental guide sign; and~~

~~(c) [(d)] Arrows pointing to the left or up at the extreme left of the cultural and recreational supplemental guide sign.~~

(3) A cultural and recreational supplemental guide sign may have the distance to an activity or attraction depicted beneath the arrow.

(4) Advance information panels.

(a) Advance information panels shall~~may~~ be installed only in situations where sight distance, intersection vehicle maneuvers, or

other vehicle operation characteristics require advance notification of the attraction to reduce vehicle conflicts and improve highway safety;

(b) The last of the advance information panels to be driven past shall be located at least one-half (1/2) mile (eight-tenths (0.8) kilometers) from the intersection;

(c) The arrangement of the cultural and recreational supplemental guide signs on the advance information panel shall be the same as the arrangement on the intersection information panel except the directional arrows and distance shall be omitted.

(d) The appropriate legend "NEXT RIGHT", "NEXT LEFT", or "AHEAD" in letters of the same size as legends shall be placed on the cultural and recreational supplemental guide sign.

(e) The legend "RIGHT X MILE", "LEFT X KILOMETERS", or similarly worded legend may be used if there are intervening minor roads.

~~(5) [(4)]~~ There shall not be more than four (4) cultural and recreational supplemental guide signs installed on a single information panel.

~~(6) [(5)] (a)~~ Cultural and recreational supplemental guide signs shall be arranged vertically on the information panels.

~~(b) An information panel [Information panels]~~ shall be located so that the right turn signs are closer to the intersection. If no more than four (4) cultural and recreational supplemental guide signs are to be installed on an intersection approach information panel, the cultural and recreational supplemental guide signs may be combined on the same information panel with the cultural and recreational supplemental guide sign for left turns placed above the cultural and recreational supplemental guide signs for right turns.

~~(7) [(6)]~~ The standard lettering for cultural and recreational supplemental guide signs shall be capital letters, six (6) inches in height~~in upper-case letters~~ of the type provided in "The Standard Alphabets for Traffic Control Devices~~Highway Signs"~~ book published in 1966 by the U.S. Department of Transportation. Capital letters shall be six (6) inches in height~~.~~

~~(8) [(7)] (a)~~ A cultural and recreational supplemental guide sign shall not exceed seventy-two (72) inches wide and eighteen (18) inches tall.

(b) The cultural and recreational supplemental guide signs on the same information panel shall all be the same width.

(c) The directional arrow with the distance to the activity or attraction underneath shall not exceed twelve (12) inches wide and sixteen (16) inches tall.

(d) There shall be a one (1) inch white border surrounding the sign and separating the directional arrow and legend.

(e) There shall be a one (1) inch spacing between the border and legend and two (2) inch spacing between lines of legend.

(f) The maximum length of the legend shall be five (5) feet and four (4) inches per line.

(g) In areas of reduced speeds or forty-five (45) mph or less the size of the cultural and recreational supplemental guide signs and lettering shall be set by the State Highway Engineer's Office, considering the location and terrain of the area as based on sound engineering judgment.

~~(9) [(8)]~~ Clearance of panels should be governed by Sections 2A and 2D of the MUTCD.

Section 6. Ahead Signing. (1) The legend "AHEAD" may be used in lieu of the up directional arrow as established~~set forth~~ in Section 5(2)(d) of this administrative regulation.

(2) Signing for cultural and recreational activities in the "AHEAD" direction shall be considered only under the following circumstances:

(a) There is signing for a similar facility in either the right or left direction;

(b) Through traffic is not the normal traffic pattern; or

(c) The visibility of the establishment is obscured until a motorist is within 800 feet of the entrance.

Section 7. Cultural and Recreational Activity Eligibility. A cultural and recreational activity shall meet the following requirements to qualify for cultural and recreational signing. A cultural and recreational supplemental guide sign shall not be erected until the activity or site has been approved in accordance with this administrative

regulation.

(1) The activity shall be open to the general public during regular and reasonable hours, and not by appointment or reservation only.

(2) Approval shall not be granted if the cultural and recreational activity is using an illegal sign at a[any] location in the Commonwealth of Kentucky.

(3) ~~[Each activity shall comply with all applicable local, state, and federal statutes and administrative regulations including those prohibiting discrimination based on race, religion, color, sex, age, disability, or national origin. Each activity identified on a cultural and recreational supplemental guide sign shall provide assurance of its conformance with all applicable federal, state or local laws and administrative regulations. If a cultural and recreational activity is in noncompliance of any of these laws or administrative regulations, it may be considered ineligible for participation in this program and its signs may be removed.]~~

(4) The activity shall be conducted in an appropriate building or area.

(a) The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate and well-marked entrance or the cultural and recreational activity is a bed and breakfast lodging.

(b) The building or area shall be maintained in a manner consistent with standards generally accepted for that type of attraction or activity.

(4)(a) ~~An[(5)-Any] activity that[which] operates on a seasonal basis or is closed in excess of thirty (30) days shall make provisions to remove or cover the activity's sign during the off season.~~

(b) The Transportation Cabinet shall be notified at least thirty (30) days before the opening or closing occurs ~~[and proper arrangements made to remove or cover the sign or signs].~~

(5)(6) A cultural and recreational supplemental guide sign shall not be displayed ~~if it may[which would] misinform the traveling public or is unsightly, badly faded, or in a state of dilapidation.~~ In these instances, the attraction shall make arrangements for a new cultural and recreational sign.

(6)(7) The Transportation Cabinet shall not be responsible for business lost due to cultural and recreational guide signs or information panels ~~that are[becoming] temporarily out of service.~~

(7)(8) The display of the activity on the cultural and recreational supplemental guide sign shall not be considered an endorsement or recommendation by the Commonwealth[State] of Kentucky on behalf of the cultural and recreational activity.

(8) Except as provided in subsection (9) of this section,(9) to qualify for a cultural and recreational supplemental guide sign, an attraction or activity shall:

(a)1. Be open a minimum of eight (8) hours a day, five (5) days a week, one (1) of which is a weekend, any time the sign is displayed or receives a waiver from the Transportation-Tourism Interagency Committee using the criteria for the Cultural Heritage Site Certification Program.

2. Temporary agritourism sites shall be open a minimum of six (6) hours a day, five (5) days a week, one (1) of which is a weekend;

(b) Have adequate parking on site or nearby for the facility;

(c) ~~Meet[Meets] the criteria established[set forth] in the Cultural Heritage Site Certification[Certified Sites] Program if it is a permanent activity and a cultural heritage certified site.~~

(d) Be listed on or eligible for listing on the National Register of Historic Places if the cultural and recreational activity is an historic site; and

(e)1. Have an eligibility distance of twenty (20) miles or less from a major roadway.

2. If there is a corresponding limited supplemental guide sign, the eligible distance shall be fifty (50) miles or less.

(9) An Adventure Tourism or Themed Trail Location shall qualify for a cultural and recreational supplemental guide sign if:

(a) The attraction is open for public use during daylight hours;

(b) The site or trail is clearly identified;

(c) The rules for public use are prominently displayed or available on site;

(d) There is adequate parking and sufficient space for loading and unloading; and

(e)1. The site is located twenty (20) miles or less from a major roadway.

2. If there is a corresponding limited supplemental guide sign, the eligible distance shall be fifty (50) miles or less.

Section 8. Changes. A change[Any changes] to the original approved permit application[set of signs] as it relates to the location or approved activities shall be sent to the Division of Maintenance Permits Branch for review[permitted by the Transportation Cabinet according to criteria set forth in Section 7 of this administrative regulation].

Section 9. Measurements. Measurements taken to determine the qualification for a cultural and recreational supplemental guide sign shall be measured from the center line of all highways. This measure shall be from the entrance driveway of the activity to the point where the directional signs are located.

Section 10. Agritourism. (1) Advertising devices for temporary agritourism sites approved by the Kentucky Department of Agriculture pursuant to 302 KAR 39:010 may be placed off-premise and off the right-of-way on temporary nonbillboards.

(2) There shall be only one (1) sign erected on a road in each direction of travel.

(3) The signs may be placed two (2) weeks prior to the start of an event and shall be removed within forty-eight (48) hours after the event is concluded.

Section 11. ~~[Permits. The city or local community wishing to install cultural and recreational supplemental guide signs shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each information panel proposed to be erected, changed or removed from the state-owned right-of-way.]~~

Section 12. ~~General Provisions for Boundary Signs. (1) Pursuant to KRS 177.037(3), in making its recommendations regarding the location of a boundary sign, the Transportation Cabinet shall recommend that:~~

(a) ~~Boundary signs may be placed on the right-of-way if the entire sign is located beyond the clear zone; and~~

(b) ~~Boundary signs shall be located off the right-of-way if insufficient right-of-way exists to provide a safe and convenient travelway for motorists and with permission of the property owner. The Transportation Cabinet shall use the AASHTO publication, "The Roadside Design Guide" to make this determination.~~

(2) ~~Boundary signs shall not be more than 200 square feet and may include a welcome message in addition to any other message as permitted by KRS 177.037. The appropriate Transportation Cabinet, Department of Highways District Office shall advise the person requesting the sign as to the number and size that will properly fit within the right-of-way as necessary for the subject area.~~

(3) ~~The Transportation Cabinet shall install these signs upon written request from the official governing body of the city, town, community, unincorporated urban place, or national scenic byway if the recommendations of the Transportation Cabinet, pursuant to subsection (1) of this section, are followed. The Transportation Cabinet shall invoice the appropriate governing body.~~

(4) ~~If more than one (1) city, town, community, unincorporated urban place, or national scenic byway requests the same general area for a sign or group of signs, the community shall have preference. These signs shall be limited to one (1) per direction of travel per roadway for entering and one per direction of travel per roadway for leaving the area.~~

(5) ~~Boundary signs for a city or an unincorporated urban place may include sports accomplishments and other events important to the area and may also honor the birthplace of a person important to the area.~~

(6) ~~Upon completion of installation of a boundary sign, all existing signs that have been placed by the Transportation Cabinet to commemorate a similar message or events shall be removed, at the expense of the city, town, community, unincorporated urban place, or national scenic byway. If a city, town, community, unincorporated urban place, or national scenic byway has placed signs~~



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on or off the right-of-way that are similar in nature, they shall be removed or incorporated into the new signs.

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

- (a) ~~[AASHTO publication; "The Roadside Design Guide", [(3rd Edition 2006, with updated Chapter 6, AASHTO)];~~
- (b) ~~[TC99-4E] "Encroachment Permit", TC Form 99-1E, February 2010[(10/01 Edition), Transportation Cabinet];~~
- (c) ~~"Standard Alphabets for Traffic Control Devices[Highway Signs]", [(2004 Edition)], U.S. Department of Transportation;~~
- (d) ~~Cultural Heritage Site Certification[Certified Sites] Program[Guide]"; [and]~~
- (e) ~~"Tourist Signage Program Application", TC Form 99-201, May 2009;~~
- (f) ~~"Temporary Agritourism Site Application", TC Form 99-202, May 2009;~~
- (g) ~~"Attraction Eligibility Information", TC Form 99-203, May 2009;~~
- (h) ~~"Signing Incentives Program Application", TC Form 99-204, February 2010,["Standard Highway Signs", (2004 Edition), U.S. Department of Transportation.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, Division of ~~Maintenance~~~~Traffic Operations~~, 200 Mero Street, Third Floor, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN K. WADDLE, State Highway Engineer  
MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: February 12, 2010

FILED WITH LRC: February 12, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2010 at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the criteria to be followed in the erection and maintenance of cultural and recreational supplemental guide signs and boundary signs designed to inform motorists where cultural and recreational sites are located.

(b) The necessity of this administrative regulation: KRS 189.337 authorizes the Transportation Cabinet to promulgate standards and specifications for a uniform system of traffic control devices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth standards to be used in the erection and maintenance of cultural

and recreational supplemental guide signs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes eligibility requirements for Adventure Tourism attractions to qualify for the signage program.

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

(a) How the amendment will change this existing administrative regulation: This amendment will incorporate the Adventure Tourism program into the regulation and establish the requirements for an Adventure Tourism attraction to obtain signage.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the regulation to incorporate language for the Adventure Tourism program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth standards to be used in the erection and maintenance of cultural and recreational supplemental guide signs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide policy and procedures for application and approval of cultural and recreational signage for Adventure Tourism sites.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all cultural and recreational sites in the interest of the traveling public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation establishes eligibility requirements for attractions to qualify for this signage program. In order to qualify, a representative for the attraction will complete a Cultural and Recreational Forms Packet and submit it to the Transportation Cabinet's Division of Maintenance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3): Entities that qualify for the signage program will be allowed to post cultural and recreational supplemental guide signs.

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

(a) Initially: No known cost.

(b) On a continuing basis: No known cost.

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

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

(9) TIERING: Is tiering applied? No. All cultural and recreational sites affected by this regulation are treated the same.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Transportation Cabinet and the Kentucky Tourism Arts and Heritage Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 177.037, 189.337(2), and 23 U.S.C. 162.

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

the first full year the administrative regulation is to be in effect. Expenditures and revenues should not be affected.

(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 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 amendment will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? No costs are anticipated.

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

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

Revenues (+-):

Expenditures (+-):

Other Explanation:

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Authority  
Division of Licensing**

**811 KAR 1:070. Licensing Standardbred Racing. [Licensing; owners, drivers, trainers, and grooms.]**

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.310, 230.320[KRS 230.310]

STATUTORY AUTHORITY: KRS 30.215(2), 230.260, 230.290(2), 230.310(1)[230.260]

NECESSITY, FUNCTION, AND CONFORMITY: 230.215(2) grants the Kentucky Horse Racing Authority (the "Authority") the authority to regulate conditions under which standardbred racing shall be conducted in Kentucky. KRS 230.310(1) authorizes the Authority to establish licensing requirements for participation in standardbred racing. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission (the "commission") and transferred all functions of the Authority to the commission. This administrative regulation establishes licensing procedures and requirements for participation in standardbred racing. To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to set out the requirements of and to provide for the licensing of owners, trainers, drivers, and grooms.]

Section 1. Definitions. (1) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, association, club, committee, organization, lessor, lessee, racing stable, farm name, or other group of persons acting in concert.

(2) "Restricted area" means a portion of association grounds to which access is limited to licensees whose occupation or participation requires access, and to those individuals accompanying a licensee as permitted by the association.

Section 2. Persons required to be licensed. (1) A person shall not participate in pari-mutuel racing under the jurisdiction of the commission without a valid license issued by the commission pursuant to KRS 230.310.

(2) An owner, owner/trainer, owner/driver, owner/trainer/driver, trainer, driver, and driver/trainer, shall also have a valid license issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in order to participate in pari-mutuel racing in Kentucky. Categories of licenses issued by the commission shall include the following:

(a) Racing participants and personnel including the following: owner, owner/trainer, owner/driver, owner/trainer/driver, driver/trainer, authorized agent, trainer, assistant trainer, driver, farm manager or agent, veterinarian, veterinary technologist or technician, veterinary assistant, equine health professional, farrier, ven-

dor, mutuel clerk, stable employee, occupational, special event and any employee listed in Section 5 of this administrative regulation.

(b) Racing officials.

(c) Persons employed by the association, or employed by a person or concern contracting with or approved by the association or commission to provide a service or commodity associated with racing or racing patrons, with job duties which require their presence anywhere on association grounds.

(d) Sole proprietors, independent contractors, and all partners of a partnership contracting with or approved by the association or commission to provide a service or commodity on association grounds.

(e) Commission employees with job duties which require their presence anywhere on association grounds; and

(f) Commission members.

(3) Lessors and Lessees. Any horse under lease shall race in the name of the lessee and a copy of the lease shall be filed with the clerk of course. A horse shall not race under lease without an eligibility certificate issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in the name of the lessee. Both the lessee and lessor shall be licensed by the commission prior to post.

(4) The commission shall require a person working at a licensed association in the Commonwealth which provides information concerning timed public qualifying races to obtain a valid license issued by the commission. The Presiding Judge or designee may refuse entry or scratch any horse involving any person who, after requested to obtain a valid license, fails to or is unable to obtain a license.

(5) A person required to be licensed shall submit a completed written application on the form "Licensing Application" (KHRC 25-01 (01/10) or forms pursuant to Section 7 of this administrative regulation, along with the fee required by Section 5 of this administrative regulation. A temporary license may be obtained by an authorized representative of an owner in accordance with Section 17 of this administrative regulation. A conditional license may be issued by the commission or its designee upon submission of a written application.

Section 3. General License Application Requirements for all Applicants. (1) Any person required to be licensed by Section 2 of this administrative regulation and desiring to participate in standardbred racing in the Commonwealth may apply to the commission for a license.

(2) An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force. An application shall be submitted not later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 17 of this administrative regulation. The license application shall be reviewed and the license issued by commission personnel.

(3) Information provided on or with a license application shall be complete and correct. Material misrepresentation by a license applicant or his or her agent shall result in an immediate license suspension, revocation, refusal, or denial, or imposition of a fine by the commission or the Presiding Judge.

(4)(a) An applicant for licensing shall be a minimum of sixteen (16) years of age except as provided by paragraph (b) of this subsection. An applicant may be required to submit a certified copy of his or her birth certificate or work permit.

(b) The commission may grant an owner's license to a person less than sixteen (16) years of age if the person's parent or legal guardian is licensed by the commission. An application under this subsection shall be signed by the applicant's parent or legal guardian in the presence of one (1) or more of the judges.

(5) An application from a person or entity consisting of more than one (1) individual person desiring to race horses in the Commonwealth shall, upon request, in addition to designating the person or persons representing the entire ownership of the horses, be accompanied by documents which fully disclose the identity, degree, and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(6) The commission shall provide notice to an applicant that

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the license has been issued, denied, or refused. If all requirements for licensure are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for Specific Licenses. (1) Driver. A person desiring to drive a harness horse at a race meeting licensed by the commission shall obtain a license from the commission and the United States Trotting Association, Standardbred Canada, or an appropriate international harness racing governing agency.

(2) General Qualifications for a Qualifying-Fair (QF) Provisional ("P") and Full ("A") Driver's License. An applicant for a provisional license to drive a harness horse at a race meeting licensed by the commission shall meet the following requirements:

(a) Be at least sixteen (16) years of age for a (QF) license.

(b) Be at least eighteen (18) years of age for a (P) or (A) license.

(c) No applicant who has previously held any type of license shall be subsequently denied a driver's license solely on the basis of age.

(d) Applicants for a Provisional license will only be considered for such a license when they have obtained at least twelve (12) satisfactory qualifying drives within a consecutive twelve (12) month period, or fifteen (15) such drives within a two (2) year period and the approval of the Presiding Judge and the local district track committee appointed by the U.S.T.A. District Chairman. Amateur races conducted at extended pari-mutuel tracks may be considered as qualifying races for the purpose of meeting this requirement. Drivers holding a Qualifying-Fair license will not be considered for advancement to a Provisional license until he or she has had at least six months driving experience while holding a Qualifying-Fair license, or have at least three (3) months driving experience while holding a Qualifying-Fair license and twenty-four (24) satisfactory qualifying drives and the unanimous written consent of the Presiding Judge and the members of the local District Track Committee.

(e) At the discretion of the Presiding Judge, a qualifying driver who has had satisfactory drives at fairs or in amateur races conducted at county fairs may be given credit for not more than three-fourths (3/4) of those drives toward the requisite number of qualifying drives required for advancement to a Provisional license.

(f) In determining the applicant's qualifications for a Provisional license the Presiding Judge shall consider each qualifying drive and shall not deem a drive to be unsatisfactory based solely upon the failure of the horse to go in qualifying time.

(g) Other criteria to be considered by the Presiding Judge and the District Track Committee shall include the applicant's ability to harness and equip a horse properly and to establish his or her proficiency in handling the animal; such examination to be administered by the District Track Committee.

(h) Upon satisfactory recommendations from both the Presiding Judge and the District Track Committee the applicant shall be granted a Provisional license for a probationary term of fifteen (15) pari-mutuel starts.

(i) Upon satisfactory completion of the probationary pari-mutuel races as described above, and with written approval of the Presiding Judge, a Provisional license shall be issued by this Association.

(j) The applicant shall submit satisfactory evidence of an eye examination indicating 20/40 corrected vision in both eyes, or if one (1) eye is blind, at least 20/30 corrected vision in the other eye, and, upon request, shall submit evidence of physical and mental ability or submit to a physical examination.

(3) (Full) A full license valid for all meetings. Drivers holding a Provisional license will not be considered for advancement to a Full license until he or she has qualified in one of the three following categories:

(a) Had at least one year's driving experience while holding a Provisional driver's license plus twenty-five (25) satisfactory pari-mutuel starts in the twelve (12) month period beginning with the issuance of the Provisional license.

(b) Or had less than one (1) year's driving experience while holding a Provisional driver's license, but with at least fifty (50) satisfactory pari-mutuel starts.

(c) Or made twenty-five (25) satisfactory extended pari-mutuel

starts, or starts at Grand Circuit meetings in the two (2) year calendar period preceding the date of application provided he or she has at least fifty (50) satisfactory Fair starts.

(d) Notwithstanding the foregoing, the applicant must have at least ten (10) wins at extended pari-mutuel meetings while holding a Provisional license and meet the provisions of Section 9 of this rule or must have at least five (5) wins at extended pari-mutuel meetings while holding a Provisional license and obtain the unanimous consent of the Presiding Judge and the members of the local District Track Committee.

(4) Trainer. An applicant for a trainer license shall show proof that he or she is duly licensed as a trainer by the United States Trotting Association and shall meet the requirements set forth in 811 KAR 1:085 and 811 KAR 1:090, Sections 1, 2, 3, 5, and 14. If any licensed trainer is absent from a racing meet for more than six (6) days, the trainer shall appoint and have properly licensed a new trainer of record.

(5) Veterinary Personnel.

(a) An application from a person desiring to treat, prescribe for, or attend to any horse on association grounds as a practicing veterinarian shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.

(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician shall be accompanied by evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth of Kentucky, and "Veterinarian Authorization Form" (KHRC 25-04 (01/10)) signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS Chapter 321.

(c) An application from a veterinary assistant shall be accompanied by a "Veterinarian Authorization Form" (KHRC 25-04 (01/10)) signed by a licensed veterinarian certifying that the applicant works for him or her as required by KRS 321.443.

(d) Equine health professionals. An application from an equine health professional not defined by KRS Chapter 321 shall be accompanied by a "Veterinarian Authorization Form" (KHRC 25-04 (01/10)) signed by a licensed veterinarian attesting to the skill and integrity of the applicant by the licensed veterinarian and the Chief State Veterinarian.

(6) Farriers. An application from a person not previously licensed in the capacity of farrier shall submit a diploma or other document signifying successful completion of a farrier course or examination recognized by the American Farrier's Association, or submit a letter of recommendation from a licensed farrier.

(7) Stable employee, occupational employee, vendor employee. In order to obtain a stable employee, occupational employee, or vendor employee license, the license applicant's employer shall sign the employee's license application verifying employment and workers' compensation coverage.

(8) Special event licensees. A special event license shall be issued to employees who are employed by an association only for the duration of a special event. A special event license shall be valid for the days of the event only, and the duration of the license shall not exceed three (3) calendar days.

Section 5. Licensing Fees. (1) The following annual fees shall accompany the application and shall not be refundable:

(a) \$125 - owner, trainer, driver, owner/trainer/driver, owner/driver, driver/trainer, owner/trainer, assistant trainer, veterinarian, claiming license, and temporary license;

(b) \$100 - racing officials, assistant racing secretary, director of racing, placing judge, farrier, testing laboratory employee, racing department employee, valet, paddock blacksmith, and outrider;

(c) Fifty (50) dollars - veterinary assistant, veterinary technician, veterinary technologist, equine health professional, vendor, mutuel employee, farm manager, and farm agent;

(d) Twenty-five (25) dollars - association employee, occupational employee, vendor employee, any person employed by a concern contracting with the association to provide a service or commodity and which employment requires that person's presence on association grounds during a race meeting, film patrol crew member, television production employee, member of an associa-

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tion security department (including a policeman, watchman, fireman, ambulance driver, or emergency medical technician), track superintendent, member of maintenance department staff, admissions department manager and employee, association concessions manager and employee, parking manager and employee, and all other persons employed by the association;

(e) Ten (10) dollars – special event mutuel, special event occupational, and special event vendor employee, including stable foreman, exercise personnel, hotwalker, groom, watchman, and pony person.

(f) Five (5) dollars – stable employee.

(2) A replacement fee for a duplicate license shall be ten (10) dollars, except that this fee shall be waived for the first duplicate license issued during any calendar year.

Section 6. Fingerprinting, if requested. A license applicant may be required to furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license. If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previous fingerprints or require new fingerprints. The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

Section 7. Multi-state/National Licenses. In lieu of a license application as required by this administrative regulation, an applicant may submit an ARCI Multi-State License and Information Form or the National Racing Compact License and Information Form. It shall be accepted if the commission determines that it ensures compliance with all licensing requirements in this administrative regulation and KRS Chapter 230.

Section 8. Consent to investigate by license applicants and licensees. After an applicant files a license application, the commission may:

(1) Investigate the criminal background, employment history, and racing history record of the applicant;

(2) Engage in research and interviews to determine the applicant's character and qualifications; and

(3) Verify information provided by the applicant.

Section 9. Consent to search and seizure by licensees. (1) By acceptance of a license, a licensee consents to search and inspection by the commission or its agents at any location described in KRS 230.260(2), including any training facility, and to the seizure of any prohibited medication, controlled substance, paraphernalia, or device in violation of state or federal law or Title 810 or 811 of the Kentucky Administrative Regulations.

(2)(a) A licensee shall consent to a reasonable search of the property in his or her possession by the commission or its representatives, including tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort at any location under the jurisdiction of the commission.

(b) A licensee shall consent to the seizure of any object which may be evidence indicating a violation of an administrative regulation.

(c) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly to the best of his or her knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(d) A licensee shall consent to out-of-competition testing.

Section 10. Employer responsibility. (1) An employer shall not employ an unlicensed person for a position that requires a license under KRS 230.300 or 230.310 or this administrative regulation. If an employer does so, the employer may be subjected to license suspension, denial, or revocation under KRS Chapter 230, Title 810 or 811 of the Kentucky Administrative Regulations.

(2) Every employer shall be responsible for ensuring compliance with all applicable employment laws.

(3) The license application of an employee shall be signed by the employer.

(4) A licensed employer shall carry workers' compensation

insurance covering his or her employees as required by KRS Chapter 342.

Section 11. Financial responsibility. A licensee shall maintain financial responsibility during the period for which the license is issued. A licensee's failure to satisfy a final judgment rendered against him or her by a Kentucky court, or a domesticated judgment from another jurisdiction, for goods, supplies, services, or fees used in the course of his or her licensed occupation, constitutes a failure to meet the financial responsibility requirements of KRS 230.310. If the licensee fails to show just cause for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked until the licensee provides written documentation of satisfaction of the judgment. An applicant for a license may be required to submit evidence of financial responsibility to the commission if such a judgment has been rendered against him or her.

Section 12. Voluntary Withdrawal of License Application. A license applicant may with the approval of the license review committee voluntarily withdraw his or her license application from the license review process. If the applicant chooses to voluntarily withdraw his or her application, then this withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice. The commission shall issue a notice of the withdrawal, and the notice shall be communicated to the Association of Racing Commissioners International.

Section 13. License Review Committee. (1) The Executive Director or Presiding Judge may refer a license application to the License Review Committee in lieu of denying.

(2) The License Review Committee shall be composed of the Executive Director or designee, the Director of Licensing or designee, the Presiding Judge or designee, and at least one other commission member or commission staff member as designated by the Executive Director. At least three members of the committee shall participate in any license review committee meeting.

(3) If a referral to the Committee is made, then a license shall not be issued until the Committee makes a favorable ruling on the license application. The applicant may be required by the Committee to appear personally. If the Committee is unable to make a favorable ruling on the license application, then the Committee may give the license applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section 12 of this administrative regulation. If the license applicant does not wish to voluntarily withdraw his or her application, then the Committee shall deny the application.

(4) The denial of the application may be appealed in accordance with KRS Chapter 13B.

(5) In the alternative, the commission, the License Review Committee, or the Executive Director may refer the case directly to the commission without denial or approval of the application.

Section 14. License denial, revocation, or suspension. (1) The commission or its designee may refuse or deny a license application; commission or Presiding Judge may suspend or revoke a license or otherwise penalize a licensee in accordance with KRS 230.320(1), or other person participating in Kentucky horse racing, for any of the following reasons:

(a) The public interest for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering may be adversely affected if the license is issued;

(b) The licensee or applicant has any felony or misdemeanor criminal conviction from any jurisdiction, including having entered into any form of diversionary program, within 15 years preceding the date of submission of a license application;

(c) The licensee or applicant has pending criminal charges or is criminally charged during the license period in any jurisdiction.

(d) The licensee or applicant has had a license issued by the legally constituted racing or gaming commission of a state, province, or country denied, suspended, or revoked.

(e) The licensee or applicant has had a license issued by the Commonwealth of Kentucky revoked, suspended, or denied;

(f) The licensee or applicant has applied and received a license

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at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;

(g) The licensee or applicant has made a material misrepresentation, falsification, or omission of information in an application for a license;

(h) The licensee or applicant has been ejected, ruled off, or excluded from racing association grounds in the Commonwealth of Kentucky or a racetrack in any jurisdiction;

(i) The licensee or applicant has violated or attempted to violate a statute, administrative regulation, or similar rule respecting horse racing in any jurisdiction;

(j) The licensee or applicant has perpetrated or attempted to perpetrate a fraud or misrepresentation in connection with the racing or breeding of a horse or pari-mutuel wagering;

(k) The licensee or applicant has caused, attempted to cause, or participated in any way in an attempt to cause the prearrangement of a race result, or has failed to report knowledge of this kind of activity immediately to the judges;

(l) The licensee or applicant has demonstrated financial irresponsibility by accumulating unpaid obligations, defaulting on obligations, or issuing drafts or checks that are dishonored or not paid;

(m) The licensee or applicant has failed to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced;

(n) The licensee or applicant has misrepresented or attempted to misrepresent facts in connection with the sale of a horse or other matter pertaining to racing or registration of a horse;

(o) The licensee or applicant has offered, promised, given, accepted, or solicited a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failed to report conduct of this nature immediately to the judges;

(p) The licensee or applicant has abandoned, mistreated, abused, neglected, or engaged in an act of cruelty to a horse;

(q) The licensee or applicant has engaged in conduct that is against the best interest of horse racing, or compromises the integrity of operations at a track, training facility, or satellite facility;

(r) The licensee or applicant has entered, or aided and abetted the entry, of a horse ineligible or unqualified for the race entered;

(s) The licensee or applicant has possessed on association grounds, without written permission from the commission or the Presiding Judge:

1. A firearm; or

2. Any other appliance or device, other than an ordinary whip, which could be used to alter the speed of a horse in a race or workout.

(t) The licensee or applicant has violated any of the alcohol or substance abuse provisions outlined in KRS Chapter 230 or 811 KAR 1:225;

(u) The licensee or applicant has failed to comply with a written order or ruling of the commission or the judges pertaining to a racing matter or investigation;

(v) The licensee or applicant has failed to answer truthfully questions asked by the commission or its representatives pertaining to a racing matter;

(w) The licensee or applicant has failed to return to an association any purse money, trophies, or awards paid in error or ordered redistributed by the commission;

(x) The licensee or applicant has participated in or engaged any conduct of a disorderly nature on association grounds which includes, but is not limited to:

1. Failure to obey the judges' or other officials' orders that are expressly authorized by the administrative regulations of the commission;

2. Failure to drive when programmed unless excused by the judges;

3. Fighting;

4. Assaults;

5. Offensive and profane language;

6. Smoking on the track in colors during actual racing hours;

7. Warming up a horse prior to racing without colors;

8. Disturbing the peace;

(y) The licensee or applicant has used profane, abusive, or insulting language to or interfered or obstructed a commission member, employee, agent, or any racing official, while these per-

sons are in the course of performing their duties;

(z) The licensee or applicant is unqualified to perform the duties for which the license is issued;

(aa) The licensee or applicant has discontinued or is ineligible for the activity for which the license is to be issued, or for which a previous or existing license was issued;

(bb) The licensee or applicant has made a material misrepresentation in the process of registering, nominating, entering, or racing a horse as Kentucky owned, Kentucky bred, or Kentucky sired;

(cc) The licensee or applicant has failed to pay a required fee or fine, or has otherwise failed to comply with Kentucky statutes or administrative regulations;

(dd) The licensee or applicant failed to comply with a written directive or ruling of the commission or the Presiding Judge;

(ee) The licensee or applicant has failed to advise the commission of changes in the application information as required by Section 16 of this administrative regulation;

(ff) The licensee or applicant has failed to comply with the temporary license requirements of Section 17 of this administrative regulation;

(gg) The licensee or applicant has violated the photo identification badge requirements of Section 20 of this administrative regulation;

(hh) The licensee or applicant has aided or abetted any person in violation of any statute or administrative regulation pertaining to horse racing;

(ii) The licensee or applicant has hired an unlicensed person required by KRS 230.300 or 230.310 or this administrative regulations to be licensed;

(jj) The licensee or applicant, being a person other than a licensed veterinarian, has possessed on association grounds:

1. A hypodermic needle, hypodermic syringe, or other device which could be used to administer any substance to a horse, except as permitted by 811 KAR 1:090; or

2. A medication, stimulant, sedative, depressant, local anesthetic, or any other foreign substance prohibited by a statute or administrative regulation of the commission; or

(kk) The licensee or applicant has manufactured, attempted to manufacture, or possessed a false license photo identification badge;

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the Presiding Judge and to the ARCI by the Division of Licensing, whereby other racing jurisdictions shall be advised of the license suspension, revocation, or denial.

(3) A license applicant may appeal the suspension, revocation, or denial in accordance with KRS 230.320 and KRS Chapter 13B.

Section 15. Reciprocity. If the license of a person is denied, suspended, or revoked, or if a person is ruled off, excluded, or ejected from a racetrack in Kentucky or in another jurisdiction, the commission may require reinstatement at that track before a license is granted by the commission.

Section 16. Changes in Application Information. (1)The licensee or applicant shall report changes in any information required for licensing in writing to the commission;

(2) Any change in information required for licensing shall be submitted in writing upon the "Change in License Information Form" (KHRC 25-03 (01/10)), signed by the licensee, and filed at the commission central office, within thirty (30) days of the change, unless it is information listed in Subsection 3 for this section.

(3) The licensee shall report changes in information in writing within seventy-two (72) hours of the occurrence for these items:

(a) Criminal charges;

(b) Criminal convictions;

(c) License denials and license suspensions of ten (10) days or more;

(d) License revocations or fines of \$500 or more in other jurisdictions;

(e) Racing related disciplinary charges pending in other jurisdictions; and

(f) Withdrawal, with or without prejudice, of a license applica-

tion by the licensee in any jurisdiction.

Section 17. Temporary licenses. (1) Only an owner is eligible for a temporary license. A horse in a trainer's care shall not start in a race unless the owner has a current license or has an application for a temporary license, "Application for a Temporary Owner's License" (KHRC 25-02 (01/10)), on file with the commission. A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains. The commission may refuse the license if the applicant fails to supply a name, social security number, and mailing address for a temporary license. A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the thirtieth day pending completion of all licensing procedures. Upon expiration of the thirty (30) day temporary license, the owner's license shall be suspended or the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures. Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year. If temporary license expires prior to completion of all owner license procedures, the applicant shall pay an additional licensing fee.

(2) An owner shall not be eligible to be issued more than one (1) temporary license in any calendar year.

(3) A temporary license shall not be valid for claiming.

Section 18. Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except when prohibited by Section 19 of this administrative regulation due to a potential conflict of interest.

Section 19. Conflict of interest. (1) The License Review Committee and the Presiding Judge or designees shall deny or refuse to process the license of a person, and the commission or the Presiding Judge shall revoke or suspend a licensee who is determined to have a conflict of interest. This conflict of interest may exist when a spouse, immediate family member, or other persons in a similar relationship to a licensee or applicant holds a license which the License Review Committee or Presiding Judge finds to be a conflict of interest with the licensee's or applicant's. A finding of a conflict of interest may be appealed to the commission pursuant to KRS 230.320 and KRS Chapter 13B.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official during that race.

(3) A person who is licensed as an owner or trainer or has any financial interest in a horse entered in that race shall not participate in that race as any of the following:

(a) Racing official;

(b) Practicing veterinarian for any horse other than owner's;

(c) Veterinary technician, veterinary technologist, veterinarian assistant, or equine professional to any horse other than the owner's;

(d) Officer or managing employee;

(e) Track maintenance supervisor or employee;

(f) Outrider;

(g) Race track security employee;

(h) Farrier;

(i) Racing chemist; and

(j) Testing laboratory employee.

(4) More than one license to participate in racing may be granted to a person except if prohibited by this administrative regulation due to a potential conflict of interest.

Section 20. License Photo Identification Badges. (1) If a licensee desires access to restricted areas of a racing association grounds, then the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge). These photo identification badges are available to licensees upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.

(2) A person shall present an appropriate license to enter a restricted area.

(3) The judges or racing association may require visible display of a license in a restricted area.

(4) A license may only be used by the person to whom it is issued, and a licensee shall not allow another person to use his or her badge for any purpose.

(5) Licensee credentials (photo identification badges) are the property of the commission and shall be surrendered to the Executive Director, the judges, the commission Director of Enforcement or Director of Licensing, or designee, upon request.

Section 21. Duties of Licensees. (1) A licensee shall be knowledgeable of this administrative regulation and, by acceptance of the license, agrees to abide by this administrative regulation.

(2) A licensee shall report to track security or judge any knowledge the licensee has that a violation of these rules has occurred or may occur.

(3) A licensee shall abide by all rulings and decisions of the judges and the commission, and all decisions by the judges and the commission shall remain in force unless reversed or modified by the commission or a court of competent jurisdiction upon proper appeal pursuant to KRS 230.330.

(4) Rulings and decisions of the judges may be appealed to the commission, except those made by the judges as to:

(a) Findings of fact as occurred during and incident to the running of a race; and

(b) A determination of the extent of disqualification of horses in a race for fouls committed during the race.

(5) A licensee shall cooperate fully with all investigations and inquiries made by commission representatives or association security, or both.

(6) A licensee shall obey instructions from commission representatives or association security, or both.

(7) All licensees shall immediately report to the commission any known or suspected irregularities, any violation of the administrative regulations rules of the commission, or any wrongdoings by any person and cooperate in any subsequent investigation.

Section 22. Common Law Rights of Associations. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Licensing Application" (KHRC 25-01 (01/10));

(b) "Application for a Temporary Owner's License" (KHRC 25-02 (01/10));

(c) "Change in Application Information Form" (KHRC 25-03 (01/10));

and (d) "Veterinarian Authorization Form" (KHRC 25-04 (01/10));

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available at [www.khrc.gov](http://www.khrc.gov). [Owners. Every person owning a horse that is entered at a race meeting licensed by the authority shall be required to obtain a license from the authority and the United States Trotting Association. The application shall be on forms provided by the authority and shall be filed at any authority office. The license shall be presented to the clerk of the course at the time the horse is entered in a race.

Section 2. Leased Horses. Any horse under lease shall race in the name of the lessee and a copy of such lease must be filed with the Kentucky Horse Racing Authority. No horse shall race under lease without an eligibility certificate issued by the United States Trotting Association in the name of the lessee and the lessee is a current licensee of the authority in good standing. Persons violating this administrative regulation shall be fined, suspended or expelled.

Section 3. Driver's Application for License. Every person desiring to drive a harness horse at a race meeting licensed by the authority shall be required to obtain a license from the authority and the United States Trotting Association. Such application shall be on forms provided by the authority. Applications may be filed at any authority office. Such license shall be presented to the clerk of course before driving. Pending a valid license by the United States

Trotting Association, the authority may, at its discretion, issue a provisional or full driver's license to those who qualify as set by this administrative regulation.

Section 4. Qualification for a Provisional and Full Driver's License. (1) Every applicant for a provisional license to drive a harness horse at a race meeting licensed by the commission shall meet the following requirements:

(a) Not have been convicted of a crime described in KRS 335B.010(4) or which otherwise directly relates to the qualifications of driving a harness horse at a race meeting.

(b) Submit evidence of his ability to drive in a race and, if he is a new applicant, this shall include the equivalent of one (1) year's training experience. Any new applicant for a driver's license shall be approved by the presiding judge and a committee of three (3) "A" class drivers appointed by the United States Trotting Association District Six (6) Chairman.

(c) Be at least eighteen (18) years of age.

(d) Furnish a completed application form.

(e) Submit satisfactory evidence of an eye examination indicating 20/40 corrected vision in both eyes, or if one (1) eye blind, at least 20/30 corrected vision in the other eye; and, when requested, submit evidence of physical and mental ability and/or submit to a physical examination.

(f) No person sixty (60) years of age or older who has never held any type of driver's license previously shall be issued a driver's license.

(g) When requested, submit a written examination at a designated time and place to determine his qualifications to drive and his knowledge of racing and the rules. In addition, any driver who presently holds a license and wishes to obtain a license in a higher category, who has not previously submitted to such written test, shall be required to take a written test before becoming eligible to obtain a license in a higher category.

(h) No applicant who has previously held any type of driver's license shall be subsequently denied a driver's license solely on the basis of age.

(2) A full license will be granted to an applicant who qualifies for a provisional license and has acquired:

(a) At least one (1) year's driving experience while holding a provisional license from the United States Trotting Association.

(b) Twenty-five (25) satisfactory starts in the calendar year preceding the date of his application at an extended pari-mutuel meeting.

(3) In the event any person is involved in an accident on the track, the authority may order the person to submit to a physical examination and the examination shall be completed within thirty (30) days from the request or his license may be suspended until compliance.

(4) All penalties imposed on any driver may be recorded on the reverse side of his authority driver's license by the presiding judge.

(5) The Kentucky Racing Authority reserves the right to require any driver to take a physical examination at any time.

Section 5. Trainers' Application for License. An applicant for a trainer's license shall show proof that he is duly licensed as a trainer by the United States Trotting Association and shall meet the requirements set forth in 811 KAR 1:085, Sections 1, 2, 3, 5, and 14, and 811 KAR 1:090, Section 6.

Section 6. Absence of Trainers. When any licensed trainer is absent from a racing meet for more than six (6) days, it shall be the duty of the trainer to appoint and have properly licensed a new trainer of record.

Section 7. Grooms' Application for License. An applicant for a license as a groom must satisfy the authority that he possesses the necessary qualifications, both mental and physical to perform the duties required. Elements to be considered, among others, shall be character, reputation, temperament, experience, knowledge of the rules of racing and of the duties of a groom. No license shall be issued to applicants under sixteen (16) years of age.

Section 8. (1) The holder of a license issued by the United States Trotting Association for the calendar year shall be presumed to be qualified to receive a license.

(2) A holder of a current qualifying license issued by the United States Trotting Association may be allowed to drive a horse that is already qualified, however, if the horse does not meet the stand-

ards of the meeting, the horse shall be placed on the stewards list. If a race is held solely for qualifying drivers, the race may not be charted. A race solely for qualifying drivers must have more than four (4) starters.

Section 9. The following shall constitute disorderly conduct and be reason for a fine, suspension, or revocation of an owner's, driver's, trainer's, or groom's license:

(1) Failure to obey the judges' or other officials' orders that are expressly authorized by the administrative regulations of this authority.

(2) Failure to drive when programmed unless excused by the judges.

(3) Drinking intoxicating beverages within four (4) hours of the first post time of the programs on which he is carded to drive.

(4) Fighting.

(5) Assaults.

(6) Offensive and profane language.

(7) Smoking on the track in colors during actual racing hours.

(8) Warming up a horse prior to racing without colors.

(9) Disturbing the peace.

(10) Refusing to take a breath analyzer test when directed by the presiding judge, deputy commissioner (supervisor of racing), or assistant deputy commissioner (assistant supervisor of racing).

Section 10. Colors and Helmet. Drivers must wear distinguishing colors, and clean white pants, and shall not be allowed to start in a race or other public performance unless in the opinion of the judges they are properly dressed. From the time it becomes necessary to wear colors before the races, no one will be permitted to jog, train, warm up or drive a horse during a race meet licensed by the Kentucky Horse Racing Authority unless he or she is wearing a protective safety helmet, with the chin strap fastened and in place, that meets the standards and requirements as set forth in the Snell Memorial Foundation's 1984 Standard For Protective Headgear For Use In Harness Racing. This standard is hereby incorporated by reference. Any equestrian helmet bearing the Snell label shall be deemed to have met the performance requirements as set forth in the standards.

Section 11. Misconduct in Colors. Any driver wearing colors who shall appear at a betting window or at a bar or in a restaurant dispensing alcoholic beverages shall be fined not to exceed \$100 for each such offense.

Section 12. Driver Change. No driver can, without good and sufficient reasons, decline to be substituted by the judges. Any driver who refuses to be so substituted may be fined or suspended, or both by order of the judges.

Section 13. Amateur Definition. An amateur driver is one who has never accepted any valuable consideration by way of or in lieu of compensation for his services as a trainer or driver during the past ten (10) years.

Section 14. Registered Colors. Drivers holding an "A" license or drivers with a "V" license who formerly held an "A" license, shall register their colors with the United States Trotting Association. Registered stables or corporations may register their racing colors with the United States Trotting Association.

Section 15. Incorporation by Reference. (1) The "Application for Owner's License, June 1993", "Driver's Application for License, June 1993", "Provisional and Full Driver's Application for License, June 1993", are incorporated by reference.

(2) Application forms may be inspected, copied, or obtained at the Kentucky Horse Racing Authority, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.]

ROBERT M. BECK, Chairman

ROBERT D. VANCE, Security

APPROVED BY AGENCY: January 14, 2010

FILED WITH LRC: January 15, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2010 at 10 a.m., at the Kentucky Horse Racing Commission, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by March 16, 2010 five (5) working days prior to

the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, 811 KAR 1:070, governs the licensing of individual participants in standardbred horse racing in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The regulation is necessary to provide licensing standards for standardbred racing, and to provide a licensing fee schedule. Revenues generated by licensing fees provide operational funds for the Kentucky Horse Racing Commission ("KHRC").

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs standardbred licensing pursuant to KRS 230.215(2) and KRS 230.260(3) which authorize the KHRC to promulgate administrative regulations governing the conditions of horse racing. In addition, KRS 230.290 and KRS 230.310 provide statutory criteria for the licensing of participants in Kentucky racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes the conditions upon which licenses may be granted by the KHRC.

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

(a) How the amendment will change this existing administrative regulation: This amendment contains several substantive changes which update the licensing standards for standardbred racing and increase the licensing fee in some categories of licenses, to insure that there is adequate funding for operational costs of the KHRC. In addition, it also amends the language of the regulation to conform to KRS Chapter 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to update the licensing standards for standardbred racing, and to increase the licensing fees to provide adequate funding for the KHRC.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation sets forth the rules regarding standardbred licenses.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will provide further guidance and clarity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2,000 standardbred licenses are issued in a calendar year to a variety of licensees, including owners, trainers, assistant trainers, drivers, stable employees, veterinary personnel, racing officials, farriers, vendors, agents, mutual clerks, agents, and employees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: All of the above entities will be impacted by updates in licensing standards and procedures. The increase in licensing fees from \$100 to \$125 will apply to owners, trainers, assistant trainers, drivers, and veterinarians. This increase in fees will impact approx-

imately 1,500 license applicants in these categories.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All will file an updated application in the 2010 licensing year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to comply with the updates to the licensing regulations. There will be a \$25 increase in licensing fees to owners, trainers, assistant trainers, drivers, and veterinarians.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All participants will benefit from better notice to them of the qualifications to obtain a license, and of the licensing procedures.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: It is estimated that there will be no new costs to the agency associated with these amendments.

(a) Initially: N/A

(b) On a continuing basis: N/A

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation will not require an increase in fees, except as described in (4).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Increase in fees as described in (4).

(9) TIERING: Tiering does not apply because the updates in the licensing regulation shall apply to all participants in horse racing equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), KRS 230.260(3), KRS 230.290, and KRS 230.310.

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. Will increase funding for standardbred racing by approximately \$37,000.00 per year.

(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? See above.

(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? See above.

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

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

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:



## VOLUME 36, NUMBER 9 – MARCH 1, 2010

### 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, EO 2009-535

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130

requires the 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. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the 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 thereof 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 that 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 providing facilities for use by the general public or employees 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 Sections 2 through 4 of this administrative regulation, and as follows:

(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;

3. Three (3) urinals for 301 to 600; 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 males or females;

(b) Two (2) lavatories for 101 to 200;

(c) Three (3) lavatories for 201 to 400;

(d) Four (4) lavatories for 401 to 750; 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 Sections 2 through 4 of this administrative regulation, and as follows:

(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 or 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. One (1) additional drinking fountain shall be provided for each seventy-five (75) pupils or fraction thereof.

(b) 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 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 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 forty (40) pupils or fraction thereof in excess of 500.

(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 fifty (50) pupils or fraction thereof over fifty (50).

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, or 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 or one (1) water closet for each twenty-five (25) females or fraction thereof;
2. One (1) lavatory for each fifty (50) males or females 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.

(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.

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(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 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) males or females 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) bathtub or shower, if needed, for each ten (10) males or females or fraction thereof;

(f) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof on each floor; and

(g) 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 over 100;

(d) One (1) lavatory for each ten (10) males or females or fraction thereof; and

(e) One (1) bathtub or shower for each ten (10) males or females or fraction thereof.

Section 12. Dormitories: School, Labor, or Institutional. In a dormitory, there shall be installed the fixtures required by this section.

- (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 one (1) urinal for each twenty-five (25) males or fraction thereof, and, if there are over 150 males, one (1) additional urinal for each additional fifty (50) males or fraction thereof.

(b) If urinals are provided for women, the same number shall be provided for women as for men.

(c) 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.

(d) Trough urinals shall be figured on the basis of one (1) urinal for each twenty-four (24) inches of length.

(3) Lavatories.

(a) There shall be one (1) lavatory for one (1) to twelve (12) persons, with an additional one (1) lavatory for each twenty (20) males and each fifteen (15) females.

(b) Separate dental lavatories shall be provided in community toilet rooms at a ratio of one (1) dental lavatory to each fifty (50) persons.

(4) Additional fixtures. There shall be:

(a) One (1) bathtub or shower for each eight (8) persons. If there are over 150 persons, there shall be one (1) additional fixture for each twenty (20) persons. For women's dormitories, there shall be installed additional bathtubs at the ratio of one (1) for each thirty (30) women;

(b) One (1) drinking fountain for each seventy-five (75) persons;

(c) One (1) laundry tray or clothes washer for each fifty (50) persons; and

(d) One (1) service sink or slop sink for each 100 persons.

(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, 9:010, and this section. Sanitary facilities shall be provided on each floor level and shall conform to the following:

(1) Hospitals.

(a) Wards. There shall be:

1. One (1) water closet for each ten (10) patients;
2. One (1) lavatory for each ten (10) patients;
3. One (1) tub or shower for each fifteen (15) patients; and
4. One (1) drinking fountain for each 100 patients.

(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;

(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 patients 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;

6. One (1) water closet for each fifteen (15) females or fraction thereof up to 100;

7. If in excess of 100 persons, there shall be:

a. One (1) additional water closet for each thirty (30) males and each thirty (30) females or fraction thereof;

b. One (1) additional lavatory for each additional fifty (50) males and females or fraction thereof; and

c. One (1) additional urinal for each 100 males or fraction thereof;

8. One (1) shower for each fifteen (15) persons exposed to skin contamination from irritating, infectious, or poisonous materials;

9. One (1) drinking fountain on each floor for each fifty (50) employees. If there are more than 100 employees, there shall be an additional drinking fountain on each floor for each additional seventy-five (75) persons; and

10. One (1) service sink or slop sink per floor.

(b) Individual sinks or wash troughs may be used in lieu of lavatories. 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 300 to 450 males;

4. Three (3) water closets plus one (1) water closet for each 500 males;

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. Three (3) urinals plus one (1) urinal for each 300 males, or fraction thereof, over 600;
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. Three (3) water closets plus one (1) water closet for each 300 females in excess of 400;
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. 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) Sanitary facilities 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. Six (6) water closets plus one (1) water closet for each forty (40) additional persons;
- 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. Five (5) lavatories plus one (1) lavatory for each forty-five (45) additional persons; 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;
2. Three (3) water closets for 201 to 400 males, with one (1) additional water closet for each additional 500 males;
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 males or females;
5. Two (2) lavatories for 151 to 400 males or females;
6. Three (3) lavatories for 401 to 750 males or females;
7. If in excess of 750 males or females, three (3) lavatories plus one (1) additional lavatory for each additional 750 males or females over 750;
8. One (1) shower per each fifty (50) persons or fraction thereof up to 150;
9. If in excess of 150 persons, one (1) additional shower plus one (1) shower per each 500 persons over 650; 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 conveniently 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 park, 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 park, 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.

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.

(h) 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.

(3) Water closets shall 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 facilities shall be provided for the employees.

(b) Sanitary facilities shall be provided for customers if the building contains 5,000 square feet or more. In a mall or shopping center, the required facilities, based on one (1) person per fifty (50) square feet, shall be 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. Three (3) water closets plus one (1) water closet for each 500 males or 300 females in excess of 400;

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. Three (3) urinals plus one (1) urinal for each 300 males or fraction thereof, over 600;

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. Three (3) lavatories plus one (1) lavatory for each 500 persons or fraction thereof in excess of 700;

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.

(2) Restaurants.

(a) If more than five (5) persons of different sex are employed, separate facilities shall be provided for the employees.

(b) 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. Carryout-type food service operations shall be exempt from providing toilet facilities for the use of their patrons.

(c) There shall be:

1. One (1) unisex restroom consisting of one (1) water closet and one (1) lavatory for one (1) to fifteen (15) persons;

2. Two (2) water closets for one (1) to 100 persons;

3. ~~2.~~ Three (3) water closets for 101 to 200 persons;

4. ~~3.~~ Four (4) water closets for 201 to 300 persons; and

5. ~~4.~~ Four (4) water closets plus one (1) water closet for each additional 200 persons or fraction thereof over 300.

(d) There shall be:

1. One (1) urinal for ~~fifty (50)~~~~eleven (11)~~ to 200 males; and

2. One (1) additional urinal for each additional 150 males or fraction thereof over 150.

(e) There shall be:

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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. One (1) additional lavatory for each additional 200 persons or fraction thereof over 600.

(f) There shall be:

1. One (1) drinking fountain for one (1) to 100 persons; and
2. Two (2) drinking fountains for 101 to 500 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.

(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 following requirements 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.

(b) A three (3) compartment sink for washing utensils shall be required which may 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 may discharge through either an air gap device or indirectly through a three (3) inch open receptacle.

(e) 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 shall:

1. Use only Kentucky Plumbing Code approved material;

2. Meet the requirements of the Kentucky Plumbing Code;

3. Have a waste tank no less than fifty (50) percent larger than the freshwater tank;

4. Have a national Sanitary Foundation (NSF) approved freshwater tank for potable water; and

5. Have a minimum of a three (3) compartment sink and one (1) hand sink. [If the service or utility sink is placed in a location readily accessible to the employees as determined by the Cabinet for Health Services, it may substitute for the lavatory.]

RICHARD MOLONEY, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: February 15, 2010

FILED WITH LRC: February 15, 2010 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2010, at 9 a.m., EDT, at 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 March 16, 2010 (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 March 31,

2010. 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) 573-0394 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 coincide with the Cabinet for Health and Family Services' new regulations.

(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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will update the administrative regulation to coincide with the Cabinet for Health and Family Services' new regulations and will afford more plumbing installation options.

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

(a) How the amendment will change this existing administrative regulation: It will coincide with the Cabinet for Health and Family Services' new regulations and will afford more plumbing installation options.

(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: It will 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: Will assist the department and plumbers in complying with the Cabinet for Health and Family Services' regulations and avoid any conflict.

(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 language within the regulation in order to avoid any conflict with the Cabinet for Health and Family Services' regulation and will allow more options regarding minimum fixture requirements.

(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 more 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

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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 in that requirements would be based on 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 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 (+/-):

Expenditures (+/-): No change in expenditures.

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, FEBRUARY 15, 2010

**GENERAL GOVERNMENT CABINET**  
**Department of Agriculture**  
**Office of State Veterinarian**  
**Division of Animal Health**  
**(New Administrative Regulation)**

**302 KAR 21:010. Animal diseases to be reported.**

RELATES TO: KRS 257.020, 257.030, 257.080

STATUTORY AUTHORITY: KRS 257.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.080

requires the Kentucky Department of Agriculture to promulgate administrative regulations listing all reportable diseases of live-stock, poultry, and fish and setting out the conditions under which the diseases shall be reported. This administrative regulation sets forth a comprehensive list of reportable diseases and the conditions under which the diseases shall be reported

Section 1. Duty To Notify. Every veterinarian, veterinary practice and personnel, veterinary diagnostic laboratory and personnel, laboratory providing animal diagnostic services and personnel for Kentucky, owner of animals, persons associated with any equine, livestock, poultry, or fish, sales or event establishment and personnel, transportation provider, slaughter facility and personnel, auctioneer or any other person having knowledge of the existence of any reportable disease, as provided in Section (2) of this administrative regulation, shall immediately report said disease or condition to the State Veterinarian.

Section 2. Diseases that Must Be Reported. The following diseases and conditions must be immediately reported to the State Veterinarian:

- (1) Foreign animal diseases:
  - (a) African horse sickness;
  - (b) African swine fever;
  - (c) Akabane disease;
  - (d) Arthropod livestock pests and disease vectors;
  - (e) Avian influenza;
  - (f) Babesiosis;
  - (g) Bluetongue;
  - (h) Borna disease;
  - (i) Bovine ephemeral fever;
  - (j) Bovine spongiform encephalopathy;
  - (k) Capripoxvirus;
  - (l) Classical swine fever;
  - (m) Contagious agalactia of sheep and goats;
  - (n) Contagious bovine pleuropneumonia;
  - (o) Contagious caprine pleuropneumonia;
  - (p) Contagious equine metritis;
  - (q) Dourine;
  - (r) Duck virus hepatitis;
  - (s) East Coast fever;
  - (t) Epizootic lymphangitis;
  - (u) Equine encephalosis;
  - (v) Foot-and-mouth disease;
  - (w) Getah;
  - (x) Glanders;
  - (y) Heartwater;
  - (z) Hemorrhagic septicemia;
  - (aa) Hendra;
  - (bb) Infectious salmon anemia;
  - (cc) Japanese encephalitis;
  - (dd) Jembrana;
  - (ee) Louping-ill;
  - (ff) Malignant catarrhal fever;
  - (gg) Nairobi sheep disease;
  - (hh) Newcastle disease;
  - (ii) Nipah;
  - (jj) Peste des petits ruminants;
  - (kk) Rabbit hemorrhagic disease;
  - (ll) Rift Valley fever;
  - (mm) Rinderpest;

- (nn) Screwworm;
- (oo) Spring viremia of carp;
- (pp) Swine vesicular disease;
- (qq) Tropical theileriosis;
- (rr) Trypanosomiasis;
- (ss) Venezuelan equine encephalitis;
- (tt) Vesicular exanthema of swine;
- (uu) Vesicular stomatitis; and
- (vv) Wesselsbron.
- (2) Office International des Epizooties diseases:
  - (a) Multiple species diseases:
    1. Anthrax;
    2. Aujeszky's disease;
    3. Bluetongue;
    4. Brucellosis (*Brucella abortus*);
    5. Brucellosis (*Brucella melitensis*);
    6. Brucellosis (*Brucella suis*);
    7. Crimean Congo haemorrhagic fever;
    8. Echinococcosis/hydatidosis;
    9. Epizootic haemorrhagic disease;
    10. Equine encephalomyelitis (Eastern);
    11. Foot and mouth disease;
    12. Heartwater;
    13. Japanese encephalitis;
    14. Leptospirosis;
    15. New world screwworm (*Cochliomyia hominivora*);
    16. Old world screwworm (*Chrysomya bezzian*);
    17. Paratuberculosis;
    18. Q fever;
    19. Rabies;
    20. Rift Valley fever;
    21. Rinderpest;
    22. Surra (*Trypanosoma evansi*);
    23. Trichinellosis;
    24. Tularemia;
    25. Vesicular stomatitis; and
    26. West Nile fever.
  - (b) Cattle diseases:
    1. Bovine anaplasmosis;
    2. Bovine babesiosis;
    3. Bovine genital campylobacteriosis;
    4. Bovine spongiform encephalopathy;
    5. Bovine tuberculosis;
    6. Bovine viral diarrhea;
    7. Contagious bovine pleuropneumonia;
    8. Enzootic bovine leucosis;
    9. Haemorrhagic septicaemia;
    10. Infectious bovine rhinotracheitis/infectious pustular vulvovaginitis;
    11. Lumpy skin disease;
    12. Theileriosis;
    13. Trichomonosis; and
    14. Trypanosomosis (tsetse-transmitted).
  - (c) Sheep and Goat diseases:
    1. Caprine arthritis/encephalitis;
    2. Contagious agalactia;
    3. Contagious caprine pleuropneumonia;
    4. Enzootic abortion of ewes (ovine chlamydiosis);
    5. Maedi-visna;
    6. Nairobi sheep disease;
    7. Ovine epididymitis (*Brucella ovis*);
    8. Peste des petits ruminants;
    9. Salmonellosis (*S. abortusovis*);
    10. Scrapie; and
    11. Sheep pox and goat pox.
  - (d) Equine diseases:
    1. African horse sickness;
    2. Contagious equine metritis;
    3. Dourine;
    4. Equine encephalomyelitis (Western);
    5. Equine infectious anaemia;
    6. Equine influenza;



7. Equine piroplasmosis;
8. Equine rhinopneumonitis;
9. Equine viral arteritis;
10. Glanders; and
11. Venezuelan equine encephalomyelitis.
- (e) Swine diseases:
  1. African swine fever;
  2. Classical swine fever;
  3. Nipah virus encephalitis;
  4. Porcine cysticercosis;
  5. Porcine reproductive and respiratory syndrome;
  6. Swine vesicular disease; and
  7. Transmissible gastroenteritis.
- (f) Avian diseases:
  1. Avian chlamydiosis;
  2. Avian infectious bronchitis;
  3. Avian infectious laryngotracheitis;
  4. Avian mycoplasmosis (*M. gallisepticum*);
  5. Avian mycoplasmosis (*M. synoviae*);
  6. Duck virus hepatitis;
  7. Fowl cholera;
  8. Fowl typhoid;
  9. Highly pathogenic avian influenza and low pathogenic avian

influenza;

10. Marek's disease;
11. Newcastle disease;
12. Pullorum disease; and
13. Turkey rhinotracheitis.
- (g) Fish diseases:
  1. Epizootic haematopoietic necrosis;
  2. Infectious haematopoietic necrosis;
  3. Spring viraemia of carp;
  4. Viral haemorrhagic septicaemia;
  5. Infectious salmon anaemia;
  6. Epizootic ulcerative syndrome;
  7. Gyrodactylosis (*Gyrodactylus salaris*);
  8. Red sea bream iridoviral disease; and
  9. Koi herpesvirus disease.
- (3) Other diseases and conditions:
  - (a) Botulism
  - (b) *Burkholderia pseudomallei*
  - (c) Camel pox virus
  - (d) Caseous lymphadenitis
  - (e) Chronic Wasting Disease
  - (f) *Clostridium perfringens* epsilon toxin
  - (g) *Coccidioides immitis*
  - (h) Menangle virus
  - (i) Plant and chemical toxicosis
  - (j) Scabies
  - (k) Shigatoxin
  - (l) Staphylococcal enterotoxins
  - (m) Strangles (*Streptococcus equi equi*)
  - (n) Swine influenza virus
  - (o) T-2 toxin
  - (p) *Salmonella typhimurium*
  - (q) Ticks (*Boophilus annulatus*, *B. microplus*)
  - (r) *Yersinia pestis*

Section 3. (1) The notification shall be given to the Office of the State Veterinarian, Kentucky Department of Agriculture, 100 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3956, fax (502) 564-7852.

(2) The person reporting shall furnish the:

- (a) Name, address, and telephone number of the owner of the equine, livestock, poultry, fish or bees;
- (b) Animal species, breed, age, sex, how many affected, clinical signs;
- (c) Premises address for the animal(s) tested or affected;
- (d) Name, address and telephone of veterinarian submitting the case; and
- (e) Name and address and phone of person reporting.

(3) A report submitted to the State Veterinarian by a diagnostic laboratory of a condition suspected or diagnosed by a test result or other laboratory procedure from the laboratory shall constitute

notification on behalf of the laboratory and the submitting veterinarian or owner.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: February 15, 2010

FILED WITH LRC: February 15, 2009 at Noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2010 at 10 am at 100 Fair Oaks Lane 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 15, 2009 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 March 31, 2010. 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 provides requirements for composting animal carcasses in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.160(3).

(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 administering KRS 257.160(3) though establishing and modifying entry requirements into the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation makes clear the composting requirements for animals in the state.

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

(a) How the amendment will change this existing administrative regulation: This amended regulation modernizes the composting requirements to conform with the most current scientific research.

(b) The necessity of the amendment to the administrative regulation: This amended regulation changes old requirements for processing that are no longer considered needed for proper composting.

(c) How this amendment conforms to the content of the authorizing statutes: The amendments conform to the statutes by establishing composting requirements.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation makes the changes necessary to keep composting requirements current with needed animal health protection.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department of Agriculture and animal producers in the state who may chose to compost rather than use other disposal methods.

(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: Animal producers may elect to compost at their option. Should they do so they must comply with the regu-

lation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Animal producers may elect to compost at their option. Depending on what current facilities they have, no new costs may be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): because this is optional for the producer, they will only chose this option if it is cheaper to them than an alternative. Therefore, participants that elect to compost would expect to save money over other alternatives.

(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: KDA general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fee has been clarified to mean a yearly fee. This will help offset the cost of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fee has been clarified to mean a yearly fee.

(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? Kentucky Department of Agriculture, Division of Animal Health, State Veterinarian

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.080

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Board of Education Department of Education (New Administrative Regulation)

**703 KAR 5:180. Intervention system for persistently low-achieving schools.**

RELATES TO: KRS 158.6453, 158.6455, 160.346

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346 (1)(a) and (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.346 as amended by 2010 Ky. Acts ch. 1 (HB 176) requires the Kentucky Board of Education to promulgate administrative regulations to establish the process and procedures for implementing school interventions and alternate management options for schools, districts, and the state for persistently low-achieving schools. This administrative regulation establishes the process and procedures for implementing those interventions and alternate governance options.

Section 1. Definitions. (1) "Assessment Team" means a group assigned by the Commissioner of Education to conduct the audit required by KRS 160.346 who are selected pursuant to the requirements of 703 KAR 5:120.

(2) "District Leadership Assessment" means the audit that is conducted:

(a) In a district that contains at least one (1) persistently low-achieving school; and

(b) Pursuant to Section 3 of this administrative regulation.

(3) "Needs Assessment" means a formal process to ascertain the strengths and weaknesses of the identified school for the purpose of developing the strategy for the school's turnaround pursuant to KRS 160.346.

(4) "School Leadership Assessment" means the audit that is conducted:

(a) In a persistently low-achieving school; and

(b) Pursuant to Section 2 of this administrative regulation.

Section 2. School Leadership Assessment. (1) Within sixty (60) days of identification as a persistently low-achieving school by the Department of Education, a school leadership assessment shall be performed for a persistently low-achieving school by the assessment team to review the functioning of the school council and also the specific leadership capacity of the principal.

(2) The assessment shall make a determination of the school council's and principal's ability to lead the intervention in the school based upon the following criteria:

(a) The school leadership's ability to function as an effective learning community and support a climate conducive to performance excellence;

(b) The school leadership's ability to actively engage families and community groups to remove barriers to learning in an effort to meet the intellectual, social, career, and developmental needs of students;

(c) The school leadership's ability to focus its professional learning program primarily on job-embedded professional learning;

(d) The school leadership's ability to make instructional decisions that focus on support for:

1. Teaching and learning;
2. Organizational direction;
3. High performance expectations;
4. Creating a learning culture; and
5. Developing leadership capacity.

(e) The school leadership's ability to organize the school to maximize use of all available resources (both human and fiscal) to support high student and staff performance; and

(f) The school leadership's ability to effectively:

1. Identify the needs of all students;
2. Set specific, measurable goals to address those needs;
3. Implement specific strategies to reach those goals;
4. Provide adequate resources to implement those strategies;

and

5. Frequently monitor implementation of the strategies and make adjustments when strategies are not achieving the desired outcomes.

(3) The school leadership assessment shall utilize the

(a) Standards and Indicators for School Improvement;

(b) The Missing Piece of the Proficiency Puzzle;

(c) Classroom observations;

(d) Stakeholder interviews;

(e) Teacher and principal working conditions survey; and

(f) Portfolio of school records.

(4) The assessment team shall submit a report to the Commissioner that specifically makes recommendations regarding whether

the:

- (a) School council has the capability and capacity to continue its roles and responsibilities established in KRS 160.345; and
  - (b) Principal has the capability and capacity to continue his or her roles and responsibilities established in KRS 160.345.
- (5) A School Leadership Assessment shall be repeated every two years until the requirements of KRS 160.346(8) are met.

Section 3. District Leadership Assessment. (1) Within sixty (60) days of identification by the Kentucky Department of Education as a district containing a low-achieving school, a district leadership assessment shall be performed by the assessment team to review the functioning of the district administration and its specific leadership capacity related to each identified school.

(2) The assessment team shall submit a report to the commissioner that specifically makes a recommendation regarding whether the district has the capability and capacity to manage the intervention in the identified school(s).

(3) There shall be only one (1) district leadership assessment per district, per year, regardless of the number of persistently low-achieving schools located in the district.

(4) The assessment shall make a determination of the district's ability to manage the intervention in the school based upon the following criteria:

(a) The district leadership's commitment to support each school in its efforts to be effective learning communities and to support climates conducive to performance excellence;

(b) The district leadership's commitment to actively engage families and community groups to remove barriers to learning in an effort to meet the intellectual, social, career, and developmental needs of students;

(c) The district leadership's commitment to provide the resources, time and calendars necessary for each school to build professional learning programs based primarily on job-embedded professional learning;

(d) The district leadership's commitment to support instructional decisions that focus on support for teaching and learning, organizational direction, high performance expectations, creating a learning culture, and developing leadership capacity;

(e) The district leadership's ability to provide the human, fiscal and time resources to allow each school to support high student and staff performance; and

(f) The district leadership's ability to support, through its district improvement plan, school efforts to effectively:

1. Identify the needs of all students;
2. Set specific, measurable goals to address those needs;
3. Implement specific strategies to reach those goals;
4. Provide adequate resources to implement those strategies;

and

5. Frequently monitor implementation of the strategies and make adjustments if strategies are not achieving the desired outcomes.

(5) The district leadership assessment shall utilize the:

- (a) Standards and Indicators for School Improvement;
- (b) Stakeholder interviews; and
- (c) Portfolio of district records.

(6) A district leadership assessment shall be repeated every two years until the requirements of KRS 160.346(8) are met by all schools in the district.

Section 4. Notification to Schools and Districts of Leadership Assessment Determination. Within ten (10) days of receipt of the assessment team's recommendations for a specific school, the commissioner shall notify, in writing, the school council, superintendent, and local board of education of the determination regarding:

- (a) School council authority;
- (b) Principal authority; and
- (c) District capacity.

Section 5. Authority to Select an Intervention Option. (1) If the school assessment determines that the school council has sufficient capacity to manage the recovery, and the district assessment determines the district has the capacity to support the recovery, the

school council shall, within thirty (30) days after the receipt of the commissioner's notification, choose an intervention option and develop an action plan. The council shall present the option and plan to the local board of education, which shall give final approval and provide the necessary support and resources for the recovery effort.

(2) If the school assessment determines that the school council does not have sufficient capacity to manage the recovery and recommends the council's authority be transferred and the district audit finds sufficient district capacity to support the recovery and recommends the council's authority be transferred to the superintendent, the superintendent shall, within thirty (30) days after the receipt of the commissioner's notification, make a recommendation for an intervention option and submit the choice to the local board of education, which shall make the final determination on the intervention option.

(3) If the school assessment determines that the school council has sufficient capacity to manage the recovery, and the district assessment determines the district does not have the capacity to support the recovery, the school council shall, within thirty (30) days after the receipt of the commissioner's notification, choose the intervention option and submit its choice to the local board of education, which shall review the option chosen by the school council and submit the choice to the Commissioner of Education who shall approve the choice.

(4) If the school assessment determines that the school council does not have sufficient capacity to manage the recovery and recommends the council's authority be transferred, and the district assessment finds the district lacks sufficient capacity to support the recovery and recommends the council's authority be transferred to the Commissioner of Education, the Commissioner of Education shall, within thirty (30) days after receipt of the assessment determination and in consultation with the school council, superintendent and local board of education, determine the intervention option. The identified school and local district shall implement the intervention option with support from the Kentucky Department of Education.

Section 6. Implementation of Intervention Options. (1) A school or district engaging in the restaffing Option shall:

(a) Replace the principal with a certified principal who has specific training in turning around low-achieving schools and grant the new leader sufficient operational flexibility, including staffing, calendars, time, and budgeting, to fully implement a comprehensive approach in order to substantially improve student achievement outcomes and, if a high school, increase high school graduation rates. The current principal shall be eligible to remain if the school leadership assessment recommends and the commissioner determines the principal has the capacity to lead the recovery.

(b) Replace the school council with individuals appointed by the commissioner. The current school council shall be eligible to remain if the school leadership assessment recommends and the commissioner determines the school council has the capacity to lead the recovery.

(c) Use standards adopted locally by the board of education to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students;

(d) Select new staff to replace those transferred or dismissed;

(e) Implement strategies designed to increase opportunities for career growth, including more flexible working conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school;

(f) Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

(g) Adopt a new governance structure which shall include requiring the school to provide quarterly progress reports to the local board of education and the Kentucky Department of Education;

(h) Use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with the required core academic standards

established in 704 KAR 3:303;

(i) Promote the continuous use of student data from formative, interim, and summative assessments to inform and differentiate instruction in order to meet the academic needs of individual students;

(j) Establish schedules and implement strategies that provide increased learning time; and

(k) Provide appropriate social, emotional, and community-oriented services and supports for students.

(2) A school or district engaging in the External Management Option shall:

(a) choose an education management organization (EMO) from a list of approved EMO's established by the Kentucky Board of Education pursuant to Section 6 of this administrative regulation;

(b) Contract with the EMO to provide day to day management of the school; and

(c) Provide quarterly progress reports to the local board of education and the Kentucky Department of Education.

(3) A school or district engaging in the Transformation Option shall:

(a) Replace the principal who led the school prior to commencement of the transformation model with a certified principal who has specific training in turning around low-achieving schools. The current principal shall be eligible to remain if the school leadership assessment recommends and the commissioner determines the principal has the capacity to lead the recovery and has specific training in turning around low-achieving schools;

(b) Replace the school council with individuals appointed by the commissioner. The current school council shall be eligible to remain if the school leadership assessment recommends and the commissioner determines the school council has the capacity to lead the recovery.

(c) Use rigorous, transparent, and equitable evaluation systems for teachers and principals that:

1. Take into account data on student growth as a significant factor as well as other factors such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduations rates; and

2. Are designed and developed with teacher and the principal's involvement;

(d) Identify and provide additional leadership and compensation opportunities to school leaders, teachers, and other staff who have increased student achievement and high-school graduation rates, if applicable, and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;

(e) Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies which shall include:

1. Subject-specific pedagogy;

2. Instruction that reflects a deeper understanding of the community served by the school; and

3. Differentiated instruction;

(f) Implement strategies designed to increase opportunities for career growth which shall include more flexible working conditions designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation school;

(g) Use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with state academic standards;

(h) Promote the continuous use of student data from formative, interim, and summative assessments to inform and differentiate instruction in order to meet the academic needs of individual students;

(i) Increase learning time and create community-oriented schools that:

1. Establish schedules and implement strategies that provide increased learning time; and

2. Provide ongoing mechanisms for family and community engagement; and

(j) Provide operational flexibility and sustained support that:

1. Gives the school sufficient operational flexibility, including staffing, calendar, time, and budgeting to fully implement a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates; and

2. Ensures that the school participates in ongoing, intensive technical assistance and related support from the local district and the state.

(k) Provide quarterly progress reports to the local board of education and the Kentucky Department of Education.

(4) A school or district engaging in the School Closure Option shall develop a plan for the closure of the school. The plan shall include:

(a) A process for the transfer of students to higher performing schools in the district;

(b) A determination by the local board of education regarding staff assignments and the use of the existing facility and other assets;

(c) A method of monitoring the progress of students in their new school environment; and

(d) A quarterly progress report to the local board of education and the Kentucky Department of Education.

Section 7. Establishment of Approved External Management Organizations. (1) The list of approved EMOs shall be created by the Commissioner of Education following the application process established in subsection (2) of this section.

(2) The commissioner shall issue a request for information to solicit EMO applicants who shall detail the scope of the services they are able to provide to persistently low-achieving school. The request for information shall include the following information to solicit the EMO's qualifications:

(a) The ability of the EMO to staff the school with dynamic leadership with experience in turning around low-performing schools during the period of the contract;

(b) The ability of the EMO to conduct a needs assessment in the school and develop a plan of action based on the needs assessment;

(c) The ability of the EMO to deliver a comprehensive list of services designed to turnaround the school(s);

(d) The ability of the EMO to screen staff and make decisions on staff assignments;

(e) Its familiarity with Kentucky school laws and administrative regulations;

(f) The experience of the EMO in turning around low-achieving schools;

(g) References from other low-achieving schools or school districts supporting the EMO's ability to turn around low-achieving schools;

(h) Evidence by the EMO that its provision of services includes instructional leadership, professional learning support for teachers and other staff, and services to families and community stakeholders;

(i) Evidence of the EMO's financial stability, any pending or threatened litigation, and liability insurance coverage; and

(j) Other information required pursuant to KRS Chapter 45A.

(3) The Commissioner of Education shall review all responses and determine which applicants meet the criteria in subsection (2) of this section. The qualifying applicants shall be submitted to the Kentucky Board of Education for approval. The list of approved EMOs shall be made public upon approval by the Kentucky Board of Education.

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

(a) "Standards and Indicators for School Improvement", dated March 30, 2000; and

(b) "The Missing Piece of the Proficiency Puzzle", dated June 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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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  
JOE BROTHERS, Chairperson

APPROVED BY AGENCY: January 15, 2010

FILED WITH LRC: January 15, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 30, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the processes to be followed when a school is identified as persistently low-achieving.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of 160.346 that set forth the processes to be followed when a school is identified as persistently low-achieving.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for establishing the process and procedures for implementing the intervention options of KRS 160.346 that are available to schools, districts, local boards of education and the commissioner of education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics for establishing the process and procedures for implementing the intervention options of KRS 160.346 that are available to schools, districts, local boards of education and the commissioner of education.

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

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky that have schools identified as persistently low-achieving 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 proposed regulation will impact identified schools and districts by providing the detail necessary to carry out their

roles and responsibilities in KRS 160.346.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts must formally choose an intervention option for those options listed in KRS 160.346 and carry out the processes detailed for that option in the regulation. The Commissioner of Education must notify the local district upon receipt of audit committee recommendations as to school and district leadership capacity based on the recommendations in the audits. Kentucky Department of Education staff and contracted individuals will be responsible for completion of the audits described in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the School Districts or the Commissioner of Education other than minimal administrative costs. The audit is paid through the Commonwealth School Improvement Funds. The cost is estimated at \$25,000 per audit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The identified persistently low-achieving schools will have an improved chance of turning around their struggling school by qualifying for significant fiscal and human resources to assist in the school improvement efforts. The commissioner and Kentucky Department of Education staff will have better ability to conduct audits and make recommendations to the school districts regarding the best strategies for improving these schools.

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

(a) Initially: The proposed regulation results in additional costs to the Kentucky Department of Education to conduct the audit process. The audit is paid through the Commonwealth School Improvement Funds. The cost is estimated at \$25,000 per audit.

(b) On a continuing basis: The proposed regulation results in additional costs to the Kentucky Department of Education to conduct the audit process. The audit is paid through the Commonwealth School Improvement Funds. The cost is estimated at \$25,000 per audit.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Commonwealth School Improvement Funds and federal funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts containing low-achieving schools.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.035, 156.070, 160.346.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. The amount of dollars expended by the State for this administrative regulation depends on the number of schools identified as persistently low-achieving. No additional costs are expected.

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

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

(c) How much will it cost to administer this program for the first year? The proposed regulation, as required by HB 176, will result in audits of low-performing schools and districts. The audit is paid through the Commonwealth School Improvement Funds. The cost is estimated at \$25,000 per audit.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation, as required by HB 176, will result in audits of low-performing schools and districts. The audit is paid through the Commonwealth School Improvement Funds. The cost is estimated at \$25,000 per audit.

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 February 8, 2010**

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 8, 2010 at 1:00 p.m., in Room 149 of the Capitol Annex. Representative Leslie Combs, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the January 2010 meeting were approved.

Present were:

Members: Senators David Givens, Alice Forgy-Kerr, Elizabeth Tori and Joey Pendleton and Representatives Leslie Combs, Robert Damron, Danny Ford and Jimmie Lee.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Chad Collins, Emily Harkenrider, Karen Howard, Emily Caudill, Jennifer Beeler, and Laura Napier.

Guests: Diana Barber, Becky Gilpatrick, Kentucky Higher Education Assistance Authority; Dennis Taulbee, Council on Postsecondary Education; Kathryn Gabhart, State Board of Elections; Dinah Bevington, Personnel Cabinet; Tom Crawford, Greg Jennings, Department of Revenue; DeVon Hankins, Mark Johnson, Gary Morris, Bruce Nix, Don Richardson, Department of Revenue; Tony Barrett, Jane Gardner, Scott Hannah, State Board of Landscape Architects; Mark Brengelman, Becky Klusch, Board of Physical Therapy; Angela Evans, Stephanie Head, Frances Short, Board of Marriage and Family Therapists; Ron Brooks, Benjy Kinman, Catherine York, Kentucky Department of Fish and Wildlife Resources; Amy Barker, James VanNort, Department of Corrections; Ann Dangelo, Godwin Onodu, Todd Shipp, Transportation Cabinet; Kevin Brown, Ronald Flora, Denise Hagan, Mark Johnson, Kentucky Department of Education; Charlene Davis, Clay Lamb, Terry Manuel, Beth Milburn, Wayne Onkst, Barbara Teague, Kentucky Department for Libraries and Archives; Tom Howard, Jeff Mosely, Rob Ramsey, Bob Tarvin, Finance and Administration Cabinet; Bob Elkins, Kristi Redmon, Labor Cabinet; Dawn Bellis, Tim House, George Mann, Richard Moloney, Melissa Smith, Department of Housing, Buildings and Construction; Shirley Eldridge, Tonia Wells, Mary Sparrow, Steven Veno, Virginia Carrington, Elizabeth Caywood, Cabinet for Health and Family Services; Virginia T. Hillis, Fred Roser, Robert Fleenor, Bill Gibson, Russ Sanders, Harry Gibson, John Knight, Frank Henn Jr., Barry Edwards, Hank Hancock, Jack Reckner, Tom Underwood, Corey Roblee, Lewis Abbott, Wesley Abbott, Ralph Cornelius, Michael Doolin, Billy Slone, Bobby Mills, Roy Cornelius, Chad Cartwright, Susan Snipes, Charles Moore, Arthur Ellis, Billy Caudill, Don Blevins, Randy Vanhook.

**The Administrative Regulation Review Subcommittee met on Monday, February 8, 2010, and submits this report:**

**Administrative Regulations Reviewed by the Subcommittee:**

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY:**  
**Division of Student and Administrative Services: KHEAA Grant Programs**

11 KAR 8:030. Teacher scholarships. Diana Barber, general counsel, and Becky Gilpatrick, Student Aid Branch Manager, represented the authority.

A motion was made and seconded to approve the following amendments: to amend Sections 5, 6, and 12 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**COUNCIL ON POSTSECONDARY EDUCATION: Public Educational Institutions**

13 KAR 2:045 & E. Determination of residency status for admission and tuition assessment purposes. Dennis Taulbee, general counsel, represented the council.

In response to questions by Representative Damron, Mr. Taulbee stated that an armed forces, active-duty member or member's spouse who qualified as a home-of-record Kentucky resident for tax purposes also qualified as a Kentucky resident for purposes of

online or correspondence courses.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8, 10, 12, and 14 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**KENTUCKY STATE BOARD OF ELECTIONS: Board**

31 KAR 4:020. Election costs and county clerk reimbursement form. Kathryn Gabhart, general counsel, represented the board.

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 Section 1 to clarify requirements pertaining to the reimbursement form. Without objection, and with agreement of the agency, the amendments were approved.

**31 KAR 4:030. Reporting forms.**

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Section 1 to clarify who is required to file the forms incorporated by reference; and (3) to amend Section 2 to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

**PERSONNEL CABINET: Personnel Cabinet, Classified**

101 KAR 2:120. Incentive programs. Dinah Bevington, general counsel, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 2 to update two (2) forms incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

**FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Property Valuation: Ad Valorem Tax; Administration**

103 KAR 5:190 & E. State registration requirements and application process for purchasing certificates of delinquency; fees; and definitions for related entities and related interest. Tom Crawford, staff advisor, and Greg Jennings, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with the agreement of the agency, the amendments were approved.

**Office of Income Taxation: Income Tax; General Administration**

103 KAR 15:110. Ethanol tax credit. Bruce Nix, policy advisor, and Don Richardson, executive director, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 15:120. Cellulosic ethanol tax credit.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 15:140. Biodiesel tax credit.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Division of Individual Income Tax: Income Tax; Withholding**

103 KAR 18:110. Withholding methods. Bruce Nix, policy advisor, and Don Richardson, executive director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT CABINET: Board of Physical Therapy: Board**

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants. Mark Brengelman, assistant attorney general, and Becky Klusch, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. 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, board counsel; Stephanie Head, board co-chair; and Frances Short, Executive Director, Office of Occupations and Professions, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 6, 7, 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 1:016. Use of lands and waters on lakes owned or controlled by the department. Benjy Kinman, deputy commissioner, and Catherine York, deputy general counsel, represented the department. Virginia T. Hillis, Lake Malone resident, appeared in support of this administrative regulation.

Senator Pendleton and Senator Kerr thanked the department for cooperating with stakeholders to develop this administrative regulation.

In response to a question by Senator Pendleton, Mr. Kinman stated that a new boat dock development would begin the process with a public hearing.

Ms. Hillis thanked the Department of Fish and Wildlife Resources for cooperating with stakeholders to develop this adminis-

trative regulation. She stated that she preferred for future policy to require public input for commercial docks.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 4, and 5 to change July 1, 2009 dates to the "effective date of this administrative regulation"; (2) to amend Section 1 to define the term "rebuild"; (3) to amend Section 4 to prohibit additional community boat docks not approved as of January 1, 2010; (4) to amend Section 5(10) and (11) to exempt existing land owners from having to meet new access structure requirements; (5) to amend Section 5(14) to allow non-access structures to be kept if the landowner maintained a valid shoreline use permit; (6) to amend Section 7(4) to delete the waiver provisions for rebuilding; (7) to amend Section 8(1)(a)2. to delete "boat dock walkway" from the list of items that cannot be renovated without department approval; (8) to amend Section 9 to provide for an amended application; and (9) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 5 through 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with the agreement of the agency, the amendments were approved.

**Hunting and Fishing**

301 KAR 3:022. License, tag, and permit fees.

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

501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders. Amy Barker, assistant general counsel, and Dr. James VanNort, board chair, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 5, 7, and 8 for clarification and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION CABINET: Kentucky Board of Education: Department of Education: Food Service Programs**

702 KAR 6:100. Appeal procedures for nutrition and health services programs. Kevin Brown, general counsel, and Denise Hagan, director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 4 to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department for Libraries and Archives: Public Records Division: Archives**

725 KAR 1:020. Recording and reproducing public records. Clay Lamb, staff attorney, and Wayne Onkst, State Librarian and commissioner, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 7 to reflect the new publication dates of material incorporated by reference contained in this administrative regulation; and (4) to amend Sections 1 through 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

725 KAR 1:025. Transfer of public records.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 6 to reflect the new



publication dates of material incorporated by reference contained in this administrative regulation; and (4) to amend Sections 1 through 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Libraries**

725 KAR 2:060. Certification of public librarians. Clay Lamb, staff attorney, and Wayne Onkst, State Librarian and commissioner, represented the division.

In response to a question by Representative Ford, Mr. Onkst stated that there were approximately 1,400 librarians and that one (1) certificate would be eliminated, but that those librarians already operating under that certificate would be "grandfathered" in.

In response to a question by Senator Givens, Mr. Onkst stated that the five (5) dollar fee had been established in 1942 and had not changed since. He stated that the new fifteen (15) dollar fee was for a scholarship fund for a librarian to work in a public library and that the fee would be due once each five (5) years.

725 KAR 2:070. Certification renewal of public librarians.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 8 to reflect the new publication dates of material incorporated by reference contained in this administrative regulation; and (4) to amend Sections 1 through 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Procedures**

750 KAR 1:010 & E. Commission procedures. Tom Howard, executive director; Bob Tarvin, policy analyst; and Jeff Moseley, general counsel, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend Sections 7, 10, and 11 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **LABOR CABINET: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Occupational Safety and Health**

803 KAR 2:300. General. Bob Elkins, safety standards specialist, and Kristie Redmon, safety standards specialist, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:307. Hazardous materials.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Kentucky Building Code**

815 KAR 7:125. Kentucky Residential Code. Dawn Bellis, general counsel; George Mann, deputy commissioner; and Richard Moloney, commissioner, represented the division.

#### **Division of Plumbing: Plumbing**

815 KAR 20:055. Water heater devices. Dawn Bellis, general

counsel; Tim House, Director of the Division of Plumbing; and Richard Moloney, commissioner, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **CABINET FOR HEALTH AND FAMILY SERVICES: Department for Aging and Independent Living: Division of Operations Support: Brain Injury**

910 KAR 3:030. Traumatic brain injury trust fund operations program. Shirley Eldridge, regulation coordinator, and Tonia Wells, program director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a citation; (2) to amend Sections 14 and 15 for clarification; and (3) to amend Sections 1 and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Department for Income Support: Child Support Enforcement: Child Support**

921 KAR 1:380. Child support enforcement program application and interstate process. Mary W. Sparrow, supervisor, and Steven P. Veno, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Section 3 to comply with the format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

921 KAR 2:055. Hearings and appeals. Virginia Carrington, branch manager, and Elizabeth Caywood, internal policy analyst, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 13 for clarification; (2) to amend Section 15 to specify when new evidence or exhibits may be submitted to the appeal board; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Sections 3, 4, 7, and 14 to comply with the drafting and format 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 March 8, 2010, meeting of the Subcommittee:**

#### **FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Purchasing**

200 KAR 5:314. Disclosure of contractor's financial records and information to certain governmental entities.

200 KAR 5:315. Suspension.

#### **GENERAL GOVERNMENT CABINET: State Board of Examiners and Registration of Landscape Architects: Board**

201 KAR 10:050. Fees. Tony Barrett, secretary - treasurer, and Scott Hannah, President of the Kentucky Society of Landscape Architects, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1(3) to clarify that the original license fee shall be paid by all licensees; and (2) to amend Section 1(4) to reduce the reciprocal license fee from \$250 to \$200. Without objection, and with agreement of the agency, the amendments were approved.

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In response to a question by Co-Chair Tori, Mr. Barrett stated that the board agreed to defer consideration of this administrative regulation. Without objection, and with agreement of the agency, this administrative regulation was deferred to the March 8, 2010 meeting of the Subcommittee.

**Kentucky Real Estate Commission: Commission**  
201 KAR 11:190. Disciplinary proceedings.

**Board of Podiatry: Board**  
201 KAR 25:012 & E. Licensing examinations.

**Board of Licensed Professional Counselors: Board**  
201 KAR 36:060. Qualifying experience under supervision.

**TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game**  
301 KAR 2:142. Spring wild turkey hunting.

**ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Waste Management: Solid Waste Facilities**  
401 KAR 47:090. Solid waste permit fees.

**Department for Natural Resources: Division of Mine Permits: Permits**  
405 KAR 8:015 & E. Processing assessments.

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Vehicle Licensing: Division of Motor Carriers**

601 KAR 1:220. Theft of motor fuel; procedures to obtain motor vehicle record. Ann D'Angelo, assistant general counsel; Godwin Onodu, assistant director; and Todd Shipp, special assistant, represented the division.

In response to a question by Co-Chair Tori, Mr. Shipp stated that the department had not yet received any requests for personal information following the theft of motor fuel. Ms. D'Angelo stated that it was difficult to anticipate if requests would be made for the personal information. Mr. Shipp stated that the fee increase was estimated based on the costs charged by surrounding states and average costs to produce reports. He stated that the division expected the cost of the fee to be subject to restitution from the motor fuel theft offender.

In response to questions by Representative Ford, Mr. Shipp stated that the report would contain the information for the registered owner of a vehicle based on the license number of the vehicle allegedly involved in the motor fuel theft. He stated that the information was not expected to assist in matters of previous motor fuel theft violations.

In response to questions by Co-Chair Tori, Mr. Onodu stated that there had not been requests for personal information after theft of motor fuel but that there had been commercial requests for opens records, into which category the motor fuel theft report fell. Mr. Shipp stated that the average size of a commercial open records request was fifty two (52) to 150 pages of documents. Mr. Godwin stated that, in the past, the two (2) dollar processing fee had not been based on the actual costs of processing the reports.

In response to a question by Representative Ford, Mr. Shipp agreed to consider if a ten (10) dollar fee for a report that costs, on average, eighty-eight (88) dollars to prepare was reasonable. A motion was made and seconded to approve the following amendments: (1) to amend the title to make technical changes for consistency with other administrative regulations; and (2) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct a statutory citation. Without objection, and with agreement of the agency, the amendments were approved.

Co-Chair Tori asked if the division would defer consideration of this administrative regulation in order to consider the appropriate fee amount and to ensure that the statutory requirements were met. Mr. Shipp stated that the division agreed to the deferral. Without objection, and with agreement of the agency, this administrative regulation was deferred to the March 8, 2010 meeting.

**Department of Vehicle Regulation: Division of Drivers License: Driver's License**  
601 KAR 12:060. Hardship driver's license.

**PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Division of Licensing: Thoroughbreds**  
810 KAR 1:025 & E. Licensing thoroughbred racing.  
  
810 KAR 1:034 & E. Licensing of racing association.

**Harness Racing**  
811 KAR 1:034 & E. Licensing of racing associations.

**PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Kentucky Building Code**

815 KAR 7:120 & E. Kentucky Building Code. Dawn Bellis, general counsel; George Mann, deputy commissioner; and Richard Moloney, commissioner, represented the division. Corey Roblee, representative of the International Code Council, and Tom Underwood, Executive Director of the Kentucky Fire Sprinkler Contractors' Association, appeared in opposition to this administrative regulation.

Mr. Underwood stated that the fee increase would be a burden to the industry. He also stated that he made comments during the public comment period but had not received a timely copy of the division's Statement of Consideration. He requested that the administrative regulation be deferred to the March meeting of the Subcommittee so that he had time to review the Statement of Consideration.

In response to a question by Co-Chair Combs, Mr. Roblee stated that those who would be responsible for enforcing the gas code were opposed to the code change.

Ms. Bellis stated that all comments that were received during the public comment period were included in the Statement of Consideration. She stated that there was not a "speed review" in place for sprinkler projects.

Mr. Mann stated that the fee increase was reviewed and approved unanimously by the Board of Housing.

In response to questions by Representative Lee, Mr. Moloney stated that it was mandatory that the division increase the staffing level in order to prevent a backlog of permitting. He stated that, with the fee increase, the program was expected to break even by the end of the year and that, without the fee increase, the permitting process would slow down significantly. He also stated that, with the fee increase even if the economy improved and construction returned to stronger levels, the agency would be able to maintain the ten (10) to fifteen (15) day turn-around time for processing permits.

In response to questions by Senator Givens, Mr. Underwood stated that the fee increase disproportionately affected small sprinkler installations. He preferred a staggered approach to the fees with smaller jobs having smaller fee increase increments.

In response to a question by Co-Chair Combs, Mr. Mann stated that the division would consider staggering the fee schedule so that smaller jobs would have smaller fee increase increments. Mr. Moloney also agreed to consider such an amendment.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved. In response to a request by Representative Dameron, Mr. Moloney stated that the division agreed to defer consideration of this administrative regulation. Without objection, and with agreement of the agency, this administrative regulation was deferred to the March 8, 2010 meeting.

**Division of Plumbing: Plumbing**

815 KAR 20:050 & E. Installation permits. Dawn Bellis, general counsel; George Mann, deputy commissioner; Richard Moloney, commissioner; and Melissa Smith, acting director of budgets, represented the division. Harry P. Gibson, owner of Harry P. Gibson and Company, appeared in support of this administrative regula-

tion. Frank Henn, Jr., plumber and President of the Kentucky Association of Plumbers and Housing Construction Contractors, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair Tori, Mr. House stated that the Division of Plumbing needed a fee increase in order to keep the division solvent and to maintain a reasonable permit-processing turn-around time. He stated that the bulk of the plumbing industry supported the fee increase.

Representative Lee stated that fee increases to compensate for budget shortfalls was unacceptable.

In response to a question by Representative Ford, Mr. House stated that, without the fee increase, twenty-six (26) division employees would be laid off and the permit processing turn-around time may increase by six (6) to eight (8) weeks. Mr. House stated that inspections would also be delayed and opportunities for the licensing examinations would have to be significantly truncated.

In response to a question by Senator Givens, Mr. House stated that excess funds swept into the General Fund would have to be reallocated through General Fund appropriations in order to be transferred within the department. Mr. Moloney stated that the Division of Plumbing funds were not swept in 2009. Ms. Smith stated that the 2009 budget bill required funds transferred within the department to be repaid to the original division at the end of the biennium.

Mr. Gibson stated that, because of better enforcement and more timely inspection and permit processing turn-around times, he would rather pay the increased fees than lose services.

In response to a question by Representative Lee, Mr. Gibson stated that he would pass the added fee expenses on to the final customer.

In response to a question by Co-Chair Tori, Mr. Gibson stated that the monetary savings of not raising the fee would not adequately provide for the protection of the public.

Mr. Henn stated that a fee increase during a slow economy would be difficult in the context of an already shrinking market share. He stated that more customers would probably have plumbing work performed without having the work properly inspected because of the fee increases that would be passed on to the final customer.

In response to a question by Senator Givens, Mr. Henn stated that the fee increases would create an uneven playing field.

In response to a question by Mr. House, staff noted that an emergency administrative regulation stayed in effect until it expired, was withdrawn, or the ordinary administrative regulation filed to replace it was withdrawn or became effective.

In response to a question by Senator Pendleton, there was a show of hands from plumbers in the audience regarding the proposed fee increases. More hands were raised in support of the fee increases than hands raised in opposition to the fee increases by approximately a three (3) to one (1) ratio, respectively.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; and (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

In response to a request by Senator Givens, Mr. Moloney stated that the division agreed to defer consideration of this administrative regulation until more direction was available regarding budget expectations. Without objection, and with agreement of the agency, this administrative regulation was deferred to the March 8, 2010 meeting.

**The subcommittee adjourned the meeting at 3:10 p.m. until March 8, 2010.**

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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.

NONE