

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 37, NUMBER 4
FRIDAY, OCTOBER 1, 2010

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MEETING NOTICE: ARRS

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet October 12, 2010 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 911-914 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2010 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, OCTOBER 12, 2010, at 1:00 p.m., Room 149 Capitol Annex**

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- 4 KAR 1:010. General compliance and federal tax laws.
- 4 KAR 1:020. Minimum distribution.
- 4 KAR 1:030. Rollovers and transfers to other plans.
- 4 KAR 1:040. Limitation on benefits.

PERSONNEL CABINET

Personnel Cabinet, General

- 101 KAR 5:015 & E. Furloughs. ("E" expires 2/9/2011)

**FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System**

General Rules

- 102 KAR 1:320 & E. Qualified domestic relations orders. ("E" expires 1/11/2011) (Amended After Comments)
- 102 KAR 1:330 & E. Travel and administrative expenses. ("E" expires 1/11/2011) (Deferred from September)

**Department of Revenue
Office of Income Taxation**

Forms

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

Income Tax; Withholding

- 103 KAR 18:070. Supplemental wages and other payments subject to withholding. (Deferred from September)

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Kentucky Veterans' Program Trust Fund

- 106 KAR 2:020. Military Family Trust Fund. (Not Amended After Comments)

**GENERAL GOVERNMENT
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County Budget

- 109 KAR 15:020. County Budget Preparation and State Local Finance Officer Policy Manual.

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Board

- 201 KAR 16:030 & E. License, renewal notice, exemption. ("E" expires 11/9/2010) (Deferred from July)

State Board of Licensure for Professional Engineers and Land Surveyors

Board

- 201 KAR 18:150. Standards of practice.

Board of Physical Therapy

Board

- 201 KAR 22:020. Eligibility and credentialing procedure.
- 201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.
- 201 KAR 22:070. Requirements for foreign-educated physical therapists.

Board of Licensed Professional Counselors

Board

- 201 KAR 36:060. Qualifying experience under supervision.
- 201 KAR 36:070. Education requirements.

**PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board for Proprietary Education**

Board

- 201 KAR 40:040. Commercial driver license training school curriculum and refresher course.
- 201 KAR 40:050. Application for license for commercial driver license training school.
- 201 KAR 40:060. Application for renewal of license for commercial driver license training school.
- 201 KAR 40:070. Commercial driver license training school instructor and agent application and renewal procedures.
- 201 KAR 40:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, and advertising and solicitation of students by commercial driver license training schools.
- 201 KAR 40:100. Standards for Kentucky resident commercial driver training school facilities.

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

Game

- 301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

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Department for Environmental Protection
Division of Water**

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401 KAR 8:100. Design, construction, and approval of facilities. (Amended After Comments)

**JUSTICE AND PUBLIC SAFETY CABINET
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503 KAR 1:170. Career Development Program.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
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601 KAR 1:018. Special overweight or overdimensional permits. ("E" expires 2/8/2011)

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

School Administration and Finance

702 KAR 3:246. School council allocation formula: KETS District Administrative System Chart of Accounts. (Deferred from June)

Pupil Transportation

702 KAR 5:110. Vocational pupils, reimbursement for. (Deferred from August)

Office of Instruction

704 KAR 3:305. Minimum requirements for high school graduation. (Deferred from August)

**Department of Workforce Investment
Office of Vocational Rehabilitation**

Administration

781 KAR 1:040. Rehabilitation technology services. (Amended After Comments)

Office of Employment and Training

Unemployment Services.

787 KAR 1:090. Unemployed worker's reporting requirements.

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

Agent, Consultants, Solicitors and Adjusters

806 KAR 9:030. Adjusters, apprentice adjusters; licenses, restrictions. (Not Amended After Comments)

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Mortgage loan companies and mortgage loan brokers

808 KAR 12:002. Definitions for 808 KAR Chapter 12.

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808 KAR 12:021. License and registration.

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808 KAR 12:024. Change of address, name, control, or agent for service of process.

808 KAR 12:026. Procedures for distributing and using funds from the Mortgage Fraud Prosecution fund.

808 KAR 12:066. Repeal of 808 KAR 12:065.

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808 KAR 12:086. Repeal of 808 KAR 12:085.

808 KAR 12:096. Repeal of 808 KAR 12:095.

Kentucky Horse Racing Commission

Thoroughbred racing

810 KAR 1:001. Definitions.

810 KAR 1:009 & E. Jockeys and apprentices. ("E" expires 1/14/2011) (Comments Received, SOC ext.)

810 KAR 1:011. Pari-mutuel wagering.

810 KAR 1:026 & E. Racing associations. ("E" expires 1/14/2011) (Comments Received, SOC ext.)

810 KAR 1:120. Exotic wagering.

Harness Racing

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811 KAR 2:010. Definitions.

811 KAR 2:060. Pari-mutuel wagering.

811 KAR 2:160. Exotic wagering.

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

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Heating, Ventilation and Air Conditioning Licensing Requirements

815 KAR 8:035. Reciprocal licensing requirements.

815 KAR 8:050. Continuing education requirements for heating, ventilation, and air conditioning (HVAC) license holders.

Division of Plumbing

Plumbing

815 KAR 20:032. Continuing education requirements for plumbers.

815 KAR 20:100. Joints and connections. (Deferred from August)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Adult and Child Health Improvement

Kentucky Early Intervention System

902 KAR 30:141. Repeal of 902 KAR 30:140 and 30:170. (Deferred from September)

Department for Community Based Services

Division of Family Support

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

921 KAR 2:040 & E. Procedures for determining initial and continuing education. ("E" expires 1/19/2011)

Food Stamp Program

921 KAR 3:030 & E. Application process. ("E" expires 1/19/2011)

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FINANCE AND ADMINISTRATION CABINET

Department of Revenue

Office of Income Taxation

Forms

103 KAR 3:050. Miscellaneous taxes forms manual. (Comments Received)

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Board of Dentistry

Board

201 KAR 8:007E. Repeal of 201 KAR 8:006, 8:015, 8:070, 8:130, 8:135, 8:140, 8:150, 8:160, 8:170, 8:180, 8:185, 8:190, 8:220, 8:225, 8:230, 8:240, 8:250, 8:260, 8:265, 8:270, 8:277, 8:280, 8:290, 8:310, 8:320, 8:330, 8:340, 8:345, 8:350, 8:355, 8:400, 8:420, 8:430, 8:440, 8:450, 8:460, 8:70, and 8:490. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:390E. General anesthesia, deep sedation, and conscious sedation by dentists. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:500 & E. Board organization. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:510 & E. Advisory opinions. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:520 & E. Fees and fines. ("E" expires 2/10/2011) (Comments Received, SOC ext.)

201 KAR 8:530 & E. Licensure of dentists. ("E" expires 2/10/2011) (Comments Received, SOC ext.)

201 KAR 8:540 & E. Dental practices. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:560 & E. Licensure of dental hygienists. ("E" expires 2/10/2011) (Comments Received, SOC ext.)

201 KAR 8:570 & E. Registration of dental assistants. ("E" expires 2/10/2011) (Comments Received, SOC ext.)

201 KAR 8:580 & E. Charity dental practices and post-disasters clinics. ("E" expires 1/11/2011) (Withdrawn by agency)

Board of Nursing

Board

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization. (Comments Received, SOC ext.)

201 KAR 20:061. Doctor of Nursing Practice (DNP) degree. (Comments Received, SOC ext.)

201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing. (Comments Received, SOC ext.)

Board of Licensure for Massage Therapy

Board

201 KAR 42:040. Renewal and reinstatement procedures. (Withdrawn by Agency)

DEPARTMENT OF AGRICULTURE

Division of Regulation and Inspection

Kentucky Grain Insurance and Grain Dealers

302 KAR 34:020. Bonding requirements. (Withdrawn by Agency)

ENERGY AND ENVIRONMENT CABINET

Division for Air Quality

Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:001. Definitions for 401 KAR Chapter 51. (Comments Received, SOC ext.)

Permits, Registrations, and Prohibitory Rules

401 KAR 52:001. Definitions for 401 KAR Chapter 52. (Comments Received, SOC ext.)

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**PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division**

Life insurance and annuity contracts

806 KAR 15:090. Notice of rights as an owner of a life insurance policy. (Comments Received)
Division of Kentucky Access

Health insurance contracts

806 KAR 17:320. Kentucky access requirements. (Comments Received)

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvement**

Kentucky Early Intervention System

902 KAR 30:001 & E. Definitions. ("E" expires 2/10/2011) (Comments Received)
902 KAR 30:110 & E. Point of entry and service coordination. ("E" expires 2/10/2011) (Comments Received, SOC ext.)
902 KAR 30:120 & E. Evaluation and eligibility. ("E" expires 2/10/2011) (Comments Received, SOC ext.)
902 KAR 30:130 & E. Assessment, service planning, and assistive technology. ("E" expires 2/10/2011) (Comments Received, SOC ext.)
902 KAR 30:150 & E. Personnel qualification. ("E" expires 2/10/2011) (Comments Received, SOC ext.)
902 KAR 30:160 & E. Covered services. ("E" expires 2/10/2011) (Comments Received, SOC ext.)
902 KAR 30:180 & E. Procedural safeguards. ("E" expires 2/10/2011) (Comments Received, SOC ext.)
902 KAR 30:200 & E. Coverage and payment for services. ("E" expires 2/10/2011) (Comments Received, SOC ext.)

**Department for Medicaid Services
Division of Healthcare Facilities Management**

Medicaid Services

907 KAR 1:012 & E. Inpatient hospital service coverage. ("E" expires 1/27/2011) (Comments Received, SOC ext.)
907 KAR 1:015 & E. Payments for outpatient services. ("E" expires 1/27/2011) (Comments Received, SOC ext.)
907 KAR 1:019 & E. Outpatient pharmacy program. ("E" expires 1/27/2011) (Comments Received, SOC ext.)
907 KAR 1:479 & E. Durable medical equipment covered benefits and reimbursement. ("E" expires 12/27/2011) (Comments Received, SOC ext.)
907 KAR 1:677 & E. Medicaid recipient lock-in program. ("E" expires 12/28/2010) (Comments Received, SOC ext.)
907 KAR 1:825 & E. Diagnosis-related group (DRG) inpatient hospital reimbursement. ("E" expires 1/27/2011) (Comments Received, SOC ext.)

Division of Community Alternatives

Payment and Services

907 KAR 3:090 & E. Acquired brain injury waiver services. ("E" expires 1/27/2011) (Comments Received, SOC ext.)
907 KAR 3:100 & E. Reimbursement for acquired brain injury waiver services. ("E" expires 12/28/2010) (Deferred from September)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

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

STATEMENT OF EMERGENCY
101 KAR 2:210E

This emergency administrative regulation incorporates by reference the 2011 plan year handbook for the Public Employee Health Insurance Program. The Public Employee Health Insurance Program is commonly known as the Kentucky Employees' Health Plan. KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the 2011 plan year handbook on or before September 15, 2010. This emergency administrative regulation is necessary to meet a deadline for the promulgation of an administrative regulation that is established by state law. KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the 2011 plan year handbook containing the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. This administrative regulation incorporates by reference the benefits selection guide distributed by the Department of Employee Insurance in the Personnel Cabinet to public employees covered under the self-insured plan. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. This emergency administrative regulation will be replaced by an ordinary administrative regulation. This emergency administrative regulation is not identical to the ordinary administrative regulation filed at the same time as this emergency administrative regulation. Because this emergency administrative regulation will be in effect for part of plan year 2010, the existing language regarding the Benefits Selection Guide for the 2010 plan year is needed until the ordinary administrative regulation replaces this emergency administrative regulation.

STEVEN BESHEAR, Governor
NIKKI JACKSON, Secretary

PERSONNEL CABINET
Office of the Secretary
(Emergency Amendment)

101 KAR 2:210E. 2010 and 2011 Plan Year Handbooks [Handbook] for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254
STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)
EFFECTIVE: September 15, 2010
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2010 and 2011 Years [Plan Year] as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2010 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan.

Section 2. (1) The Department of Employee Insurance shall

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

(2) The 2011 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide shall govern the health plan benefits for public employees covered under the self-insured plan beginning January 1, 2011.

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

(a) "2010 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2010 edition; and

(b) "2011 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2011 edition[~~is incorporated by reference~~].

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

NIKKI JACKSON, Secretary

APPROVED BY AGENCY: September 10, 2010

FILED WITH LRC: September 15, 2010 at noon

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Joe R. Cowles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference, the 2011 plan year Benefits Selection Guide for health benefit plans offered through the Public Employee Health Insurance Program. The Benefits Selection Guide is distributed to all health plan participant plan holders. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the 2011 self-insured plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254 requires the Personnel Cabinet to incorporate by reference the 2011 plan year Benefits Selection Guide distributed to the public employees covered by the Public Employee Health Insurance Program in an administrative regulation. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2011 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

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

(a) How the amendment will change this existing administrative regulation: This is an amendment. This administrative regulation constitutes a compilation of the health contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for the plan year 2011. The

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2011 Benefits Selection Guide contains at a minimum, the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the additional health benefit under the Public Employee Health Insurance Program for the plan year 2011 and the statutory mandate to annually update the regulations incorporating the plan year handbook contained in KRS 18A.2254.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2011 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2011 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: State and select county and local government entities, including employees of the local school boards and districts, and retirees will be affected. More specifically, this encompasses approximately 158,000 eligible employees under KRS 18A.225(1)(a) and a total of 263,000 (which would include qualifying beneficiaries and dependents).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by entities to comply with the incorporation of these provisions in an administrative regulation. The 2011 plan year Benefits Selection Guide will provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the health benefit plans offered for the 2011 plan year; specifically, the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for the 2011 plan year.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants and dependents covered under the Public Employee Health Insurance Program for plan year 2011 will have comparable benefit structure to the 2010 plan year. There were necessary employee premium contribution and health benefit modifications for plan year 2011 as a result of projected health care inflation, no budgeted employer contribution increase for plan year 2011 and state and federal health care mandates effective January 1, 2011.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This is an

amendment. This administrative regulation will not require an increase in funding or fees.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287, and 26 U.S.C. 105, 106, 125, 152, 129 and 152 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1-7.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law an amended administrative regulation will be promulgated in 2011 and each subsequent plan year.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

STATEMENT OF EMERGENCY 301 KAR 2:225E

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

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tive regulation. This emergency administrative regulation is identical to the ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler by September 15, 2010.

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

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

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

RELATES TO: KRS 150.330, 150.340, 150.603
STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21
EFFECTIVE: AUGUST 18, 2010
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

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

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

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

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

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

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

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

(a) Dove, beginning on:

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

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

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

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

(c) Common snipe, beginning on:

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

2. Thanksgiving Day for sixty (60) consecutive days.

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

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

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

1. Ballard reporting area;

2. Public lands in the West-Central Goose Zone; and

3. The Northeast Goose Zone.

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

(a) Dove:

1. Daily limit of fifteen (15); and

2. Possession limit of thirty (30).

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

1. The head; or

2. A fully-feathered wing.

(c) Woodcock:

1. Daily limit of three (3); and

2. Possession limit of six (6).

(d) Common snipe:

1. Daily limit of eight (8); and

2. Possession limit of sixteen (16).

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

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

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

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

1. Daily limit of fifteen (15); and

2. Possession limit of thirty (30).

(g) Wood duck and teal:

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

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

(h) Canada goose:

1. Daily limit of two (2); and

2. Possession limit of four (4).

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

(a) The head; or

(b) A fully-feathered wing.

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

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

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

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

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

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

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

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

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

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. 20.121 for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:

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

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

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

(2) A person hunting dove on any of the following areas shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. 20.121:

(a) Ballard WMA;

(b) Boatwright WMA;

(c) Doug Travis WMA;

(d) Duck Island WMA;

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

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: June 11, 2010

FILED WITH LRC: AUGUST 18, 2010 at 1 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the United States Fish and Wildlife Service (USFWS).
 - (b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2010-2011 migratory bird seasons in accordance with the USFWS.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to establish hunting season dates and bag limits.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will open the body of water known as Swan Lake on the Boatwright WMA to waterfowl hunting during the September season.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to provide more public waterfowl opportunity during the September seasons.

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

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

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

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

(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 current changes in season dates, bag limits and/or wildlife management area requirements will be published in the annual Migratory Bird Hunting Guide and on the department's website. Hunters must review the hunting guide or website for the updated information to hunt legally during the specified season.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be increased opportunity to hunt migratory game birds.

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

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

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

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

fore, during and after periods open for hunting.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
803 KAR 25:091E

The Department of Workers' Claims must amend this administrative regulation by emergency to comply with KRS 342.035(1), which requires that the schedule of fees be reviewed and updated, if appropriate, every two (2) years on July 1. A fee schedule shall be limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. This emergency administrative regulation complies with the statutory mandate in KRS 342.035(1) and protects human health and public health, safety, and welfare. When the administrative regula-

tions were last changed percentage multipliers used inadvertently resulted in potential inequities to hospitals and other entities such as ambulatory surgery centers and stand alone rehabilitation facilities within the hospital definition which do not file the HCFA 2552. The current changes are intended to correct any inequity. Adjustments are made to the percentage multipliers to cost to charge ratios for hospitals and other facilities within the definitions of this regulation which do not file HCFA Form 2552. This should result in more consistent and fair charges. In addition to rectifying any inequity this change will assist in keeping quality medical providers whose services may have been adversely impacted by the previous changes involved in providing treatment to injured workers. This emergency administrative regulation will be replaced by an ordinary administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation that will be filed at the same time.

STEVEN L. BESHEAR, Governor
DWIGHT T. LOVAN, Commissioner

LABOR CABINET
Department of Workers' Compensation
(Emergency Amendment)

803 KAR 25:091E. Workers' compensation hospital fee schedule.

RELATES TO: KRS 216B.105, 342.020, 342.035, 342.315
STATUTORY AUTHORITY: KRS 342.020, 342.035(1), 342.260(1)

EFFECTIVE: September 15, 2010
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) and 342.260(1) require the Commissioner of the Department ~~[requires the Executive Director of the Office]~~ of Workers' Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. ~~[EO 2008-472, effective June 2, 2008, reorganized the Office of Workers' Claims as the Department of Workers' Claims and established the commissioner, rather than executive director, as the head of the department.]~~ This administrative regulation establishes hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Ambulatory surgery center" means a public or private institution that is:

- (a) Hospital based or freestanding;
- (b) Operated under the supervision of an organized medical staff; and
- (c) Established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) "Hospital" means a facility, ~~[,]~~ surgical center, ~~[,]~~ or psychiatric, rehabilitative, or other treatment or specialty center ~~that [which]~~ is licensed pursuant to KRS 216B.105.

(3) "Hospital-based practitioner" means a provider of medical services who is an employee of the hospital and who is paid by the hospital.

(4) "Independent practitioner" means a physician or other practitioner who performs services that are covered by the Workers' Compensation Medical Fee Schedule for Physicians on a contract basis and who is not a regular employee of the hospital.

(5) "New hospital" means a hospital ~~that [which]~~ has not completed its first fiscal year.

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital fees for each hospital for each compensable service or supply.

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1)(a) The commissioner shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year.

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(b) A hospital's base cost-to-charge ratio shall be based on the latest cost report, or HCFA-2552, which has been supplied to the Cabinet for Health and Family Services, Department of Medicaid Services, pursuant to 907 KAR 1:815 and utilized in 907 KAR 1:820 and 1:825 on file as of October 31 of each calendar year.

(c)(b) The base cost-to-charge ratio shall be determined by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95, plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 12, 13, and 35 of Worksheet A-8, by the total patient revenues as reflected on Worksheet G-2 of the HCFA-2552. The adjusted cost-to-charge ratio shall be determined as set forth in paragraph (c) of this subsection.

(d)(e)1. The base cost-to-charge ratio shall be further modified to allow for a return to equity by multiplying the base cost-to-charge ratio by 132 percent except that a hospital with more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's Web site or a hospital that is designated as a Level I trauma center by the American College of Surgeons shall have a return to equity by multiplying its base cost-to-charge ratio by 138 percent.

2. If a hospital's base cost-to-charge ratio falls by ten (10) percent or more of the base for one (1) reporting year, the next year's return to equity shall be reduced from 132 percent to 130 percent or 138 percent to 135 percent as determined by subparagraph 1. of this paragraph.

a. This reduction shall be subject to an appeal pursuant to Section 4 of this administrative regulation.

b. Upon written request of the hospital seeking a waiver and a showing of extraordinary circumstances the commissioner shall ~~may~~ waive the reduction for no more than one (1) consecutive year.

c. The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

(e)(f)1. Except as provided in subparagraph 2 of this paragraph, a hospital's adjusted cost-to-charge ratio shall not exceed fifty (50) percent, including the return to equity adjustment.

2. The adjusted cost-to-charge ratio shall not exceed sixty (60) percent for a hospital that:

a. Has more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's Web site;

b. Is designated as a Level I trauma center by the American College of Surgeons;

c. Services sixty-five (65) percent or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health and Family Services, Department of Medicaid Services; or

d. Has a base cost-to-charge ratio of fifty (50) percent or more.

(2)(a) Except as provided in paragraph (b) of this subsection, the reimbursement to a hospital for services or supplies furnished to an employee ~~that which~~ are compensable under KRS 342.020 shall be calculated by multiplying the hospital's total charges by its adjusted cost-to-charge ratio after removing any duplicative charges, billing errors, or charges for services or supplies not confirmed by the hospital records.

(b) If part of a bill for services or supplies is alleged to be non-compensable under KRS 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of this subsection.

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this administrative regulation shall be notified of its proposed base cost-to-charge ratio by the commissioner by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Commissioner of the Department of Workers' Claims.

(2)(a) A hospital may request a review of its assigned ratio. A written appeal to request a review shall be filed [by filing a written appeal] with the commissioner no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

(b) The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

Section 5. Calculations of New Hospitals. Hospitals that do not file Worksheets A and G-2 of HCFA-2552 and ASC's within the Commonwealth of Kentucky.

(1)(a) ~~[Revision of Hospital Cost to charge Ratio. (1)(a) The commissioner shall calculate cost to charge ratios and notify each hospital of its adjusted cost to charge ratio on or before February 1 of each calendar year.~~

(b) A new hospital shall be assigned a cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals until it has been in operation for one (1) full fiscal year.

(b)(e) A hospital that does not file Worksheets A and G-2 of HCFA 2552 shall be assigned a cost-to-charge ratio as follows:

1. A psychiatric, rehabilitation, or long-term acute care hospital shall be assigned a cost-to-charge ratio equal to 125 percent of the average adjusted cost-to-charge ratio of all in-state acute care hospitals;

2. An ambulatory surgery center shall be assigned a cost-to-charge ratio equal to:

a. 120[Seventy (70)] percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the ambulatory surgery center; ~~or~~

b. If no acute care hospital is located in the county of the ambulatory surgery center, 120[seventy (70)] percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in counties contiguous to the county in which the ambulatory surgery center is located; or

c. The adjusted cost-to-charge ratio of the base hospital if:

i. The center is hospital based;

ii. It is a licensed ambulatory surgery center pursuant to 902 KAR 20:105; and

iii. It is a Medicare provider based entity; and

3. All other hospitals not specifically mentioned in subparagraphs 1 or 2 of this paragraph shall be assigned a cost-to-charge ratio equal to:

a. The average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the facility; or

b. If there are no hospitals in the county, the average of all acute care hospitals located in contiguous counties.

(2) An assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the commissioner.

Section 6. Calculation for Hospitals and Ambulatory Surgery Centers Located Outside the Commonwealth of Kentucky. (1) A hospital or ambulatory surgery center located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA 2552.

(3) An out-of-state ambulatory surgery center having no contiguous Kentucky counties shall be assigned a cost-to-charge ratio equal to seventy (70) percent of the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals.

(4) An out-of-state ambulatory surgery center having one (1) or more contiguous Kentucky counties shall be assigned a cost-to-charge ratio in accordance with Section 5(1)(b)(e)2.b. of this administrative regulation.

Section 7. Reports to be Filed by Hospitals. Each bill submitted by a hospital pursuant to this administrative regulation shall be submitted on a statement for services, Form UB-04 (Formerly UB-92), as required by 803 KAR 25:096.

Section 8. Billing and Audit Procedures. (1) A hospital providing the technical component of a procedure shall bill and be paid for the technical component.

(2)(a) An independent practitioner providing the professional component shall bill for and be paid for the professional component.

(b) An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate

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statement for services, HCFA 1500, as required by 803 KAR 25:096.

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the commissioner setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2)(a) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the statement for services defined by 803 KAR 25:096 ~~if/when~~ billing for professional services and shall be compensated pursuant to the Kentucky Workers' Compensation Medical Fee Schedule for Physicians incorporated by reference in 803 KAR 25:089.

(b) An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital.

(c) The hospital may bill for the professional component of the service under the Kentucky Workers' Compensation Medical Fee Schedule for Physicians if the independent practitioner is directly compensated for services by the contracting hospital.

(3) A hospital-based practitioner shall not bill for a service he performs in a hospital if the service is regulated by 803 KAR 25:089, but he shall receive payment or salary directly from the employing hospital.

Section 10. Incorporation by Reference. (1)The following material is incorporated by reference:

(a) Form UB-40, "Universal Billing Form", 10-23-06; and

(b) HCFA 1500, "Health Care Financing Administration", 12-90.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DWIGHT T. LOVAN, Commissioner

APPROVED BY AGENCY: September 9, 2010

FILED WITH LRC: September 15, 2010

CONTACT PERSON: Charles E. Lowther, General Counsel, Department of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Charles E. Lowther, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the hospital fee schedule and regulates hospital fees and supplies provided to workers' compensation patients.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the Department of Workers' Claims is charged with the duty of setting fee schedules, and KRS 342.020 requires that hospital treatment be reimbursed on behalf of injured workers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth how hospital fees and supplies are reimbursed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements for charging and reimbursing for hospital treatment of injured employees.

(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 Department of Workers' Claims will recalculate the cost-to-charge ratios to keep all charges at certain levels and avoid the impact of enormous markups for individual services. This approach should protect claimants, insurance carriers, and avoid a huge administrative burden on hospitals.

(b) The necessity of the amendment to this administrative regulation: When last changed percentages applied to Hospitals and other entities such as ambulatory surgery centers and stand alone rehabilitation facilities that are within the hospital definition

but do not file the HCFA 2552 were inequitably impacted. This change is intended to correct any inequity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments make the fees fair, current, and reasonable for similar treatment as paid by health insurers.

(d) How the amendment will assist in the effective administration of the statutes: The certainty of these hospital charges should reduce medical fee dispute issues in this area. Hospitals will avoid administrative costs. Claimants and insurance carriers will get more consistent charges from hospitals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Injured employees, hospitals, medical providers, insurance carriers, self-insurance groups, individual self-insurers and third party administrators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Workers' Claims will calculate the hospital cost-to-charge ratio pursuant to the new calculation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Some hospitals will receive a different cost-to-charge ratio which is designed to provide fair and consistent charges.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurance carriers, self-insured groups and individual self-insured employers will receive consistent prices for hospital services. Anytime medical costs are reduced, employers could benefit on workers' compensation insurance policies.

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

(a) Initially: The Department of Workers' Claims will use normal budget to implement administrative regulation. There would be no cost.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims' budget will be used which is restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees or funding will be increased. Payments to hospitals may be reduced and for some they may be increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Hospitals and other facilities within the definitions of this regulation which do not file HCFA Form 2552 cost-to-charge ratios are adjusted by new calculation. This should result in more consistent and fair charges.

(9) TIERING: Is tiering applied? Tiering is not applied because it applies to all hospitals and other parties in an equal manner to a workers' compensation claim.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035

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. As an employer, there may be some increased costs for medical services. It is impossible to estimate not knowing what medical services will be needed by injured workers. Pursuant to KRS 342.035, the fee schedule is designed to be similar to commercial costs for similar procedures.

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

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

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

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

**STATEMENT OF EMERGENCY
810 KAR 1:110E**

KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations to restrict or prohibit the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation creates new out-of-competition sampling and testing procedures that will allow the commission to detect the presence of certain substances in a horse that are prohibited by 811 KAR 1:090, but cannot be effectively detected through the existing post-race sampling and testing procedures. The new procedures only apply to the specific nontherapeutic substances identified in the administrative regulation that have the ability to affect a horse's performance on the racetrack despite being undetectable in its post-race sample. Although the prohibited substances are only detectable in a horse's system for a very short period of time, their effects can last for weeks, even months. As a result, they are often administered well in advance of a horse being entered in a race and have long since ceased to be detectable by the time the horse competes in a race. Therefore, in order for the commission to be able to detect the presence of these prohibited substances, it must be able to collect a specimen within a very short time period after its administration. This administrative regulation allows the commission to do exactly that. This emergency administrative regulation is necessary to protect the health, safety, and welfare of horses, drivers, and any other persons who come in contact with horses training or racing in the Commonwealth. The substances subject to out-of-competition testing include blood doping agents and venoms. The use of blood doping agents increases the oxygenation of a horse's blood, thus increasing its endurance and allowing it to run fast for longer periods of time. However, blood doping agents pose a significant health risk and can lead to a horse suffering debilitating medical problems, or even death, if administered improperly. Venoms and their derivatives are used to deaden

nerves and can be used to mask lameness in a horse, thus allowing it to continue running even if it is injured or unsound. The use of these substances in a horse that is in training puts the horse at risk of a catastrophic injury. Such an injury would jeopardize the health, safety, and welfare of anyone handling the horse or coming into close proximity with it, including drivers, exercise riders, grooms, trainers, and association employees. The use of the prohibited substances also undermines the integrity of racing and pari-mutuel wagering on racing in the Commonwealth, possibly resulting in the loss of state funds. Each of the prohibited substances potentially benefits a horse's performance on the racetrack, thus giving the horse a competitive advantage over horses running without the benefit of the prohibited substances. If left unchecked, the use of such substances may cause owners and trainers to run their horses in other jurisdictions where out-of-competition drug testing is already in place and the use of the prohibited substances is more tightly regulated. Similarly, the betting public may lose confidence in the integrity of horse racing in the Commonwealth and may choose to spend their wagering dollars in other jurisdictions or not wager on horse racing. Any exodus of horsemen to other jurisdiction will result in a loss of jobs and tax revenue to the Commonwealth. Any decrease in handle will similarly jeopardize jobs at the racetracks and cost the Commonwealth the excise tax dollars it receives from money wagered on horse racing. An emergency administrative regulation is necessary to implement out-of-competition testing because of the imminent threat to the health, safety, and welfare of the horses and those individuals participating in horse racing in the Commonwealth, to protect the integrity of pari-mutuel wagering on horse racing in the Commonwealth and to prevent a loss of tax dollars paid to the Commonwealth. This emergency administrative regulation will be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation.

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

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Emergency Administrative Regulation)**

810 KAR 1:110E. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.230, 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320, 230.370

EFFECTIVE: September 12, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes new sampling and testing procedures for the prohibited substances identified herein, and establishes penalties for individuals that are found to be in violation of this administrative regulation.

Section 1. Definitions. (1) "Actionable finding" means a deter-

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mination by the commission that a substance described in Section 2 of this administrative regulation was present in a horse based on the commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results, or based on the commission's review of a report of finding issued by the commission laboratory for which an owner and trainer have waived their right to have a split sample analysis performed.

(2) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(3) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

Section 2. Prohibited Substances and Practices. (1) The following shall be a violation of this administrative regulation:

(a) The presence in, or administration to, a horse, at any time, of blood doping agents including: erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, or any other substance that enhances the oxygenation of equine body tissue;

(b) The nontherapeutic administration to, a horse, at any time, of whole blood or packed red blood cells;

(c) The presence in, or administration to, a horse, at any time, of naturally produced venoms, synthetic analogues of venoms, derivatives of venoms or synthetic analogues of derivatives of venoms;

(d) The presence in, or administration to, a horse, at any time, of growth hormones;

(e) The possession of erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, synthetic analogues of derivatives of venoms, or growth hormones on the grounds of a licensed association or a training facility under the jurisdiction of the commission; and

(f) The possession at any time of whole blood or packed red blood cells on the grounds of a licensed association or a training facility under the jurisdiction of the commission by anyone other than a licensed veterinarian rendering emergency treatment to a horse located on the grounds of the association or training facility. The attending veterinarian shall notify the commission veterinarian of the intent to administer whole blood or packed red blood cells prior to his or her collection or possession of the whole blood or packed red blood cells.

(2) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

Section 3. Out-of-Competition Testing. (1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse is presumed eligible to race in Kentucky if:

(a) It is under the care, custody, or control of a trainer licensed by the commission; or

(b) It is owned by an owner licensed by the commission; or

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300; or

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months; or

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Thoroughbred Development Fund.

(2) If a horse to be tested is not covered under subsection (1) of this section, the executive director or chief state steward may nevertheless designate any horse that may become eligible to race in Kentucky to be tested for the prohibited substances described in Section 2 of this administrative regulation.

(3) Horses may be designated for testing by the executive director, the chief state steward, or their respective designee.

(4) A horse designated for testing under this section shall be subject to testing for the substances described in Section 2 of this administrative regulation.

(5) An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-

competition testing;

(b) Making the horse available for the collection of the specimen at an agreed upon stall or other safe location; and

(c) Observing the collection of the specimen.

1. If the owner, trainer or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee, becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is received.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

(6) If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, for 180 days, and the individual(s) responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties described in Section 8 of this administrative regulation.

(7)(a) A horse that is barred from racing in Kentucky and placed on the Veterinarian's List and the Steward's List pursuant to subsection (5) or (6) of this section shall remain barred from racing and shall remain on the veterinarian's list and the steward's list upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

Section 4. Specimen Collection. (1) A specimen shall be collected from any horse designated by the executive director, the chief state steward, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) When a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from another racing commission or regulatory entity to collect the specimen.

(3) If specimen collection occurs at a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) If specimen collection occurs at a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify the owner, trainer or any other person exercising care, custody or control of the horse before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 5. Minimum and split samples. The commission veterinarian shall determine minimum and split sample requirements as set forth at 810 KAR 1:018, Section 11.

Section 6. Sample storage and testing. (1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with the procedures set forth in 810 KAR 1:018, Section 11.

(2) The commission is the owner of an out of competition specimen.

(3) The sample may be submitted to the commission laboratory for testing on the same date the specimen is collected or on a sub-

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sequent date.

(4) A written chain of custody protocol shall be made available to the owner and trainer upon request.

(5) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(6) Split samples shall be subject to the provisions and procedures set forth in 810 KAR 1:018, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 810 KAR 1:018, Section 13.

(7) The cost of testing the split sample under subsections (5) and (6) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Steps After Actionable Finding or Any Other Violation of this Administrative Regulation. In the event of an actionable finding, or any other violation of this administrative regulation, the following steps shall be taken:

(1)(a) Within five (5) business days of receipt of notification of an actionable finding, the commission shall notify the owner and trainer in writing of the actionable finding and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties; and

(b) The commission shall cause the subject horse to be immediately placed on the Veterinarian's List, 810 KAR 1:018, Section 18, and the Steward's List, thereby rendering the horse ineligible to compete, pending the conduct of the hearing described in subsection (1) of this section and the issuance of a steward's order.

(2) Within thirty (30) days of the commission's discovery of any violation of this administrative regulation other than an actionable finding, the commission shall notify the owner and trainer in writing of the violation and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner, or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) For a first offense:

(a) A revocation of the individual's license for a period of five (5) to ten (10) years;

(b) A fine of up to \$50,000;

(c) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding; and

(d) Any individual who has his or her license revoked for a violation of this administrative regulation shall go before the license review committee before being eligible for a new license.

(2) For a second offense:

(a) Permanent revocation of the individual's license; and

(b) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(4) Upon a violation of this administrative regulation, the horse

in which the presence of a substance described in Section 2 of this administrative regulation was detected remains subject to the requirements of subsection (3) of this section upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(5) The penalties established by this administrative regulation shall supersede any set forth in 810 KAR 1:028.

(6) The provisions of 810 KAR 1:018, Section 15, shall apply to this administrative regulation.

(7) The chief state steward and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation.

Section 9. Postrace testing. Nothing contained in this administrative regulation shall be construed to prevent the commission from conducting postrace testing for the substances described in Section 2 of this administrative regulation. In the event of an actionable finding for the presence of any of the substances described in Section 2 of this administrative regulation as a result of postrace testing, the provisions of Sections 7 and 8 of this administrative regulation shall apply.

Section 10. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, Jr., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 10, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates new out of competition sampling and testing procedures that allow the commission to detect the presence of certain substances in a horse that are prohibited by 810 KAR 1:018, but cannot be effectively detected through the existing post-race sampling and testing procedures. The new procedures, which allow the commission to collect specimens from a horse prior to the horse being entered in a race, only apply to the non-therapeutic substances identified in the regulation that have the ability to affect a horse's performance on the racetrack long after they can be detected in the horse's system through postrace sampling and testing.

(b) The necessity of this administrative regulation: This regulation is necessary because the prohibited, non-therapeutic substances identified therein cannot be effectively detected through the existing post-race sampling and testing procedures. The prohibited substances only remain in a horse's system for a very short period of time. However, their ability to affect a horse's performance can last for weeks or even months. Because their effects far outlast their ability to be detected, these substances are generally administered well in advance of a race and are not detectable through the testing of post-race specimens. Therefore, it is necessary for the commission to be able to collect a specimen from a horse at or close to the time a prohibited substance may have been administered, which, in most cases, is before a horse is even entered in a race. This regulation allows the commission to do exactly that.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred rac-

ing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

This regulation allows the commission to sample horses in such a way as to effectively restrict or prohibit "the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race," and further allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The commission's current postrace sampling and testing procedures are not adequate to detect the administration of the prohibited substances identified in the regulation. This regulation rectifies that problem by allowing the commission to sample and test a horse at the time and in the manner necessary to detect the presence of those prohibited substances, thus fulfilling its statutory mandate.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and trainers with horses that are eligible, or that may become eligible, to race in the Commonwealth; the five currently-licensed racing associations offering thoroughbred racing; any training center under the jurisdiction of the commission; jockeys and any other persons who come into contact with horses racing or training in the Commonwealth; patrons who place pari-mutuel wagers on horse races in the Commonwealth; and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The owners and trainers are required to cooperate with the commission in the sampling of horses by locating and identifying any horse designated for testing, making the horse available at a stall or other safe location for the collection of a specimen and witnessing the collection of the specimen.

The licensed racing associations and training centers under the jurisdiction of the commission will be required to cooperate, if necessary, by locating horses to be sampled. As is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens.

Jockeys and other licensees that come into contact with horses racing in the Commonwealth will not have any additional responsi-

bilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission will not have any out of pocket expenses but will devote employee time toward identifying horses to be tested and collecting specimens for testing. As is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. As is already the case, owners and trainers will bear any costs associated with the testing of split samples if a primary sample collected from one of their horses tests positive for a prohibited substance and the owner or trainer elects to have a split sample tested.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from sampling and testing procedures that will allow the commission to detect the presence of the prohibited substances identified in the regulation.

The horses, jockeys, and any other individuals who come into contact with horses racing or training in the Commonwealth will benefit because the regulation provides a strong deterrent to putting their health, safety, and welfare at risk through the use of the prohibited substances;

The owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will be less likely to feel the need to take their horses to race in other jurisdictions;

The patrons placing pari-mutuel wagers on horse racing in the Commonwealth will benefit from the knowledge that certain horses cannot gain an advantage over others through the use of prohibited substances;

The racing associations and the commission will benefit from increased public confidence in the integrity of horse racing in the Commonwealth;

The Commonwealth will benefit from the tax revenue generated when owners and trainers remain in state rather than racing in other jurisdictions and from the tax revenue generated when the betting public wagers their money on races run in Kentucky.

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

(a) Initially: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(b) On a continuing basis: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will not incur any out of pocket expenses as a result of this administrative regulation. It will compensate employees for the additional time spent on designating horses to be tested and collecting samples from those horses from its general 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 established any fees or directly or indirectly increased any fees: The regulation does not establish any fees or directly or indirectly increase any fees. However, as is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. To the extent that these expenses could be characterized as "fees," this regulation will result in an increase in testing and the associations may see a corresponding increase in their expenses.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

VOLUME 37, NUMBER 4 – OCTOBER 1, 2010

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

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

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

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

(c) How much will it cost to administer this program for the first year? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

(d) How much will it cost to administer this program for subsequent years? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

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 1:240E

KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations to restrict or prohibit the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation creates new out-of-competition sampling and testing procedures that will allow the commission to detect the presence of certain substances in a horse that are prohibited by 811 KAR 1:090, but cannot be effectively detected through the existing post-race sampling and testing procedures. The new procedures only apply to the specific nontherapeutic substances identified in the administrative regulation that have the ability to affect a horse's performance on the racetrack despite being undetectable in its post-race sample. Although the prohibited substances are only detectable in a horse's system for a very short period of time, their effects can last for weeks, even months. As a result, they are often administered well in advance of a horse being entered in a race and have long since ceased to be detectable by the time the horse competes in a race. Therefore, in order for the commission to be able to detect the presence of these prohibited substances, it must

be able to collect a specimen within a very short time period after its administration. This administrative regulation allows the commission to do exactly that. This emergency administrative regulation is necessary to protect the health, safety, and welfare of horses, drivers, and any other persons who come in contact with horses training or racing in the Commonwealth. The substances subject to out-of-competition testing include blood doping agents and venoms. The use of blood doping agents increases the oxygenation of a horse's blood, thus increasing its endurance and allowing it to run fast for longer periods of time. However, blood doping agents pose a significant health risk and can lead to a horse suffering debilitating medical problems, or even death, if administered improperly. Venoms and their derivatives are used to deaden nerves and can be used to mask lameness in a horse, thus allowing it to continue running even if it is injured or unsound. The use of these substances in a horse that is in training puts the horse at risk of a catastrophic injury. Such an injury would jeopardize the health, safety, and welfare of anyone handling the horse or coming into close proximity with it, including drivers, exercise riders, grooms, trainers, and association employees. The use of the prohibited substances also undermines the integrity of racing and pari-mutuel wagering on racing in the Commonwealth, possibly resulting in the loss of state funds. Each of the prohibited substances potentially benefits a horse's performance on the racetrack, thus giving the horse a competitive advantage over horses running without the benefit of the prohibited substances. If left unchecked, the use of such substances may cause owners and trainers to run their horses in other jurisdictions where out-of-competition drug testing is already in place and the use of the prohibited substances is more tightly regulated. Similarly, the betting public may lose confidence in the integrity of horse racing in the Commonwealth and may choose to spend their wagering dollars in other jurisdictions or not wager on horse racing. Any exodus of horsemen to other jurisdiction will result in a loss of jobs and tax revenue to the Commonwealth. Any decrease in handle will similarly jeopardize jobs at the racetracks and cost the Commonwealth the excise tax dollars it receives from money wagered on horse racing. An emergency administrative regulation is necessary to implement out-of-competition testing because of the imminent threat to the health, safety, and welfare of the horses and those individuals participating in horse racing in the Commonwealth, to protect the integrity of pari-mutuel wagering on horse racing in the Commonwealth and to prevent a loss of tax dollars paid to the Commonwealth. This emergency administrative regulation will be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation.

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

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Emergency Administrative Regulation)

811 KAR 1:240E. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.230, 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320, 230.370

EFFECTIVE: September 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain

horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes new sampling and testing procedures for the prohibited substances identified herein, and establishes penalties for individuals that are found to be in violation of this administrative regulation.

Section 1. Definitions. (1) "Actionable finding" means a determination by the commission that a substance described in Section 2 of this administrative regulation was present in a horse based on the commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results, or based on the commission's review of a report of finding issued by the commission laboratory for which an owner and trainer have waived their right to have a split sample analysis performed.

(2) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(3) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

Section 2. Prohibited Substances and Practices. (1) The following shall be a violation of this administrative regulation:

(a) The presence in, or administration to, a horse, at any time, of blood doping agents including: erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, or any other substance that enhances the oxygenation of equine body tissue;

(b) The nontherapeutic administration to, a horse, at any time, of whole blood or packed red blood cells;

(c) The presence in, or administration to, a horse, at any time, of naturally produced venoms, synthetic analogues of venoms, derivatives of venoms or synthetic analogues of derivatives of venoms;

(d) The presence in, or administration to, a horse, at any time, of growth hormones;

(e) The possession of erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, synthetic analogues of derivatives of venoms, or growth hormones on the grounds of a licensed association or a training facility under the jurisdiction of the commission; and

(f) The possession at any time of whole blood or packed red blood cells on the grounds of a licensed association or a training facility under the jurisdiction of the commission by anyone other than a licensed veterinarian rendering emergency treatment to a horse located on the grounds of the association or training facility. The attending veterinarian shall notify the commission veterinarian of the intent to administer whole blood or packed red blood cells prior to his or her collection or possession of the whole blood or packed red blood cells.

(2) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

Section 3. Out-of-Competition Testing. (1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse is presumed eligible to race in Kentucky if:

(a) It is under the care, custody or control of a trainer licensed by the commission; or

(b) It is owned by an owner licensed by the commission; or

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300; or

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months; or

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Standardbred Development Fund.

(2) If a horse to be tested is not covered under subsection (1),

the executive director or presiding judge may nevertheless designate any horse that may become eligible to race in Kentucky to be tested for the prohibited substances described in Section 2 of this administrative regulation.

(3) Horses may be designated for testing by the executive director, the presiding judge, or their respective designee.

(4) A horse designated for testing under this section shall be subject to testing for the substances described in Section 2 of this administrative regulation.

(5) An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at an agreed upon stall or other safe location; and

(c) Observing the collection of the specimen.

1. If the owner, trainer, or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee, becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is received.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list, 811 KAR 1:095, Section 18, and the judge's list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

(6) If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list, 811 KAR 1:095, Section 18, and the judge's list, for 180 days, and the individual(s) responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties described in Section 8 of this administrative regulation.

(7)(a) A horse that is barred from racing in Kentucky and placed on the Veterinarian's List and the Judge's List pursuant to subsection (5) or (6) of this section shall remain barred from racing and shall remain on the veterinarian's list and the judge's list upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the presiding judge.

Section 4. Specimen Collection. (1) A specimen shall be collected from any horse designated by the executive director, the presiding judge, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) When a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from another racing commission or regulatory entity to collect the specimen.

(3) If specimen collection occurs at a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) If specimen collection occurs at a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify the owner, trainer or any other person exercising care, custody or control of the horse before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 5. Minimum and Split Samples. The commission veterinarian shall determine minimum and split sample requirements as

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set forth at 811 KAR 1:090, Section 11.

Section 6. Sample Storage and Testing. (1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with the procedures set forth in 811 KAR 1:090, Section 11.

(2) The commission is the owner of an out of competition specimen.

(3) The sample may be submitted to the commission laboratory for testing on the same date the specimen is collected or on a subsequent date.

(4) A written chain of custody protocol shall be made available to the owner and trainer upon request.

(5) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(6) Split samples shall be subject to the provisions and procedures set forth in 811 KAR 1:090, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 811 KAR 1:090, Section 13.

(7) The cost of testing the split sample under subsections (5) and (6) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Steps After Actionable Finding or Any Other Violation of This Administrative Regulation. In the event of an actionable finding, or any other violation of this administrative regulation, the following steps shall be taken:

(1)(a) Within five (5) business days of receipt of notification of an actionable finding, the commission shall notify the owner and trainer in writing of the actionable finding and shall schedule a judges' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the judges determine a continuation is necessary to accommodate the parties; and

(b) The commission shall cause the subject horse to be immediately placed on the Veterinarian's List, 811 KAR 1:090, Section 18, and the Judge's List, thereby rendering the horse ineligible to compete, pending the conduct of the hearing described in subsection (1) of this section and the issuance of a judge's order.

(2) Within thirty (30) days of the commission's discovery of any violation of this administrative regulation other than an actionable finding, the commission shall notify the owner and trainer in writing of the violation and shall schedule a judges' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the judges determine a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) For a first offense:

(a) A revocation of the individual's license for a period of five (5) to ten (10) years;

(b) A fine of up to \$50,000;

(c) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding; and

(d) Any individual who has his or her license revoked for a violation of this administrative regulation shall go before the license review committee before being eligible for a new license.

(2) For a second offense:

(a) Permanent revocation of the individual's license; and

(b) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected,

between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the veterinarian's list, 811 KAR 1:090, Section 18, and the judge's list, for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the presiding judge.

(4) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected remains subject to the requirements of subsection (3) of this section upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the presiding judge.

(5) The penalties established by this administrative regulation shall supersede any set forth in 811 KAR 1:095.

(6) The provisions of 811 KAR 1:090, Section 15, shall apply to this administrative regulation.

(7) The presiding judge and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation.

Section 9. Postrace Testing. Nothing contained in this administrative regulation shall be construed to prevent the commission from conducting postrace testing for the substances described in Section 2 of this administrative regulation. In the event of an actionable finding for the presence of any of the substances described in Section 2 of this administrative regulation as a result of postrace testing, the provisions of Sections 7 and 8 of this administrative regulation shall apply.

Section 10. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 10, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 28, 2010 at 10 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by Thursday, October 21, 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 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 November 1, 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

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(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates new out of competition sampling and testing procedures that allow the commission to detect the presence of certain substances in a horse that are prohibited by 811 KAR 1:090, but cannot be effectively detected through the existing post-race sampling and testing procedures. The new procedures, which allow the commission to collect specimens from a horse prior to the horse being entered in a race, only apply to the non-therapeutic substances identified in the regulation that have the ability to affect a horse's performance on the racetrack long after they can be detected in the horse's system through postrace sampling and testing.

(b) The necessity of this administrative regulation: This regulation is necessary because the prohibited, non-therapeutic substances identified therein cannot be effectively detected through the existing postrace sampling and testing procedures. The prohibited substances only remain in a horse's system for a very short period of time. However, their ability to affect a horse's performance can last for weeks or even months. Because their effects far outlast their ability to be detected, these substances are generally administered well in advance of a race and are not detectable through the testing of postrace specimens. Therefore, it is necessary for the commission to be able to collect a specimen from a horse at or close to the time a prohibited substance may have been administered, which, in most cases, is before a horse is even entered in a race. This regulation allows the commission to do exactly that.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

This regulation allows the commission to sample horses in such a way as to effectively restrict or prohibit "the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race," and further allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The commission's current postrace sampling and testing procedures are not adequate to detect the administration of the prohibited substances identified in the regulation. This regulation rectifies that problem by allowing the commission to sample and test a horse at the time and in the manner necessary to detect the presence of those prohibited substances, thus fulfilling its statutory mandate.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and trainers with horses that are eligible, or that may become eligible, to race in the Commonwealth; the three currently-licensed racing associations offering standardbred racing; any training center under the jurisdiction of the commission; drivers and any other persons who come into contact with horses racing or training in the Commonwealth; patrons who place pari-mutuel wagers on horse races in the Commonwealth; and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The owners and trainers are required to cooperate with the commission in the sampling of horses by locating and identifying any horse designated for testing, making the horse available at a stall or other safe location for the collection of a specimen and witnessing the collection of the specimen.

(b) The licensed racing associations and training centers under the jurisdiction of the commission will be required to cooperate, if necessary, by locating horses to be sampled. As is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens.

(c) Drivers and other licensees that come into contact with horses racing in the Commonwealth will not have any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission will not have any out of pocket expenses but will devote employee time toward identifying horses to be tested and collecting specimens for testing. As is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. As is already the case, owners and trainers will bear any costs associated with the testing of split samples if a primary sample collected from one of their horses tests positive for a prohibited substance and the owner or trainer elects to have a split sample tested.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from sampling and testing procedures that will allow the commission to detect the presence of the prohibited substances identified in the regulation.

The horses, drivers, and any other individuals who come into contact with horses racing or training in the Commonwealth will benefit because the regulation provides a strong deterrent to putting their health, safety, and welfare at risk through the use of the prohibited substances;

The owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will be less likely to feel the need to take their horses to race in other jurisdictions;

The patrons placing pari-mutuel wagers on horse racing in the Commonwealth will benefit from the knowledge that certain horses cannot gain an advantage over others through the use of prohibited substances;

The racing associations and the commission will benefit from increased public confidence in the integrity of horse racing in the Commonwealth;

The Commonwealth will benefit from the tax revenue generated when owners and trainers remain in state rather than racing in other jurisdictions and from the tax revenue generated when the betting public wagers their money on races run in Kentucky.

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

(a) Initially: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting

samples from those horses.

(b) On a continuing basis: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will not incur any out of pocket expenses as a result of this administrative regulation. It will compensate employees for the additional time spent on designating horses to be tested and collecting samples from those horses from its general 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 established any fees or directly or indirectly increased any fees: The regulation does not establish any fees or directly or indirectly increase any fees. However, as is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. To the extent that these expenses could be characterized as "fees," this regulation will result in an increase in testing and the associations may see a corresponding increase in their expenses.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

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

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

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

(c) How much will it cost to administer this program for the first year? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

(d) How much will it cost to administer this program for subsequent years? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

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 2:150E

KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing shall be conducted in Kentucky and charges it to, "promulgate administrative regulations

prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations to restrict or prohibit the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation creates new out-of-competition sampling and testing procedures that will allow the commission to detect the presence of certain substances in a horse that are prohibited by 811 KAR 1:090, but cannot be effectively detected through the existing postrace sampling and testing procedures. The new procedures only apply to the specific nontherapeutic substances identified in the administrative regulation that have the ability to affect a horse's performance on the racetrack despite being undetectable in its postrace sample. Although the prohibited substances are only detectable in a horse's system for a very short period of time, their effects can last for weeks, even months. As a result, they are often administered well in advance of a horse being entered in a race and have long since ceased to be detectable by the time the horse competes in a race. Therefore, in order for the commission to be able to detect the presence of these prohibited substances, it must be able to collect a specimen within a very short time period after its administration. This administrative regulation allows the commission to do exactly that. This emergency administrative regulation is necessary to protect the health, safety, and welfare of horses, drivers, and any other persons who come in contact with horses training or racing in the Commonwealth. The substances subject to out-of-competition testing include blood doping agents and venoms. The use of blood doping agents increases the oxygenation of a horse's blood, thus increasing its endurance and allowing it to run fast for longer periods of time. However, blood doping agents pose a significant health risk and can lead to a horse suffering debilitating medical problems, or even death, if administered improperly. Venoms and their derivatives are used to deaden nerves and can be used to mask lameness in a horse, thus allowing it to continue running even if it is injured or unsound. The use of these substances in a horse that is in training puts the horse at risk of a catastrophic injury. Such an injury would jeopardize the health, safety, and welfare of anyone handling the horse or coming into close proximity with it, including drivers, exercise riders, grooms, trainers, and association employees. The use of the prohibited substances also undermines the integrity of racing and pari-mutuel wagering on racing in the Commonwealth, possibly resulting in the loss of state funds. Each of the prohibited substances potentially benefits a horse's performance on the racetrack, thus giving the horse a competitive advantage over horses running without the benefit of the prohibited substances. If left unchecked, the use of such substances may cause owners and trainers to run their horses in other jurisdictions where out-of-competition drug testing is already in place and the use of the prohibited substances is more tightly regulated. Similarly, the betting public may lose confidence in the integrity of horse racing in the Commonwealth and may choose to spend their wagering dollars in other jurisdictions or not wager on horse racing. Any exodus of horsemen to other jurisdiction will result in a loss of jobs and tax revenue to the Commonwealth. Any decrease in handle will similarly jeopardize jobs at the racetracks and cost the Commonwealth the excise tax dollars it receives from money wagered on horse racing. An emergency administrative regulation is necessary to implement out-of-competition testing because of the imminent threat to the health, safety, and welfare of the horses and those individuals participating in horse racing in the Commonwealth, to protect the integrity of pari-mutuel wagering on horse racing in the Commonwealth and to prevent a loss of tax dollars paid to the Commonwealth. This emergency administrative regulation will be replaced by an ordinary administrative regulation filed simultaneously with the emer-

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gency administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation.

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

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Emergency Administrative Regulation)**

811 KAR 2:150E. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.230, 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320, 230.370

EFFECTIVE: September 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa, and Arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes new sampling and testing procedures for the prohibited substances identified herein, and establishes penalties for individuals that are found to be in violation of this administrative regulation.

Section 1. Definitions. (1) "Actionable finding" means a determination by the commission that a substance described in Section 2 of this administrative regulation was present in a horse based on the commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results, or based on the commission's review of a report of finding issued by the commission laboratory for which an owner and trainer have waived their right to have a split sample analysis performed.

(2) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(3) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

Section 2. Prohibited Substances and Practices. (1) The following shall be a violation of this administrative regulation:

(a) The presence in, or administration to, a horse, at any time, of blood doping agents including: erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, or any other substance that enhances the oxygenation of equine body tissue;

(b) The nontherapeutic administration to, a horse, at any time, of whole blood or packed red blood cells;

(c) The presence in, or administration to, a horse, at any time, of naturally produced venoms, synthetic analogues of venoms, derivatives of venoms or synthetic analogues of derivatives of venoms;

(d) The presence in, or administration to, a horse, at any time, of growth hormones;

(e) The possession of erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, synthetic analogues of derivatives of venoms, or growth hormones on the grounds of a licensed association or a training facility under the jurisdiction of

the commission; and

(f) The possession at any time of whole blood or packed red blood cells on the grounds of a licensed association or a training facility under the jurisdiction of the commission by anyone other than a licensed veterinarian rendering emergency treatment to a horse located on the grounds of the association or training facility. The attending veterinarian shall notify the commission veterinarian of the intent to administer whole blood or packed red blood cells prior to his or her collection or possession of the whole blood or packed red blood cells.

(2) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

Section 3. Out-of-competition Testing. (1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse is presumed eligible to race in Kentucky if:

(a) It is under the care, custody or control of a trainer licensed by the commission; or

(b) It is owned by an owner licensed by the commission; or

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300; or

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months; or

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Quarter Horse, Appaloosa, and Arabian Development Fund.

(2) If a horse to be tested is not covered under subsection (1) of this section, the executive director or chief state steward may nevertheless designate any horse that may become eligible to race in Kentucky to be tested for the prohibited substances described in Section 2 of this administrative regulation.

(3) Horses may be designated for testing by the executive director, the chief state steward, or their respective designee.

(4) A horse designated for testing under this section shall be subject to testing for the substances described in Section 2 of this administrative regulation.

(5) An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at an agreed upon stall or other safe location; and

(c) Observing the collection of the specimen.

1. If the owner, trainer or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee, becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is received.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list and the steward's list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

(6) If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list and the steward's list, for 180 days, and the individual(s) responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties described in Section 8 of this administrative regulation.

(7)(a) A horse that is barred from racing in Kentucky and placed on the veterinarian's list and the steward's list pursuant to subsection (5) or (6) of this section shall remain barred from racing and shall remain on the veterinarian's list and the steward's list upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test

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negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

Section 4. Specimen Collection. (1) A specimen shall be collected from any horse designated by the executive director, the chief state steward, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) When a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from another racing commission or regulatory entity to collect the specimen.

(3) If specimen collection occurs at a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) If specimen collection occurs at a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify the owner, trainer or any other person exercising care, custody or control of the horse before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 5. Minimum and Split Samples. The commission veterinarian shall determine minimum and split sample requirements as set forth at 810 KAR 1:018, Section 11(2).

Section 6. Sample Storage and Testing. (1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with the procedures set forth in 810 KAR 1:018, Section 12(1).

(2) The commission is the owner of an out of competition specimen.

(3) The sample may be submitted to the commission laboratory for testing on the same date the specimen is collected or on a subsequent date.

(4) A written chain of custody protocol shall be made available to the owner and trainer upon request.

(5) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(6) Split samples shall be subject to the provisions and procedures set forth in 810 KAR 1:018, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 810 KAR 1:018, Section 13.

(7) The cost of testing the split sample under subsections (5) and (6) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Steps After Actionable Finding or Any Other Violation of This Administrative Regulation. In the event of an actionable finding, or any other violation of this administrative regulation, the following steps shall be taken:

(1)(a) Within five (5) business days of receipt of notification of an actionable finding, the commission shall notify the owner and trainer in writing of the actionable finding and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties; and

(b) The commission shall cause the subject horse to be immediately placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, thereby rendering the horse ineligible to compete, pending the conduct of the hearing described in subsection

(1) of this section and the issuance of a steward's order.

(2) Within thirty (30) days of the commission's discovery of any violation of this administrative regulation other than an actionable finding, the commission shall notify the owner and trainer in writing of the violation and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) For a first offense:

(a) A revocation of the individual's license for a period of five (5) to ten (10) years;

(b) A fine of up to \$50,000;

(c) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding; and

(d) Any individual who has his or her license revoked for a violation of this administrative regulation shall go before the license review committee before being eligible for a new license.

(2) For a second offense:

(a) Permanent revocation of the individual's license; and

(b) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the Veterinarian's List and the Steward's List, for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(4) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected remains subject to the requirements of subsection (3) of this section upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(5) The penalties established by this administrative regulation shall supersede any set forth in 811 KAR 2:100 and 810 KAR 1:028.

(6) The provisions of 810 KAR 1:018, Section 15, shall apply to this administrative regulation.

(7) The chief state steward and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation.

Section 9. Postrace testing. Nothing contained in this administrative regulation shall be construed to prevent the commission from conducting postrace testing for the substances described in Section 2 of this administrative regulation. In the event of an actionable finding for the presence of any of the substances described in Section 2 of this administrative regulation as a result of postrace testing, the provisions of Sections 7 and 8 of this administrative regulation shall apply.

Section 10. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

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ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 10, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

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

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 creates new out of competition sampling and testing procedures that allow the commission to detect the presence of certain substances in a horse that are prohibited by 810 KAR 1:018, but cannot be effectively detected through the existing post-race sampling and testing procedures. The new procedures, which allow the commission to collect specimens from a horse prior to the horse being entered in a race, only apply to the non-therapeutic substances identified in the regulation that have the ability to affect a horse's performance on the racetrack long after they can be detected in the horse's system through postrace sampling and testing.

(b) The necessity of this administrative regulation: This regulation is necessary because the prohibited, nontherapeutic substances identified therein cannot be effectively detected through the existing postrace sampling and testing procedures. The prohibited substances only remain in a horse's system for a very short period of time. However, their ability to affect a horse's performance can last for weeks or even months. Because their effects far outlast their ability to be detected, these substances are generally administered well in advance of a race and are not detectable through the testing of postrace specimens. Therefore, it is necessary for the commission to be able to collect a specimen from a horse at or close to the time a prohibited substance may have been administered, which, in most cases, is before a horse is even entered in a race. This regulation allows the commission to do exactly that.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa, and Arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

This regulation allows the commission to sample horses in such a way as to effectively restrict or prohibit "the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race," and further allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The commission's current postrace sampling and testing procedures are not adequate to detect the administration of the prohibited substances identified in the regulation. This regulation rectifies that problem by

allowing the commission to sample and test a horse at the time and in the manner necessary to detect the presence of those prohibited substances, thus fulfilling its statutory mandate.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and trainers with horses that are eligible, or that may become eligible, to race in the Commonwealth; the currently-licensed racing associations offering quarter horse, appaloosa, and Arabian racing; any training center under the jurisdiction of the commission; jockeys and any other persons who come into contact with horses racing or training in the Commonwealth; patrons who place pari-mutuel wagers on horse races in the Commonwealth; and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The owners and trainers are required to cooperate with the commission in the sampling of horses by locating and identifying any horse designated for testing, making the horse available at a stall or other safe location for the collection of a specimen and witnessing the collection of the specimen. The licensed racing associations and training centers under the jurisdiction of the commission will be required to cooperate, if necessary, by locating horses to be sampled. As is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. Jockeys and other licensees that come into contact with horses racing in the Commonwealth will not have any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission will not have any out of pocket expenses but will devote employee time toward identifying horses to be tested and collecting specimens for testing.

As is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. As is already the case, owners and trainers will bear any costs associated with the testing of split samples if a primary sample collected from one of their horses tests positive for a prohibited substance and the owner or trainer elects to have a split sample tested.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from sampling and testing procedures that will allow the commission to detect the presence of the prohibited substances identified in the regulation.

The horses, jockeys, and any other individuals who come into contact with horses racing or training in the Commonwealth will benefit because the regulation provides a strong deterrent to putting their health, safety, and welfare at risk through the use of the prohibited substances;

The owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will be less likely to feel the need to take their horses to race in other jurisdictions;

The patrons placing pari-mutuel wagers on horse racing in the Commonwealth will benefit from the knowledge that certain horses cannot gain an advantage over others through the use of prohibited substances;

The racing associations and the commission will benefit from

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increased public confidence in the integrity of horse racing in the Commonwealth;

The Commonwealth will benefit from the tax revenue generated when owners and trainers remain in state rather than racing in other jurisdictions and from the tax revenue generated when the betting public wagers their money on races run in Kentucky.

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

(a) Initially: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(b) On a continuing basis: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will not incur any out of pocket expenses as a result of this administrative regulation. It will compensate employees for the additional time spent on designating horses to be tested and collecting samples from those horses from its general 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 established any fees or directly or indirectly increased any fees: The regulation does not establish any fees or directly or indirectly increase any fees. However, as is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. To the extent that these expenses could be characterized as "fees," this regulation will result in an increase in testing and the associations may see a corresponding increase in their expenses.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

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

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

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

(c) How much will it cost to administer this program for the first year? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

(d) How much will it cost to administer this program for subsequent years? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

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
902 KAR 20:410E

This emergency administrative regulation is being promulgated to establish minimum licensure requirements for the operation of specialty intermediate care clinics located on the grounds of state-owned facilities licensed pursuant to 902 KAR 20:086 as intermediate-care facilities for the intellectually and developmentally disabled. Specialty intermediate care clinics will provide an array of outpatient services, including medical, behavioral, psychiatric, nutritional, and therapy services, all of which will be individualized to meet the treatment needs of individuals in the community who qualify for admission to, or are residents of an intermediate-care facility for the intellectually and developmentally disabled. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to prevent a loss of federal funds. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) will compromise the cabinet's ability to comply with the terms of the Strategic Action Plan incorporated into the Commonwealth's Settlement Agreement with the U.S. Department of Justice's Civil Rights Division. The Strategic Action Plan calls for the establishment of specialty intermediate care clinics on the grounds of intermediate-care facilities for the intellectually and developmentally disabled as a means of serving individuals in the most integrated setting appropriate to their needs. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(New Emergency Administrative Regulation)

902 KAR 20:410E. Specialty intermediate care clinics.

RELATES TO: KRS 216B.010-216B.131, 216B.990
STATUTORY AUTHORITY: 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation provides minimum licensure requirements for the operation of specialty intermediate care clinics.

Section 1. Definitions. (1) "Clinic" or "specialty intermediate care (IC) clinic" means a clinic located on the grounds of a state-owned facility licensed pursuant to 902 KAR 20:086 as an intermediate-care facility for the intellectually and developmentally disabled.

(2) "Developmental disability" is defined by 42 U.S.C. 15002(8)(A) as a severe, chronic disability of an individual that:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is manifested before the individual attains age twenty-two (22);

(c) Is likely to continue indefinitely;

(d) Results in substantial functional limitations in three (3) or more areas of major life activity, including:

- 1. Self-care;
- 2. Receptive and expressive language;
- 3. Learning;
- 4. Mobility;
- 5. Self direction;

6. Capacity for independent living; or
7. Economic self-sufficiency; and

(e) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(3) "Intellectual disability" means an individual has:

- (a) Significantly sub-average intellectual functioning;
- (b) An intelligence quotient of seventy (70) or below;
- (c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

1. Communication;
2. Self-care;
3. Home living;
4. Social or interpersonal skills;
5. Use of community resources;
6. Self-direction;
7. Functional academic skills;
8. Work;
9. Leisure; or
10. Health and safety; and

(d) Had an onset prior to eighteen (18) years of age.

(4) "Patient" means an individual who receives services provided by a specialty IC clinic and who:

(a) Is not a resident of, but qualifies for admission to an intermediate-care facility for the intellectually and developmentally disabled by meeting the patient status criteria established in 907 KAR 1:022, Section 4; or

(b) Is a resident of an intermediate-care facility for the intellectually and developmentally disabled which contracts with, or makes arrangements with the specialty IC clinic for outpatient services.

Section 2. Licensure Application and Fee. (1) An applicant for licensure as a specialty IC clinic shall complete and submit to the Office of the Inspector General an Application for License to Operate a Health Facility or Service, pursuant to 902 KAR 20:008, Section 2(1)(f).

(2) The initial and annual fee for licensure as a specialty clinic shall be \$500.

Section 3. Scope of Operations and Services. (1) Services provided by a specialty IC clinic shall be individualized to meet the treatment needs of each of the specialty IC clinic's patients. Patients may receive one (1) or more of the following services from the clinic:

- (a) Dental services;
- (b) Psychiatric services;
- (c) Psychological services;
- (d) Psychotropic medication management;
- (e) Neurology;
- (f) Epileptology;
- (g) Preventive health care;
- (h) Medical assessment and treatment;
- (i) Occupational therapy;
- (j) Physical therapy;
- (k) Speech therapy;
- (l) Nutritional or dietary consultation;
- (m) Mobility evaluation or treatment;
- (n) Behavioral support services;
- (o) Audiology;
- (p) Ophthalmology;
- (q) Pharmacy;
- (r) Medication consultation;
- (s) Medication management;
- (t) Seizure management;
- (u) Behavioral support services;
- (v) Diagnostic services;
- (w) Clinical laboratory services;
- (x) Physician services; or
- (y) Laboratory services.

(2) Off-site services.
(a) Specialty IC clinic personnel as identified in Section 5(4) of this administrative regulation may provide services off-site at a local health department or in a health facility licensed under 902 KAR Chapter 20 if the specialty IC clinic has an agreement to provide the

off-site services at the health department or licensed health facility's location for the purpose of improving patient accessibility or accommodating the patient's individualized healthcare needs.

(b) A psychologist, psychiatrist, behavior specialist, or board certified behavior analyst directly employed by, or under contract with a specialty IC clinic, may provide behavioral assessments or consultation off-site:

1. In a patient's home; or
2. At a day service or other service site where the patient receives services.

Section 4. Administration and Policies. (1) The licensee shall have legal responsibility for the specialty IC clinic, including responsibility for ensuring compliance with federal, state, and local laws and regulations pertaining to the operation of the clinic.

(2) The licensee shall establish lines of authority and designate an administrator who shall be principally responsible for the daily operation of the specialty IC clinic.

(3) A specialty IC clinic shall establish and follow written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing, and allocation of responsibility and accountability;

(b) Policies and procedures for the guidance and control of personnel performances;

(c) A written program narrative describing in detail the:

1. Services offered;
2. Methods and protocols for service delivery;
3. Qualifications of personnel involved in the delivery of the services; and
4. Goals of the service;

(d) A description of how administrative and patient care records and reports are maintained; and

(e) Procedures to be followed in the event the clinic performs any functions related to the storage, handling, and administration of drugs and biologicals.

(4) Patient Care Policies. A specialty IC clinic shall develop patient care policies which address:

(a) A description of the services the clinic provides directly and those provided through agreement.

(b) Guidelines for the medical management of health problems which include the conditions requiring medical consultation or patient referral; and

(c) Procedures for the annual review and evaluation of the services provided by the clinic.

Section 5. Personnel. (1)(a) A specialty IC clinic shall have a medical director who is a licensed physician.

(b) The specialty IC clinic's medical director shall:

1. Be responsible for all medical aspects of the clinic and provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311;

2. Provide medical direction, supervision, and consultation to the staff;

3. In conjunction with the registered nurse described in subsection (2) of this section, participate in the development, execution, and periodic review of the clinic's written policies and services;

4. Periodically review the clinic's patient records, provide medical orders, and provide medical care services to patients of the clinic;

5. Be present for weekly consultation, or delegate responsibility for weekly consultation to another physician employed by, or under contract with the specialty IC clinic if a temporary absence is necessary; and

6. Be available within one (1) hour through direct telecommunication for consultation, assistance with medical emergencies, or patient referral. If a temporary absence is necessary, the medical director shall designate another physician who is employed by, or under contract with the specialty IC clinic to be available within one (1) hour through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

(2) A specialty IC clinic shall have at least one (1) registered nurse who shall:

(a) Have at least one (1) year experience in treating or working with individuals with an intellectual disability and a developmental disability;

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(b) Participate in the development, execution, and periodic review of the written policies governing the services the clinic provides;

(c) Participate with the medical director in periodic review of patient health records;

(d) Provide services in accordance with clinic policies, established protocols, the Nurse Practice Act (KRS Chapter 314), and with administrative regulations promulgated thereunder;

(e) Arrange for or refer patients to needed services that cannot be provided at the clinic; and

(f) Assure that adequate patient health records are maintained and transferred when patients are referred.

(3) A specialty IC clinic shall maintain, through direct employment or contract, a sufficient number of qualified personnel to provide effective patient care and all other related services.

(4) Qualified personnel directly employed by, or under contract with a specialty IC clinic shall include:

- (a) Physicians;
- (b) Dentists;
- (c) Dental hygienists;
- (d) Physician assistants;
- (e) Nurse practitioners;
- (f) Registered nurses;
- (g) Psychologists;
- (h) Psychiatrists;
- (i) Pharmacists;
- (j) Audiologists;
- (k) Optometrists;
- (l) Dieticians;
- (m) Behavior specialists;
- (n) Board certified behavior analysts;
- (o) Ophthalmologists;
- (p) Physical therapists;
- (q) Speech therapists;
- (r) Occupational therapists;
- (s) Physical therapist assistants; and
- (t) Occupational therapist assistants.

(5)(a) Prior to providing any service described in Section 3(1) of this administrative regulation, all qualified personnel as identified in subsection (4) of this section shall submit to an in-state criminal background information check conducted by the Justice and Public Safety Cabinet or Administrative Office of the Courts.

(b) An out-of-state criminal background information check shall be obtained for any qualified personnel who have resided or been employed outside Kentucky.

(c) A clinic shall not knowingly employ any person who has been convicted of a felony offense under:

- 1. KRS Chapter 209;
- 2. KRS Chapter 218A;
- 3. KRS 507.020, 507.030, and 507.040;
- 4. KRS Chapter 509;
- 5. KRS Chapter 510;
- 6. KRS Chapter 511;
- 7. KRS Chapter 513;
- 8. KRS 514.030;
- 9. KRS Chapter 530;
- 10. KRS Chapter 531;
- 11. KRS 508.010, 508.020, 508.030, and 508.032;
- 12. A criminal statute of the United States or another state similar to subparagraphs 1 to 11 of this paragraph; or
- 13. A violation of the uniform code of military justice or military regulation similar to subparagraphs 1 to 11 of this paragraph which has caused the person to be discharged from the Armed Forces of the United States.

(d) A person who has received a pardon for an offense specified in paragraph (c) or has had the record of such an offense expunged may be employed.

(6) A specialty IC clinic shall maintain written personnel policies which shall be available to all employees.

(7) A specialty IC clinic shall maintain a written job description for each position which shall be reviewed and revised as necessary.

(8) A specialty IC clinic shall maintain current personnel records for each employee. An employee's personnel record shall include the following:

- 1. Employee's name and address;

2. Evidence that the health care professional has a valid license or other valid credential required for the professional to be able to practice;

3. Record of training and experience; and

4. Record of performance evaluations.

(9)(a) Specialty IC clinic personnel shall attend in-service training programs relating to their respective job duties. These training programs shall include:

1. Thorough job orientation for new personnel;

2. Regular in-service training programs;

3. Behavior management procedures and techniques;

4. Training in the detection and reporting of suspected abuse or neglect of a child or adult;

5. Training in the field of intellectual and developmental disabilities; and

6. Emergency and safety procedures.

(b) A written document describing the training programs completed by all clinic employees shall be maintained on the premises of the clinic.

Section 6. Medical Records. (1) A specialty IC clinic shall maintain medical records which contain the following:

(a) Name of the patient;

(b) Description of each medical visit or contact, including:

1. Date of the visit;

2. Condition or reason for the visit;

3. Name of health care practitioner providing the service;

4. Description of the services provided; and

5. Any medications or treatments prescribed;

(c) Medical or social history relevant to the services provided, including data obtained from other providers;

(d) Names of referring physicians, if any, and physicians orders for special diagnostic services; and

(e) Documentation of all referrals made, including the reason for the referral and to whom the patient was referred.

(2) A specialty IC clinic shall maintain confidentiality of patient records at all times pursuant to and in accordance with federal, state and local laws and administrative regulations, including the privacy standard promulgated pursuant to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. 160 and 164.

(3) A specialty IC clinic shall:

(a) Establish systematic procedures to assist in continuity of care if the patient moves to another source of care;

(b) Transfer medical records or an abstract upon request, subject to required releases and authorizations; and

(c) Have a specific location designated for the storage and maintenance of the clinic's medical records, maintain scanned copies of the original medical records in an electronic format, or maintain electronic health records, available for copying to a disk or printing at the clinic.

(4)(a) Medical records shall be maintained by the clinic for a period of six (6) years following the last treatment, assessment, or visit made by the patient, or three (3) years after the patient reaches age eighteen (18), whichever is longer.

(b) A provision shall be made for written designation of a specific location for the storage of medical records in the event the specialty IC clinic ceases to operate because of disaster, or for any other reason.

(5) A specialty IC clinic shall safeguard each clinic's medical records and content against loss, defacement, and tampering.

Section 7. Provision of Services. (1) Equipment. Equipment used for direct patient care shall comply with the following:

(a) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative, properly calibrated, and cleaned regularly;

(b) All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, registered or certified in accordance with applicable state statutes and administrative regulations; and

(c) A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment.

(2) Diagnostic services. Diagnostic services shall be performed

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in accordance with the specialty IC clinic's protocol.

(a) Protocols for diagnostic examinations shall be developed by the medical director.

(b) Diagnostic services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific technique utilized for diagnostic purposes.

(c) Physical examination services shall be nonabusive and provided in a manner which ensures the greatest amount of safety and security for the patient.

1. Personnel performing physical examinations shall have adequate training and be currently licensed, registered, or certified in accordance with applicable Kentucky statutes and administrative regulations.

2. Personnel performing physical examinations shall be limited by the relevant scope of practice of state licensure.

(3) Referrals. A specialty IC clinic shall refer a patient for services that cannot be provided at the clinic.

Section 8. Physical Environment. (1) Accessibility. A specialty IC clinic shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. A specialty IC clinic shall be approved by the State Fire Marshal's office prior to initial licensure.

(3) Housekeeping and maintenance services.

(a) Housekeeping. A specialty IC clinic shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

(b) Maintenance. The premises shall be well kept and in good repair as follows:

1. The clinic shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors which can be opened for ventilation shall be screened;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly;

4. A pest control program shall be in operation in the clinic. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock;

5. Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles shall be segregated from other wastes and aggregated in rigid disposable containers immediately after use. Needles and syringes shall not be cut, dismantled, or destroyed after use but shall be placed intact directly into a rigid container. The rigid containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020; and

6. The clinic shall establish a written policy for the handling and disposal of all infectious, pathological, and contaminated waste if the clinic generates them. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 61:010.

a. (i) Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness.

(ii) A bag, when full, shall not exceed twenty five (25) pounds.

(iii) All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the clinic from which the waste is being removed and shall be attached to the bag in a conspicuous manner.

b. All unpreserved tissue specimens procedures shall be incinerated on or off site.

c. The following wastes shall be sterilized before disposal or be disposed of by incineration if they are combustible:

(i) Dressings and materials from open or contaminated wounds;

(ii) Waste materials and disposable linens from isolation rooms;

(iii) Culture plates;

(iv) Test tubes;

(v) Sputum cups; and

(vi) Contaminated sponges and swabs.

MARY REINLE BEGLEY, Inspector General

JANIE MILLER, Secretary

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, 502-564-2888

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure as a specialty intermediate care clinic located on the grounds of a state-owned facility licensed pursuant to 902 KAR 20:086 as an intermediate-care facility for the intellectually and developmentally disabled.

(b) The necessity of this administrative regulation: Following a November 2001 investigation by the U.S. Department of Justice's Civil Rights Division (DOJ) of conditions and practices at the Oakwood Developmental Center, Kentucky voluntarily came forward with a Strategic Action Plan incorporated into the Commonwealth's Settlement Agreement with DOJ. The Strategic Action Plan details Kentucky's solutions to DOJ's findings, including a process for transitioning residents of intermediate-care facilities for the intellectually and developmentally disabled to community placements. The Strategic Action Plan further calls for the establishment of specialty intermediate care clinics located on the grounds of intermediate-care facilities for the intellectually and developmentally disabled. The specialty intermediate care clinics will provide an array of specialized outpatient services, including medical, behavioral, psychiatric, nutritional, and therapy services to individuals in the community who qualify for admission to an intermediate-care facility for the intellectually and developmentally disabled. The specialty intermediate care clinics may also serve facility residents. However, the primary benefit derived from the specialty intermediate care clinics is the role they will play in helping transition residents from institutional settings to the community, and further maintain community placements for individuals with an intellectual disability and a developmental disability who have complex health care needs and require specialized services that are not available outside of the specialty intermediate care clinic or the intermediate-care facility for the intellectually and developmentally disabled.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities.

(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 licensure requirements for specialty intermediate care clinics.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Specialty intermediate care clinics, one of which will be operational on September 1, 2010 on the campus of Oakwood, will provide an array of individualized outpatient services to individuals with an intellectual disability and a developmental disability.

(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: Specialty intermediate care clinics will be re-

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quired to provide outpatient services individualized to meet the treatment needs of residents and those individuals with an intellectual disability and a developmental disability who qualify for admission to an intermediate-care facility for the intellectually and developmentally disabled; have an administrator who is principally responsible for the daily operation of the clinic; have a medical director who is responsible for all medical aspects of the clinic; maintain administrative policies covering all aspects of operation; have at least one registered nurse; maintain a sufficient number of qualified personnel to provide effective patient care; assure all qualified personnel submit to criminal background checks; not employ or contract with health care practitioners convicted of a felony offense identified in Section 5(5) of this administrative regulation; maintain personnel records; maintain patient medical records; and meet the physical environment requirements established in Section 8 of this administrative regulation for maintaining a clean and safe clinic.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial and annual fee for licensure as a specialty intermediate care clinic will be \$500.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity that demonstrates compliance with this administrative regulation will be approved for licensure as a specialty intermediate care clinic. These clinics will play a vital role in delivering services individualized to meet the health care needs of individuals with an intellectual disability and a developmental disability who live in the community and qualify for placement in an institutional setting.

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

(a) Initially: Based on the small number of entities eligible to become licensed as a specialty intermediate care clinic, the cost of implementing this administrative regulation is expected to be absorbable and the licensure fee is anticipated to cover all, or most of the cost of implementation.

(b) On a continuing basis: Based on the small number of entities eligible to become licensed as a specialty intermediate care clinic, the cost of implementing this administrative regulation is expected to be absorbable and the licensure fee is anticipated to cover all, or most of the cost of implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from specialty intermediate care clinics and state 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 initial and annual fee for licensure as a specialty intermediate care clinic will be \$500.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial and annual fee for licensure as a specialty intermediate care clinic. Both the initial and annual licensure fee will be \$500.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation relates to the licensure of specialty intermediate care clinics located on the grounds of state-owned facilities licensed pursuant to 902 KAR 20:086 as intermediate-care facilities for the intellectually and developmentally disabled.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

4. Estimate the effect of this administrative regulation on the

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

(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 will collect an initial fee of \$500 from each applicant for licensure as a specialty intermediate care clinic. There will be one specialty intermediate care clinic operational on September 1, 2010. Therefore, the cabinet will collect at least \$500 in licensure 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 will collect an annual licensure fee of \$500 from each licensed specialty intermediate care clinic.

(c) How much will it cost to administer this program for the first year? Based on the low number of entities eligible to become licensed as a specialty intermediate care clinic, the cost of implementing this administrative regulation is expected to be absorbable and the licensure fee is anticipated to cover all, or most of the cost of implementation.

(d) How much will it cost to administer this program for subsequent years? Based on the low number of entities eligible to become licensed as a specialty intermediate care clinic, the cost of implementing this administrative regulation is expected to be absorbable and the licensure fee is anticipated to cover all, or most of the cost of implementation.

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
902 KAR 45:005E

This emergency administrative regulation is being promulgated to establish a special one (1) time food service establishment, non-permanent, serving the public at the World Equestrian Games and festivals in adjoining communities. The amendment is necessary because the current food code allows for temporary food establishments to be permitted for no longer than fourteen (14) days by the Department for Public Health, which has been used to limit nonpermanent food service that might otherwise bypass water and sewage requirements. This emergency amendment is necessary because the World Equestrian Games and associated festivals at which vendors will be providing food service will exceed fourteen (14) days and allows a nonpermanent food establishment to operate for up to thirty (30) days. Failure to enact this administrative regulation on an emergency basis may pose an imminent threat to the public's health by having food service at a premier international event degraded or terminated due to an administrative regulation that did not anticipate a festival of this magnitude. This would also limit the tourism and economic development impact of the games on the Commonwealth. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation because it only pertains to the World Equestrian Games and associated festivals.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Emergency Amendment)

902 KAR 45:005E. Kentucky food code.

RELATES TO: KRS 217.005-217.205, 217.280-217.390,
217.990-217.992

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3),

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211.180(c), 217.125

EFFECTIVE: September 8, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1), 217.125, 211.090(3), and 211.180(c) authorize the Cabinet for Health and Family Services to regulate food service establishments and retail food stores. This administrative regulation establishes a uniform code for the regulation of all food service establishments and retail food stores for the purpose of protecting the public health.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 217.015(3).

(2) "Temporary food establishment" is defined by KRS 217.015(45).

Section 2. Insertions and Modifications to the 2005 FDA Food Code. (1) Except as provided by subsection (2) of this section, the 2005 edition of the FDA Food Code shall apply to Kentucky food establishments with the addition of the provisions established in this subsection.

(a) FDA Food Code Subparagraph 2-102.11(B). Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program or a local health department class that addresses the food safety issues described in 2-102.11(C) of the 2005 FDA food code.

(b) FDA Food Code Subparagraph 3-301.11(D). Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if the permit holder has a written policy that addresses hand washing while processing, preparing, and serving all ready-to-eat foods; and

(c) FDA Food Code Subparagraph 8-302.11.

1. A mobile food unit shall not operate for more than fourteen (14) consecutive days at one (1) location.

2. After the fourteen (14) consecutive days has expired, a mobile food unit shall not operate at the same location until a period of thirty (30) days has elapsed.

(d) Nonpermanent Food Service Establishment. The cabinet may issue a permit for a nonpermanent food service establishment for a period of time not to exceed thirty (30) days, for operation on property that is owned, leased, operated, or managed by a governmental entity.

(2) The following provisions of the 2005 FDA Food Code shall not apply to Kentucky food establishments.

(a) FDA Food Code Subparagraph 3-301.11(D)(1).

(b) FDA Food Code Subparagraph 3-301.11(D)(2)(a).

(c) FDA Food Code Subparagraph 3-301.11(6)(e).

(d) FDA Food Code Subparagraph 8-811.10 (B).

(e) FDA Food Code Annex 7: Form 3-A, Food Establishment Inspection Report.

Section 3. Inspections and Violations. (1) If an inspection is made of an establishment, the findings shall be recorded on form DFS-208, Food Establishment Inspection Report, and shall constitute a written notice to the permit holder.

(2) A copy of the inspection report shall be furnished to the permit holder or person in charge.

(3) The inspection report form shall summarize the requirements of this administrative regulation and shall set forth a point value for each requirement.

(4) The rating score of the establishment shall be the total of the point value for all violations subtracted from 100.

(5) The inspection report form shall specify a period of time for the correction of the violations found pursuant to the following provisions:

(a) If the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point items shall be corrected prior to the next routine inspection.

(b) If the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point items shall be corrected within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of three (3), four (4), or five (5) point items shall be cor-

rected within a time period specified by the cabinet but not to exceed ten (10) days.

(d) If the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit, using form DFS-214 Enforcement Notice. The permit shall be suspended within ten (10) days after receipt of the notice unless a written request for a hearing is filed in accordance with 902 KAR 1:400.

(e) A permit shall be suspended immediately upon notice to the permit holder without a hearing if:

1. The cabinet has reason to believe that an imminent public health hazard exists;

2. The permit holder or an authorized agent has interfered with the cabinet in the performance of its duties after its agents have duly and officially identified themselves; or

3. An inspection of an establishment reveals a rating score of less than sixty (60).

(f) A permit holder subject to the immediate suspension of a permit may make application on form DFS-215, Application for Reinstatement of Suspended Permit, for the purpose of reinstatement of suspended permit.

(g) All violations concerning a temporary food service establishment shall be corrected within twenty-four (24) hours.

1. If violations are not corrected within the required twenty-four (24) hour time period, the permit shall be immediately suspended.

2. The permit holder whose permit has been suspended may request a hearing using form DFS-212.

(h) If a food service establishment is required under the provisions of this administrative regulation to cease operations, it shall not resume operations until a reinspection determines that conditions responsible for the requirement to cease operations no longer exist.

(j) An opportunity for reinspection shall be offered within seven (7) days of the cabinet's receipt of the form DFS-215.

(6) The inspection report shall state that:

(a) Failure to comply with a time limit for correction may result in the suspension of a permit; and

(b) An opportunity for appeal will be provided if a written request for a hearing is filed in accordance with 902 KAR 1:400.

Section 4. Effective Date. This Code and the rules, administrative regulations, provisions, requirements, and orders shall take effect one (1) year from the date of approval.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Food Code", U.S. Public Health Service, FDA, 2005.

(b) "DFS-200, Facility Profile", edition 07/01;

(c) "DFS-202, Application for a Permit to Operate a Temporary, Fee Exempt or Farmer's Market Temporary Food Service Establishment", edition 04/07;

(d) "DFS-208, Food Establishment Inspection Report", edition 1/09;

(e) "DFS-210, Notice to Correct Violations", edition 02/95;

(f) "DFS-212, Request for Conference", edition 10/96;

(g) "DFS-213, Notice of Conference", edition 08/96;

(h) "DFS-214, Enforcement Notice to Apply for Permit, Order to Cease Operation, or Permit Suspension and Order to Cease Operation", edition 08/96;

(i) "DFS-215, Application for Re-instatement of Suspended Permit", edition 02/95;

(j) "DFS-216, Record of Complaint and Investigation", edition 04/95;

(k) "DFS-218, Concessionaires Food Sanitation Guidelines", edition 05/94;

(l) "DFS-222, Notice and Order of Quarantine", edition 05/94;

(m) "DFS-223, Tag-Quarantined", edition 10/90;

(n) "DFS-224, Label for Sample Collection and Analysis", edition 09/87; and

(o) "DFS-232, Permit to Operate Temporary, Fee Exempt Food Service or Farmer's Market Temporary Food Service Establishment", edition 04/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family

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Services, Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 7, 2010

FILED WITH LRC: September 8, 2010 at 8 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2010 at 9 a.m. in Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Reed, (502) 564-7181

(1) Provide a brief summary of 902 KAR 45:005E:

(a) What this administrative regulation does: 902 KAR 45:005E establishes a uniform code for the regulation of all food service establishments and retail food stores in Kentucky for the purpose of protecting the public health.

(b) The necessity of this administrative regulation: 902 KAR 45:005E is necessary because all food services establishment and retail food stores need to handle, store and prepare food for human consumption in a safe and sanitary manner. This regulation meets the public health requirement for offering safe food to consumers.

(c) How this administrative regulation conforms to the content of the authorizing statute: 194A.050(1), 217.125, 211.090(3), and 211.180(c) authorize the Cabinet for Health and Family Services to regulate food service establishments and retail food stores. This regulation sets forth the requirements for operating food establishments and retail food stores under that statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation describes the requirements for operating a food service establishment or retail food store in Kentucky and assists Kentucky in regulating the Food Code uniformly across the state.

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

(a) How the amendment will change the existing administrative regulation: The amendment(s) will create a new category of food service establishment called Nonpermanent Food Establishment, solely for use in the World Equestrian Games and community festivals in areas surrounding the WEG. The current regulation governing temporary food establishments does not allow the state to provide a permit for operating a temporary food establishment longer than 14 days.

(b) The necessity of the amendment to this administrative regulation? This amendment is necessary because the existing regulation does not allow for an event where food will be served to use temporary food permitting longer than 14 days. Therefore this regulation will allow WEG to be permitted for the entire length of its duration and continue to serve food in excess of the period stated in the current regulation.

(c) How the amendment conforms to the content of the authorizing statutes: 194A.050(1), 217.125, 211.090(3), and 211.180(c) au-

thorize the Cabinet for Health and Family Services to regulate food service establishments and retail food stores. This includes vendors serving food to the public on a temporary nature. This regulation conforms to the content of the authorizing statutes by creating a new category of food service establishments covering the World Equestrian Games.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the non-permanent food service vendors at both the World Equestrian Games and the community festivals surrounding it to offer food service consistent with Kentucky's Food Code regulation, thus protecting the consuming public and promoting economic development at a high visibility international event.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect the vendor chosen to provide food service at the World Equestrian games and the 12 to 15 that will provide temporary food services in surrounding counties at community sponsored festivals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The food service vendors will need to apply for a special World Equestrian Games Permit and pay the associated fee. This permit will allow the food vendor to operate in a non-permanent status for a period that exceeds the current regulation limit of 14 days.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each permit acquired under this emergency regulation will cost \$50 to offset a portion of the costs incurred for the permitting and inspection of nonpermanent food service vendors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated food establishment and food retail store will be in compliance with Kentucky Food code regulation and can assure their customers that all requirements for operating a nonpermanent food establishment have been met. The entities will also benefit from serving the public during a highly visible international event.

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

(a) Initially: Administrative costs regarding permitting and inspection of Nonpermanent food service vendors at the WEG are expected to be limited to approximately thirty days. These costs are also largely expected to be limited to the environmental health sections of the Lexington-Fayette County Health Department, the Scott County Health Department, and Department for Public Health. Costs will also be incurred by other Public Health agencies, including the FDA and other local health departments, who send staff to assist the lead agencies with food safety and sanitation inspections. These costs are not expected to exceed \$40,000, and the permitting fee will offset a small part of this cost at the state and local level, with the rest absorbed by the agencies. Federal costs will be absorbed by FDA.

(b) On a continuing basis: The emergency regulation will expire and not be replaced with an Ordinary regulation once the WEG and associated festivals are over. There will be no on-going costs to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The initial implementation will be paid for with Agency Funds generated by the permitting fee, with any additional costs absorbed by using general funds of the Food Safety Program.

(7) Will an increase in fees or funding be necessary to implement this administrative regulation or amendment to an existing administrative regulation? Yes. The permitting fee for this one time only non-permanent food establishments will be set at \$50 to offset a portion of the costs incurred for the permitting and inspection of non-permanent food service vendors.

(8) Does this administrative regulation establish or directly or indirectly increase any fees? This administrative regulation establishes fees for a new category of food establishment, Non-

Permanent, to coincide with the World Equestrian Games. It will apply only to those food establishments that operate during this event.

(9) TIERING: Is tiering applied? Tiering is not applied because Kentucky Food Code regulations apply consistently across establishments serving food in Kentucky.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect the Kentucky Department for Public Health and its environmental agents, the local health departments, and county, city, and community governments sponsoring festivals in conjunction with the WEG.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 194A.050(1), 217.125, 211.090(3), and 211.180(c)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will generate minimal revenue, less than \$500, for all entities involved in permitting food establishments for the WEG.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) in subsequent years? No new revenue will be generated for the Cabinet or Department for Public Health or its local government partners in subsequent years. This Emergency regulation will be allowed to expire without replacing it with an ordinary when the World Equestrian Games are over and no additional fees will be generated under the emergency provisions of this regulation.

(c) How much will it cost to administer this program for the first year? Administrative costs regarding permitting and inspection of Nonpermanent food service vendors at the WEG are expected to be limited to approximately thirty days. These costs are also largely expected to be limited to the environmental health sections of the Lexington-Fayette County Health Department, the Scott County Health Department, and Department for Public Health. Costs will also be incurred by other Public Health agencies, including the FDA and other local health departments, who send staff to assist the lead agencies with food safety and sanitation inspections. Administrative costs are expected to include personal auto mileage to and from surveillance and inspection locations, as well as lodging and per diem costs for some inspection staff. These costs are not expected to exceed \$40,000. The permitting fee will offset a small part of this cost at the state and local level, with the rest absorbed by the agencies. Federal costs will be absorbed by FDA.

(d) How much will it cost to administer this program for subsequent years? There will not be any costs to administer this program in subsequent years as this Emergency Regulation will be allowed to expire once the World Equestrian Games are over.

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
902 KAR 45:110E**

This emergency administrative regulation is being promulgated

to establish a special one (1) time fee for permitting and inspecting food establishments serving the public at the World Equestrian Games and festivals in adjoining communities. The amendment is necessary because the current food code allows temporary food establishments to be permitted for no longer than fourteen (14) days by the Department for Public Health, which has been used to limit nonpermanent food service locations that might otherwise bypass water and sewage requirements. This emergency amendment is necessary because the World Equestrian Games and associated festivals at which vendors will be providing food service will exceed fourteen (14) days. This emergency administrative regulation sets forth the fee for permitting and inspection of non-permanent food establishment that can operate for up to thirty (30) days, which would also allow the communities around the WEG to incorporate food services in to their festivals for a period longer than the currently limited 14 days. Failure to enact this administrative regulation on an emergency basis may pose an imminent threat to the public's health by having food service at a premier international event degraded or terminated due to a regulation that did not anticipate a festival of this magnitude. This would also limit the tourism and economic development impact of the games on the Commonwealth. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation because it only pertains to the WEG and associated festivals.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Emergency Amendment)**

902 KAR 45:110E. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and seasonal restricted food concessions.

RELATES TO: KRS 217.025, 217.035, 217.037, 217.125, 217.811, 2000 Ky. Acts ch. 549, part I.A.41

STATUTORY AUTHORITY: KRS 194A.050, 217.125(1), 2000 Ky. Acts ch. 549, part I.A.41

EFFECTIVE: September 8, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(2), 217.811 and 2000 Ky. Acts ch. 549, part I.A.41 authorize the Secretary of the Cabinet for Health Services to provide by administrative regulation a schedule of reasonable fees to be paid by food manufacturing plants, food storage warehouses, retail food establishments, salvage distributors, salvage processing plants, vending machine companies, and seasonal restricted food concessions for permits to operate and for inspection activities carried out by the Cabinet for Health Services. This administrative regulation establishes the schedule of fees.

Section 1. Fees. (1)(a) A permit fee is required for inspections conducted by the cabinet or its representatives to determine compliance with:

1. Administrative regulations for salvage distributors and salvage processing plants; and
2. KRS 217.025, 217.035, and 217.037 for food manufacturing plants and food storage warehouses.

(b) A fee shall be assessed according to the total square footage of the establishment, as follows:

1. 0 - 1,000 square feet - seventy-five (75) dollars;
2. 1,001 - 5,000 square feet - eighty-five (85) dollars;
3. 5,001 - 30,000 square feet - \$147;
4. 30,001 - 40,000 square feet - \$275; or
5. 40,001 or more square feet - \$290.

(2)(a) A fee shall be assessed for inspections of retail food stores, conducted by the cabinet or its representative to determine compliance with administrative regulations pursuant to KRS 217.025, 217.035, 217.037, and 217.125(2) pertaining to:

1. Adulteration;
2. Misbranding;

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3. Packaging; and
4. Labeling of food products.

(b) A fee shall be assessed according to the total square footage of the establishment, as follows:

1. 0 - 1,000 square feet - twenty-seven (27) dollars;
2. 1,001 - 10,000 square feet - fifty-three (53) dollars;
3. 10,001 - 20,000 square feet - ninety (90) dollars;
4. 20,001 - 30,000 square feet - ninety-five (95) dollars; or
5. 30,001 or more square feet - \$100.

(c) An application for a permit to operate a mobile retail food store shall be accompanied by a fee of twenty-seven (27) dollars.

(3) An application for a permit to operate a vending machine company shall be accompanied by a fee of twenty-seven (27) dollars for each vending commissary plus a fee for the total number of vending machines operated by the applicant as follows:

- (a) One (1) - twenty-five (25) machines - \$107;
- (b) Twenty-six (27) - fifty (50) machines - \$160;
- (c) Fifty-one (51) - 100 machines - \$213;
- (d) 101-150 machines - \$253; or
- (e) 151 and over machines - \$414.

(4) An application for a permit to operate a food service establishment shall be accompanied by a fee of sixty (60) dollars plus the following fees, if applicable:

(a) For a permanent food service establishment, according to the number of seats, as follows:

1. Zero to twenty-five (25) seats - sixty (60) dollars annually;
2. Twenty-six (26) to fifty (50) seats - ninety (90) dollars annually;
3. Fifty-one (51) to 100 seats - ninety-five (95) dollars annually;
4. 101 to 200 seats - \$100 annually;
5. 201 or more seats - \$105 annually;
- (b) Drive-through window - \$125 per year;
- (c) Catering operation - \$110 per year; or
- (d) Mobile food unit - \$120 per year.

(5) An application for a permit to operate a temporary food service establishment shall be accompanied by a fee according to the length of the event, as follows:

- (a) One (1) to three (3) day event - twenty-five (25) dollars;
- (b) Four (4) to fourteen (14) day event - thirty (30) dollars.

(6) An application for a permit to operate a seasonal restricted food concession within a local health department jurisdiction shall be accompanied by a fee of thirty-three (33) dollars.

(7) An application for a permit to operate a nonpermanent food service establishment as defined in 902 KAR 45:005 shall be accompanied by a fee of fifty (50) dollars

Section 2. Payment of Fees. Payment of fees shall be made to the local health department having jurisdiction. Fees received by a local health department shall be deposited in the Kentucky State Treasury.

WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 7, 2010

FILED WITH LRC: September 8, 2010 at 8 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2010 at 9 a.m. in Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275

East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Reed, (502) 564-7181

(1) Provide a brief summary of 902 KAR 45:110E:

(a) What this administrative regulation does: 902 KAR 45:110E establishes a schedule of reasonable fees to be paid by food manufacturing plants, food storage warehouses, retail food establishments, salvage distributors, salvage processing plants, vending machine companies, and seasonal restricted food concessions for permits to operate and for inspection activities carried out by the Cabinet for Health Services.

(b) The necessity of this administrative regulation: 902 KAR 45:110E is necessary to recover some of the costs of inspecting for compliance with Kentucky Food Code and other state and federal laws.

(c) How this administrative regulation conforms to the content of the authorizing statute: 194A.050(1), 217.125, 211.090(3), and 211.180(c) authorize the Cabinet for Health and Family Services to regulate food service establishments and retail food stores and to set a reasonable fee for the permitting and inspection of such establishments. This regulation sets forth the fee schedule for establishments by type and by length of operation for temporary facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will set the fee for permitting a non-permanent food service establishment operated by and in conjunction with a one-time special event, the World Equestrian Games. This will assist in the implementation of food inspections performed by the Cabinet and its agents and also allow economic development of an international destination event to be held under current regulation.

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

(a) How the amendment will change the existing administrative regulation: The amendment(s) will permit the collection of a permitting and inspection fee for a new category of food service establishment called Nonpermanent Food Establishment, solely for use in the World Equestrian Games and community festivals in areas surrounding the WEG. The fee covers an event of duration longer than current regulation provides. The current regulation governing temporary food establishments does not allow the state to provide a permit for operating a temporary food establishment longer than 14 days.

(b) The necessity of the amendment to this administrative regulation? This amendment is necessary because the existing regulation does not allow for a permit and fee for an event where food will be served longer than 14 days. Therefore this regulation will allow WEG to be permitted for the entire length of its duration and continue to serve food in excess of the period stated in the current regulation.

(c) How the amendment conforms to the content of the authorizing statutes: 194A.050(1), 217.125, 211.090(3), and 211.180(c) authorize the Cabinet for Health and Family Services to regulate food service establishments and retail food stores. This includes vendors serving food to the public on a temporary nature. The statute also allows fees to be collected for permitting and inspection of such establishment. This regulation conforms to the content of the authorizing statutes by creating a fee for a new category of food service establishments covering the World Equestrian Games.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the non-permanent food service vendors at both the World Equestrian Games and the community festivals surrounding it to offer food service consistent with Kentucky's Food Code regulation, thus protecting the consuming public and promoting Kentucky's economic development at a high visibility international event.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect the one vendor chosen to provide food service at the World Equestrian games and the 12

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to 15 that will provide temporary food services in surrounding counties at community sponsored festivals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The food service vendors will need to apply for a special World Equestrian Games Permit, be inspected, and pay the associated fee of \$50. This permit will allow the food vendor to operate in a non-permanent status for a period that exceeds the current regulation limit of 14 days.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each permit acquired under this emergency regulation will cost \$50.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated food establishment and food retail store will be in compliance with Kentucky Food code regulation and can assure their customers that all requirements of the operating a nonpermanent food establishment have been met and that they are operating consistently with current regulation for permits, inspections, and fees.

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

(a) Initially: Administrative costs regarding permitting and inspection of Nonpermanent food service vendors at the WEG are expected to be limited to approximately thirty days. These costs are also largely expected to be limited to the environmental health sections of the Lexington-Fayette County Health Department, the Scott County Health Department, and Department for Public Health. Costs will also be incurred by other Public Health agencies, including the FDA and other local health departments, who send staff to assist the lead agencies with food safety and sanitation inspections. These costs are not expected to exceed \$40,000 and the permitting and inspection fee in this regulation will offset a small part of this cost at the state and local level, with the rest absorbed by the agencies. Federal costs will be absorbed by FDA.

(b) On a continuing basis: The emergency regulation will expire and not be replaced with an ordinary regulation once the WEG and associated festivals are over. There will be no on-going costs to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The initial implementation will be paid for with Agency Funds generated by the permitting and inspection fee, with any extra costs absorbed by general funds of the Food Safety Program.

(7) Will an increase in fees or funding be necessary to implement this administrative regulation or amendment to an existing administrative regulation? Yes. The permitting and inspection fee for non-permanent food establishments will be set at \$50 to offset a portion of the costs incurred for the permitting and inspection of non-permanent food services vendors.

(8) Does this administrative regulation establish or directly or indirectly increase any fees? This administrative regulation establishes a one-time special permit and inspection fee directly by establishing a permitting and inspection fee for a new category of food establishment, Nonpermanent, to coincide with the World Equestrian Games

(9) TIERING: Is tiering applied? Tiering is not applied because Kentucky Food Code regulations apply consistently across establishments serving food in Kentucky.

county, city governments sponsoring festivals in conjunction with the WEG.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 194A.050(1), 217.125, 211.090(3), and 211.180(c)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will generate minimal revenue, less than \$500, for all entities involved in permitting and inspecting food establishments for the WEG.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) in subsequent years? No new revenue will be generated for the Cabinet or Department for Public Health or its local government partners in subsequent years. This Emergency regulation will be allowed to expire without replacing it with an ordinary when the World Equestrian Games are over and no additional fees will be generated under the emergency provisions of this regulation.

(c) How much will it cost to administer this program for the first year? Administrative costs regarding permitting and inspection of Non-Permanent food service vendors at the WEG are expected to be limited to approximately thirty days. These costs are also largely expected to be limited to the environmental health sections of the Lexington-Fayette County Health Department, the Scott County Health Department, and Department for Public Health. Costs will also be incurred by other Public Health agencies, including the FDA and other local health departments, who send staff to assist the lead agencies with food safety and sanitation inspections. These costs are not expected to exceed \$40,000, and the permitting fee will offset a small part of this cost at the state and local level, with the rest absorbed by the agencies. Federal costs will be absorbed by FDA.

(d) How much will it cost to administer this program for subsequent years? There will not be any costs to administer this program in subsequent years as this Emergency Regulation will be allowed to expire once the World Equestrian Games are over.

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:

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect the Kentucky Department for Public Health and its environmental agents, the local health departments, and

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ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, September 14, 2010)

103 KAR 31:102. Rebate for a governmental public facility.

RELATES TO: KRS 139.010, 139.200, 139.533

STATUTORY AUTHORITY: KRS 131.130(1), 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) ~~requires~~ [authorizes] the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to administer the provisions of KRS Chapter 139 relating to the assessment, collection, refund, and administration of sales and use taxes. KRS 139.533 establishes the sales tax rebate provisions for sales of admissions to and sales of tangible personal property at a governmental public facility. This administrative regulation establishes [~~is necessary to establish~~] the requirements and procedures to apply for the sales tax rebate created by KRS 139.533.

Section 1. Definitions. (1) "Effective date" is defined by KRS 139.533(1)(a).~~;~~]

(2) "Governmental entity" is defined by KRS 139.533(1)(b).~~;~~]

(3) "Public facility" is defined in KRS 139.533(1)(c).

Section 2. Registration Process. (1) To determine eligibility for the sales tax rebate under KRS 139.533, the governmental entity shall submit to the Department of Revenue a fully completed Governmental Public Facility Sales Tax Rebate Registration, Form 51A400.

(2) The department shall notify the qualifying governmental entity of the effective date for sales eligible for the sales tax rebate according to the provisions of KRS 139.533(1)(a) and (3).

Section 3. Quarterly Rebate Application Requirements. (1) An approved governmental entity shall file the following within the sixty (60) day timeframe as provided for in KRS 139.533(4):

(a) A fully completed Governmental Public Facility Application for Sales Tax Rebate, Form 51A401; and

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

(2) All applications and other documents required shall be postmarked, electronically submitted or, if delivered by messenger, hand-stamped by the department by the date required to qualify for consideration.

(3) The department shall pay the rebate amount determined due within the forty-five (45) day timeframe as provided for in KRS 139.533(5).

Section 4. Recordkeeping Requirements. (1) The qualifying governmental entity shall keep adequate and complete records supporting each rebate request for at least [~~its rebate request(s) for periods not less than~~] four (4) years as provided for in KRS 139.720.

(2) The department may audit part or all of the records of all parties involved as necessary to verify the refund request and to ensure compliance with KRS 139.533.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Governmental Public Facility Sales Tax Rebate Registration", Form 51A400, June 2010;

(b) "Governmental Public Facility Application for Sales Tax Rebate", Form 51A401, June 2010; and

(c) "Vendor Assignment Agreement for Sales at a Qualifying Public Facility", Form 51A402, June 2010.

(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: July 1, 2010

FILED WITH LRC: July 9, 2010 at 2 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.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, September 14, 2010)

105 KAR 1:190. Qualified domestic relations orders.

RELATES TO: KRS ~~16.505(36), (37), (38), 16.576, 16.645(5), 61.510(37), (38), (39), 61.690, 78.510(34), (35), (36), 78.545(26), 205.712, 26 U.S.C. [26 U.S.C. sec.1414(p)]~~ [16.505-16.652, 61.510-61.705, 78.510-78.852]

STATUTORY AUTHORITY: KRS 61.645(9)(g), ~~[KRS]61.690(4)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.690 requires the retirement systems to promulgate an administrative regulation establishing the requirements, procedures, and forms necessary to administer qualified domestic relations orders (QDROs). This administrative regulation establishes the requirements, procedures, and forms necessary to administer QDROs [~~(3) requires the retirement systems to honor qualified domestic relations orders which comply with the policy of the Board of Trustees established by this administrative regulation~~].

Section 1. Definitions. (1) "Alternate payee" is defined by KRS 16.505(38), 61.510(39), and 78.510(36) [~~means an individual who is named in a qualified domestic relations order to receive a portion of the member's retirement benefits~~].

(2) "Qualified domestic relations order" is defined by KRS 16.505(37), 61.510(38), and 78.510(35) [~~(QDRO) means a court order issued incident to an annulment, separation or divorce which establishes an alternate payee's rights to a portion of the member's benefit~~].

(3) "Participant" is defined by KRS 16.505(36), 61.510(37), and 78.510(34).

Section 2. The provisions of this section shall only apply to QDROs that were approved by the retirement systems for enforcement prior to July 14, 2000. After the participant notifies the retirement system of the participant's requested effective retirement date, the retirement systems shall administer a QDRO that was entered prior to the participant's retirement as follows:

(1) The retirement systems shall send the participant and the alternate payee information regarding the amount of the benefits payable pursuant to the QDRO.

(2) The amount of the benefits payable pursuant to a QDRO approved for enforcement by the retirement systems prior to July 14, 2000, shall be calculated as follows:

~~(a) [A QDRO shall be accompanied by a statement from counsel that the QDRO is current and not superseded by a subsequent QDRO and shall contain the following:~~

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~~(1) Certification by the clerk of the circuit court in which the QDRO was entered;~~

~~(2) The name, Social Security number and last known mailing address of the member and the alternate payee;~~

~~(3) The date of marriage and the date of decree of dissolution or marriage;~~

~~(4) The correct name of the system or systems to which it applies;~~

~~(5) If the member is retired, the percentage of the member's retirement allowance to be paid to the alternate payee or the specific amount to be paid to the alternate payee; and~~

~~(6) If the member is not retired, the percentage to be paid to the alternate payee upon the member's retirement, death or withdrawal from the system and whether the percentage pertains to the benefits attributable to the period of marriage, the member's entire period of employment or other specified period.~~

~~Section 3. If the retirement system determines that a QDRO does not meet the requirements of Section 2 of this administrative regulation, the retirement system shall do the following:~~

~~(1) Notify the participant, alternate payee and their legal counsel, if known, that the QDRO is not in compliance and will not be followed and the necessary changes to be made to the QDRO to bring it into compliance.~~

~~(2)(a) If the member is retired, the general manager shall direct the percentage or amount of benefits to be paid to the alternate payee, if determinable from the QDRO, to be withheld from the member's retirement allowance and placed in abeyance until the QDRO is amended.~~

~~(b) If the QDRO is not amended to comply with this administrative regulation within eighteen (18) months from the date the QDRO was first received, the percentage or amount of the member's retirement allowance held in abeyance shall be restored to the member's account and paid to the member.~~

~~(c) A QDRO or amended QDRO received after the close of the eighteen (18) month period and determined to be in compliance shall only be applied prospectively.~~

~~Section 4. A QDRO shall not be effective until received by the retirement system and shall apply only to those monthly retirement allowances that have not been processed by the retirement system by the date of receipt.~~

~~Section 5. If the QDRO is received prior to the member's retirement, then upon the member's retirement pursuant to KRS 61.590, the system shall notify the member and the alternate payee of the benefits payable under the QDRO which shall be calculated as follows:~~

~~(1) The benefit payment shall be divided between the member and the alternate payee as follows: The alternate payee shall receive the amount computed by multiplying the basic option amount due the participant[member] by the percentage allocated to the alternate payee by the terms of the QDRO multiplied by a fraction, the numerator of which shall be the period of service specified in the QDRO and the denominator of which shall be the participant's[member's] total service credit. The participant[member] shall be paid all amounts in excess of the amounts paid to the alternate payee.~~

~~(b)(2) If a lump sum payment equal to the balance of the participant's[member's] account is to be made, the percentage determined by this calculation shall be multiplied by the balance of the participant's[member's] account and the result paid to the alternate payee. The participant[member] shall be paid all amounts in excess of the amounts paid the alternate payee.~~

~~(c)(3) If a monthly benefit is paid, the options made available to the alternate payee shall be derived from the participant's[member's] basic option.~~

~~(d)(4) Service added for disability under KRS 61.605 or KRS 16.582 shall not be included in determining the amount payable to the alternate payee. Service credit purchased during the period of marriage shall be included in the calculation under this paragraph[subsection].~~

~~(e)(5) The payment options offered to the alternate payee shall be based on the alternate payee's life expectancy. The alter-~~

nate payee shall be offered the payment options described in KRS 61.635 which do not provide lifetime benefits to a beneficiary and, if the participant is eligible, the ten (10) year certain option as provided[~~proved~~] by KRS 16.576(5).

~~(f)(6) If the alternate payee predeceases the participant[member] after the participant's[member's] retirement, a lump sum, determined actuarially, of the payments remaining to the alternate payee, if any, shall be paid to the alternate payee's estate.~~

~~(g)(7) The alternate payee of a QDRO approved for enforcement by the retirement systems prior to July 14, 2000, shall receive [a pro rata share of any] increases given recipients under KRS 61.691.~~

~~(3)[Section 6-(4)] If the participant[member] dies prior to retirement and prior to the death of the alternate payee, the participant's[member's] account shall be divided in accordance with the QDRO between the alternate payee and the beneficiary.~~

~~(4)(2) If the death benefit is a refund of the participant's accumulated contributions and interest[members' contribution account], the alternate payee shall only be offered a lump sum payment representing a portion of the participant's[member's] account calculated in accordance with subsection (2)(2)-1 of this section[Section 5 of this administrative regulation].~~

~~(5)(3) If the death benefit is calculated under KRS 16.578 or 61.640, the alternate payee shall be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment, or an actuarial lump sum payment.~~

~~(6)[Section 7. If the QDRO is received after the member's retirement, then the alternate payee shall receive the percentage or amount of the member's retirement allowance as stated in the QDRO until the benefit payable to the member or the member's beneficiary ceases under the terms of the payment option previously selected by the member or until the death of the alternate payee.~~

~~Section 8.] If the alternate payee dies prior to the participant's[member's] death, retirement, or withdrawal of account, payment shall not[or withdrawal of account, no payment shall] be made to the alternate payee.~~

~~(7)[Section 9.] When benefits become payable to the alternate payee, the retirement system shall establish a separate account for the alternate payee, which shall consist of the alternate payee's pro rata share of the participant's[member's] contributions, service, and benefit. Once the alternate payee's account has been established, the alternate payee shall not be entitled to further benefits acquired by the participant[member].~~

~~Section 3. (1) All sections of this administrative regulation, except for Section 2, shall only apply to QDROs approved for enforcement by the retirement systems on or after July 15, 2010.~~

~~(2) A QDRO shall apply to all retirement systems administered by the Kentucky Retirement Systems[retirement systems] as established by KRS Chapters 16, 61, and 78 in which the participant is a member during the period of the marriage that is the subject of the QDRO and from which the participant will receive retirement benefits.~~

~~(3) A QDRO shall contain the following information:~~

~~(a) The participant's name;~~

~~(b) The participant's mailing address;~~

~~(c) The participant's Kentucky Retirement Systems member identification number;~~

~~(d) The alternate payee's name;~~

~~(e) The alternate payee's mailing address;~~

~~(f) The system or systems to which the QDRO applies;~~

~~(g) The amount or percentage to be paid to the alternate payee;~~

~~(h) When payments under the QDRO are to end;~~

~~(i) How the cost of living increase provided in KRS 61.691 is to be administered; and~~

~~(j) All information required on the form that applies to the subject matter of the order:~~

~~1. Form 6434, [Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property]-;~~

~~2. Form 6435, Post-Retirement Qualified Domestic Relations~~

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Order for Division of Marital Property;

3. Form 6436, Qualified Domestic Relations Order for Child Support;

4. Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency; or

5. Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

Section 4. (1) The participant shall sign and submit a Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Order to obtain the information necessary for the Court to calculate the amount due to the alternate payee for purposes of the QDRO.

(a) The participant shall provide the retirement systems with the following information:

1. The participant's and the alternate payee's Social Security numbers;

2. The participant's and the alternate payee's dates of birth;

3. Date of marriage;

4. Date of divorce;

5. The participant's and the alternate payee's mailing addresses; and

6. The addresses of the participant's and the alternate payee's legal counsel, if any.

(2) If the participant has not yet retired, the retirement systems shall provide as of the date of the divorce, the participant's:

(a) Accumulated contributions and interest contributed and earned during the marriage in each system in which the participant has marital service;

(b) Total number of months of service credit on file at the systems as of the effective date of the divorce and upon[~~at the time of~~] the request in each system in which the participant has service;

(c) The number of months of service credit earned and purchased during the marriage in each system in which the participant has marital service;

(d) The hypothetical monthly retirement benefit pursuant to KRS 61.595 the participant would receive when the participant is eligible for an unreduced retirement benefit based on the final compensation and service credit as of the effective date of the divorce in each system in which the participant has marital service; and

(e) The hypothetical actuarial refund payment option or lump-sum refund payment the participant would receive when the participant is eligible for an unreduced benefit based on the final compensation and service credit as of the effective date of the divorce in each system in which the participant has marital service.

(3)[~~(4)~~] The retirement systems shall use the participant's final compensation as of the date of the divorce and the service credit accrued by the participant during the marriage when calculating the participant's projected[~~, estimated~~] basic monthly retirement allowance and the projected[~~, estimated~~] actuarial refund or lump-sum refund payment.

(4)[~~(3)~~] If the participant retired prior to the effective date of the divorce, the retirement systems shall provide the participant's:

(a) Current monthly retirement benefit in each system from which the participant is receiving a monthly retirement benefit;

(b) The total number of months of service credit earned and purchased during the marriage in each system from which the participant is receiving a monthly retirement benefit; and

(c) The total number of months of service credit in each system from which the participant is receiving a monthly retirement benefit.

(5)[~~(4)~~] If information other than the information supplied by the retirement systems in accordance with subsections (2) through (4)[~~2 and 3~~] of this section is required, then the participant shall send an additional request for information in writing or the court shall issue a subpoena or an order requesting the additional information.

Section 5. (1) A QDRO shall be on the form incorporated by reference that applies to the subject matter of the order.

(2) A QDRO shall be signed by the judge of a court with jurisdiction over the case or by the head of the administrative agency with statutory authority to issue a QDRO.

(3) A QDRO shall be entered and certified by the Clerk of the

Court or by the head of the administrative agency with statutory authority to issue a QDRO.

(4) The participant, alternate payee, or their legal counsel shall submit the entered and certified QDRO to the retirement systems. A copy of the QDRO signed by the Judge and entered by the Clerk of the Court may be submitted if the copy is certified by the Clerk of the Court.

(5)(a) The participant, alternate payee, or their legal counsel shall not submit a QDRO that is before an appellate court and is not final.

(b)[~~(a)~~] The retirement systems shall have no responsibility or liability for payments made pursuant to a QDRO that was submitted in violation of this subsection that was altered or dissolved by an order of an appellate court of competent jurisdiction.

(6) The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount of fifty (50) dollars made payable to the Kentucky State Treasurer as a nonrefundable processing fee for the QDRO. The retirement systems shall not review the QDRO unless the fee is submitted with the QDRO.

(a) A QDRO shall provide who shall pay the fee, including if[~~The court shall order who is to pay the fee. The court may order that~~] the fee is to be divided between the participant and the alternate payee. Only one (1) certified check or money order shall be submitted in payment of the fee.

(b) There shall be no fee required for submission of a Form 6436, Qualified Domestic Relations Order for Child Support or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(c) If the dissolution of marriage action was filed in forma pauperis then the retirement systems shall[~~may~~] waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be filed with the entered and certified QDRO.

(7) If the retirement systems determines that the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation the participant, alternate payee, or their legal counsel shall have ninety (90)[~~90~~] days from the date [of] the retirement systems' notification of the deficiency was mailed as provided in Section 6(4) of this administrative regulation to submit a corrected QDRO. If a corrected QDRO is not submitted within ninety (90)[~~90~~] days of the date of notification then the participant, alternate payee, or their legal counsel shall be required to submit a nonrefundable fifty (50) dollar[~~\$50~~] fee with a QDRO submitted after ninety (90)[~~90~~] days.

Section 6. (1) The retirement systems shall determine if the QDRO is complete and qualifies as a QDRO pursuant to KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.

(a) A QDRO shall not be effective until the retirement systems has determined that it complies with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation and has approved the QDRO for enforcement.

(b) The retirement systems shall provide notification of its determination within ninety (90)[~~90~~] days of the submission of the QDRO during the time period from July 15, 2010 until July 14, 2011.

(c) The retirement systems shall provide notification of its determination within forty-five (45)[~~45~~] days of the submission of the QDRO after July 15, 2011.

(2) The retirement systems shall notify the participant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, that the QDRO has been approved for enforcement.

(a) If the participant has not yet retired, the retirement systems shall place the QDRO on file until the participant files a notification of retirement or an application for refund.

(b) If the participant has retired, the retirement systems shall begin to enforce the QDRO the month after it is approved for enforcement by the retirement systems.

(3) The alternate payee shall submit a completed Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, prior to receiving payment under a QDRO. If the alternate payee has not submitted a

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completed Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, by the last day of the month before the first payment under the QDRO is due to be paid to the alternate payee, the retirement systems shall segregate and hold the alternate payee's payments until the alternate payee has submitted the required form.

(4) If the retirement systems determines that the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation, the retirement systems shall notify the participant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, that:

(a) The retirement systems has determined the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation;

(b) The reason for the determination that the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation; and

(c) The changes necessary to make the QDRO in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.

Section 7. (1) If a QDRO approved for enforcement and on file at the retirement systems is amended or terminated, the participant, alternate payee, or their legal counsel shall submit the amended entered and certified QDRO or an entered and certified order terminating the QDRO to the retirement systems as provided in Section 5[4] of this administrative regulation.

(2) The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount of **twenty-five (25) dollars** made payable to the Kentucky State Treasurer as a nonrefundable processing fee for the amended QDRO or order terminating the QDRO. The retirement systems shall not review the amended QDRO or order terminating the QDRO unless the fee is submitted with the amended QDRO or order terminating the QDRO.

(a) If the dissolution of marriage action was filed in forma pauperis then the retirement systems shall ~~may~~ waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be filed with the entered and certified QDRO.

(b) There shall be no fee required for submission of a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(3) The retirement systems shall review the amended QDRO using the same procedures found in Section 6 of this administrative regulation.

(4) If the retirement systems determines that the amended QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation or that the order terminating the QDRO is insufficient the participant, alternate payee, or their legal counsel shall have **ninety (90)** days from the date ~~of~~ the retirement systems' notification of the deficiency **was mailed** as provided in Section 6(4) of this administrative regulation to submit a corrected amended QDRO or a corrected order terminating the QDRO. If a corrected amended QDRO or a corrected order terminating the QDRO is not submitted within **ninety (90)** days of the date of notification then the participant, alternate payee, or their legal counsel shall be required to submit a nonrefundable **twenty-five (25) dollar** fee with an amended QDRO or order terminating the QDRO that is submitted after **ninety (90)** days.

(5) An amended QDRO approved by the retirement systems shall only be administered prospectively.

Section 8. All fees collected pursuant to this administrative regulation shall be deposited in the Retirement Allowance Account established in KRS 61.580.

Section 9. (1) A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce entered prior to the participant's effective retirement date shall be submitted on the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property.

(2) The effective date of the Form 6434, Pre-Retirement Quali-

fied Domestic Relations Order for Division of Marital Property, shall be the participant's effective retirement date as provided in KRS 61.590. If the participant receives a lump sum payment representing monthly retirement benefits paid retroactively to the participant's effective retirement date, the alternate payee shall receive a portion of the lump sum payment as provided in the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property. The alternate payee shall not receive a retirement benefit if the participant is not receiving a retirement benefit.

Section 10. ~~[(4)]~~The Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

~~(1)[(a)]~~ As a monthly dollar amount if the participant elects a monthly retirement benefit or as a one (1) time lump sum dollar payment if the participant selects the actuarial refund payment option pursuant to KRS 61.635(11) at ~~the time of~~ the participant's retirement, or as a lump sum dollar payment from participant's refund of contributions and interest if the participant elects to terminate his membership pursuant to KRS 61.625; or

~~(2)[(b)]~~ As a percentage of the participant's basic monthly retirement benefit pursuant to KRS 61.595 or **16.576**, actuarial refund pursuant to KRS 61.635(11), or lump sum payment pursuant to KRS 61.625, which may be determined as follows:

~~(a)[(1)]~~ The numerator of the fraction shall be the number of months during which the participant was both a contributing member of any of the retirement systems administered by Kentucky Retirement Systems and married to the alternate payee, including service purchased during the marriage;

~~(b)[(2)]~~ The denominator of the fraction, which shall be determined by the retirement system as of the participant's effective retirement date or the participant's termination date prior to the participant's filing of a request for a refund of contributions and interest, shall be the total number of months of service credit used to calculate the participant's retirement payment options or the total number of months of service credit the participant had at the time of the request for refund of contributions and interest; and

~~(c)[(3)]~~ The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee;

Section 11. (1) The provisions of this section shall only apply to participants whose membership date is prior to August 1, 2004. If a participant whose membership date is prior to August 1, 2004, and who has a QDRO on file at the retirement systems is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, or 61.621 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as follows:

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as provided in **Section 10(1)**~~subsection (1)(a) of Section 10~~ of this administrative regulation, the retirement system shall ~~will~~ pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit; or

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as provided in **Section 10(2)**~~subsection 1(b) of Section 10~~ of this administrative regulation, the retirement systems shall not use the service credit added to the participant's account pursuant to KRS 16.582(5)(a) or 61.605(1) when calculating the amount the alternate payee is due under the QDRO on file at the retirement systems.

(2)(a) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant is not eligible to receive early retirement benefits, the alternate payee's payment shall be discontinued;

(b) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO;

(c) If the participant's disability retirement benefits are reins-

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tated pursuant to KRS 61.615, the alternate payee's payment shall be reinstated:

(d) If the participant later begins receiving early retirement benefits while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

Section 12. (1) The provisions of this section shall only apply to participants whose membership date is on or after August 1, 2004. If a participant whose membership date is on or after August 1, 2004, and who has a QDRO on file at the retirement systems is awarded disability retirement benefits pursuant to KRS 16.582, [61.600, or 61.621 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as provided in **Section 11(1)(b) of this administrative regulation** ~~subsection (1)(b) of Section 11.~~

(2)(a) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant is not eligible to receive early retirement benefits, the alternate payee's payment shall be discontinued:

(b) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO;

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615, the alternate payee's payment shall be reinstated;

(d) If the participant later begins receiving early retirement benefits while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

Section 13. (1) A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce decree entered after the participant's effective retirement date shall be submitted on the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property.

Section 14. (1) The Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee.

(2) The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

(a) As a monthly dollar amount;

(b) As a percentage of the participant's selected monthly retirement benefit pursuant to KRS 61.595, which may be determined as follows:

1. The numerator of the fraction shall be the number of months during which the participant was both a contributing member of any of the retirement systems administered by Kentucky Retirement Systems and married to the alternate payee, including service purchased during the marriage;

2. The denominator of the fraction, shall be the total number of months of service credit used to calculate the participant's retirement payment option; **and**

3. The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee.

Section 15. (1)(a) If the retirement systems determines that the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation, the retirement systems shall:

1. ~~(a) The retirement systems shall~~ Segregate and hold the amount that would have been payable to the alternate payee if the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, had been in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation;

2. ~~Hold (b) The retirement systems shall hold~~ the segregated amount for a period of no more than **the eighteen (18) month hold period** ~~[eighteen (18) months]~~;

3. ~~(c)~~ If a Form 6435, Post-Retirement Qualified Domestic

Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation within the eighteen (18) month **hold period**, ~~[months the retirement systems shall]~~ pay the segregated amount to the alternate payee;

4. ~~(d)~~ If no subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation **within the eighteen (18) month hold period**, ~~[after eighteen (18) months the retirement systems shall]~~ pay the segregated amount to the participant; **or**

5. **If after the eighteen (18) month hold period** ~~(e) The eighteen (18) month time period begins on the date the first payment would be required by the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, that the retirement systems determined was not in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation;~~

~~(f) If after eighteen (18) months~~ a subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation, the Form 6435, Post-Retirement Qualified Domestic Relations Order shall only be applied prospectively.

(b) The eighteen (18) month time period begins on the date the first payment would be required by the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property that the retirement systems determined was not in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.

(2) The effective date of the first payment to the alternate payee shall be the month following the month the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is approved for enforcement by the retirement systems.

Section 16. (1) A QDRO issued for purposes of payment of child support shall be submitted on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(2) The amount of child support to be paid by the participant shall be determined by a court of competent jurisdiction or an administrative agency with statutory authority to issue an order for child support in accordance with the laws governing child support.

(3) **The retirement systems shall remit the payment for child support to the centralized registry established pursuant to KRS 205.712 and defined in 921 KAR 1:001, Section 1(5).**

(a) The payment for child support shall be made payable to "Kentucky Child Support Enforcement".

(b) The participant's name and Social Security number shall be noted on the payment.

(4) An alternate payee **listed** on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency shall not be required to submit a Form 6130, Authorization for Deposit of Retirement Payment or a Form 6135, Payment of Retirement Payment by Check.

~~(5)[4]~~ The retirement systems shall not accept a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant has not retired and is not receiving a monthly retirement benefit.

Section 17. (1) A QDRO issued for purposes of payment of alimony or maintenance pursuant to KRS 403.200 shall be submitted on the Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

(2) The amount of alimony or maintenance to be paid by the participant shall be determined by a court of competent jurisdiction in accordance with the laws governing alimony or maintenance.

(3) The retirement systems shall not accept a Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance if the participant has not retired and is not receiving a monthly retirement

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benefit.

Section 18. (1) The participant shall be[is] responsible for notifying the retirement systems in writing of an event which causes payments to the alternate payee under a QDRO for Division of Marital Property or a QDRO for Alimony/Maintenance to end.

(2) The retirement systems shall hold any payments due the alternate payee pending submission of proof of the event which causes payments to the alternate payee to end is provided by the participant beginning the month after the retirement systems' receipt of the participant's written notification.

(3) The participant shall submit a copy of the alternate payee's marriage certificate, the alternate payee's death certificate, or other reliable documentation as proof of the event which causes the participant's alimony or maintenance[alimony/maintenance] to end.

(4) The participant shall submit a copy of the alternate payee's death certificate or other reliable documentation as proof of the event which causes the participant's payments pursuant to the division of marital property to end.

(5) The participant shall not be[is not] required to submit written notification if the QDRO specifies the number of months of payments.

(6) If proof is not submitted within ninety (90) days of the written notification to the retirement systems, the payments being held shall be released to the alternate payee.

(7) The retirement systems shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification and documentation of the event that causes payments to the alternate payee to end.

Section 19. (1) The participant shall be[is] responsible for notifying the retirement systems in writing of an event which causes payments to the alternate payee under a QDRO for Child Support to be amended or to end.

(2)(a) If an alternate payee is being paid child support pursuant to a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, the participant shall submit an order from a court of competent jurisdiction or an administrative agency with statutory authority to order child support providing that payments under the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, shall end or be amended.

(b) The retirement systems shall segregate and hold the payments due to the alternate payee under a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant submits an order changing the custody of the child to someone other than the alternate payee, a copy of the child's marriage certificate, a letter from the child's high school indicating the child's graduation date, the child's birth certificate, an order of emancipation of the minor child, or the child's death certificate.[]

1. If the QDRO for child support is for the support of more than one (1) child, the retirement systems shall not segregate or hold payments due to the alternate payee.

(c) If the participant does not submit an order from a court of competent jurisdiction or an administrative agency with statutory authority to order child support within ninety (90) days of the participant's submission as provided in paragraph (b) of this subsection the payments being held shall be released to the alternate payee.

~~(3)[]~~ The retirement systems shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification, documentation of the event, or the court order that causes payments to the alternate payee to end or be amended.

Section 20. (1) If there are multiple QDROs on file for a participant's account, the QDROs shall be administered in the following order:

- (a) QDROs for the Division of Marital Property;
- (b) QDROs for Child Support;
- (c) QDROs for Alimony/Maintenance.

(2) If multiple QDROs for the Division of Marital Property are on file, they shall[will] be administered in the order of approval by the retirement systems.

(3) If multiple QDROs for Child Support are on file, they shall[will] be administered in the order of approval by the retirement systems.

(4) If multiple QDROs for Alimony/Maintenance are on file, they shall[will] be administered in the order of approval by the retirement systems.

(5) If a QDRO for Child Support is submitted subsequent to the participant's retirement and subsequent to the administration of the QDROs on file at the time of the participant's retirement it shall be given priority over any QDROs for Alimony/Maintenance being administered.

(6)(a) If the total amount of the payments due to alternate payees under the QDROs being administered on the participant's account exceeds the amount of the participant's monthly retirement benefit, the retirement systems shall notify the participant and alternate payees under the QDROs that the QDROs cannot be administered due to the exhaustion of the participant's monthly retirement benefit.

(b) The retirement systems shall recalculate the amounts due under the QDROs being administered by the retirement systems on a participant's account after the effective date of any cost of living increase provided pursuant to KRS 61.691.

Section 21. The alternate payee shall be responsible for notifying the retirement systems in writing of any change in mailing address. The retirement systems shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when a benefit subject to the QDRO becomes payable. The retirement systems shall have no duty or obligation to search for or locate an alternate payee.

Section 22. A QDRO shall not provide that the alternate payee be eligible to enroll in the health insurance plan administered by the retirement systems.

Section 23. (1) If the participant's retirement benefit is corrected pursuant to KRS 61.685, the alternate payee's payment shall also be corrected.

(2) If the alternate payee was overpaid because of the error that is being corrected pursuant to KRS 61.685, the retirement systems shall withhold the amount of the overpayment from the alternate payee's payment.

(3) If the alternate payee was underpaid because of the error that is being corrected pursuant to KRS 61.685, the retirement systems shall pay the alternate payee a lump sum payment of the additional funds due.

Section 24. Any person who attempts to make the retirement systems a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the benefits payable to the participant pursuant to a QDRO may petition the court for payment of the retirement systems' costs and legal fees.

Section 25. (1) Any person or party who requests a subpoena be issued for the personal appearance of a representative of the retirement systems to appear at a deposition or in a court or administrative proceeding regarding a QDRO shall reimburse the retirement systems for the travel expenses and services of the retirement systems' representative, or representatives, and the retirement systems' legal counsel, as an administrative fee including:

- (a) The Internal Revenue Service standard mileage rate;
- (b) Parking and tolls;
- (c) Meals if the retirement systems' personnel are required to travel and be away from the retirement office from 6:30 a.m. to 9 a.m., 11 a.m. to 2 p.m., or 5 p.m. to 9 p.m.;

(d) The wages earned by the retirement systems' employees during the time period they are away from the retirement office calculated by multiplying the hourly rate of each employee by the number of hours each employee was away from the office; and

- (e) Lodging[Hotel/Lodging] expenses, if necessary.

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(2) The retirement systems shall send an estimated amount owed for expenses to the person or party requesting the subpoena.

(a) The person or party shall remit payment for the estimated expenses before the date of appearance ordered in the subpoena.

(b) The retirement systems shall send an invoice for any additional expenses owed by the party or issue a refund for any amount over the cost of the expenses.

Section 26. Neither the retirement systems nor its trustees nor its employees shall have any liability for making or withholding payments in accordance with the provisions of this administrative regulation.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6015, "Estimate of a Monthly Retirement Allowance", July 2004;

(b) Form 6434, "Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property", July 2010;

(c) Form 6435, "Post-Retirement Qualified Domestic Relations Order for Division of Marital Property", July 2010;

(d) Form 6436, "Qualified Domestic Relations Order for Child Support", August[July] 2010;

(e) Form 6437, "Qualified Domestic Relations Order for Child Support by an Administrative Agency", August[July] 2010;

(f) Form 6438, "Qualified Domestic Relations Order for Alimony/Maintenance", July 2010;

(g) Form 6130, "Authorization for Deposit of Retirement Payment", April 2010;

(h) Form 6135, "Payment of Retirement Payment by Check", February 2002; and

(i) Form 6433, "Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders", August[July] 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. [Section 10. The payment options shall be offered to the alternate payee on an Estimate of Monthly Retirement Allowance, Form 6A-QDRO, dated July 1991, incorporated by reference. The form can be obtained from the Kentucky Retirement Systems at its office at 1260 Louisville Road, Frankfort, Kentucky between 8 a.m. and 4:30 p.m. Monday through Friday.]

RANDY OVERSTREET, Chair
APPROVED BY AGENCY: May 20, 2010
FILED WITH LRC: July 15, 2010 at 9 a.m.
CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8815.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, September 14, 2010)**

201 KAR 2:330. Emergency pharmacy powers.

RELATES TO KRS 39A.100, 315.500[~~315.505~~]
STATUTORY AUTHORITY: KRS 315.191, 315.505

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.500 establishes the conditions under which a pharmacy may operate temporarily in an area not designated on the pharmacy permit pursuant to an executive order issued by the Governor pursuant to KRS 39A.100. 315.191 authorizes the Board of Pharmacy to promulgate administrative regulations governing pharmacists and pharmacies. This administrative regulation sets out the conditions whereby a prescription may be refilled pursuant to an executive order issued by the Governor as authorized by KRS 315.500 when the prescriber is unavailable. This administrative regulation sets out the conditions whereby a pharmacy may operate temporarily in an area not designated on the pharmacy

permit pursuant to an executive order issued by the Governor as authorized by KRS 315.500.

Section 1. If a pharmacist receives a request for a prescription refill with no refill authorized and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may dispense an emergency refill of up to a thirty (30) day supply of the medication ~~if~~when:

(1) The Governor has issued an executive order as authorized by KRS 315.500 for the county where the pharmacy is located;

(2) The pharmacist obtains prescription information from:

- (a) A prescription label;
- (b) A prescription record within the pharmacy;
- (c) A prescription record from another pharmacy;
- (d) A common database;
- (e) The patient; or

(f) ~~[Any other legitimate source of prescription record information; or~~

~~(g)] Any other healthcare record;~~

(3) The prescription refill is not for a controlled substance;

(4) The prescription is for a maintenance medication;

(5) In the pharmacist's professional judgment, the interruption of therapy may ~~[might reasonably]~~ produce undesirable consequences or may be detrimental to the patient's welfare and cause physical or mental discomfort; and

(6) The pharmacist notes on the prescription record the date, the quantity dispensed, and the pharmacist's name or initials.

Section 2. (1) A pharmacy may temporarily relocate to and operate at a new location if:

(a) It is not safe or practicable to operate a pharmacy at the address listed on the permit; and

(b) The Governor has issued an executive order as authorized by KRS 315.500 for the county where the pharmacy is located.

(2) The pharmacy owner shall:

(a) Maintain confidentiality of patient records;

(b) Secure all drugs; and

(c) Notify the board of the temporary address as soon as practicable.

~~(3) [If a pharmacy temporarily relocates because it is not safe or practicable to operate at the location listed on the permit, then the pharmacy may temporarily relocate to and operate at a new location when:~~

~~(1) The Governor has issued an executive order as authorized by KRS 315.500 for the county where the pharmacy is located;~~

~~(2) The pharmacy owner is able to maintain confidentiality of patient records;~~

~~(3) The pharmacy owner is able to secure the drugs; and~~

~~(4) The pharmacy owner notifies the board as soon as practicable of the temporary address.~~

~~(5)] The following regulatory requirements shall not apply for this temporary location:~~

~~(a) The requirement to maintain references as listed in 201 KAR 2:090, Section 1;~~

~~(b) The requirement to maintain equipment as listed in 201 KAR 2:090, Section 2; and~~

~~(c) The requirement that the pharmacy be enclosed by a floor to ceiling partition if it is located within a larger establishment which is open to the public for business when a pharmacist is not present.~~

JOEL THORNBURY, Board President
APPROVE BY AGENCY: July 14, 2010
FILED WITH LRC: July 14, 2010 at 4 p.m.
CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

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GENERAL GOVERNMENT CABINET Board of Nursing (As Amended at ARRS, September 14, 2010)

201 KAR 20:230. Renewal of licenses.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes requirements and procedures for the renewal of licenses.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:

- (1) Hold a valid and current license issued by the board;
- (2) Submit a completed application form as required by 201 KAR 20:370, Section 1(1), to the board office, postmarked no later than the last day of the licensure period;
- (3) Submit the current fee required by 201 KAR 20:240;
- (4) Have met requirements of 201 KAR 20:215, if applicable;
- (5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation;
- (6) Submit certified copies of any disciplinary actions taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on nursing or other professional or business licenses in other jurisdictions; and
- (7) Have paid all monies due to the board.

Section 2. An applicant shall be exempt from meeting the continuing competency requirements of 201 KAR 20:215 if renewing for the first time:

- (1) An original Kentucky license issued by examination or endorsement; or
- (2) A license that has been reinstated pursuant to 201 KAR 20:225.

Section 3. The licensure period for renewal of licenses shall be as specified in 201 KAR 20:085. ~~[Section 4. Upon the request of the board, submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI.]~~

JIMMY ISENBERG, President

APPROVED BY AGENCY: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET (As Amended at ARRS, September 14, 2010)

300 KAR 2:040. Kentucky film industry incentives application and fees.

RELATES TO: KRS 148.544

STATUTORY AUTHORITY: KRS 148.546

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.546 requires the Film Office within the Tourism, Arts and Heritage Cabinet to establish standards for the making of an application for incentives and to set forth the fees for application for incentives. This administrative regulation establishes these standards.

Section 1. Definitions. (1) "Application" means the Kentucky Film Office Film Production Company Refundable Tax Credit Application.

(2) "Authority" means the Kentucky Tourism Development Finance Authority.

(3) "Eligible company" is defined by KRS 148.542(10).

(4) "Motion Picture or Entertainment Production" is defined by KRS 148.542(14).

(5) "Office" is defined by KRS 148.542(16).

Section 2. Application. (1) An eligible company wishing to receive incentives for filming a motion picture or entertainment production in the Commonwealth shall file three (3) copies of the application with the office at least thirty (30) days prior to incurring any expenditure.

(2) In addition to the information included in the application as set forth in KRS 148.546, an eligible company shall promptly submit any supporting documentation or information requested by the Office.

Section 3. Recommendation. Prior to making a recommendation on whether to enter into a tax incentive agreement with the eligible company to the Authority, the office shall fully consider:

- (1) The eligible company's ability to meet the expenditure requirements of KRS 148.544(3);
- (2) The written application submitted by the eligible company; and
- (3) All other supplemental information submitted by the eligible company.

Section 4. Agreement. (1) Upon recommendation of the Film Office, the Authority may authorize by resolution the execution of a tax incentive agreement which shall include the provisions required by KRS 148.546(4).

(2) Upon execution of the agreement, the eligible company shall submit the greater of:

- (a) \$500; or
- (b) One-half (0.5) percent of the estimated amount of tax incentive sought.

(3) ~~If [in the event that]~~ the eligible company wishes to increase the amount of qualified expenditures, the eligible company:

(a) Shall apply for ~~the [such]~~ increase at least thirty (30) days prior to spending any amounts for which an incentive is sought;

(b) Shall not be eligible for amounts spent in excess of the initial total of approved expenditures prior to the execution of an amended agreement; and

- (c) Shall submit an additional fee which shall be the greater of:
 1. \$500; or
 2. One-half (0.5) percent of the estimated amount of increased tax incentive sought.

Section 5. Incorporation by Reference. (1) The "Kentucky Film Office Film Production Company Refundable Tax Credit Application", ~~[rev.]~~ 07/09, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Tourism Cabinet, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: June 14, 2010

FILED WITH LRC: June 14, 2010 at 4 p.m.

CONTACT PERSON: Catherine York, 500 Mero Street, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601, phone (502) 564-4270, fax (502) 564-1079.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, September 14, 2010)

301 KAR 1:010. Commercial boat docks, concession stands, and boat rental facilities.~~[Boat docks and concession stands.]~~

RELATES TO: KRS ~~150.025(1)~~~~[450.025, 450.620]~~

STATUTORY AUTHORITY: KRS. ~~[43A.350]~~KRS 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes the approval process for the construction of commercial boat docks,

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concession stands, and boat rental facilities on lakes and shoreline owned or controlled by the department.

Section 1. Written Request, Public Notice, and Public Hearings. (1) The following activities shall be prohibited on - department-owned or - controlled lakes and shorelines without prior written approval from the department:

- (a) Construction and operation of a commercial boat dock;
- (b) Construction and operation of a concession stand; and
- (c) Boat rental.

(2) A person, firm, or corporation may submit to the department, in writing, a request to conduct the activities specified in subsection (1) of this section.

(3) Upon receipt of a written request, the department shall:

- (a) Provide notice to the general public of the request;
- (b) Provide written notice to all known adjacent property owners on the lake for which the request was made; and

(c) Hold a public hearing at a time [and location] most convenient to the public and at a location within ten (10) miles of the boundary of the lake so that the public may make comments about the proposed commercial request.

(4) The notices specified in subsection (3) of this section shall include:

- (a) At least a thirty (30) day written comment period; and
- (b) The date of the next scheduled quarterly meeting involving the Fish and Wildlife Commission when the commercial request will be considered.

Section 2. Department Review and Approval. (1) The department shall:

(a) Review and consider all written and verbal comments received from the public;

(b) Provide to the Fish and Wildlife Commission:

1. All written comments received and a synopsis of all verbal comments received; and

2. A recommendation on the final decision that is based on the following criteria:

- a. Public need for the facility;
- b. Public support for the facility;
- c. If there is an existing facility of the same or similar type on the lake;

d. If there is a suitable location on the lake for the requested facility; and

e. The prior experience of the petitioner.

(2) The commission shall:

(a) [4-] Review and consider all comments received;

(b) Consider the written recommendations of the department; and

(c) [2-] Approve or deny the application based on the information provided in paragraphs (a) and (b) of this subsection [request].

(3) If one (1) or more of the activities specified in Section 1 of this administrative regulation are approved by the Fish and Wildlife Commission, a person, firm, or corporation shall not begin construction or operation of a commercial boat dock, concession stand, or boat rental business until possessing a signed agreement from the commissioner of the department. [NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation prohibits boat docks and concessions on lakes and property owned by the Department of Fish and Wildlife Resources without the written consent of the commissioner. It is necessary in order that the department may have control over boat docks and concessions.

Section 1. No person, firm, or corporation shall build or attempt to build any boat docks, or operate, or attempt to operate any boat docks, or have and maintain any boats for hire, or maintain or operate any concession stands on any of the Department of Fish and Wildlife Resources lakes or property without written consent to do so from the Commissioner of the Department of Fish and Wildlife Resources and with the approval of the Fish and Wildlife Resources Commission.

Section 2. This administrative regulation applies only to lakes and property owned by the Department of Fish and Wildlife Resources.]

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: July 8, 2010

FILED WITH LRC: July 9, 2010 at 4 p.m.

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

DEPARTMENT OF AGRICULTURE
Office of State Veterinarian
Division of Animal Health
(As Amended at ARRS, September 14, 2010)

302 KAR 20:020. General requirements for interstate and intrastate movement of animals.

RELATES TO: KRS 246.295(1) [256.295(1)], 257.030[(4)]
STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.030(4) authorizes the Board of Agriculture to promulgate administrative regulations necessary to administer KRS Chapter 257. This administrative regulation establishes the general health requirements and provisions concerning interstate and intrastate movement of animals.

Section 1. General Requirements and Provisions. (1) Premises of origin information.

(a) If an animal moves to a state-federal approved stockyard, exhibition, or assembly point, premises of origin information shall be provided for the premises from which the movement originated.

(b) The information shall include:

1. Road name and number, city, and state; or

2. A PIN. [Premises address, including road name and number, city, and state, or a PIN shall be provided for the premises from which the movement originated for all animals upon movement to a state-federal approved stockyard, exhibition, or assembly point.]

(2) Official identifier. The official individual, group, or lot animal identification shall consist of a set of alphanumeric characters or physical characteristics which are uniquely associated with an individual animal, group or lot of animals as listed in this subsection:

- (a) Official USDA animal tag;
- (b) An official breed association tattoo, tag, or photograph;
- (c) Breed registration brand;
- (d) A written or graphic description of an equine or camelid animal which uniquely identifies that equine or camelid animal and includes all of the following:

- 1. Breed;
- 2. Age;
- 3. Color;
- 4. Distinctive Markings; and
- 5. Gender and sexual status;

(e) An EID if all the following apply:

- 1. The EID uniquely identifies the animal;
- 2. The EID is attached to or implanted in the animal;
- 3. The person having custody of the animal has an EID reader that can read the EID or the facility has a reader; **and**
- 4. The EID is registered to a PIN or to a person;
- (f) A leg or wing band number that uniquely identifies poultry, ratite, or other avian species; [or]

(g) Breed registry ear notches on swine; **or**[-]

(h) Official USDA back tags if used for identification on slaughter animals moving from a state-federal approved stockyard directly to a slaughter facility. Back tags shall not be used for animals entering into Kentucky. [may be used for identification on slaughter animals with approval from the Kentucky State Veterinarian.]

(3) Certificate of veterinary inspection.

(a) A CVI or entry permit shall be required for movement or exhibition of each animal, except as specified in each species section established in 302 KAR 20:040 and 20:065.

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(b) A CVI shall be valid for thirty (30) days after date of inspection and issuance except as provided in 302 KAR 20:065.

(c) A CVI shall contain the following information:

1. Identification of each animal recorded on the certificate. An official individual identification shall be required except if group or lot identification numbers are approved by USDA or the OSV;

2. The species, breed, sex, and age of the animal;

3. The name and address of the owner or agent shipping the animal and the location from which the animal is shipped;

4. The name and address of the person receiving the animal and the location at which the animal will be received;

5. The following statement or one substantially similar: "I certify as an accredited veterinarian that the above described animals have been inspected by me and that they are not showing signs of infection or communicable disease (except if noted). The vaccinations and results of tests are as indicated on the certificate. To the best of my knowledge, the animals listed on this certificate meet the state of destination and federal interstate requirements."; and

6. For movements requiring vaccination, the:

a. Date of vaccination;

b. Name of vaccine;

c. Serial number of vaccine; and

d. Expiration date of the vaccine used.

(d) Distribution of written CVIs by the accredited veterinarian.

1. The first page shall be submitted to the OSV within seven (7) days of the date it is written.

2. The second page shall accompany the animal being moved.

3. The third page shall be sent to the state of destination within seven (7) days of the date it is written.

4. The fourth page shall be retained by the issuing veterinarian.

(4) Certificate of Veterinary Inspection Reconsignment Form. Sale animals purchased at a Kentucky sale venue may move to the buyer's destination with a consignee certificate attached to the original CVI for the sale if the following conditions are met:

(a) The state of destination agrees to accept a reconsigned CVI;

(b) The animal will reach its final destination within thirty (30) days of the date on the original CVI;

(c) All requirements of the state of destination have been met and test results included on the CVI; and

(d) The reconsigning veterinarian submits the Reconsignee Certificate and a copy of the original CVI to the state of destination and to the OSV within seven (7) days of the date of reconsignment.

(5) Equine Interstate Event Permit.

(a) The Equine Interstate Event Permit shall be accepted from states participating in a Memorandum of Agreement with Kentucky.

(b) The Equine Interstate Event Permit shall be valid for six (6) months from date of issue for out of state equine.

(c) The Equine Interstate Event Permit shall be valid for one (1) year from date of issue for intrastate movement for exhibition or until the expiration of the EIA test.

(d) The equine shall have a permanent individual animal identification in the form of a unique identifier, lip tattoo, brand, electronic implant, or digital photograph, which shall be incorporated into the issued permit.

(e) An accurate event itinerary log shall be in the owner or transporter's possession documenting each equine movement during the period of permit.

(6) Entry permit.

(a) A permit, if required by 302 KAR 20:040 or 20:065 or KRS 257.030(2), shall be obtained from the OSV and shall include:

1. Number of animals;

2. Species, breed, sex, age, and if requested, weight;

3. Consignor premises and either the premises of origin or the PIN;

4. Consignee premises and either the premises of destination or the PIN;

5. Arrival date of each animal; and

6. Any special restrictions relating to the movement of each animal.

(b) A permit for movement requiring CVI shall only be issued to an accredited veterinarian.

(7) Owner and shipper's declaration shall;

(a) Be accepted only for imported animals originating directly from the farm of origin and proceeding directly to a recognized slaughtering center for immediate slaughter or to a state-federal approved stockyard for reconsignment to immediate slaughter with no diversion whatever **en route; and**

~~(b) [enroute and shall]~~ Include the information required by subsection (6)(a) of this section.

(8) An animal that is known to be affected with or exposed to any communicable disease or that originated from a quarantined area or quarantined herd shall not enter Kentucky or be transported intrastate within Kentucky without permission of the OSV.

(9) An animal entering or moving that is not in compliance with existing administrative regulations and statutes shall be subject to expulsion or isolation and quarantine pending compliance.

(10) All required tests shall be conducted at no expense to the Commonwealth of Kentucky.

(11) All required laboratory tests shall be conducted in a state-federal approved laboratory.

(12) Required testing or vaccination. All required tests and vaccinations, including brucellosis and tuberculosis, shall be performed by one (1) of the following:

(a) A licensed and accredited veterinarian;

(b) An authorized representative of the State Veterinarian; or

(c) An authorized representative of the federal government.

(13) The owner or consignor shall be responsible for all required laboratory tests, vaccinations, or procedures and animal identification prior to sale or change of ownership.

(14) Any person consigning an animal for interstate movement or moving an animal through the state of Kentucky from another state shall:

(a) Comply with the requirements of the state of destination prior to movement or be approved for movement subject to the requirements of that state; and

(b) Provide documentation required by state of destination upon request.

Section 2. Cleaning and Disinfection of Conveyances Used to Transport Animals. The owners and operators of planes, railway cars, trucks, or other conveyances that have been used for the movement of animals infected with or exposed to any communicable disease shall have the conveyances cleaned and disinfected. A certificate of cleaning and disinfecting shall be in possession of the operator or carrier.

Section 3. Incorporation by Reference. (1) "Reconsignee Certificate," Kentucky Department of Agriculture, Office of State Veterinarian, October 2004, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT STOUT, State Veterinarian

APPROVED BY: July 15, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

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

**GENERAL GOVERNMENT
Department of Agriculture
Office of State Veterinarian
Division of Animal Health**

(As Amended at ARRS, September 14, 2010)

302 KAR 20:050. Carcasses.

RELATES TO: KRS **257.030, 257.160** [Chapter 257]

STATUTORY AUTHORITY: KRS [Chapter 257.] 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS

257.030(3) authorizes the board to order and enforce the cleaning and disinfection of premises and all articles and materials by which communicable diseases may be transmitted.

and the destruction of diseased and exposed animals and all property and materials, as may be necessary in the eradication of disease. This administrative regulation establishes the requirements for transport of a carcass. [257.160 provides for the disposition of dead carcasses in the proper manner to prevent the spread of contagion. This administrative regulation allows the animal to be transported from the farm in a proper manner.]

Section 1. If the owner of a dead carcass is unable to dispose of it as provided for in KRS 257.160 by incineration, by composting at a permitted facility, ~~burning, by cremation~~ or by burial:

(1) The carcass may be transported if:

(a) The carcass is covered with a tarpaulin or other heavy material so that no portion of the dead animal can be exposed; and

(b) The sides of the truck used for transport are made of solid material; and

(2) The carcass shall not be transported in a flat-bodied truck with no sides or with sides made of slat material with openings between slats. [it will be permissible to haul a dead carcass under these conditions: The bodies of dead animals transported over the highways by anyone must be covered with a tarpaulin or other heavy material and no portion of the dead animal can be exposed. The sides of trucks used must be of solid material. Flat bodied trucks with no sides and sides made of slat material with openings between slats are forbidden.]

Section 2. The owner shall dispose of a dead animal [animals] within forty-eight (48) hours after the carcass is found.

DR. ROBERT STOUT, Kentucky State Veterinarian

APPROVED BY AGENCY: July 14, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

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

**GENERAL GOVERNMENT
Department of Agriculture
Office of State Veterinarian
Division of Animal Health**

(As Amended at ARRS, September 14, 2010)

302 KAR 20:115. Vesicular stomatitis.

RELATES TO: KRS 257.030, 257.230

STATUTORY AUTHORITY: KRS 257.030, 257.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.030 authorizes the board to establish quarantine and other measures to control the movement of livestock into, through, or within the state. This administrative regulation establishes requirements for entry into Kentucky for livestock that has been exposed to vesicular stomatitis.

Section 1. General Provisions. (1) Prohibited entry into Kentucky.

(a) Livestock, wild or exotic animals shall not be permitted entry into Kentucky from any designated area or region in which vesicular stomatitis has been diagnosed. Any designated area or region shall be defined by the Kentucky State Veterinarian.

(b) Livestock, wild or exotic animals which have been in a vesicular stomatitis designated area or region shall not be permitted entry into Kentucky until they have been out of the designated area or region a minimum of twenty-one (21) days or the vesicular stomatitis designated area or region is released from restriction.

(c) Livestock, wild or exotic animals shall not be permitted entry into Kentucky from any state which does not have in place adequate requirements, as determined by the Kentucky State Veterinarian [chief livestock health official in Kentucky], governing the entry of the animals from states which have had vesicular stomatitis diagnosed.

(2) Vaccination.

(a) Livestock, wild or exotic animals in Kentucky shall not be

vaccinated with an autogenous vesicular stomatitis virus vaccine without approval of the Kentucky State Veterinarian [and issued a conditional license by the United States Department of Agriculture's Animal and Plant Health Inspection Service].

(b) Livestock, wild or exotic animals which have been vaccinated with an autogenous vesicular stomatitis virus [vaccine and issued a conditional license by the USDA's Animal and Plant Health Inspection Service] shall not be permitted entry into Kentucky without approval of the Kentucky State Veterinarian.

(3) Testing.

(a) The Kentucky State Veterinarian may prescribe USDA approved testing for vesicular stomatitis based on:

1. Extent of outbreak in the defined area;

2. Species affected;

3. Geographic region; and

4. Purpose of entry into Kentucky.

(b) The testing requirements shall be posted on the Kentucky Department of Agriculture's Web pages and shall include the prescribed testing assay and the time testing is to be completed. [as is deemed necessary to protect Kentucky's livestock populations and industries based on extent of outbreak in the defined area(s), species affected, geographic region, and purpose of entry into Kentucky. The requirements for entry shall be posted on the Kentucky Department of Agriculture's web pages and shall include the prescribed testing assay, time testing is to be completed and all other relative information pertaining to entry into Kentucky.]

(4) If testing is required, [All equidae, including suckling foals, originating from a state which has a common border with a state in which vesicular stomatitis has been diagnosed, shall be negative to either a serum neutralization test, a complement fixation test, or a C-ELISA test for a vesicular stomatitis as directed by the Office of the Kentucky State Veterinarian within ten (10) days prior to the animal's entry into Kentucky.] the certificate of veterinary inspection shall include the following:

(a) Testing laboratory;

(b) Test date;

(c) Accession number;

(d) Type of test and test results; and

(e) Complete name, address, city and state of both the consignor and consignee.

(4) Other requirements. All other entry requirements as found in 302 KAR 20:040 shall be met in full.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: June 30, 2010

FILED WITH LRC: July 2, 2010 at 11 a.m.

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

**GENERAL GOVERNMENT
Department of Agriculture
Office of State Veterinarian
Division of Animal Health**

(As Amended at ARRS, September 14, 2010)

302 KAR 21:005. 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 livestock, poultry, and fish and set out the conditions under which the diseases shall be reported. This administrative regulation **establishes [sets forth]** a comprehensive list of reportable diseases and the conditions under which the diseases shall be reported.

Section 1. Duty To Notify. **(1)** Every veterinarian, veterinary practice and personnel; veterinary diagnostic laboratory and personnel; laboratory providing animal diagnostic services for Kentucky; owner of animals; persons associated with any equine, lives-

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tock, poultry, or fish; sales or event establishment and personnel; transportation provider; slaughter facility and personnel; 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 ~~the~~ ~~said~~ disease or condition to the State Veterinarian.

(2) All laboratories providing diagnostic services for Kentucky equine, livestock, poultry, or fish shall give notification pursuant to Section 3 of this administrative regulation.

Section 2. Diseases That Must Be Reported. (1) The following diseases and conditions ~~shall~~ ~~must~~ be immediately reported to the State Veterinarian:

(a) United States Animal Health Association Foreign Animal Diseases;~~[-]~~

(b) The World Organization for Animal Health (OIE) Listed Diseases;~~[-]~~

- (c) Botulism;~~[-]~~
- (d) Burkholderia pseudomallei;~~[-]~~
- (e) Caseous lymphadenitis;~~[-]~~
- (f) Chronic Wasting Disease;~~[-]~~
- (g) Clostridium perfringens epsilon toxin;~~[-]~~
- (h) Coccidioides immitis;~~[-]~~
- (i) Menangle virus;~~[-]~~
- (j) Plague (Yersinia pestis);~~[-]~~
- (k) Plant and chemical toxicosis;~~[-]~~
- (l) Scabies;~~[-]~~
- (m) Shigatoxin;~~[-]~~
- (n) Staphylococcal enterotoxins;~~[-]~~
- (o) Strangles (Streptococcus equi equi);~~[-]~~ and
- (p) Swine influenza virus.

(2) Conditions of unknown etiology that meet any of the following criteria ~~shall~~ ~~must~~ be reported immediately:

- (a) Abortion storms in livestock ~~or~~ ~~[A]~~ equine of unknown etiology;~~[-]~~
- (b) Undiagnosed central nervous system conditions;~~[-]~~
- (c) Unusual number of acute deaths in livestock, ~~[A]~~ equine, poultry, ~~or~~ fish;~~[-]~~ or
- (d) Highly infectious conditions of any etiology, known or unknown.

Section 3. (1) The notification shall be given to the Office of the State Veterinarian, Kentucky Department of Agriculture, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601; telephone (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, or fish;~~[-]~~
- (b) Animal species, breed, age, sex, how many affected, and clinical signs;
- (c) Premises address for the animal ~~[animal(s)]~~ tested or affected;
- (d) Name, address, and telephone number of the veterinarian submitting the case; and
- (e) Name, address, and telephone number of the ~~[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.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "United States Animal Health Association (USAHA) Seventh Edition of Foreign Animal Diseases", ~~[Revised]~~ 2008. This publication may also be found at <http://www.usaha.org/pubs/#FAD>;~~[-]~~

(b) "The World Organisation for Animal Health (OIE) Listed Diseases", 2006. This list may also be found at http://www.oie.int/eng/maladies/en_classification2010.htm?e1d7.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture,

Division of Animal Health, 100 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: June 30, 2010

FILED WITH LRC: July 2, 2010 at 11 a.m.

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

**CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(As Amended at ARRS, September 14, 2010)**

307 KAR 1:060. Kentucky Small Business Investment Credit Program.

RELATES TO: KRS 154.20-33, 154.60-010-154.60-030.

STATUTORY AUTHORITY: KRS 154.20-33, 154.60-030.

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.60-030 requires ~~[authorizes]~~ the Kentucky Economic Development Finance Authority to promulgate administrative regulations establishing ~~[establish]~~ the procedures and standards for the Kentucky Small Business Investment Credit Program ~~[set forth in KRS 154.60-010 et. seq. by the promulgation of administrative regulations]~~. KRS 154.20-033 authorizes the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation establishes the application and fee structure for the Kentucky Small Business Investment Credit Program ~~[adopts the application for the KRS 154.60 economic development incentives program and sets the fee structure]~~.

Section 1. Definitions. (1) "Application" means the form "Kentucky Small Business Investment Credit (KSBIC) Application", dated June 30, 2010.

(2) "Base employment" is defined by KRS 154.60-010(2).

(3) "Base hourly wage" means the average per hour wage earned by a full-time employee, including wages, tips and commissions, but excluding benefits, reimbursements, and bonuses.

(4) "Base year" is defined by KRS 154.60-010(3).

(5) "Creates and fills" is defined by KRS 154.60-010(4).

(6) "Company start date" means the first day the business applicant begins its operations as verified by one of the methods set out in Section 3(2) of this administrative regulation.

(7) "Eligible position" is defined by KRS 154.60-010(5).

(8) ~~["Eligibility date" means the date the business applicant becomes eligible to apply for the tax credits which is the date:~~

~~(a) One (1) year after the purchase of qualifying equipment or technology; or~~

~~(b) One (1) year after the eligible position or positions have been created and filled, which ever date occurs last.~~

~~(9)~~ "Full-time employee" is defined by KRS 154.60-010(6).

~~(9)~~ ~~(40)~~ "KEDFA" means the Kentucky Economic Development Finance Authority.

(10) "Kentucky Small Business Investment Program" means the small business development credit program established in KRS 154.60-010 through 154.60-030 and this administrative regulation.

(11) "Qualifying equipment or technology" means tangible property:

(a) ~~1.~~ With a per-unit cost of \$300 or more;

~~2.~~ ~~(b)~~ With an expected useful life of more than one (1) year; and

~~3.~~ ~~(c)~~ Approved by the Division of Small Business Services; and

(b) Not including ~~[Qualifying equipment or technology shall not include]~~ real property, buildings, and supplies.

(12) "Small business" is defined in KRS 154.60-010.

Section 2. Ineligible Business Applicants. ~~[(4)]~~ The following businesses shall not be eligible ~~[be ineligible]~~ to apply:

~~(1)~~ ~~(a)~~ Businesses engaged in any type of illegal activity;

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~~(2)(b)~~ Businesses that present live performances of a prurient sexual nature;

(3) Businesses that ~~are~~ derive more than (5) percent of annual gross revenue through;

(a) The sale or rental of products or services of a prurient sexual nature; ~~or~~;

(b) The presentation of any depictions or displays ~~of~~ a prurient sexual nature;

~~(4)(e)~~ Businesses principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting;

~~(5)(d)~~ Businesses deriving more than fifty (50) **percent** of annual gross revenues from lobbying activities;

~~(6)(e)~~ Businesses that are in default on any federal, state, or local taxes;

(7) Businesses that are not in good standing with the Kentucky Secretary of State's Office (if applicable);

(8) Businesses that ~~are~~ do not hold all current licenses, permits, and registrations necessary to legally operate a business in Kentucky; or

~~(9)(2)~~ Businesses that have received Kentucky Economic Development Finance Authority approved loans, grants, or tax incentives that were based on job creation or equipment purchases if the eligible **position or positions** ~~position~~ or qualifying equipment in their applications was used as the basis for a tax credit under a previously approved Kentucky Economic Development Finance Authority incentive program.

Section 3. **Eligibility Date. Businesses shall not be eligible to apply until the latter of the following dates:**

(1) One (1) year after the purchase of qualifying equipment or technology; or

(2) One (1) year after the eligible position or positions have been created and filled.

Section 4. Application Supplements. **(1)** In addition to the information required by KRS 154.60-020, the applicant shall provide:

(a) ~~(4)~~ All information required by the application which is incorporated herein by reference; **and**

(b) ~~(2)~~ Verification of its company start date by providing one (1) of the following:

1. ~~(a)~~ If the business is registered with the Kentucky Secretary of State, the organization number and organization date as listed in the Secretary of State's Organization Search database at <http://sos.ky.gov/online.htm>; ~~or~~

2. ~~(b)~~ The initial occupational license issued to a business that clearly identifies the company start date; ~~or~~

3. ~~(c)~~ Documentation from the Kentucky Department of Revenue that shows the company start date; or

4. ~~(d)~~ Affidavit from the business attesting to the company start date including the factual basis for citing the date; ~~and~~

(2) ~~(3)~~ The applicant shall pay an administration fee, which is one (1) **percent** of the qualifying tax credit amount, in order to be eligible for the credits **established** ~~set forth~~ in KRS 154.60-020. The fee **shall be refunded** ~~is refundable~~ if not approved by the Kentucky Economic Development Finance Authority.

(3) ~~(4)~~ In addition to the administration fee, the applicant shall certify its current level of employment prior to approval by the Kentucky Economic Development Finance Authority.

Section **5.** ~~(4)~~ Incorporation by Reference. (1) The "Kentucky Small Business Investment Credit (KSBIC) Application", June 30, 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Economic Development, Department of Financial Incentives, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JEAN HALE, Chairman

LARRY M. HAYES, Secretary

APPROVED BY AGENCY: July 7, 2010

FILED WITH LRC: July 14, 2010 at noon

CONTACT PERSON: Janine Coy-Geeslin, Staff Attorney,

Cabinet for Economic Development, Old Capital Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (As Amended at ARRS, September 14, 2010)

401 KAR 59:015. New indirect heat exchangers.

RELATES TO: KRS ~~224.10~~ ~~224.10-100~~, ~~EO 2009-538~~, 40 C.F.R. Part 60, Appendices A and B [EO 2008-507, 2008-531, 40 C.F.R. Part 60]

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) ~~requires~~ ~~authorizes~~ the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. ~~EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet~~ ~~EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet~~. This administrative regulation provides for the control of emissions from new indirect heat exchangers.

Section 1. Definitions. (1) "Affected facility" means an indirect heat exchanger having a heat input capacity greater than one (1) million BTU per hour (MMBTU/hr) ["Indirect heat exchanger" or "IHE" means a piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a fluid medium that does not come in contact with or add to the products of combustion.].

(2) "CEMS" means continuous emissions monitoring system.

(3) "Classification date" means:

(a) August 17, 1971, for an affected facility ~~affected facilities~~ ~~indirect heat exchangers~~ with a capacity greater than 250 (MMBTU/hr) ~~million BTU per hour~~ heat input:

1. For particulate emissions;

2. For sulfur dioxide emissions; and

3. For ~~particulate emissions, sulfur dioxide emissions, or~~ nitrogen oxide emissions if fuels other than lignite are burned;

(b) April 9, 1972, for an affected facility ~~affected facilities~~ ~~indirect heat exchangers~~ with a capacity of 250 MMBTU/hr ~~million BTU per hour~~ heat input or less for particulate emissions and sulfur dioxide emissions; and

(c) December 22, 1976, for an affected facility ~~affected facilities~~ ~~indirect heat exchangers~~ with a capacity greater than 250 MMBTU/hr ~~million BTU per hour~~ heat input for nitrogen oxides if lignite fuel is burned.

(4) "COMS" means continuous monitoring system for opacity.

(5) "Indirect heat exchanger" means a piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a medium that does not come in contact with or add to the products of combustion.

(6) "PM CEMS" means a particulate matter continuous emissions monitoring system.

Section 2. Applicability. (1) This administrative regulation shall apply to affected facilities ~~indirect heat exchangers having a heat input capacity greater than one (1) million BTU per hour~~ commenced on or after the applicable classification date.

(2) An affected facility ~~Affected facilities~~ ~~Units~~ subject to 40 C.F.R. 60.40 to 60.46 (Subpart D); 60.40Da to 60.52Da (Subpart Da); 60.40b to 60.49b (Subpart Db); or 60.40c to 60.48c (Subpart Dc) shall be exempt from this administrative regulation for each pollutant covered under this administrative regulation with a specific emission standard in the applicable New Source Performance Standard (NSPS) codified at 40 C.F.R. Part 60.

Section 3. Method for Determining Allowable Emission Rates. (1) Except as provided in subsection (3) of this section, the total rated heat input capacity of all affected facilities ~~IHEs located~~ at a

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source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet, shall be used as specified in Sections 4 and 5 of this administrative regulation to determine the allowable emission rate in terms of pounds per million BTU (lb/MMBTU)~~[lbs per million BTU]~~ heat input.

(2) The permitted allowable emissions rate of an affected facility~~[indirect heat exchanger]~~ shall not be changed due to inclusion or shutdown of another affected facility~~[heat exchanger]~~ at the source.

(3) Sources may petition the cabinet to approve an allowable emission rate apportioned independently from individual heat input pursuant to this subsection, as follows:

(a) The following equation shall be used to determine the allowable emissions rate: $F=(AB+DE)/C$, in which~~[if the conditions specified in this subsection are met:~~

~~(a) The allowable emission rate shall be determined according to the following equation: $F = (AB + DE)/C$ in which:~~

1. A = allowable emission rate (in lb/MMBTU) heat input~~[lbs per million BTU heat input as]~~ determined pursuant to subsection (1) of this section~~[)];~~

2. B = total rated heat input (in MMBTU/hr) of all affected facilities~~[millions of BTU per hour] of all indirect heat exchangers]~~ at the source commenced on or after the applicable classification date, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;

3. C = total rated heat input (in MMBTU/hr of all affected facilities~~[millions of BTU per hour] of all indirect heat exchangers]~~ at the source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;

4. D = allowable emission rate (in lb/MMBTU heat input)~~[lbs per million BTU input as]~~ determined pursuant to 401 KAR 61:015, Section 3(1);

5. E = total rated heat input (in MMBTU/hr) of all affected facilities~~[in millions of BTU per hour of all indirect heat exchangers]~~ at the source commenced before the applicable classification date; and

6. F = alternate allowable emission rate in lbs per actual MMBTU heat input~~[million BTU input]~~.

(b) The total emissions (in lb/hr) from all affected facilities~~[lbs per hour from all indirect heat exchangers]~~ at the source subject to this administrative regulation divided by the total actual heat input (in MMBTU/hr) of the affected facilities~~[millions of BTU per hour] of the indirect heat exchangers]~~ shall not exceed the alternate allowable emission rate as determined in paragraph (a) of this subsection.~~[-]~~

(c) A source operating an affected facility that~~[IHE, which]~~ is not subject to a federal NSPS codified at~~[new source performance standard (NSPS) of]~~ 40 C.F.R. Part 60 only because the affected facility~~[IHE]~~ commenced construction prior to the NSPS classification date, shall not allow emissions of the affected facility to exceed the allowable emission rate determined pursuant to~~[by the IHE's rated heat input as specified in]~~ Sections 4 and 5 of this administrative regulation.~~[-]~~

(d) The source shall demonstrate compliance with this subsection by conducting a performance test pursuant to 401 KAR 50:045 for each affected facility~~[indirect heat exchanger]~~ subject to this administrative regulation; ~~and~~~~[-]~~

(e) The source shall demonstrate that compliance with this subsection shall be maintained ~~[with this subsection]~~ on a continual basis.

Section 4. Standard for Particulate Matter. Except as provided in Section 3(3) of this administrative regulation, an affected facility~~[indirect heat exchanger]~~ subject to this administrative regulation shall not cause emissions of particulate matter in excess of:

(1)(a) 0.56 lb/MMBTU actual heat input for sources with total heat input capacity totaling ten (10) MMBTU/hr or less for all affected facilities at the source;

(b) 0.10 lb/MMBTU actual heat input for sources with total heat input totaling 250 MMBTU/hr or more for all affected facilities at the source; and

(c) 0.9634 multiplied by the quantity obtained by raising the total heat input capacity (in MMBTU/hr) to the -0.2356 power for sources with heat input values totaling greater than ten (10) MMBTU/hr and less than 250 MMBTU/hr for all affected facilities at

the source; and~~[0.56 lbs per million BTU actual heat input for IHEs with total heat input capacity of ten (10) million BTU per hour or less;~~

~~(b) 0.10 lbs per million BTU heat input for IHEs with total heat input capacity of 250 million BTU per hour or more; and~~

~~(c) 0.9634 multiplied by the quantity obtained by raising the total heat input capacity (in millions BTU per hour) to the -0.2356 power for IHEs with heat input values greater than ten (10) million BTU per hour and less than 250 million BTU per hour; and]~~

(2) Twenty (20) percent opacity except:

(a) For sources with heat input capacity totaling 250 MMBTU/hr or more for all affected facilities at the source~~[indirect heat exchangers with heat input capacity of 250 million BTU per hour or more;]~~ a maximum of twenty-seven (27) percent opacity shall be allowed for one (1) six (6) minute period in any sixty (60) consecutive minutes;

(b) For sources with heat input capacity totaling 250 MMBTU/hr or more for all affected facilities at the source~~[indirect heat exchangers with heat input capacity of less than 250 million BTU per hour;]~~ a maximum of forty (40) percent opacity shall be allowed for a maximum of six (6) consecutive minutes in any sixty (60) consecutive minutes during fire box cleaning or soot blowing; and

(c) For emissions from an affected facility~~[indirect heat exchanger]~~ caused by building a new fire, emissions during the period required to bring the boiler up to operating conditions shall be allowed, if the method used is recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

Section 5. Standard for Sulfur Dioxide. (1) Except as provided in Section 3(3) of this administrative regulation, an affected facility~~[affected facilities]~~~~[indirect heat exchangers]~~ subject to this administrative regulation shall not cause emissions of gases that contain sulfur dioxide in excess of:

(a) For sources with heat input capacity totaling ten (10) MMBTU/hr or less for all affected facilities at the source~~[IHEs with total heat input capacity of ten (10) million BTU per hour or less];~~

1. Three and zero-tenths (3.0) lb/MMBTU~~[lbs per million BTU]~~ actual heat input for combustion of liquid and gaseous fuels; and

2. Five and zero-tenths (5.0) lb/MMBTU~~[lbs per million BTU]~~ actual heat input for combustion of solid fuels;

(b) For sources with heat input capacity totaling 250 MMBTU/hr or more for all affected facilities at the source~~[IHEs with total heat input capacity of 250 million BTU per hour or more];~~

1. Eight-tenths (0.8) lb/MMBTU~~[lbs per million BTU]~~ actual heat input for combustion of liquid and gaseous fuels; and

2. One and two-tenths (1.2) lb/MMBTU~~[lbs per million BTU]~~ actual heat input for combustion of solid fuels; and

(c) For sources with total heat input values greater than ten (10) MMBTU/hr and less than 250 MMBTU/hr for all affected facilities at the source~~[IHEs with heat input values between those specified in paragraphs (a) and (b) of this subsection]~~, the standard, in lb/MMBTU~~[lbs per million BTU]~~ actual heat input, shall be equal to:

1. The value 7.7223 multiplied by the quantity obtained by raising to the -0.4106 power the total heat input capacity (in MMBTU/hr) of the affected facilities combusting liquid fuels;~~[For combustion of liquid and gaseous fuels, the value 7.7223 multiplied by the quantity obtained by raising the total heat input capacity of the IHE in millions BTU per hour to the -0.4106 power; and]~~

2. The value 7.7223 multiplied by the quantity obtained by raising to the -0.4106 power the total heat input capacity (in MMBTU/hr) of the affected facilities combusting gaseous fuels; and

3. The value 13.8781 multiplied by the quantity obtained by raising to the -0.4434 power the total heat input capacity (in MMBTU/hr) of the affected facilities combusting solid fuels;~~[For combustion of solid fuels, the value 13.8781 multiplied by the quantity obtained by raising the total heat input capacity of the IHE in millions BTU per hour to the -0.4434 power.]~~

(2) ~~[Compliance shall be based on the total heat input from all fuels burned.~~

(3) For simultaneously burning different fuels in combination, the applicable standard shall be determined by prorating BTUs pursuant to the following equation: Allowable sulfur dioxide emis-

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sion in ~~lb/MMBTU/hr~~[~~lbs per million BTU per hour~~] heat input = $(y(a) + z(b))/(y + z)$, in which:

(a) y = percent total heat input derived from liquid or gaseous fuel;

(b) z = percent total heat input derived from solid fuel;

(c) a = allowable sulfur dioxide emission in ~~lb/MMBTU/hr~~[~~lbs per million BTU~~] heat input derived from liquid or gaseous fuel; and

(d) b = allowable sulfur dioxide emission in ~~lb/MMBTU/hr~~[~~lbs per million BTU~~] heat input derived from solid fuel.

(3) Compliance shall be based on the total heat input from all fuels burned.

Section 6. Standard for Nitrogen Oxides. (1) An affected facility[~~indirect heat exchanger~~] with heat input capacity of 250 ~~MMBTU/hr~~[~~million BTU per hour~~] or more shall not cause emissions of gases that contain nitrogen oxides expressed as nitrogen dioxide in excess of:

(a) ~~0.20~~[~~Twenty hundredths (0.20)~~] ~~lb/MMBTU heat input~~ [~~0.36 grams per million calories (g/MMCal)~~]~~0.20 lbs per million BTU heat input (0.36 g per million cal)~~ derived from gaseous fuel;

(b) ~~0.030~~[~~Thirty hundredths (0.30)~~] ~~lb/MMBTU heat input~~ [~~0.54 g/MMCal~~]~~0.30 lbs per million BTU heat input (0.54 g per million cal)~~ derived from liquid fuel;

(c) ~~0.70~~[~~0.70 Seventy hundredths (0.70)~~] [~~0.70 lbs per million BTU heat input (1.26 g per million cal)~~] derived from solid fuel except lignite;

(d) ~~0.60~~[~~Sixty hundredths (0.60)~~] ~~lb/MMBTU heat input~~ [~~1.08 g/MMCal~~]~~0.60 lbs per million BTU heat input (1.08 g per million cal)~~ derived from lignite or lignite and wood residue except as provided in paragraph (e) of this subsection; and

(e) ~~0.80~~[~~Eighty hundredths (0.80)~~] ~~lb/MMBTU~~ [~~0.80 lbs per million BTU~~] derived from lignite that is mined in North Dakota, South Dakota, or Montana and that is burned in a cyclone-fired unit[~~IHE~~].

(2) Except as provided in subsections (3) and (4) of this section, if different fuels are burned simultaneously in any combination, the allowable nitrogen dioxide emission shall be prorated using the following equation: Allowable nitrogen dioxide emission in ~~lbs per million BTU/hour heat input~~ = $[x(0.20) + y(0.30) + z(0.70) + w(0.60)] / [(x + y + z + w)]$, in which: ~~equation: Allowable nitrogen dioxide emission in lbs per million BTU/hour heat input = $(x(0.20) + y(0.30) + z(0.70) + w(0.60)) / (x + y + z + w)$, in which:~~

(a) x = percent of total heat input derived from gaseous fuel;

(b) y = percent of total heat input derived from liquid fuel;

(c) z = percent of total heat input derived from solid fuel (except lignite); and

(d) w = percent of total heat input derived from lignite.

(3) For fossil fuel containing at least twenty-five (25) percent by weight coal refuse burned in combination with gaseous, liquid, or other solid fossil fuel; wood residue; or biomass, the standard for nitrogen oxides shall not apply.

(4) A cyclone-fired unit[~~IHE~~] burning fuel containing at least twenty-five (25) percent lignite mined in North Dakota, South Dakota, or Montana shall be subject to subsection (1)(e) of this section for all types of fuel combusted in combination with the lignite.

Section 7. Emission and Fuel Monitoring. [~~This section shall apply to sources operating indirect heat exchangers with rated heat input capacity greater than 250 million BTU per hour.~~]

(1) Except as provided in subsection (2) of this section, sources shall install, calibrate, maintain, and operate a continuous monitoring system for measuring:

(a) Opacity of emissions;

(b) Sulfur dioxide emissions;

(c) Nitrogen oxides emissions; and

(d) Oxygen or carbon dioxide emissions [~~in the flue gases~~].

(2) Subsection (1) of this section shall not apply as follows:

(a) For an affected facility[~~affected facilities~~][~~IHE~~] burning only gaseous fuel, a continuous monitoring system for opacity (COMS) shall not be required.[;]

(b) For an affected facility[~~affected facilities~~][~~IHE~~] burning only natural gas, wood, wood residue, or biomass; or a combination of natural gas, wood, wood residue, or biomass, a continuous emissions monitoring system (CEMS) for sulfur dioxide emissions shall

not be required.[;]

(c)1. For nitrogen ~~oxides~~[~~oxide~~], installation of CEMS may be delayed until after the initial performance tests required by 401 KAR 59:005, Sections 2 and 4(2); and

2. If the initial performance test results show nitrogen oxide emissions:

a. Are less than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, CEMS for nitrogen oxides shall not be required; or

b. Are equal to or greater than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, the source shall install CEMS for nitrogen oxides within one (1) year after the date of the initial performance tests.[;]

(d) For a source exempt from installing ~~COMS pursuant to paragraph (a) of this subsection and~~ CEMS for sulfur oxides and nitrogen oxides pursuant to paragraphs (b) and (c) of this subsection, a continuous monitoring system for measuring oxygen or carbon dioxide shall not be required.[;]

(e) For an affected facility ~~not using a flue gas desulfurization device~~[~~IHEs not using flue gas desulfurization devices~~], CEMS for sulfur dioxide emissions shall not be required if the source monitors sulfur dioxide emissions by fuel sampling and analysis pursuant to subsection (5) of this section.

(3) For performance evaluations subject to 401 KAR 59:005, Section 4(3), and calibration checks subject to 401 KAR 59:005, Section 4(4)[~~the following procedures shall be used~~]:

(a) Reference Methods 6-6C or 7-7E, incorporated by reference in 401 KAR 50:015, as applicable, shall be used for conducting performance evaluations of CEMS for sulfur dioxide and nitrogen oxides;

(b) Sulfur dioxide or nitric oxide, as applicable, shall be used for preparing calibration gas mixtures pursuant to 40 C.F.R. Part 60, Appendix B, Performance Specification 2;

(c) The span value for a continuous monitoring system:

1. For an affected facility[~~IHEs~~] burning fossil fuels, shall be eighty (80), ninety (90), or 100 percent; and

2. For systems measuring sulfur oxides or nitrogen oxides, shall be determined pursuant to the following table:

DETERMINATION OF SPAN VALUE (in parts per million)		
Fossil Fuel	Span Value for Sulfur Dioxide	Span Value for Nitrogen Oxides
Gas	*	500
Liquid	1,000	500
Solid	1,500	500
Combinations	1,000y + 1,500z	500(x + y) + 1,000z

~~In which~~[~~3. For the table in subparagraph 2 of this paragraph~~]:

a. * shall indicate that a value shall not be applicable;

b. x = fraction of total heat input derived from gaseous fossil fuel;

c. y = fraction of total heat input derived from liquid fossil fuel; and

d. z = fraction of total heat input derived from solid fossil fuel;

(d) Span values computed pursuant to paragraph (c) of this subsection for burning combinations of fuels shall be rounded to the nearest 500 ppm; and

(e) The source shall submit the proposed CEMS span value for cabinet approval pursuant to 40 C.F.R. 60.13(d) and this subsection, for all affected facilities[~~all IHEs~~] that simultaneously burn fossil fuel and nonfossil fuel [~~for cabinet approval pursuant to 40 C.F.R. 60.13(d) and this subsection~~].

(4) For continuous monitoring systems installed pursuant to subsection (1) of this section, the following conversion procedures shall be used to convert the continuous monitoring data into units of the applicable requirement in nanograms/joule (ng/J) or ~~lb/MMBTU~~[~~lb/million BTU~~]:

(a) For continuous monitoring systems measuring oxygen, the pollutant concentration and oxygen concentration shall be measured on a consistent wet or dry basis as follows:

1. Procedures approved by the cabinet and the U. S. EPA pursuant to 40 C.F.R. Part 60, Appendix B, shall be used for wet-basis measurements; and

2. For dry-basis measurements, the following conversion pro-

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cedure shall be used:

$E = (20.9CF)/(20.9 - \text{percent oxygen})$ [20.9CF divided by (20.9 minus percent oxygen)] in which E, C, F, and percent oxygen shall be determined pursuant to subsection (5) of this section; and

(b) For continuous monitoring systems measuring carbon dioxide, the pollutant concentration and carbon dioxide concentration shall be measured on a consistent wet or dry basis and the following conversion procedure shall be used: $E = (100 CF_c)/(\text{percent carbon dioxide})$, in which E, C, Fc, and percent carbon dioxide shall be determined pursuant to subsection (5) of this section.

(5) The values used in the equations in subsection (4)(a) and (b) of this section shall be derived as follows:

(a) E = pollutant emissions in grams per million calorie (g/MMCal) or lb/MMBTU [g/million-calorie (cal) (lb/million-BTU)];

(b) C = pollutant concentration in grams per dry cubic meter at standard conditions (g/dscm) or pounds per dry cubic feet at standard conditions (lb/dscf) [g/dscm (lb/dscf)] determined by multiplying the average concentration (ppm) for each one (1) hour period by 0.000415 M (g/dscm)/ppm or (lb/dscf)/ppm [g/dscm per ppm]; multiplied by two and five-tenths (2.5) multiplied by ten (10) raised to the negative ninth [nine] (9) power; and multiplied by M (g/dscm)/ppm or (lb/dscf)/ppm [(lb/dscf per ppm)] in which M equals:

1. Pollutant molecular weight in grams per gram-mole (g/g-mole) or pounds/pound-mole (lb/lb-mole) [g/g-mole (lb/lb-mole)]; or
2. 64.07 for sulfur dioxide and 46.01 for nitrogen oxides;

(c) F, Fc = a factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), and a factor representing a ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted (Fc), respectively, pursuant to the applicable American Society for Testing and Materials (ASTM) standard from the Book of ASTM Standards incorporated by reference in 401 KAR 50:015 [incorporated by reference in 401 KAR 50:015] as follows:

1. For anthracite coal as classified according to ASTM D388-66(72), F equals 10,140 dscf/MMBTU [dscf/million-BTU] and Fc equals 1,980 standard cubic feet (scf) CO₂/MMBTU [CO₂/million-BTU];

2. For subbituminous and bituminous coal as classified according to ASTM D388-66(72), F equals 9,820 dscf/MMBTU [dscf/million-BTU] and Fc equals 1,810 scf CO₂/MMBTU [CO₂/million-BTU];

3. For liquid fossil fuels including crude, residual, and distillate oils, F equals 9,220 dscf/MMBTU [dscf/million-BTU] and Fc equals 1,430 scf CO₂/MMBTU [CO₂/million-BTU];

4a. For gaseous fossil fuels, F equals 8,740 dscf/MMBTU [dscf/million-BTU];

b. For natural gas, [propane and butane fuels,] Fc equals 1,040 scf CO₂/MMBTU; for propane, Fc equals [CO₂/million-BTU for natural gas,] 1,200 scf CO₂/MMBTU [CO₂/million-BTU] for propane, and 1,260 scf CO₂/MMBTU [CO₂/million-BTU for butane];

5a. For bark, F equals 9,575 dscf/MMBTU [dscf/million-BTU] and Fc equals 1,927 scf CO₂/MMBTU [CO₂/million-BTU];

b. For wood residue other than bark, F equals 9,233 dscf/MMBTU [dscf/million-BTU] and Fc equals 1,842 scf CO₂/MMBTU [CO₂/million-BTU]; and

6. For lignite coal as classified according to ASTM D388-66(72), F equals 9,900 dscf/MMBTU [dscf/million-BTU] and Fc equals 1,920 scf CO₂/MMBTU [CO₂/million-BTU];

(d) The source [owner or operator] may use the equation given in subparagraph 1 of this paragraph to determine an F factor (dscm/MMCal, or dscf/MMBTU) [dscm/million-cal, or dscf/million-BTU] on a dry basis or Fc factor (standard cubic meters (scm) CO₂/MMCal, or standard cubic feet (scf) CO₂/MMBTU) [scm CO₂/million-cal, or scf CO₂/million-BTU] on either wet or dry basis in lieu of the F or Fc factors specified in paragraph (c) of this subsection; where

1. The F or Fc Factor shall be determined by the following:

a. $F = \{227.2 (\%H) + 95.5 (\%C) + 35.6 (\%S) + 8.7 (\%N) - 28.7 (\%O)\} / \text{GCV}$ (metric units);

b. $F = 10^6 \{3.64 (\%H) + 1.53 (\%C) + 0.57 (\%S) + 0.14 (\%N) - 0.46 (\%O)\} / \text{GCV} [\text{GVC}]$ (English units);

c. $F_c = \{2.0 \times 10^{-5} (\%C)\} / \text{GCV}$ (metric units); and

d. $F_c = \{3.21 \times 10^5 (\%C)\} / \text{GCV}$ (English units);

2. H, C, S, N, and O shall be content by weight of hydrogen, carbon, sulfur, nitrogen, and oxygen (expressed as percent), respectively, as determined on the same basis as GCV by ultimate analysis of the fuel fired using ASTM method D3178-73 or D3176-74 (solid fuels) or computed from results using ASTM methods D1137-53(75), D1945-64(73), or D1946-67(72) (gaseous fuels) as applicable; and

3. GCV shall be the gross calorific value (Cal/g or BTU/lb) [cal/g, BTU/lb] of the fuel combusted determined by ASTM test methods D2015-66(72) for solid fuels and D1826-64(70) for gaseous fuels as applicable; and

(e) For an affected facility firing a combination [IHEs firing combinations] of fuels, the F or Fc factors determined by paragraphs (c) and (d) of this subsection shall be prorated in accordance with the applicable formula as follows:

1. $F = xF_1 + yF_2 + zF_3$, where:

a. x, y, z = the fraction of total heat input derived from gaseous, liquid, and solid fuels [fuel], respectively; and

b. F₁, F₂, F₃ = the value of F for gaseous, liquid, and solid fuels, respectively, pursuant to subsection (5)(c) and (d) of this section; or

2. where:

$$F_c = \sum_{i=1}^n X_i (F_c)_i$$

a. X_i = fraction of total heat input derived from each type fuel; and

b. (F_c)_i [(F_c)_i] = applicable Fc factor for each fuel type determined pursuant to subsection (5)(c) and (d) of this section.

(6) For reports required pursuant to 401 KAR 59:005, Section 3(3), periods of excess emissions required to be reported shall be as follows:

(a) Excess emissions shall be any six (6) minute period during which the average opacity of emissions exceeds twenty (20) percent opacity, except that one (1) six (6) minute average per hour of up to twenty-seven (27) percent opacity shall not be required to be reported;

(b) For sulfur dioxide, excess emissions shall be any three (3) hour period during which the average emissions (arithmetic average of three (3) contiguous one (1) hour periods) of sulfur dioxide as measured by a continuous monitoring system exceed an applicable standard in Section 5 of this administrative regulation; and

(c) For nitrogen oxides, excess emissions [for IHEs using a continuous monitoring system for measuring nitrogen oxides] shall be any three (3) hour period during which the average emissions (arithmetic average of three (3) contiguous one (1) hour periods) of nitrogen oxides as measured by a continuous monitoring system exceed an applicable standard in Section 6 of this administrative regulation.

(7) The source may request approval, [in writing to the cabinet,] to install a Particulate Matter Continuous Emissions Monitoring System (PM CEMS) as an alternative to [in lieu of the requirement of] subsection (1)(a) of this section [for a COMS] as follows:

(a) The request for approval shall be made in writing to the cabinet;

(b) if the PM CEMS request is approved, the source:

1. Shall be subject to a federally enforceable PM limit of 0.030 lb/MMBTU/hr or less;

2. Shall comply with 40 C.F.R. 60.42Da(a) [and 60.43Da(a)]; and

3. Shall follow the [applicable] compliance and monitoring provisions of 40 C.F.R. 60.48Da and 60.49Da that are applicable to particulate matter, excluding 40 C.F.R. 60.48Da(c) and (g)(3); [and]

(c) Excess emissions for an affected facility [IHE] using PM CEMS shall be determined by a boiler-operating-day, as defined by 40 C.F.R. 60.41, in which the average emissions (arithmetic average of all operating one (1) hour periods) exceed the applicable standard pursuant to 40 C.F.R. 60.42Da; and

(d) For calculating average emissions and determining compliance:

1. The boiler operating day shall have at least eighteen (18) hours of unit operation during which the standard shall apply;

2. All valid hourly emission rates of the boiler operating day not meeting the minimum eighteen (18) hours valid data daily average

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requirement shall be averaged with the valid hourly emission rates of the next boiler operating day with eighteen (18) hours or more of valid PM CEMS data; and

~~(b) The source shall follow the applicable compliance and monitoring provisions of 40 C.F.R. 60.48Da and 60.49Da.~~

Section 8. Test Methods and Procedures. (1) Except as provided in 401 KAR 50:045, the reference methods specified in 40 C.F.R. Part 60, Appendix A - Test Methods, shall be used to determine compliance with Sections 4, 5, and 6 of this administrative regulation as follows:

(a) Reference Method 1 shall be used for the selection of sampling site and sample traverses;

(b) Reference Method 3 shall be used for gas analysis in applying Reference Methods 5, 6, and 7;

(c) Reference Method 5 shall be used for concentration of particulate matter and the associated moisture content;

(d) Reference Method 6 shall be used for the concentration of sulfur dioxide;

(e) Reference Method 7 shall be used for the concentration of nitrogen oxides; and

(f) Reference Method 9 shall be used for visible emissions.

(2) For Reference Method 5:

(a) Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points;

(b) The sampling time for each run shall be at least sixty (60) minutes, and the minimum sampling volume shall be 0.85 dscm (thirty (30) dscf) except smaller sampling times or volumes, if necessitated by process variables or other factors, may be requested by the source; and

(c) The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature not greater than 160 degrees Centigrade (320 degrees Fahrenheit).

(3) For Reference Methods 6 and 7:

(a) The sampling site shall be the same as the site selected for Reference Method 5;

(b) The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than one (1) meter (3.28 ft); and

(c) For Reference Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.

(4) For Reference Method 6:

(a) The minimum sampling time shall be twenty (20) minutes, and the minimum sampling volume shall be 0.02 dscm (0.71 dscf) for each sample;

(b) The arithmetic mean of two (2) samples shall constitute one (1) run; and

(c) Samples shall be taken at approximately thirty (30) minute intervals.

(5) For Reference Method 7:

(a) Each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals; and

(b) The arithmetic mean of the samples shall constitute the run value.

(6) For each run using the methods specified by subsection (1)(a), (b), and (c) of this section, the emissions expressed in $\frac{g}{MMCal} (\frac{lb}{MMBTU}) [\frac{g}{million\ cal} (\frac{lb}{million\ BTU})]$ shall be determined by the following procedure:

$E = \frac{20.9CF}{(20.9 - \text{percent oxygen})} [20.9 - CF \text{ divided by } 20.9 \text{ minus percent oxygen}]$, in which:

(a) E = pollutant emission, $\frac{g}{MMCal} (\frac{lb}{MMBTU}) [\frac{g}{million\ cal} (\frac{lb}{million\ BTU})]$;

(b) C = pollutant concentration, g/dscm (lb/dscf), determined by Reference Methods 5, 6, or 7;

(c) Percent oxygen:

1. Shall equal oxygen content by volume (expressed as percent), dry basis; and

2. Shall be determined using the integrated or grab sampling and analysis procedures of Reference Method 3:

a. For determination of sulfur dioxide and nitrogen oxides emissions, the oxygen sample shall be obtained simultaneously at the same point in the duct as used to obtain the samples for Reference Methods 6 and 7 determinations, respectively, with the oxygen sample for reference Method 7 obtained using the grab sam-

pling and analysis procedures of Reference Method 3; and[;]

b. For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Reference Method 5 pursuant to subsection (2) of this section, using Reference Method 1 for selection of the number of traverse points except that not more than twelve (12) points shall be required; and~~[e. Reference Method 1 shall be used for selection of the number of traverse points except that not more than twelve (12) sample points shall be required; and]~~

(d) F = a factor as determined in Section 7(5) of this administrative regulation.

(7) If an affected facility fires a combination of fossil fuels [are fired], the heat input, expressed in Cal/hr (BTU/hr) [cal/hr (BTU/hr)], shall be determined during each testing period by multiplying the gross calorific value of each fuel fired by the rate of each fuel burned, in which:

(a) Gross calorific value shall be determined in accordance with ASTM methods D2015-66(72) (solid fuels), D240-76 (liquid fuels), or D1826-64(70) (gaseous fuels) as applicable; and

(b) The rate of fuels burned during each testing period shall be determined by the applicable method and shall be confirmed by a material balance over the steam generation system.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 7, 2010

FILED WITH LRC: May 12, 2010 at noon

CONTACT PERSON: Millie Ellis, Internal Policy Analyst III, Division for Air Quality, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, telephone (502) 564-3999, fax (502) 564-4666, e-mail mil.ellis@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET Office of the Secretary (As Amended at ARRS, September 14, 2010)

500 KAR 2:020. Filing and processing SLEO commissions.

RELATES TO: KRS 61.900-61.930

STATUTORY AUTHORITY: KRS. 61.904

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.904 authorizes the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations that are reasonable and necessary to carry out the provisions of KRS 61.900 to 61.930. This administrative regulation establishes the criteria and procedures required for filing and processing applications for commissions to be a special law enforcement officer.

Section 1. Definitions. (1) "Cabinet" means the Justice and Public safety Cabinet.

(2) "SLEO Act" means the Special Law Enforcement Officer Act found in KRS 61.900 to 61.930.

(3) "SLEO program administrator" means the person designated or appointed by the Secretary of the Justice and Public Safety Cabinet to administer the Special Law Enforcement Officer Program whose address is: SLEO Program Administrator, Justice and Public Safety Cabinet [whose address is: SLEO Program Administrator, Justice and Public Safety Cabinet], 125 Holmes Street, Frankfort, Kentucky 40601.

Section 2. Qualifications to Apply for Commission as a Special Law Enforcement Officer. To qualify for a commission as a special law enforcement officer pursuant to KRS 61.900 to 61.930, an individual shall comply with the conditions and requirements set forth in KRS 61.906.

Section 3. Application for Commission as a Special Law Enforcement Officer. (1) An applicant shall meet all of the requirements of the SLEO Act before a commission is granted.

(2) An applicant shall provide to the governmental unit two (2) complete signed and notarized SLEO Application Forms (SLEO-1).

(3) The governmental unit shall submit both application forms to the Justice and Public Safety Cabinet SLEO Program Adminis-

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trator.

(4) The application forms shall contain the following information:

(a) The name, address, telephone number, and detailed personal description of and information about the applicant; and

(b) All arrests and convictions, including traffic offenses committed within the past ten (10) years, violations, misdemeanors, or felonies as requested on the application and any other information necessary to conduct a criminal history check.

(5) Any false, misleading, or withholding of information requested on the application or by the cabinet investigator may[shall] be grounds for rejection without further consideration.

Section 4. Additional Requirements. (1) In addition to the application form, an applicant shall provide to the governmental unit who shall submit to the SLEO Program Administrator the following with his or her application:

(a) A copy of the applicant's high school diploma or GED;

(b) A certified copy of the applicant's birth certificate;

(c) Two (2) recent photographs of the individual (full face) measuring not larger than three (3) inches by five (5) inches and taken within the last thirty (30) days of the date the application is submitted;

(d) If the applicant is a veteran, a copy of his or her military release (Form DD-214);

(e) An Authority to Release Information Form, SLEO-2, which allows the release of all necessary information to the SLEO program administrator. It shall be signed by the applicant and witnessed by a second person;

(f) A Letter of Intent Form, SLEO-3, completed by the governmental unit giving the name of the applicant, the specific public property to be protected, and the signature of the authorizing official of the requesting governmental unit;

(g) Proof that the applicant has completed a recognized course and is certified in first aid and CPR. This requirement may be waived if the agency hiring the applicant has full-time EMT's on staff; and

(h) The application fee.

(2) If not on file from a previous application, an applicant shall be fingerprinted at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601 [~~the applicant's fingerprints are not on file with the Kentucky State Police Criminal Record Section, the SLEO program administrator shall make arrangements to have the applicant fingerprinted~~].

(3) The applicant shall arrange for and be interviewed by the SLEO program administrator before a commission is granted.

(4) All SLEO applicants shall sign and the governmental unit shall submit to the cabinet the SLEO Acknowledgement Notice Form, SLEO-4, which indicates that he:

(a) Has received, read, and understands:

- 1. Provisions of the SLEO Act, KRS 61.900-61.930;
- 2. Administrative regulations in 500 KAR Chapter 2;
- 3. Penalties imposed for violating the SLEO Act and its administrative regulations; and
- 4. KRS 61.300, 61.990, 61.991, 62.010, and 62.990;

(b) Acknowledges that his authority is limited and restricted under the SLEO Act; and

(c) Understands and acknowledges that his commission as a SLEO does not give him the right or authority to carry a concealed weapon off the premises of the public property, unless he holds a license to carry a concealed deadly weapon issued pursuant to KRS 237.110 or meets the requirements or 18 U.S.C. 926B or 926C.

Section 5. Fees. (1) All fees required by KRS 61.908 shall be paid in advance and are nonrefundable.

(2) Fees shall be paid in the form of a check or money order payable to the Kentucky State Treasurer.

Section 6. Approval of Application. (1) If the applications and all required documents are in order, and if the criminal history information record review and background investigation are favorably completed, the governmental unit for whom the SLEO applicant will be employed shall notify the Department of Criminal Justice

Training concerning any training the applicant needs in order to satisfy the requirements of KRS 61.906(2)(f).

(2) In notifying the Department of Criminal Justice Training, the governmental unit shall describe the training needed by the applicant. The Department of Criminal Justice Training shall schedule and conduct the training and collect the related fees as prescribed in KRS 61.908(3), (4), and (5). An applicant who [that] has successfully completed the training previously shall not be required to repeat the course.

(3) The Department of Criminal Justice Training shall notify the governmental unit of the results of the training upon completion.

Section 7. Receipt of Defective or Falsified Application. (1) If the application is defective or in conflict with the SLEO Act or its administrative regulations, 502 KAR Chapter 2, the cabinet shall notify the governmental unit.

(2) An application may be corrected and resubmitted at no additional cost if it is resubmitted within sixty (60) days of the date the applicant is sent notice of the deficiencies by the program administrator [~~original submission date~~].

(3) An application that has [~~intentionally~~] been falsified or contains material omissions or contains incomplete information may be rejected and the applicant shall be prohibited from submitting an application for commission as a SLEO for [at least] one (1) year [~~shall be rejected~~].

Section 8. The Grant of the Commission and the Required Oath of Office. (1) A commission for a special law enforcement officer shall be validated and granted as follows:

(a) If the applicant has successfully satisfied the requirements of the act and a commission has been recommended [~~granted~~], a commission certificate and the[a] recommendation shall be forwarded by the SLEO program administrator to the secretary for review.

(b) After the commission is issued by the secretary, a copy of the commission shall be placed in the officer's file maintained by the cabinet.

(2) The governmental unit shall be notified that the commission has been granted.

(a) One (1) of the original applications and [~~An original of the application with~~] two (2) [~~original~~] County Clerk Oath verification forms (SLEO-6) [~~pages, (SLEO-4, page 7)~~] shall be forwarded by the cabinet to the governmental unit whose property is to be protected.

(b) The governmental unit shall arrange for the appointed applicant to take the oath of office.

(3) The appointed applicant shall take:

(a) One (1) of the applications and the [~~An original of the application with~~] two (2) [~~original~~] County Clerk Oath verification forms [~~pages~~] to the county clerk in the county where the applicant is to serve; and

(b) The constitutional oath of office within thirty (30) days after notice of appointment.

(4) The county clerk shall then:

(a) Complete and sign the clerk's attestation on both SLEO-6s [~~of the two (2) SLEO-6~~] [~~signature pages of the original application~~];

(b) Retain the application and [~~one (1) copy of the entire original application, including~~] one (1) of the County Clerk Oath verification forms [~~pages~~], for filing purposes in the county clerk's office; and

(c) Give the second [~~original copy of the~~] County Clerk Oath verification form [~~page~~], signed by the clerk, to the applicant.

(5) The applicant shall return the second [~~original copy of the~~] County Clerk Oath verification form [~~page~~], signed by the Clerk, to the governmental unit. The governmental unit [~~which~~] shall return it to the cabinet SLEO program administrator within thirty (30) days to indicate [~~for the purpose of indicating~~] that the oath was administered and that the application and oath verification form are [~~it is~~] filed with the county clerk.

(6) Upon receipt of the oath verification, the commission certify shall be forwarded by the cabinet to the governmental unit whose property is to be protected.

(7) [~~The governmental unit shall:~~

~~(a) Arrange for the appointed applicant to take the oath of of-~~

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file; and

~~(b) Return the County Clerk Oath verification to the cabinet program administrator within thirty (30) days.~~

~~(8) If the second [original copy of the] County Clerk Oath verification form [page], signed by the clerk, is not returned within [with] thirty (30) days, the commission shall be null and void and the applicant shall be required to repeat the application process.~~

~~(8)(9) The applicant shall not exercise the authority of a SLEO until the governmental unit [he or she] has received the commission certificate from the cabinet.~~

~~(9)(10) The commission certificate shall be kept by the governmental unit so long as the officer is employed or until his or her authority is terminated by action of the [local] government unit or the cabinet secretary.~~

~~(10)(11)(12) The SLEO Commissions shall be issued for a period of two (2) years if the officer continues to meet all statutory and regulatory criteria.~~

~~(11)(12)(13) After the governmental unit [SLEO officer] has received the SLEO commission certificate [taken the constitutional oath of office], the governmental unit shall issue an identification card which is to be carried by the SLEO officer whenever he or she is acting under the authority of KRS 61.900-61.930.~~

~~(12)(13)(14) The identification card shall be:~~

~~(a) Presented as requested by any duly sworn peace officer or cabinet official;~~

~~(b) Subject to control by the cabinet; and~~

~~(c) Comply with the provisions of Section 11(5) of this administrative regulation.~~

~~(13)(14)(15) If for any reason a SLEO officer is terminated or otherwise relieved of his duties as a SLEO officer by the governmental unit or the cabinet, he or she shall immediately return this identification card to the officer's governmental unit [who shall return the same to the SLEO program administrator].~~

~~(14)(15)(16) The SLEO commission certificate shall be held by the governmental units and shall:~~

~~(a) Be available for inspection by the cabinet program administrator or his designee;~~

~~(b) Remain the property of the cabinet; and~~

~~(c) Be returned upon the officer's authority being withdrawn for any reason.~~

Section 9. Special Provisions. (1) Special Local Peace Officers meeting the requirements of KRS 61.906(2)(f)3 may apply for commission as a SLEO in the following manner:

(a) An official for the governmental unit shall sign and submit a new set of applications with the filing fee on behalf of the applicant; and

(b) The applicant shall undergo a current background investigation.

(2) Training waiver. A SLEO applicant may apply for a training waiver by providing sufficient proof of past police experience, or military records, or examination records, that substantiates that the applicant meets the waiver requirements set forth in KRS 61.906(2)(f)2.

Section 10. Renewals. (1) A letter of intent from the governmental unit stating its request to renew a commission and two (2) complete signed and notarized SLEO Renewal Application Forms (SLEO-5) [a new set of applications] for each individual involved shall be filed with the cabinet program administrator at least sixty (60) days before the expiration date of the existing commission.

(2) The applicant for renewal shall undergo a background investigation to bring his records up-to-date.

Section 11. Governmental Units Employing SLEO Officers - Records, Reports, and Responsibility.

(1) All governmental units employing SLEO officers shall:

(a) Keep their files current as to the expiration date on each officer's commission;

(b) Keep the individual officer's commission certificates on file, to be returned to the cabinet upon termination of the officer and his authority;

(c) Provide proof to the SLEO program coordinator at the time of request for renewal that its SLEOs;

1. Are currently certified in First Aid and CPR unless this requirement is waived pursuant to Section 4(1)(g) of this administrative regulation; and

2. Have met the same marksmanship qualification required of certified peace officers in KRS 15.383; and

(d) Mail or e-mail to the SLEO program administrator by June 30 of each year:

1. ~~mail~~ A current list of all active SLEO personnel; and

2. The number of arrests made or citations issued by the agency the previous calendar year ~~[to the SLEO program administrator by June 30 each year].~~

(2) The unit shall post a copy of the SLEO administrative regulations, 500 KAR Chapter 2, and a copy of KRS 61.900-61.930, 61.990, and 61.991 of the SLEO Act in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLEO officers.

(3) Complaints or unusual incidents involving SLEO officers shall be handled by the governmental unit whose public property is being protected by the SLEO officer involved except:

~~[a]-[However,]~~ The governmental unit shall notify the cabinet SLEO program administrator by:

1. ~~(a)~~ Direct verbal communication within twenty-four (24) hours of any reported incident involving the misconduct or unlawful act by any of its SLEO officers; and

2. ~~(b)~~ A follow-up written report to be filed with the SLEO program administrator, within thirty (30) days of the original oral report, setting forth the details of the incident and listing any action taken by governmental unit; and:-

~~(b)(4)~~ If formal charges are pending, the unit or agency shall advise the SLEO program administrator as to the specific charge, trial date, and the final disposition of the charge.

~~(4)(5)~~ The unit shall issue each SLEO officer an identification card upon the individual's appointment. The identification card shall be:

(a) Encased in plastic;

(b) Billfold size (approximately two and one-fourth (2 1/4) inches by three and one-half (3 1/2) inches); and

(c) Composed as follows:

1. One (1) side containing the following language: "The holder of this card has been commissioned as a Special Law Enforcement Officer (SLEO), pursuant to KRS 61.902. As a SLEO, the holder of this card is deemed to be a peace officer within the meaning of KRS 527.020 and may exercise the powers of a peace officer in accordance with KRS 61.900 to 61.930"; and

2. The other side containing a full-faced photograph of the officer with his or her:

a. Name;

b. Identification or notation that the officer has been commissioned a "Special Law Enforcement Officer";

c. Governmental unit employing the officer;

d. Badge number, if any; and

e. Signature of the officer's chief, supervisor, or employer.

~~(5)(6)~~ The unit shall obtain and destroy the identification card from any officer whose employment is terminated ~~[and remit it to the SLEO program administrator for destruction].~~

Section 12. Violations. (1) All governmental units utilizing SLEO's shall be subject to inspection and investigation by the Cabinet as circumstances may warrant for possible violations.

(2) Violations may result in prosecution and recommendation to the secretary of the cabinet [Justice] that the commission be revoked.

Section 13. Revocation or Suspension of SLEO Commissions.

(1) A SLEO may have his or her commission suspended or revoked in accordance with KRS 61.910.

(2) The program administrator shall notify the secretary of any violations of KRS 61.910, who shall send written notice of the alleged violation to the:

(a) SLEO; and

(b) Governmental unit employing the SLEO.

(3) The notice of alleged violation shall be sent to the SLEO and employing governmental unit by certified mail, return receipt requested.

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(4) The SLEO may request an administrative hearing before the secretary before suspension or revocation is imposed. The request for hearing shall be in writing and shall be received by the Secretary within thirty (30) days of receipt by the SLEO of the notice of intent to seek suspension or revocation.

(5) The secretary shall suspend or revoke the commission of a SLEO who fails to request an administrative hearing within the thirty (30) day time period ~~[applicable time period above]~~.

(6) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(7) The cabinet may temporarily suspend the commission of a SLEO prior to holding a hearing pursuant to KRS Chapter 13B if the cabinet believes that the safety of the public requires that action. If a commission is temporarily suspended prior to holding a hearing pursuant to KRS Chapter 13B, the cabinet shall hold a Chapter 13B hearing not later than thirty (30) days from the date of the temporary suspension unless the SLEO requests an extension for a time certain. If the SLEO requests an extension for a time certain, then the commission shall remain suspended until the conclusion of the hearing.

~~(8) If a SLEO commission is suspended or revoked (7) [Upon revocation of a SLEO commission]:~~

(a) The SLEO program administrator shall notify the governmental unit involved to return the commission of the SLEO officer;

(b) The governmental unit responsible for the SLEO officer shall forward a letter to the officer stating that:

1. His or her commission has been revoked or suspended; and
2. He or she shall immediately return the SLEO identification card to the governmental unit;

(c) Upon receipt of the card, the governmental unit shall ~~destroy it [forward it to the SLEO program administrator]; and~~

(d) The program administrator shall notify the county clerk in the officer's county of jurisdiction ~~[whenever a SLEO officer's commission has been suspended or revoked].~~

Section 14. Procedures for Investigating Complaints or Unusual Incidents Involving SLEO Officers.

(1) Complaints or unusual incidents involving SLEO officers shall be handled by the governmental units whose public property is being protected by the SLEO officer involved. The governmental unit shall notify the cabinet of all incidents involving their SLEO personnel as required by Section 11(3) of this administrative regulation.

(2) ~~[However,]~~ The cabinet program administrator or other assigned officers may investigate any and all complaints or unusual incidents involving SLEO officers, if there is reason to believe the provisions of KRS 61.900-61.930, 61.990, 61.991, or 500 KAR Chapter 2, or other applicable laws or administrative regulations have been violated and an investigation is necessary.

(3) Any investigation conducted by the cabinet shall become part of the official record of the SLEO officer involved.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "SLEO Application Candidate Information Form", SLEO-1, ~~July 1, 2010 [March 3, 2009] [edition];~~

(b) "Authority to Release Information Form", SLEO-2, April 13, 2009 ~~[edition];~~

(c) "Letter of Intent Form", SLEO-3, June 3, 2009 ~~[edition];~~ ~~[and]~~

(d) "SLEO Acknowledgement Notice Form", SLEO-4, ~~August 10, 2009 [January 12, 2009] [edition];~~

(e) "SLEO Renewal Application ["] Form", SLEO-5, July 1, 2010 ~~[edition]; and~~

(f) "County Clerk Oath ["] Form", SLEO-6, July 1, 2010 ~~[edition].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: July 15, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

CONTACT PERSON: Stephen D. Lynn, Assistant General

Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475, phone (859) 622-3073, fax (859) 622-5027.

JUSTICE AND PUBLIC SAFETY CABINET Office of the Secretary (As Amended at ARRS, September 14, 2010)

500 KAR 3:020. Filing and processing SLPO commissions.

RELATES TO: KRS ~~61.300~~, 61.360, ~~61.991~~, ~~62.010~~, ~~62.990~~
STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A and direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet, except laws and functions vested in the Department for Public Advocacy. KRS 61.360 authorizes the Governor or his agent to appoint Special Local Peace Officers. This administrative regulation establishes the procedure for applying for a commission as a Special Local Peace Officer.

Section 1. Qualifications to Apply for Commission as a Special Local Peace Officer. To qualify for a commission as a SLPO, an applicant shall present satisfactory evidence of compliance with the conditions and requirements set forth in KRS 61.360.

Section 2. Application for Commission as a Special Local Peace Officer. Applications from the property owner shall be sent to the cabinet SLPO program administrator and shall comply with the following requirements:

(1) An applicant shall meet all of the requirements of KRS 61.360 before a commission shall be granted. An applicant who qualifies may hold additional commissions for different property locations.

(2) The applicant shall complete two (2) notarized "SLPO Application Candidate Information (SLPO-1)" forms, which shall include the following:

- (a) The name of the property owner;
 - (b) The name, address, date of birth, and Social Security number of the applicant and a detailed personal description;
 - (c) A certified copy of the applicant's birth certificate;
 - (d) Two (2) photographs of the applicant, which shall be:
 1. Full face;
 2. At least three (3) inches by five (5) inches in size; and
 3. Taken within thirty (30) days prior to submission of the application;
 - (e) A copy of the applicant's military discharge or Form DD-214, if the applicant is a veteran;
 - (f) The signature of the property owner;
 - (g) A statement of all arrests and convictions, including traffic offenses committed within the past ten (10) years, violations, misdemeanors, or felonies; and
 - (h) The notarized signature of the applicant.
- (3) The ten (10) dollar application fee shall be:
- (a) Submitted with the application form;
 - (b) Nonrefundable; and
 - (c) Submitted by check or money order made payable to the Kentucky State Treasurer.

(4) Submission of any false or misleading information or the withholding of information requested on the application or by the cabinet investigator, ~~may [shall]~~ be grounds for rejection without further consideration.

(5) If not on file from a previous application, an applicant shall be fingerprinted at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601.

(6) The application shall also contain the Authority to Release Information Form (SLPO-4) to allow the release of all necessary information to the SLPO program administrator. It shall be signed by the applicant and notarized or may be witnessed by a cabinet official.

(7) The applicant shall also sign the SLPO Acknowledgment

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Notice Form (SLPO-5) which indicates that:

(a) He has received, read, and understands:

1. KRS 61.300;
2. KRS 61.360;
3. KRS 61.991;
4. KRS 62.010;
5. KRS 62.990; and
6. The administrative regulations in 500 KAR Chapter 3;

(b) He acknowledges that his authority is limited and restricted under the SLPO Act, cited in paragraph (a) of this subsection; and

(c) He understands and acknowledges that his commission as a SLPO does not give him the right or authority to carry a concealed weapon off the premises of the said property, unless he holds a license to carry a concealed deadly weapon issued pursuant to KRS 237.110.

(8) A Letter of Intent Form (SLPO-3) shall be filed with each application by the property owner giving the name of applicant and the specific private property to be protected. This letter shall accompany the application forms for SLPO initial application or renewals.

(9) The applicant shall arrange for an interview with the SLPO program administrator.

(10) If the application is defective or in conflict with the SLPO Act, cited in subsection (7)(a) of this section or 500 KAR Chapter 3, the application shall be returned to the property owner. An application may be corrected and resubmitted at no additional cost if it is resubmitted within sixty (60) days of the date the applicant is sent notice of the deficiencies by the program administrator~~(original submission date)~~.

Section 3. The Grant of the Commission and the Required Oath of Office. A commission for a special local peace officer shall be validated and granted as follows:

(1) If the applicant has successfully satisfied the requirements of the statutes cited in Section 2(7)(a) of this administrative regulation, a commission certificate and a Special Local Peace Officer Recommendation of Background Investigator (SLPO-2) form shall be forwarded by the SLPO program administrator to the secretary for review. After the commission is issued by the secretary, a copy of the commission shall be placed in the officer's file.

(2) If a commission is granted:

(a) The commission, one (1) application, and two (2) County Clerk Oath forms (SLPO-6)~~and the applications~~ shall be forwarded by the cabinet to the property owner.

(b) The appointed applicant shall promptly take the application and the two (2) County Clerk Oath forms~~both applications~~ to the county clerk in the county where the applicant is to serve and shall take the constitutional oath of office within thirty (30) days after notice of appointment.

(c) The county clerk shall then complete and sign the clerk's attestation on both County Clerk Oath forms~~the applications~~ and return the application and one (1) of the County Clerk Oath forms ~~[one (1) copy]~~ for filing purposes in the county clerk's office ~~[in accordance with the statute]~~.

(d) The applicant shall return the second County Clerk Oath form~~application~~ signed by the clerk to the property owner.

(e) The property owner shall then return the second County Clerk Oath form~~copy of the application~~ to the cabinet SLPO program administrator to indicate ~~[for the purpose of indicating]~~ that the oath was administered and that the application and one (1) of the County Clerk Oath forms ~~[it is]~~ filed with the county clerk.

(f) The property owner shall be allowed thirty (30) days to arrange for the appointed applicant to take the oath of office and return the second County Clerk Oath form ~~is application~~ to the cabinet SLPO program administrator. If the County Clerk Oath form~~[oath and application are]~~ not returned within thirty (30) days, the commission shall be revoked in accordance with KRS 62.010 and 62.990.

(g) The commission certificate shall be kept by the property owner so long as the officer is employed or until his authority is terminated by action of the property owner or the cabinet secretary.

(3) A SLPO Commission shall be issued for a period of two (2)~~four (4)~~ years, if the officer continues to meet all statutory and regulatory criteria.

(4) After the SLPO officer has taken the constitutional oath of office, the property owner shall issue an identification card which is to be carried by the SLPO officer whenever he is acting under the authority of KRS 61.360. The identification card shall be presented as required by any duly sworn peace officer or cabinet official and is subject to control by the cabinet. If for any reason a SLPO officer is terminated or otherwise relieved of his duties as a SLPO officer by the property owner or the cabinet, he shall immediately return this identification card to the officer's property owner ~~[who shall return the same to the SLPO program administrator]~~.

(5) A notice shall be forwarded to the property owner concerning any officer whose appointment has been suspended or revoked by the secretary. The property owner shall maintain current files and make renewal applications at least sixty (60) days prior to the commission's expiration date.

(6) The applicant shall not exercise the authority of a SLPO until the property owner has received the commission certificate from the cabinet.

(7) The SLPO commission certificate shall be held by the property owner and shall be available for inspection by the cabinet program administrator or his designee. The commission certificate remains the property of the cabinet and is to be returned upon the officer's authority being withdrawn for any reason.

Section 4. Denial of an Application. (1) If an application for commission as a SLPO is denied, the applicant and property owner may appeal the determination in accordance with KRS Chapter 13B. An appeal shall be filed:

(a) In writing with the secretary; and

(b) Within thirty (30) days of the date of the written notice that the application has been denied.

(2) An applicant who is denied a commission shall not submit another SLPO application for a period of at least one (1) year.

Section 5. Renewals. A Letter of Intent Form (SLPO-3) from the property owner stating a request to renew a commission and two (2) complete signed and notarized SLPO Renewal Application Forms (SLPO-7)~~[a new set of applications]~~ for each applicant involved shall be filed with the cabinet program administrator at least sixty (60) days before the expiration date of the existing commission. The applicant for renewal shall undergo a new background investigation to bring his records up-to-date.

Section 6. ~~[5-]~~ Records, Reports and Responsibility. Each property owner employing SLPO officers shall keep his files current as to the expiration date on each officer's commission and as follows:

(1) The property owner shall keep the individual officer's commission certificates on file, to be returned to the cabinet upon termination of the officer's employment ~~[officer and/or his authority]~~.

(2) The property owner shall post a copy of 500 KAR Chapter 3 and a copy of KRS 61.360 and 61.990 in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLPO officers.

(3) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner whose private property is being protected by the SLPO officer involved. However, the property owner shall notify the cabinet SLPO program administrator by direct verbal communication within twenty-four (24) hours of any reported incident involving any act as enumerated in KRS 61.360(1)(c) by any of its SLPO officers. A written report shall be filed with the SLPO program administrator, within thirty (30) days of the original oral report, setting forth the details of the incident and listing any action taken by the property owner. If formal charges are pending, the property owner shall advise the SLPO program administrator as to all specific charges, trial dates, and the final disposition of all charges.

(4) The property owner shall mail or e-mail to the SLPO program administrator by June 30 of each year:

(a) A current list of all active SLPO personnel; and

(b) The number of arrests made or citations issued by the SLPO the previous calendar year~~[to the SLPO program administrator by June 30 each year]~~.

(5) The property owner shall issue each SLPO officer an identification card upon the individual's appointment. The identification

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card shall be:

- (a) Encased in plastic;
- (b) Billfold size 2 1/4 in. x 3 1/2 in.; and
- (c) Composed as follows:

1. One (1) side containing the following language: "The holder of this card has been commissioned as a Special Local Peace Officer (SLPO), pursuant to KRS 61.360. As a SLPO, the holder of this card is deemed to be a peace officer within the meaning of KRS 527.020 and may exercise the limited powers of a peace officer granted by KRS 61.360"; and

2. The other side containing a full-faced photograph of the officer with his or her:

- a. Name;
- b. Identification or notation that the officer has been commissioned a "Special Local Peace Officer";
- c. Property owner employing the officer;
- d. Badge number, if any; and
- e. Signature of the officer's property owner

~~upon the applicant's appointment. The identification card shall be billfold size (approximately two and one-fourth (2 1/4) inches by three and one-half (3 1/2) inches) and shall include:~~

- ~~(a) A reduced copy of the officer's commission certificate (reduced by photographing or other method) on one side of the card;~~
- ~~(b) A full-faced photograph of the officer on the other side of the card; and~~
- ~~(c) The name, date of birth, Social Security number, and signature of the officer.~~

(6) The property owner shall be responsible for obtaining and destroying the identification card from any officer **whose employment is** terminated ~~and remitting the same to the SLPO program administrator for destruction.~~

(7) If the bond required by KRS 61.360 is cancelled or revoked, the property owner shall notify the cabinet of this fact and the reason for cancellation or revocation. ~~[This notice shall be sent in writing to the cabinet within five (5) days of cancellation or revocation. This notification provision shall be retroactive in application and shall be applicable to SLPOs who have already been commissioned.]~~

Section 7.[6.] Violations. A property owner utilizing SLPO's shall be subject to inspection and investigation by the cabinet for possible violations. Violations may result in prosecution and recommendation to the secretary that the commission affected ~~directly or indirectly~~ be revoked.

Section 8.[7.] Revocation or Suspension of SLPO Commissions. (1) If it is determined by the program administrator that KRS 61.360(1) of the SLPO Act applies to any active SLPO commissioned officer, the program administrator shall notify the secretary who shall revoke or suspend the commission of any special local peace officer, after an administrative hearing conducted in accordance with KRS Chapter 13B, if he determines:

- (a) That the commission-holder does not meet, or no longer meets the requirements and conditions for the commission;
- (b) That the commission-holder has knowingly falsified an application or portion thereof, or has knowingly made any false or misleading statement of a material fact to the cabinet; or
- (c) That the commission-holder has violated any of the Kentucky Revised Statutes or administrative regulations cited in Section 2(7)(a) of this administrative regulation, or order of the secretary.

(2) Upon revocation or suspension the SLPO program administrator shall notify the property owner involved to return the commission of the SLPO officer involved to the SLPO program administrator for the cabinet. The property owner responsible for the SLPO officer shall forward a letter to the SLPO officer involved stating that his commission has been revoked or suspended and that he shall immediately return the SLPO identification card to the property owner ~~who shall forward the card to the SLPO program administrator.~~

(3) The secretary may temporarily suspend the commission of an SLPO prior to holding a hearing pursuant to KRS Chapter 13B if he believes that the safety of the public requires that [such an] action. If [in the event that] a commission is temporarily suspended prior to holding a hearing pursuant to KRS Chapter 13B, the secre-

tary shall hold a KRS Chapter 13B hearing not later than thirty (30) days from the date of the temporary suspension unless the SLPO requests an extension for a time certain. If the SLPO requests an extension for a time certain, then the commission shall remain suspended until the conclusion of the hearing.

(4) The program administrator shall notify the county clerk in the officer's county of jurisdiction if a SLPO officer's commission has been surrendered, suspended, or revoked.

Section 9.[8.] Procedures for Investigating Complaints or Unusual Incidents Involving SLPO Officers.

(1) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner whose private property is being protected by the SLPO officer involved. The property owner shall be responsible for notification to the cabinet of all incidents involving their SLPO personnel as indicated in Section 6[5] of this administrative regulation.

(2) The cabinet program administrator or other assigned officers may investigate any complaints or unusual incidents involving a SLPO officer if there is reason to believe the provisions of KRS 61.360 or other applicable laws have been violated and an investigation is necessary.

(3) Any investigation conducted by the cabinet shall become part of the official record of the SLPO officer involved.

Section 10.[9.] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "SLPO Application Candidate Information Form (SLPO-1)", July 1, 2010 ~~[August 14, 2008] [edition];~~
- (b) "Special Local Peace Officer Recommendation of Background Investigator Form (SLPO-2)", May 8, 2008 ~~[edition];~~
- (c) "Letter of Intent Form (SLPO-3)", July 28, 2008 ~~[edition];~~
- (d) "Authority to Release Information Form (SLPO-4)", July 28, 2008 ~~[edition]; [and]~~
- (e) "SLPO Acknowledgment Notice Form (SLPO-5)", April 29, 2009 ~~[July 28, 2008] [edition];~~
- (f) "County Clerk Oath" Form (SLPO-6), July 1, 2010 ~~[edition]; and~~
- (g) "SLPO Renewal Application Form (SLPO-7)" July 1, 2010 ~~[edition].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

J. MICHAEL BROWN, Secretary
APPROVED BY AGENCY: July 15, 2010
FILED WITH LRC: July 15, 2010 at 11 a.m.
CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475, phone (859) 622-3073, fax (859) 622-5027.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
Forensic Laboratory
(As Amended at ARRS, September 14, 2010)**

502 KAR 32:010. Centralized database for DNA identification records.

RELATES TO: KRS 17.169, 17.170, 17.175, 10 U.S.C. 1565, 42 U.S.C. 14131, 42 U.S.C. 14132

STATUTORY AUTHORITY: KRS 15A.160, 17.170(5), 17.175
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the secretary to promulgate administrative regulations and direct proceedings and actions for the administration of **all laws [allows]** and functions which are vested in the cabinet, except laws and functions vested in the Department for Public Advocacy. KRS 17.170(5) authorizes the Justice and Public Safety cabinet to promulgate administrative regulations concerning the sampling and packaging of DNA. KRS 17.175(6) requires the cabinet to promulgate administrative regulations necessary to carry out the provi-

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sions of the DNA database identification system, including procedures for collection of DNA samples from designated persons for inclusion in the database, and procedures concerning database system usage and integrity. This administrative regulation establishes collection procedures for DNA samples for inclusion in the DNA database, quality assurance and testing proficiency standards for DNA samples included in the DNA database, and procedures governing DNA database system usage, security, and integrity.

Section 1. Definitions. (1) "Authorized personnel" is defined by KRS 17.169(2).

(2) "Biological sample" means any part of the human body from which a person's DNA profile may be extracted such as blood, hair, saliva, tissue, or bone.

(3) "Blood sample" means blood drawn from a person by means of hypodermic needle extraction or by a finger prick lancet for purposes of obtaining a DNA profile.

~~(4)~~ "DJJ" means the Department of Juvenile Justice.

(5) "DNA" means deoxyribonucleic acid.

(6) "DNA database" means the database that is part of the federal Combined DNA Index System maintained by the Kentucky State Police under agreement with the Federal Bureau of Investigation and contains the DNA profiles for qualifying offenders, crime scene specimens, unidentified human remains, missing persons, and close relatives of missing persons as authorized by KRS 17.175.

(7) "DNA Database Supervisor" means a person designated as the point of contact with the Federal Bureau of Investigation to insure the proper operation and security of the database.

~~(8)~~ "DNA profile" is defined by KRS 17.169(1).

~~(9)~~ "DNA sample" is defined by KRS 17.169(1) ~~[means a biological sample collected for DNA identification purposes].~~

~~(9)~~ "DOC" means the Department of Corrections.

~~(10)~~ "Evidentiary item" means any physical evidence recovered from a crime scene that may contain biological material from which a DNA profile may be extracted.

~~(11)~~ "KSP" means the Kentucky State Police.

~~(12)~~ "KSP Central Lab" means the Kentucky State Police Central Forensic Laboratory.

~~(13)~~ "Offender DNA collection kit" means a package of materials obtained from the KSP Central Lab for the purpose of collecting a DNA sample from a qualifying offender by finger prick lancet or other biological sample for the purpose of obtaining a DNA profile.

~~(14)~~ "Qualifying offender" means a person who has committed one (1) or more of the criminal or public offenses enumerated in KRS 17.170~~–17.174~~.

Section 2. Collection of DNA Samples From Qualifying Offenders For Inclusion In DNA Database. (1) In accordance with KRS 17.170(2), DNA samples shall be collected by authorized personnel ~~[DOC and DJJ]~~.

(2) In accordance with KRS 17.170(5), KSP Central Lab shall provide offender DNA collection kits to DOC and DJJ for the collection of DNA samples. Each offender DNA collection kit shall contain the collection materials necessary to obtain either a blood sample by a finger stick lancet procedure or other biological sample. Each offender DNA collection kit shall be secured in protective wrapping materials in a preaddressed, sealable mailing container.

(3) Each offender DNA collection kit for the collection of a finger prick lancet blood sample shall contain an "Offender DNA Collection Kit Information Sheet (finger prick lancet method)", KSP Form No. 47-A and for the "Offender DNA Collection Kit Information Sheet (buccal swab method)", KSP Form No. 47-B~~].~~ The Offender DNA Collection Kit Information Sheet shall contain step-by-step instructions for the collection of the blood sample or other biological samples on one (1) side of the form. The other side of the Offender DNA Collection Kit Information Sheet shall be completed accurately with as much biographical and offense-related information available concerning the qualifying offender. The qualifying offender's left and right thumbprints shall be taken when the sample is collected, except in the instance of amputation or injury to the qualifying offender's thumbs, in which case another digit shall be printed per the instructions on the Offender DNA Collec-

tion Kit Information Sheet. The Offender DNA Collection Kit Information Sheet shall be completed by the person collecting the DNA sample from the qualifying offender when the sample is collected and in the presence of the qualifying offender. The DNA sample shall be taken by DOC or DJJ authorized personnel and shall not be self-collected by the qualifying offender.

(4) Following collection of a blood or other biological sample from a qualifying offender, the offender DNA collection kit shall be sealed. As soon as practical following collection, the offender DNA collection kit shall be forwarded to the KSP Central Lab either by personal courier, private courier, registered mail, certified mail, or first class mail.

Section 3. Collection of Missing Person DNA Samples for Inclusion in DNA Database. (1) Any available biological material from the missing person from which a DNA sample can be extracted which is submitted by a law enforcement agency to the KSP Central Lab shall be accompanied by a completed KSP "Request For Examination," KSP Form No. 26.

(2) If practical, DNA samples shall be submitted to the KSP Central Lab from the biological parents and siblings of the missing person. If practical, a DNA sample from children of the missing person and the children's other parent may also be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 4. Collection of DNA Samples from Unidentified Bodies for Inclusion In DNA Database. (1) A biological sample from the unidentified body, submitted by a law enforcement agency to the laboratory, shall be accompanied by a completed KSP Form No. 26.

(2) If practical, the biological sample shall be a blood sample, a deep muscle tissue sample, or a long bone. The requesting officer shall contact the KSP Central Lab to determine if a different type of biological sample from the unidentified body is acceptable if one (1) of the above-enumerated samples cannot be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 5. Collection of DNA Samples from Crime Scenes for Inclusion in DNA Database. (1) Any evidentiary item recovered from a crime scene from which a DNA sample can be extracted may be submitted by a law enforcement agency to KSP Central Lab for analysis. All evidentiary items so submitted shall be accompanied by a completed KSP Form No. 26.

(2) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 6. Quality Assurance Standards for DNA Database. (1) The proficiency of examiners conducting DNA analysis for the database shall be tested twice a year in accordance with 42 U.S.C. 14132(b)(2).

(2) Only DNA profiles obtained as a result of DNA analysis shall be entered in the DNA database.

Section 7. DNA Database Usage, Access and Security. (1) Information contained in the DNA database shall be used for law enforcement and statistical purposes only in accordance with KRS 17.175.

(2) DNA database shall only be accessed as approved by the DNA Database Supervisor by Kentucky State Police employees who show proficiency in DNA testing and the DNA database, and maintain continuing education hours pursuant to KSP forensic lab policy and federal requirements in accordance with 42 U.S.C. 14131. The DNA Database Supervisor may provide KSP interns

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with limited access to the DNA database pursuant to KSP forensic lab policy.

(3) All data and information generated by the DNA Database are confidential.

(4) Searches shall be conducted for law enforcement, criminal justice agencies, or governmental forensic science laboratories approved by the DNA Database Supervisor pursuant to 42 U.S.C. 14132 [federal guidelines].

(5) Access to the DNA Database shall be through computers that are utilized solely for accessing the DNA Database by authorized users and are located in areas secured by the Kentucky State Police.

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

(a) "Offender DNA Collection Kit Information Sheet (finger prick lancet method)," KSP Form No. 47-A, January 2006;

(b) "KSP Request For Evidence Examination," KSP Form No. 26, March 2001;

(c) "Offender DNA Collection Training Program for Trainers", KSP Form No. 139, June 2008;

(d) "Offender DNA Collection Training Program for Collectors", KSP Form No. 140, June 2008;

(e) "Offender DNA Collection Training Program", KSP Form No. 141, June 2008; and

(f) "Offender DNA Collection Kit", KSP Form No. 47-B, August 2009[May 2008].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the KSP Central Forensic Laboratory, 100 Sower Boulevard, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: July 12, 2010

FILED WITH LRC: July 14, 2010 at 1 p.m.

CONTACT PERSON: Emily Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 695-6300, fax (502) 573-1636.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Licensing
(As Amended at ARRS, September 14, 2010)**

601 KAR 9:015. Registration of motor vehicle dealers and manufacturers.

RELATES TO: KRS 186.070, 190.010, 190.040

STATUTORY AUTHORITY: KRS 174.080, 186.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.070 requires the Transportation Cabinet to promulgate an administrative regulation establishing the license revocation procedures for motor vehicle manufacturers and motor vehicle dealers. This administrative regulation establishes the license revocation procedures and establishes procedures for a county clerk to insure that a motor vehicle dealer or motor vehicle manufacturer is qualified and licensed as required in KRS 186.070[This administrative regulation requires the county clerk to place the dealer's license number on the face of the dealer registration certificate. This provides a method of checking to whom dealer's plates have been issued and to assure that the dealer is properly licensed].

Section 1. County Clerk Procedures. (1) The county clerk, before issuing a motor vehicle dealer or motor vehicle manufacturer a certificate of registration and a license plate pursuant to[as provided by] KRS 186.070, shall require each applicant to present a license issued by the Motor Vehicle Commission showing that he or she has qualified as a motor vehicle dealer or motor vehicle manufacturer as provided by KRS 190.010[Chapter 190].

(2) The clerk shall insert on the face of the dealer registration certificate the license number issued by the Motor Vehicle Commission.

Section 2. Licensing. (1) A motor vehicle[Each] manufacturer or motor vehicle[and] dealer shall file Motor Vehicle Dealer or Manufacturer's Dealer Plate Usage Authorization Register, TC Form 96-10B with the county clerk to obtain a manufacturer's or dealer's license plate[the verified statement required by KRS 186.070](2)(a) on forms TC 96-10 as revised October, 1989, Kentucky Motor Vehicle Dealer/Manufacturer Dealer Plate Usage Authorization Register and TC 96-153 as revised May, 1994, Affidavit Supporting Application for License Plates for Manufacturers and Dealers. These forms are incorporated by reference as a part of this administrative regulation].

(2)(a) A motor vehicle manufacturer or motor vehicle dealership shall authorize an employee to drive a motor vehicle by signing a Kentucky Motor Vehicle Dealer or Manufacturer Temporary Employee Transportation Permit For Dealer Usage, TC Form 96-10A.

(b) A completed and original Kentucky Motor Vehicle Dealer or Manufacturer Temporary Employee Transportation Permit For Dealer Usage, TC Form 96-10A, signed by the designated representative of a motor vehicle dealership or motor vehicle manufacturer shall be placed in a motor vehicle being transported and shall be valid for five (5) days.

Section 3. Revocation Procedures. A motor vehicle dealer or motor vehicle manufacturer whose license has been revoked pursuant to KRS 186.070 shall follow the license revocation procedures established in KRS 190.040.

Section 4. (1) Incorporation by Reference. The following material is incorporated by reference:

(a) "Kentucky Motor Vehicle Dealer or Manufacturer Temporary Employee Transportation Permit For Dealer Plate Usage", TC Form 96-10A, July[June], 2010;

(b) "Kentucky[Motor Vehicle Dealer or Manufacturer's]Manufacturer] Dealer Plate Usage Authorization Register", TC Form 96-10B, July[June], 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building[The forms incorporated by reference in this section may be viewed, copied or obtained at the Transportation Cabinet, Department of Vehicle Regulation,] Division of Motor Vehicle Licensing, 200 Mero Street[501 High Street, 2nd Floor, State Office Building,] Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.[The division's telephone number is (502) 564-5301. Its business hours are 8 a.m. to 4:30 p.m. eastern time, weekdays.]

T.O. ZAWACKI, Commissioner

MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: July 11, 2010

FILED WITH LRC: July 15, 2010 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.

**TRANSPORTATION CABINET
Kentucky Bicycle and Bikeway Commission
Office of the Secretary
(As Amended at ARRS, September 14, 2010)**

601 KAR 14:030. Bicycle and bikeway program.

RELATES TO: KRS 61.820, 61.826, 174.120; 174.125

STATUTORY AUTHORITY: KRS 174.120, 174.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.120 requires the Transportation Cabinet to develop and coordinate a bikeway program in assistance and cooperation with local governments and other agencies. KRS 174.125 establishes the Kentucky Bicycle and Bikeway Commission (KBBC) within the Transportation Cabinet to serve as an advisor to the secretary in matters related to the interests of the bikeway program and the bicycling public. This administrative regulation implements the procedures

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related to KRS 174.120 and 174.125.

Section 1. Quarterly Meetings. (1)(a) KBBC shall conduct at least four (4) quarterly meetings each year at a time and place agreed upon by the chairman and the commission members. Meetings shall be conducted as established in KRS 61.820 and 61.826.

(2)(b) The secretary shall call at least one (1) yearly meeting with KBBC in order to review issues related to the bikeway program.

(3)(c) A schedule of the quarterly meetings including the time and place of meetings for the coming year shall be set by the commission pursuant to paragraph (a) of this subsection at its last meeting of the calendar year and forwarded to the secretary of the Transportation Cabinet.

(4)(a)(e) The schedule for meetings shall may be altered upon motion approval by a quorum of the commission.

(b) The altered meeting schedule shall be forwarded to the secretary.

(5)(a)(e) Notice of regular quarterly meetings of the commission shall be given to each member of the commission and the secretary of the Transportation Cabinet in writing by either regular or electronic mail not less than seven (7) days prior to the meeting.

(b) The notice shall contain a date, time, place, and agenda for the meeting.

(6)(f) Minutes of all meetings shall be kept by the commission, and a copy of the minutes shall be forwarded to the secretary within ten (10) days of the meeting.

Section 2. Special Meetings. (4) A special meeting may be called as designated by the commission or the secretary and shall require three (3) days notice to all parties.

Section 3. Grant Applications. (1) A completed grant application (a) Completed grant applications for the Paula Nye Memorial Educational Grant for funds received from sales of the "Share the Road" license plate shall be reviewed by the commission.

(2)(b) A copy of the selected grant applications and a memorandum supporting the commission's decision in selecting the applications shall be sent to the secretary within thirty (30) days of the closing date of receipt for all applications.

(3)(e) The secretary shall approve or deny the commission's decision within thirty (30) days of his or her receipt of the applications and the memorandum.

(4)(e) The secretary's failure to approve or deny the commission's decision within thirty (30) days of receipt of the applications and memorandum shall be deemed the same as approval.

Section 4. Audit of Funds. (1) Funds obtained by the commission through monetary donations for purchase of the "Share the Road" license plate shall be subject to an audit as established in KRS 186.164 and 601 KAR 9:130.

(2) A copy of the findings of the audit shall be forwarded to the Secretary of Transportation.

(3) The audit shall be reviewed and approved or denied by the Office of Audits within the Transportation Cabinet.

MIKE HANCOCK, Acting Secretary
REBECCA GOODMAN, Executive Director
APPROVED BY AGENCY: July 14, 2010
FILED WITH LRC: July 15, 2010 at 10 a.m.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, September 14, 2010)

702 KAR 7:130. Approval of innovative alternative school calendars.

RELATES TO: KRS 157.320, 157.350, 158.060, 158.070, 2010 Extra. Sess. Ky. Acts ch. 1, Part I.C.3(17) [HB 1, part I, C, 3(17)] [2008 Ky Acts ch. 127, Part I, D, 4, (14)]
STATUTORY AUTHORITY: 2010 Extra. Sess. Ky. Acts ch. 1,

Part I.C.3(17) [HB 1, part I, C, 3(17)] [2008 Ky Acts ch. 127, Part I, D, 4, (14)]

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Extra. Sess. Ky. Acts ch. 1, Part I.C.3(17) [HB 1, part I, C, 3(17)] [2008 Ky Acts ch. 127, Part I, D, 4, (14)] (e) requires the Kentucky Board of Education to establish by administrative regulation procedures by which the Commissioner of Education may approve innovative alternative school calendars, prior to the approval of school calendars for fiscal year 2010-2011. This administrative regulation establishes uniform procedures for approval of innovative alternative calendars.

Section 1. (1)(a) A local board of education may request approval of an innovative alternative school calendar for the 2010-2011 [2008-2009] school year or the 2011-2012 [2009-2010] school year by submitting a written request to the Commissioner of Education.

(b) All calendars that contain less than 170 six (6) hour instructional days shall be considered innovative alternate calendars and shall be submitted to the Commissioner of Education for approval.

(2) The request shall:

(a) Be signed by the superintendent and board of education chairperson;

(b) Contain a specific explanation of the reason for the request; and

(c) Include the following information:

1. How the alternative calendar will improve teaching and learning in the district;

2. How 1,062 hours of instruction will be included in the calendar;

3. The structure of any instructional days that are less than six-hours in length; and

4. A description of how the alternative calendar will provide for professional learning situations designed to improve instructional practices that will enhance student learning.

Section 2. (1) A request for approval of an innovative alternative school calendar shall be submitted to the Commissioner of Education no later than June 30 preceding the school year for which the request is submitted.

(2) The commissioner shall approve the request upon a determination that:

(a) The requirements established in Section 1(2) of this administrative regulation have been met; and

(b) The alternative calendar is designed to improve teaching and learning in the district.

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

TERRY HOLLIDAY, Ph.D., Commissioner
JOE BROTHERS, Chairperson
APPROVED BY AGENCY: June 15, 2010
FILED WITH LRC: June 23, 2010 at 11 a.m.
CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, phone 502 564-4474.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Libraries and Archives
Public Records Division
(As Amended at ARRS, September 14, 2010)

725 KAR 1:061. Records retention schedules; authorized schedules.

RELATES TO: KRS 171.420(3), 171.450
STATUTORY AUTHORITY: KRS 171.450
NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.420(3) provides that the State Archives and Records Commis-

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sion shall be the final authority for the disposition of all public records in Kentucky. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to promulgate administrative regulations to enforce the provision of KRS 171.410 to 171.740[by promulgating administrative regulations]. This administrative regulation identifies records retention and disposition schedules approved by the commission that[of public records approved and authorized for use by] state and local agencies shall follow for retention and disposition of public records.

Section 1. Schedules. (1) A Kentucky state government agency shall comply with:

(a) Records Retention Schedule, [The] General Schedule for State Agencies;

(b) Records Retention Schedule, [The] General Schedule for Electronic and Related Records; and

(c) The applicable schedule for the specific agency from among the following:

1. Records Retention Schedule, Department of Agriculture;
2. Records Retention Schedule, Auditor of Public Accounts;
3. Records Retention Schedule, Economic Development Cabinet;

4. Records Retention Schedule, Education and Workforce Development Cabinet;

5. Records Retention Schedule, Energy and the Environment Cabinet;

6. Records Retention Schedule, Finance and Administration Cabinet;

7. Records Retention Schedule, General Government;

8. Records Retention Schedule, Office of the Governor;

9. Records Retention Schedule, Cabinet for Health and Family Services;

10. Records Retention Schedule, Justice and Public Safety Cabinet;

11. Records Retention Schedule, Department of Law;

12. Records Retention Schedule, Labor Cabinet;

13. Records Retention Schedule, Legislative Branch;

14. Records Retention Schedule, Office of the Lieutenant Governor;

15. Records Retention Schedule, Personnel Cabinet;

16. Records Retention Schedule, Public Protection Cabinet;

17. Records Retention Schedule, Office of the Secretary of State;

18. Records Retention Schedule, Tourism, Arts and Heritage Cabinet;

19. Records Retention Schedule, Transportation Cabinet; or

20. Records Retention Schedule, Department of the Treasury [Department of Agriculture Schedule;

2. Auditor of Public Accounts Schedule;

3. Commerce Cabinet Schedule;

4. Economic Development Schedule;

5. Education Cabinet Schedule;

6. Environmental and Public Protection Cabinet Schedule;

7. Finance and Administration Cabinet Schedule;

8. General Government Schedule;

9. Office of the Governor Schedule;

10. Cabinet for Health and Family Services Schedule;

11. Justice and Public Safety Cabinet Schedule;

12. Department of Law Schedule;

13. Legislative Branch Schedule;

14. Office of the Lieutenant Governor Schedule;

15. Personnel Cabinet Schedule;

16. Office of the Secretary of State Schedule;

17. Transportation Cabinet Schedule; or

18. Department of the Treasury Schedule.]

(2) State universities and the Kentucky Community and Technical College System shall comply with the Records Retention Schedule, State University Model [Schedule].

(3) Kentucky local government agencies shall comply with:

(a) Records Retention Schedule, [The] Local Government General Records Schedule;

(b) Records Retention Schedule, [The] General Schedule for

Electronic and Related Records; and

(c) The applicable schedule for the specific agency from among the following:

1. Records Retention Schedule, Area Development District [Schedule];

2. Records Retention Schedule, County Attorney [Schedule];

3. Records Retention Schedule, County Clerk [Schedule];

4. Records Retention Schedule, County Coroner [Schedule];

5. Records Retention Schedule, County Judge Executive [Schedule];

6. Records Retention Schedule, County Sheriff [Schedule];

7. Records Retention Schedule, County Treasurer [Schedule];

8. Records Retention Schedule, Jailer [Schedule];

9. Records Retention Schedule, Lexington Fayette Urban County Government [Schedule];

10. Records Retention Schedule, Public Library and Library Board [Library District Schedule];

11. Records Retention Schedule, Local Health Department [Schedule];

12. Records Retention Schedule, Louisville Metro Government;

13. Records Retention Schedule, Municipal Government [Schedule]; or

14. Records Retention Schedule, [1-3] Public School District (K-12/Central Office) [Schedule].

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

(a) "Records Retention Schedule, General Schedule for State Agencies", 2010;

(b) "Records Retention Schedule, General Schedule for Electronic and Related Records", 2010;

(c) "Records Retention Schedule, Department of Agriculture", 2010;

(d) "Records Retention Schedule, Auditor of Public Accounts", 2010;

(e) ["Records Retention Schedule, Commerce Cabinet", 2010;

(f)] "Records Retention Schedule, Economic Development Cabinet", 2010;

(g)] "Records Retention Schedule, Education and Workforce Development Cabinet", 2010;

(h)] "Records Retention Schedule, Energy and Environment Cabinet", September 2010;

(i)] "Records Retention Schedule, Finance and Administration Cabinet", 2010;

(j)] "Records Retention Schedule, General Government", September 2010;

(k)] "Records Retention Schedule, Office of the Governor", 2010;

(l)] "Records Retention Schedule, Cabinet for Health and Family Services", September 2010;

(m)] "Records Retention Schedule, Justice and Public Safety Cabinet", 2010;

(n)] "Records Retention Schedule, Labor Cabinet", 2010;

(o)] "Records Retention Schedule, Department of Law", 2010;

(p)] "Records Retention Schedule, Legislative Branch", 2010;

(q)] "Records Retention Schedule, Office of the Lieutenant Governor", 2010;

(r)] "Records Retention Schedule, Personnel Cabinet", 2010;

(s)] "Records Retention Schedule, Public Protection Cabinet", 2010;

(t)] "Records Retention Schedule, Tourism, Arts and Heritage Cabinet", 2010;

(u)] "Records Retention Schedule, Department of the Treasury", 2010;

(v)] "Records Retention Schedule, State University Model", September 2010;

(w)] "Records Retention Schedule, Local Government Gen-

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eral Records", 2010;

~~(y)(z)~~ "Records Retention Schedule, Area Development District", 2010;

~~(z)(aa)~~ "Records Retention Schedule, County Attorney", 2010;

~~(aa)(bb)~~ "Records Retention Schedule, County Clerk", 2010;

~~(bb)(cc)~~ "Records Retention Schedule, County Coroner", 2010;

~~(cc)(dd)~~ "Records Retention Schedule, County Jailer", 2010;

~~(dd)(ee)~~ "Records Retention Schedule, County Judge Executive", 2010;

~~(ee)(ff)~~ "Records Retention Schedule, County Sheriff", 2010;

~~(ff)(gg)~~ "Records Retention Schedule, County Treasurer", 2010;

~~(gg)(hh)~~ "Records Retention Schedule, Lexington Fayette Urban County Government", 2010;

~~(hh)(ii)~~ "Records Retention Schedule, Public Library and Library Board", 2010;

~~(ii)(kk)~~ "Records Retention Schedule, Local Health Department", 2010;

~~(jj)(kk)~~ "Records Retention Schedule, Louisville Metro Government", 2010;

~~(kk)(ll)~~ "Records Retention Schedule, Municipal Government", 2010; and

~~(ll)(mm)~~ "Records Retention Schedule, Public School District (K-12/Central Office)", 2010. [~~General Schedule for State Agencies", September 2007;~~

~~(b) "General Schedule for Electronic and Related Records Schedule", 2007;~~

~~(c) "Department of Agriculture Schedule", 2007;~~

~~(d) "Auditor of Public Accounts Schedule", 2007;~~

~~(e) "Commerce Cabinet Schedule", 2007;~~

~~(f) "Economic Development Cabinet Schedule", 2007;~~

~~(g) "Education Cabinet Schedule", 2007;~~

~~(h) "Environmental and Public Protection Cabinet Schedule", September 2007;~~

~~(i) "Finance and Administration Cabinet Schedule", 2007;~~

~~(j) "General Government Schedule", September 2007;~~

~~(k) "Office of the Governor Schedule", 2007;~~

~~(l) "Cabinet for Health and Family Services Schedule", September 2007;~~

~~(m) "Justice and Public Safety Cabinet Schedule", 2007;~~

~~(n) "Department of Law Schedule", 2007;~~

~~(o) "Legislative Branch Schedule", 2007;~~

~~(p) "Office of the Lieutenant Governor Schedule", 2007;~~

~~(q) "Personnel Cabinet Schedule", 2007;~~

~~(r) "Office of the Secretary of State Schedule", 2007;~~

~~(s) "Transportation Cabinet Schedule", 2007;~~

~~(t) "Department of the Treasury Schedule", 2007;~~

~~(u) "State University Model Schedule", September 2007;~~

~~(v) "Local Government General Records", 2007;~~

~~(w) "Area Development District Schedule", 2007;~~

~~(x) "County Attorney Schedule", 2007;~~

~~(y) "County Clerk Schedule", 2007;~~

~~(z) "County Coroner Schedule", 2007;~~

~~(aa) "County Judge Executive Schedule", 2007;~~

~~(bb) "County Sheriff Schedule", 2007;~~

~~(cc) "County Treasurer Schedule", 2007;~~

~~(dd) "Jailer Schedule", 2007;~~

~~(ee) "Lexington Fayette Urban County Government Schedule", 2007;~~

~~(ff) "Library District Schedule", 2007;~~

~~(gg) "Local Health Department Schedule", 2007;~~

~~(hh) "Municipal Government Schedule", 2007; and~~

~~(ii) "Public School District (K-12/Central Office) Schedule", 2007.]~~

(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 ONSKT, Commissioner

APPROVED BY AGENCY: July 14, 2010

FILED WITH LRC: July 15, 2010 at 9 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.

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(As Amended at ARRS, September 14, 2010)

806 KAR 9:001. Prelicensing courses of study; instructors.

RELATES TO: KRS 304.4-010, 304.9-105, 304.9-230
STATUTORY AUTHORITY: KRS 304.2-110, 304.9-105, 304.9-230[, 304.9-513]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the ~~Commissioner~~[~~Executive Director~~] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-105 requires the ~~commissioner~~[~~executive director~~] to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the ~~commissioner~~[~~executive director~~] to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. [KRS 304.9-513 authorizes the executive director to promulgate administrative regulations relating to prelicensing courses for rental vehicle managing employees.] This administrative regulation establishes the guidelines for instructors and for courses of instruction to be completed by each individual applying for an agent[, specialty credit insurance managing employee, or rental vehicle managing employee] license in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "~~Commissioner~~" is defined by KRS 304.1-050(1) "~~Executive director~~" means the ~~Executive Director~~ of the ~~Office of Insurance~~.

(2) "~~Department~~" is defined by KRS 304.1-050(2) "~~Office~~" means the ~~Office of Insurance~~.

Section 2. (1) Except for individuals applying for a limited line of authority as identified in KRS 304.9-230, [~~a specialty credit insurance managing employee license,~~] or a rental vehicle managing employee license, all agent applicants shall complete a course of classroom or self-instruction study, approved in accordance with subsection (3) of this section, which shall include a minimum of forty (40) hours for life and health insurance, forty (40) hours for property and casualty insurance, or twenty (20) hours for each line of authority, as applicable, for which the agent is applying.

(2) [~~Agent applicants for a rental vehicle managing employee license shall complete a prior approved course of classroom or self study instruction, approved in accordance with subsection (3) of this section, for this license.~~

(3)(a) A prelicensing course of study shall be approved by the ~~commissioner or the commissioner's [his or her]~~[~~executive director or its~~] designee, in accordance with paragraph (c) of this subsection, prior to authorized use and shall be renewed biennially.

(b) An outline of the content of each prelicensing course of study, together with the name and qualifications of the instructors, shall be submitted in writing to the ~~department~~[~~office~~]. Submission of the prelicensing course of study shall be made on Form CE/PL-100, incorporated by reference in 806 KAR 9:340, or electronically through the ~~department's~~ [~~office's~~] Web site, <http://insurance.ky.gov> [<http://doi.ppr.ky.gov>]. Submission of the qualifications of the instructors shall be made on Form CE/PL-200, incorporated by reference in 806 KAR 9:340, or electronically through the ~~department's~~[~~office's~~] Web site, <http://insurance.ky.gov> [<http://doi.ppr.ky.gov>].

(c) In approving a prelicensing course of study, the ~~commissioner~~[~~executive director~~] or ~~the commissioner's [his or her]~~ [~~designee~~[~~its designees~~]] shall consider whether the course of study covers the subject matter included in the ~~department's~~[~~office's~~] current study outlines or their equivalent.

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~~(3)(4)~~ An applicant for a limited line of authority as identified in KRS 304.9-230 shall not be required to complete any prelicensing course of study for this line of authority. ~~(5) An applicant for a specialty credit insurance managing employee license shall not be required to complete a prelicensing course of study for this license.~~

Section 3. Prelicensing courses of study and instructors filed with the ~~commissioner~~~~[executive director]~~ shall be accompanied by the fees as set forth in 806 KAR 4:010~~[KRS 304.4-040]~~.

Section 4. A prelicensing course of study is valid for one (1) year from the date of completion.

Section 5. The prelicensing provider shall submit proof of completion of a course of study on Form CPL-01, as prescribed in 806 KAR 9:340, or electronically through the ~~department's~~~~[office's]~~ Web site, <http://insurance.ky.gov>~~[http://doi.ppr.ky.gov/kentucky]~~, for each applicant.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 14, 2010 at 3 p.m.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

PUBLIC PROTECTION CABINET Department of Insurance Agent Licensing Division (As Amended at ARRS, September 14, 2010)

806 KAR 9:060. Identification cards.

RELATES TO: KRS 304.9-105, 304.9-390, 304.9-430, 304.9-432

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes ~~[provides that]~~ the ~~Commissioner~~~~[Executive Director]~~ of the ~~Department~~~~[Office]~~ of Insurance to ~~[may]~~ promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation permits an agent and independent, staff, public, or apprentice adjuster to have an identification card for use when the adjuster ~~[he or she]~~ is outside of his or her principal place of business.

Section 1. (1) An agent licensed pursuant to KRS Chapter 304.9-105, independent, staff, or public adjuster licensed pursuant to KRS 304.9-430, or an appropriate adjuster licensed pursuant to KRS 304.9-432~~[304.9]~~ may obtain from the ~~commissioner~~~~[executive director]~~ an identification card issued by the ~~Department~~~~[Office]~~ of Insurance indicating that the agent, independent adjuster, staff adjuster, public adjuster, or apprentice adjuster is a qualified insurance representative in Kentucky.

~~(2) [An insurance agent who obtains an identification card pursuant to this administrative regulation shall pay to the executive director in advance a fee of five (5) dollars per application for each card.]~~

~~(3)~~ The purpose of an identity card obtained pursuant to this administrative regulation shall be ~~[is]~~ to identify an independent, staff, public, or apprentice adjuster as an individual authorized to investigate, negotiate, or settle insurance claims, or an insurance agent as a qualified insurance representative while selling, soliciting, or negotiating insurance or annuity contracts outside of the agent's ~~[his or her]~~ principal place of business.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 14, 2010 at 3 p.m.

CONTACT PERSON: DJ Wasson, Kentucky Department of

Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

PUBLIC PROTECTION CABINET Department of Insurance Agent Licensing Division (As Amended at ARRS, September 14, 2010)

806 KAR 9:070. Examinations.

RELATES TO: KRS 304.1-050, 304.1-110(2), 304.4-010, 304.9-030(2), 304.9-105, 304.9-160, 304.9-190, 304.9-230, 304.9-320, 304.9-430, 304.9-505(5)(e), 304.15-700

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-160(1), 304.9-230(2), 304.15-700(2)(a), 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance.]~~ KRS 304.2-110(1) authorizes the ~~Commissioner~~~~[Executive Director]~~ of Insurance to promulgate administrative regulations necessary for, or as an aid to the effectuation of, any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.9-160(1) requires the ~~commissioner~~~~[executive director]~~ to promulgate administrative regulations developing and conducting examinations required by Subtitle 9 of the Kentucky Insurance Code. KRS 304.9-230(2) requires the ~~commissioner~~~~[executive director]~~ to promulgate administrative regulations regarding examinations for limited lines of authority. KRS 304.15-700(2)(a) requires the ~~commissioner~~~~[executive director]~~ to promulgate administrative regulations regarding the required training and examination for life settlement brokers, and KRS 304.15-720~~[304.15-270]~~ authorizes the ~~commissioner~~~~[executive director]~~ to promulgate regulations to implement KRS 304.15-700 through 304.15-720. This administrative regulation restricts the number of times an applicant for an agent's, life settlement broker's, consultant's, independent adjuster's, staff adjuster's, or public~~[or]~~ adjuster's license may take the appropriate examination required by the Kentucky Insurance Code, as defined in KRS 304.1-010, ~~[or administrative regulations promulgated there under.]~~ establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1)~~[means the Commissioner of the Department of Insurance].~~

(2) "Department" is defined by KRS 304.1-050(1)~~[means the Department of Insurance].~~

(3) "Examination" means a written examination required to license an applicant in accordance with KRS Chapter 304 for an independent adjuster, staff adjuster, public adjuster, agent, consultant, or life settlement broker license.

(4) "License" is defined by KRS 304.1-110(2).

Section 2. A completed "NAIC ~~[Uniform]~~ Individual Insurance Producer License~~[Licensing]~~ Application", incorporated by reference in 806 KAR 9:340, for the examination and documentation demonstrating successful completion of any required prelicensing training shall be filed with the commissioner by, or on behalf of, the applicant, prior to the date scheduled for the examination. The application shall be accompanied by fees specified in KRS 304.4-010 or 806 KAR 4:010.

Section 3. Every applicant for a license who is required to take an examination shall answer correctly seventy (70) percent of the questions to successfully pass the examination.

Section 4. An applicant who takes an examination required by KRS Chapter 304 shall be permitted to take or retake an examination a total of three (3) times within 120 days of the receipt of an application by the commissioner. Applicable fees, as set out in KRS 304.4-010 and 806 KAR 4:010, Section 1(15), shall be submitted with the request to retake the examination. The request shall be made on an "Examination Retake Form", incorporated by

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reference in 806 KAR 9:340.

Section 5. An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully complete examinations as follows:

- (1) For life line of authority, a life examination;
- (2) For health line of authority, a health examination;
- (3) For property line of authority, a property examination;
- (4) For casualty line of authority, a casualty examination;
- (5) For personal lines, a property and casualty personal lines examination;
- (6) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and
- (7) For variable life and variable annuity products, no examination is required.

Section 6. (1) The provisions of this administrative regulation shall apply to every individual resident applicant for a limited line of authority identified in KRS 304.9-230(1).

(2) An individual applying for limited lines of authority as identified in KRS 304.9-230 shall successfully complete examinations as follows:

- (a) For surety limited line of authority, a surety examination;
- (b) For travel limited line of authority, a travel examination;
- (c) For crop limited line of authority, a crop examination; ~~and~~
- (d) For ~~limited lines~~ credit limited line of authority, an examination shall not be required; and
- (e) For rental vehicle limited line of authority, a rental vehicle examination shall be administered or monitored by the rental vehicle agent.

Section 7. An individual applying for a life settlement broker license shall successfully complete a life settlement examination unless exempt from examination pursuant to KRS 304.15-700(2)(b).

The examination shall be given by the commissioner or in accordance with provisions of an agreement the commissioner executes with another state.

Section 8. (1) An individual applying for a line of authority identified in KRS 304.9-430(7) or (8) shall:

- (a) For property and casualty line of authority, successfully complete a property and casualty adjuster examination;
- (b) For workers' compensation line of authority, successfully complete a workers' compensation adjuster examination; and
- (c) For crop line of authority, successfully complete a crop adjuster examination.

(2) In lieu of successfully completing the crop adjuster examination required by subsection (1)(c) of this section, an individual applying for a crop line of authority may demonstrate certification through the Crop Adjuster Proficiency Program, by providing to the department a copy of a Crop Adjuster Proficiency Program certification identification card with an active status issued by the federal Risk Management Agency, an agency within the U.S. Department of Agriculture, which specifies the applicant has passed a proficiency examination to adjust multi-peril crop claims.

Section 9. (1) If an applicant who applies to take the examinations required by KRS Chapter 304 does not take an examination or fails to pass an examination within 120 days of the filing ~~the~~ of his or her application, the application shall become invalid, unless the ~~commissioner~~ executive director grants an extension for good cause shown. The applicant may file a new application at any time following the expiration of the 120 day period, and an examination may be taken when scheduled by the department in the regular course of business.

(2) In determining good cause, the commissioner shall consider whether the delay to take the examination or the failure to pass the examination within the time period specified in subsection (1) of this section was due to extenuating circumstances beyond the applicant's control.

Section ~~10~~ 9. Examination results are valid for one (1) year

from the date the examination is taken. Application for additional lines of authority or licenses issued as a result of the same examination shall be received by the commissioner within the same one (1) year period. After this period, the applicant shall be retested.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 13, 2010
FILED WITH LRC: July 14, 2010 at 3 p.m.
CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Kentucky Access
(As Amended at ARRS, September 14, 2010)

806 KAR 17:545. ICARE Program employer eligibility, application process, and requirements.

RELATES TO: 2010 ES Ky Acts ch. 1, Part XII, secs. 1-8, 12, KRS 304.1-050(2), 304.2-310, 304.9-020(1), 304.17A-005(22)~~[2008 Ky Acts ch. 127, Part XII, secs. 1-8, 12]~~

STATUTORY AUTHORITY: KRS 304.2-110(1), 2010 ES Ky Acts ch. 1, Part XII, secs. 1(2), 1(3), 2(5)~~[2008 Ky Acts ch. 127, Part XII, secs. 1(2), 1(3), 2(5)]~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance.]~~ KRS 304.2-110(1) authorizes the ~~commissioner~~ executive director of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2010 ES Ky Acts ch. 1, Part XII, sec. 1(2) and (3)~~[2008 Ky Acts ch. 127, Part XII, sec. 1(2) and (3)]~~ require the ~~department~~ office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2010 ES Ky Acts ch. 1, Part XII, sec. 2(5)~~[2008 Ky Acts ch. 127, Part XII, sec. 2(5)]~~ requires the ~~department~~ office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Complete ICARE Program renewal application" means the ICARE Program renewal application, ICARE-APP-1, with all fields completed and all required attachments, including:

(a) Documentation verifying that the employer group's average annual salary is 300 percent of the federal poverty level or below, which may include the employer's:

- 1. Quarterly unemployment tax statement; or
- 2. Payroll register;

(b) Documentation supporting coverage of the employer group under a qualified health benefit plan if:

- 1. The employer group is participating in the ICARE Program as a previously uninsured group; or
- 2. The employer group is participating in the ICARE Program under the high cost condition category and the employer group has changed coverage during the ICARE Program year;

~~(c) [A copy of the employer's application or renewal information for coverage to the insurer;~~

~~(d)]~~ Employee ICARE Program high-cost condition certification, if applicable; and

~~(e)]~~ Any additional attachments, if applicable.

(3) "Department" is defined in KRS 304.1-050(2)~~[means the Department of Insurance].~~

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(4) "Eligible employee" is defined in 2010 ES Ky Acts ch. 1, Part XII, Sec. 1(3)~~[2008 Ky Acts ch. 127, Part XII, sec. 1(3)]~~.

(5) "Eligible employer" is defined in 2010 ES Ky Acts ch. 1, Part XII, Sec. 1(2)~~[2008 Ky Acts ch. 127, Part XII, sec. 1(2)]~~.

(6) "Federal poverty level" means a standard of income for an individual who resides in one (1) of the forty-eight (48) contiguous states which:

(a) Is issued annually by the United States Department of Health and Human Services;

(b) Is published annually in the Federal Register; and

(c) Accounts for the previous year's price increases as measured by the consumer price index.

(7) "Full time employee" means an employee who works at least twenty-five (25) hours per week.

(8) "Full time equivalent" means a number that equals the total hours worked per week by part time employees divided by twenty-five (25).

(9) "Health benefit plan" is defined in KRS 304.17A-005(22).

(10) "Health care incentive payment" means a payment as established in 2010 ES Ky Acts ch. 1, Part XII, secs. 2(3) and 4(1)~~[2008 Ky Acts ch. 127, Part XII, secs. 2(3) and 4(1)]~~.

(11) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2010 ES Ky Acts ch. 1, Part XII, sec. 2(1)~~[2008 Ky Acts ch. 127, Part XII, sec. 2(1)]~~.

(12) "ICARE Program high-cost condition" means a high-cost condition as:

(a) Defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(5)~~[2008 Ky Acts ch. 127, Part XII, sec. 1(5)]~~; and

(b) Established in 806 KAR 17:540.

(13) "ICARE Program participating employer" means an eligible employer who is enrolled in the ICARE Program.

(14) "ICARE Program participating insurer" is defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(6)~~[2008 Ky Acts ch. 127, Part XII, sec. 1(6)]~~.

(15) "ICARE Program year" means a one (1) year period of time beginning on an eligible employer's enrollment date in the ICARE Program.

(16) "Insurer" is defined in KRS 304.17A-005(27).

(17) "Qualified health benefit plan" is defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(8)~~[2008 Ky Acts ch. 127, Part XII, sec. 1(8)]~~.

Section 2. Employer Eligibility. (1) To determine the number of employees of an employer pursuant to 2010 Ky Acts ch. 127, Part XII, sec. 1(2)~~[2008 Ky Acts ch. 127, Part XII, sec. 1(2)]~~, the department shall consider:

(a) Full time employees; and

(b) Full time equivalents rounded to the nearest whole number.

(2) The average annual salary of the employer group shall not exceed 300 percent of the most current federal poverty level for a family of three (3). To determine the average annual salary of the employer group pursuant to 2010 ES Ky Acts ch. 1, Part XII, sec. 2(4)~~[2008 Ky Acts ch. 127, Part XII, sec. 2(4)]~~, the department shall:

(a) Calculate the sum of the annual gross salaries of all eligible employees, excluding the salary of any employee:

1. With an ownership interest in the business;

2. Who is a Medicare-eligible employee;

3. Who has attained age sixty-five (65); or

4. Who does not meet eligibility requirements for participation in the employer-sponsored health benefit plan established by the employer and insurer; and

(b) Divide the sum calculated in paragraph (a) of this subsection by the total number of employees whose salaries were used in the calculation established in paragraph (a) of this subsection.

(3) An eligible employer shall pay fifty (50) percent or more of the average single premium cost of qualified health benefit plan coverage for each eligible employee.

(4) An eligible employer shall have at least one (1) eligible employee who is not an owner of the business.

Section 3. ~~Application for Participation in the ICARE Program.~~
(1) An eligible employer who desires to participate in the ICARE

Program and:

~~(a) Who has not provided employer-sponsored health benefit plan coverage to its employees within the previous twelve (12) months, shall submit a complete ICARE Program application within 120 days of receiving notice of approval for coverage under a qualified health benefit plan;~~

~~(b) Who currently provides employer-sponsored health benefit plan coverage to its employees under a qualified health benefit plan and has an eligible employee with a diagnosed ICARE high-cost condition, shall submit a complete ICARE Program application at any time; or~~

~~(c) Who has been terminated from the ICARE Program for any reason other than material misrepresentation or fraud, shall submit a complete ICARE Program application no earlier than sixty (60) days prior to the anniversary of the employer's initial enrollment in the ICARE Program.~~

~~(2) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of an application for the ICARE Program by:~~

~~(a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;~~

~~(b) Completing section 3 of the ICARE Program application of the employer; and~~

~~(c) If applicable:~~

~~1. Collecting employee ICARE Program high cost condition certifications from employees, as identified in the ICARE Program application; and~~

~~2. Protecting personal health information as established in subparagraph 1 of this paragraph pursuant to 806 KAR 3:210 through 806 KAR 3:230.~~

~~Section 4. Application Process. (1) Within sixty (60) days of receiving a complete ICARE Program application, the department shall make a determination of the employer's eligibility for the ICARE Program and provide written or electronic notification to the employer regarding eligibility.~~

~~(2) Within sixty (60) days of receiving an incomplete ICARE Program application, the department shall provide the employer with a written or electronic notification of:~~

~~(a) Ineligibility of the employer, if the application includes information which makes an employer ineligible for the ICARE Program; or~~

~~(b) Any information that is missing or incomplete.~~

~~(3) If an employer receives notification of ineligibility for the ICARE Program, the employer may submit within thirty (30) days from the date of the notification a written request to the department for reconsideration in accordance with Section 8 of this administrative regulation.~~

~~(4) Upon approval of ICARE Program eligibility by the department under a program eligibility category as established in 2008 Ky Acts 127, Part XII, sec. 2(3), an eligible employer shall not be allowed to reapply to the ICARE Program under a different program eligibility category.~~

~~Section 5.] Changes in Application Information. An ICARE Program participating employer shall provide written notification of any change in ICARE Program application information to the department within thirty (30) days of the date of the change.~~

Section 4.[6.] Renewal of ICARE Program Participation. (1) At least sixty (60) days prior to the ICARE Program year renewal date, the department shall send a renewal notification to an ICARE Program participating employer.

(2) At least thirty (30) days prior to the ICARE Program year renewal date, an ICARE Program participating employer who desires continued participation in the ICARE Program shall submit to the department:

(a) A written request for renewal of ICARE Program participation; ~~and~~

(b) A complete ICARE Program renewal application; and

(c) Documentation to support eligibility as established in Section 2 of this administrative regulation and 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8~~[2008 Ky Acts ch. 127, Part XII, secs. 1~~

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through 8].

(3) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of a renewal application for the ICARE Program by:

(a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;

(b) Completing section 3 of the ICARE Program renewal application of the employer; and

(c) If applicable:

1. Collecting employee ICARE Program high-cost condition certifications from employees, as identified in the ICARE Program application; and

2. Protecting personal health information as established in subparagraph 1 of this paragraph pursuant to 806 KAR 3:210 through 806 KAR 3:230.

(4) Within thirty (30) days of receiving a request for renewal, the department shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

Section 5,~~[7]~~ Termination of ICARE Program Participation. (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

(a) The department determines that the employer ceases to meet an eligibility requirement as established in Section 2 of this administrative regulation or 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8~~[2008 Ky Acts ch. 127, Part XII, secs. 1 through 8]~~:

1. Upon completion of an annual review for the ICARE Program year reviewed; or

2. Upon review of a request for renewal of ICARE Program Participation;

(b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2010 ES Ky Acts ch. 1, Part XII, sec. 4(5)~~[2008 Ky Acts ch. 127, Part XII, sec. 4(5)]~~;

(c) The employer or any employee of the employer group performs an act or practice that constitutes fraud or intentionally misrepresents a material fact in the ICARE Program application;

(d) The employer requests termination from the ICARE Program;

(e) The employer ceases business operations in Kentucky; or

(f) The employer fails to cooperate in an annual review as described in Section 8~~[4]~~ of this administrative regulation.

(2) Prior to terminating an ICARE Program participating employer, the department shall provide written notification to the employer, which shall include:

(a) The reason for termination as identified in subsection (1) of this section;

(b) The termination date, which shall be:

1. If terminated for fraud or misrepresentation, the date of the written notification; or

2. If terminated for a reason other than fraud or misrepresentation, no less than thirty (30) days from the date of the written notification; and

(c) Instructions for filing an appeal if dissatisfied with the termination.

Section 6,~~[8]~~ Reconsideration Requests and Appeals. (1) Within thirty (30) days of receiving notification of a determination of ineligibility pursuant to Section 4 ~~[or 6]~~ of this administrative regulation or termination by the department pursuant to Section 5~~[7]~~ of this administrative regulation, an employer may request a reconsideration of the determination of ineligibility or termination in writing. A request for reconsideration shall include:

(a) A description of the basis for reconsideration; and

(b) Any new relevant information including documentation to support eligibility as established in Section 2 of this administrative regulation and 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8 that was not provided with the written request for renewal [and shall provide the basis for reconsideration, including any new relevant information].

(2) The department shall provide written notification of its determination to the employer within sixty (60) days of receipt of a request for reconsideration from an employer.

(3) Within sixty (60) days of receiving the department's determination on reconsideration, the employer may appeal by filing a written application for an administrative hearing in accordance with KRS 304.2-310.

Section 7,~~[9]~~ ICARE Program Health Care Incentive Payment.

(1) If confirmation of premium payment by the ICARE Program participating employer is included in the report required by 806 KAR 17:555, Section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The department shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2010 ES Ky Acts ch. 1, Part XII, sec. 4(1)~~[2008 Ky Acts ch. 127, Part XII, sec. 4(4)]~~ for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the department based on the employer's ICARE Program application or ICARE Program renewal.

(3) The total amount of the monthly health care incentive payment provided to an employer may vary during the ICARE Program year based upon the number of eligible employees enrolled in the qualified health benefit plan as reported by the ICARE Program participating insurer.

(4) If an ICARE Program participating employer is terminated from the ICARE Program, the employer shall not be eligible for a monthly health care incentive payment following the effective date of termination for months remaining after the termination.

(5) If an ICARE Program participating employer is terminated from the ICARE Program due to fraud or material misrepresentation, the employer shall refund to the department all health care incentive payments received by the employer for the period of ineligibility determined by the department.

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that is equal to the health care incentive payment that the employer would have received at the time of renewal in accordance with 2010 ES Ky Acts ch. 1, Part XII, Sec. 4(1)~~[2008 Ky Acts ch. 127, Part XII, sec. 4(1)]~~.

Section 8,~~[40]~~ Annual Review. The department may make or cause to be made an annual review of the books and records of an ICARE Program participating employer, insurer, or agent to ensure compliance with:

(1) 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8~~[2008 Ky Acts ch. 127, Part XII, secs. 1 through 8]~~; 806 KAR 17:540 and 17:555; and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 9,~~[44]~~ Response to Department Inquiry. If an employer receives an inquiry from the department relating to the eligible employer's participation or application in the ICARE Program, the eligible employer shall respond within fifteen (15) business days.

Section 10,~~[42]~~ Incorporation by Reference. (1) "ICARE-APP-1", 7/2010~~[7/2008]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department Web site at <http://insurance.ky.gov> [~~http://doi.ppr.ky.gov/kentucky~~].

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 21, 2010

FILED WITH LRC: June 23, 2010 at 2 p.m.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

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PUBLIC PROTECTION CABINET
Department of Insurance
Division of Property and Casualty
(As Amended at ARRS, September 14, 2010)

806 KAR 46:050. Liability self-insurance group rate, underwriting and evidence of coverage filings.

RELATES TO: KRS 304.1-050, 304.13-011, 304.13-051, 304.14-120, 304.48-020(7), 304.48-180

STATUTORY AUTHORITY: KRS 304.48-180, 304.48-230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.48-230 authorizes the commissioner to promulgate reasonable administrative regulations not inconsistent with KRS 304 Subtitle 48 that the commissioner deems necessary for the proper administration of the subtitle. KRS 304.48-180 authorizes the commissioner to promulgate administrative regulations to establish requirements for liability self-insurance groups to follow when filing rates, underwriting guidelines, evidence of coverage, and any changes. [~~requires liability self-insurance groups to file rates, underwriting guidelines, evidence of coverage and any changes therein with the commissioner.~~] This administrative regulation establishes the procedures for liability self-insurance groups to submit these filings.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Liability self-insurance group" is defined by KRS 304.48-020(7).

(3) "Rates and underwriting guidelines" means any rating manuals and underwriting rules for all coverage types including any manual or plan of rates, loss costs, risk classifications, rating schedule, minimum premium, policy fees, premium payment plans, rating rules, supplementary rating information or any other similar information needed to determine the applicable coverage rate or premium for a member.

(4) "Supplementary rating information" is defined by KRS 304.13-011(2).

Section 2. General Filing Requirements. (1) All filings shall be accompanied by a completed and signed Form LSIG F-1A P&C, Face Sheet and Verification Form for Liability Self-Insurance Groups.

(2) All paper filings shall include one (1) full document set on 8 1/2 in. x 11 in. white paper with two (2) cover letters and a self-addressed stamped envelope.

(3) A filing may include any number of documents, filed together on a particular date. Rates and underwriting guidelines shall be filed separately from evidence of coverage forms.

(4)(a) A liability self-insurance group may submit a filing in an electronic format established by the National Association of Insurance Commissioners.

(b) An electronic filing shall be in lieu of a paper filing.

(5) The period of time in which the commissioner may affirmatively approve or disapprove the filing, as set forth in KRS 304.13-051, shall not begin until a complete filing and the filing fee in accordance with KRS 304.48-180, is received.

Section 3. Rate and Rule Filings. (1) The rates and underwriting guidelines shall be filed not later than fifteen (15) days after the date of first use of the rates and underwriting guidelines, pursuant to KRS 304.13-051(1).

(2) A liability self-insurance group shall comply with the requirements of KRS 304.13-051(5). [~~(a) A liability self-insurance group shall not place into effect any rates, manuals, or underwriting rules which it proposes to use pursuant to KRS 304.13-051(1) or (4) if the rates, manuals or underwriting rules will result in an increase or decrease of more than twenty-five (25) percent from the group's then existing rates for any type of coverage for any classification of risks in any of its rating territories within a twelve (12) month period of time.~~

(b) ~~Any group which proposes to change its then existing rates, manual or underwriting rules so as to effectively increase or decrease the rates of any coverage for any classification of risks~~

~~within any rating territory more than twenty-five (25) percent within a twelve (12) month period shall file all the rates and supplemental rating information which shall not become effective until approved by the commissioner.]~~

(3) Form LSIG: S-1 P & C, Filing Synopsis for Rates and or Rules, shall be filed with all rate and underwriting guideline filings. Separate forms shall be filed for each type of coverage.

(4)(a) Form LSIG: LC-1 P & C, Calculation of Loss Cost Multiplier, shall be filed with all rate filings referencing loss costs formulated by any advisory organization. Separate forms shall be filed for each type of coverage.

(b) Form LSIG LC-2 P & C, Expense Constant Supplement, shall be filed with all rate filings referencing loss costs formulated by an advisory organization in which an expense constant is used. Separate forms shall be filed for each type of coverage.

(5)(a) All rate or underwriting guideline filings utilizing an experience modification plan shall include the experience rating plan by type of coverage with the formula used for calculating the experience modification factor for that coverage. Each experience modification factor applied shall be made available to the member upon request.

(b) All rate or underwriting guideline filings containing schedule rating plans shall identify the characteristics of the risk not reflected in an experience modification factor.

(c) Any application of the schedule rating plan shall be based on evidence contained in the liability self-insurance group's file when [at the time] it is applied. The schedule rating plan debit or credit factor applied shall be made available to the member upon request.

(d) If the reason for application of any schedule debit is corrected by the member to the satisfaction of the liability self-insurance group, the debit may be removed when [at the time] evidence of the correction is received by the group.

Section 4. Coverage Form Filings. (1) Form LSIG: S-2 P & C, Filing Synopsis for Forms, and Form LSIG: F-2 P & C, Forms Index, shall be filed with all evidence of coverage form filings.

(2) An evidence of coverage form shall not be used until it has been approved by the commissioner. If the rates pertaining to an evidence of coverage form are required to be filed with or approved by the commissioner pursuant to KRS 304.13-051, the coverage form shall not be used until the appropriate rates have been filed or approved as required.

(3) A filing which amends, replaces, or supplements an evidence of coverage form previously filed and approved shall include an explanation setting forth all changes contained in the newly filed coverage form, the effect, if any, the changes have upon the hazards purported to be assumed by the policy, and an explanation as to the effect on the rates applicable thereto.

(4) A change of signature of the executing officer on an evidence of coverage form shall not, because of this change alone, require a new filing.

Section 5. Advisory Organization Filings. (1) A liability self-insurance group that is a member, subscriber, or service purchaser of an advisory organization, statistical agent or forms provider may adopt coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans of that advisory organization or statistical agent by doing so in accordance with the procedures established in this administrative regulation and shall clearly identify each filing of the advisory organization or statistical agent it is adopting.

(2) If a liability self-insurance group chooses to adopt only a specific filing of an advisory organization, statistical agent, or form provider it shall do so in accordance with the procedures established in this administrative regulation, and shall clearly identify which filing of the advisory organization or statistical agent it is adopting. Loss cost filings shall be specifically adopted.

(3)(a) If a liability self-insurance group chooses to adopt all of the current and future evidence of coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines and statistical plans, excluding loss costs, of an advisory organization, statistical agent, or

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forms provider, it may file written notice with the commissioner that it is adopting by blanket reference all of the current and future coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines and statistical plans, excluding loss costs, as filed by the advisory organization, statistical agent, or forms provider. Loss cost filings shall not be adopted on this blanket reference basis.

(b) If a liability self-insurance group previously notified the commissioner of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses to not adopt certain evidence of coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans, the group shall file notice of the nonadoption with the commissioner and shall pay the appropriate filing fee in accordance with KRS 304.48-180.

1. If a liability self-insurance group previously notified the commissioner of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses to delay the effective date of its adoption, it shall submit a letter to the commissioner requesting the revised date upon which it will adopt the filing.

2. The delayed adoption date shall be within six (6) months of the original effective date.

3. If additional time is needed, a second letter shall be submitted to the commissioner, requesting a revised delayed adoption date.

4. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization, statistical agent or forms provider.

5. If a liability self-insurance group fails to adopt the advisory organization, statistical agent, or forms provider filing within one (1) year of the original effective date as filed by the advisory organization, statistical agent or forms provider, the insurer shall submit a filing to the commissioner indicating it is nonadopting.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form LSIG: F-1A P & C, "Face Sheet and Verification Form for Liability Self Insurance Groups", 7/2010;

(b) Form LSIG: F-2 P & C, "Forms Index", 7/2010;

(c) Form LSIG: S-1 P & C, "Filing Synopsis for Rates and or Rules", 7/2010;

(d) Form LSIG: S-2 P & C, "Filing Synopsis Form", 7/2010;

(e) **Form LSIG: LC-1 P & C, "Calculation of Loss Cost Multiplier", 7/2010;**

(f) Form LSIG: LC-2 P & C, "Expense Constant Supplement", 7/2010; and

(g)(4) Form LSIG: EMA P & C, "E-mod Affidavit", 7/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Department of Insurance Internet Web site, <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 7, 2010 at 3 p.m.

FILED WITH LRC: July 14, 2010

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Licensing
(As Amended at ARRS, September 14, 2010)

811 KAR 2:020. Licensing quarter horse, appaloosa, or Arabian racing [procedures].

RELATES TO: KRS 230.260, 230.290, 230.310, 230.320~~[230.240-230.247]~~

STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260, 230.290(2), 230.310~~[230.225-230.360]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the Kentucky Horse Racing Commission [Authority] the authority to regulate conditions under which quarter horse, appaloosa and Arabian racing shall be conducted in Kentucky. KRS 230.310(1) authorizes the commission [authority] to establish licensing requirements for participation in quarter horse, appaloosa and Arabian racing. [EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the Kentucky Horse Racing Authority to the commission.] This [emergency] administrative regulation establishes licensing procedures and requirements for individuals participating in quarter horse, appaloosa and Arabian racing. [To regulate conditions under which quarter horse, appaloosa and Arabian racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the licensing procedures and requirements.]

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) Categories of licenses shall include:

(a) Racing participants and personnel including the following: owner, [authorized agent], trainer, assistant trainer, jockey, apprentice jockey, jockey agent, farm manager or agent, veterinarian, equine therapist, veterinary technologist or technician, veterinary assistant, farrier, vendor, mutuel clerk, exercise rider, stable employee, 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; [and]

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

(f) Commission members.

(3) A person working at a licensed racing association in the Commonwealth shall obtain a valid license issued by the commission. The executive director, chief racing steward, or their designee may refuse entry or scratch any horse involving any person who, after being requested to obtain a valid license, fails or is unable to obtain a license.

(4)(a) A person required to be licensed shall submit:

1. A completed written application on the form Licensing Application (KHRC 25-01 (7/10))~~[(KHRA 25-01 (03/10))]~~ or the Multi-jurisdictional License Form pursuant to Section 7 of this administrative regulation; and

2. The fee required by Section 5 of this administrative regulation.

(b) A temporary license may be obtained by an authorized representative of an owner in accordance with Section 17 of this administrative regulation.

(c) 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

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Applicants. (1) Any person required to be licensed by Section 2 of this administrative regulation and desiring to participate in quarter horse, appaloosa or Arabian racing in the Commonwealth may apply to the commission for a license.

(2)(a) 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.

(b) An application shall be submitted ~~no later~~ 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.

(c) 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 chief racing steward.

(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 stewards.

(5) An application from a person or other entity consisting of more than one (1) individual person desiring to race horses in the Commonwealth of Kentucky 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 the license has been issued or denied ~~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) 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:

1. Evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth of Kentucky; and

2. A **Veterinarian Approval Form (KHRC 25-04 (04/10))** ~~and KHRC Form 25-04~~ signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS 321.443.

(c) An application from a veterinary assistant shall be accompanied by a **Veterinarian Approval Form (KHRC 25-04 (04/10))** ~~[KHRC Form 25-04]~~ signed by a licensed veterinarian certifying that the applicant works for ~~is employed by~~ him or her as required by KRS 321.443.

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

(2) 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 ~~recognized~~ farrier course or examination recognized by the American Farrier's Association, or submit a letter of recommendation from a licensed farrier.

(3) Stable employee, occupational employee, vendor em-

ployee. In order to obtain a stable employee, occupational employee, or vendor employee license, the license applicant shall submit a KHRC Form 25-01 from his or her employer verifying employment and workers' compensation coverage.

(4) 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. The amount of the licensing fees shall depend on the number of race days granted by the commission for quarter horse, appaloosa and Arabian racing.

(1) The following annual fees shall apply if the commission awards twenty (20) race days or less for quarter horse, appaloosa, and Arabian racing:

(a) **Thirty-five (35) dollars - owner, trainer, assistant trainer, veterinarian, jockey, jockey apprentice, jockey agent, farrier, racing secretary, assistant racing secretary, director of racing, starter, assistant starter, paddock judge, patrol judge, placing judge, timer, steward, testing laboratory employee, racing department employee, valet, outrider, and temporary license;**

(b) **Twenty-five (25) dollars - vendor, vendor employee, equine therapist, veterinary technician, veterinary technologist, veterinary assistant, farm manager, and farm agent;**

(c) **Twenty (20) dollars - mutuel employee;**

(d) **Ten (10) dollars association employee, horse identifier, photo finish operator, film patrol crew member, television production employee, member of an association 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, occupational employee, special event mutuel, special event occupational, and special event vendor employee; and**

(e) **Five (5) dollars - stable employee, including stable foreman, exercise personnel, hotwalker, groom, watchman, and pony person.** ~~[\$35 - owner, trainer, assistant trainer, veterinarian, jockey, jockey agent, claiming license, and temporary license;~~

~~(b) \$35 - racing secretary, assistant racing secretary, director of racing, starter, assistant starter, paddock judge, patrol judge, placing judge, timer, jockey apprentice, farrier, steward, testing laboratory employee, racing department employee, valet, and outrider;~~

~~(c) \$35 - veterinary assistant, veterinary technician, veterinary technologist, vendor, mutuel employee, farm manager, and farm agent;~~

~~(d) \$25 - 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, horse identifier, photo finish operator, film patrol crew member, television production employee, member of an association 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) \$40 - exercise rider, special event mutuel, special event occupational, and special event vendor employee, stable employee, including stable foreman, exercise personnel, hotwalker, groom, watchman, and pony person.]~~

(2) The following annual fees shall apply if the commission awards more than twenty (20) race days for quarter horse, appaloosa and Arabian racing:

(a) \$125 - owner, trainer, assistant trainer, veterinarian, jockey, jockey agent ~~[, claiming license]~~, and temporary license;

(b) \$100 - racing secretary, assistant racing secretary, director of racing, starter, assistant starter, paddock judge, patrol judge, placing judge, timer, jockey apprentice, farrier, steward, testing

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laboratory employee, racing department employee, valet, and out-rider;

(c) Fifty (50) dollars - **equine therapist**, veterinary assistant, veterinary technician, veterinary technologist, 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, horse identifier, photo finish operator, film patrol crew member, television production employee, member of an association 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; **and**

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

(3) 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 shall 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. Search and Seizure. (1) The commission or its designee may search any location described in KRS 230.260(7).

(2) The commission or its designee may seize any medication, drug, substance, paraphernalia, object, or device in violation or suspected violation of KRS Chapter 230 or KAR Title 810 or 811.

(3) A licensee shall:

(a) Cooperate with the commission or designee during an investigation; and

(b) Respond correctly to the best of the licensee's knowledge if questioned by the commission or designee about a racing matter.

(4) A licensee shall consent to out-of-competition testing in accordance with 811 KAR 2:150.~~(e) Consent to out-of-competition testing at any time or place designated by the commission.~~

Section 10. Employer Responsibility. 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, or KAR Title 810 or 811.

(2) Every employer shall report in writing to the commission or

its designee, within twenty-four (24) hours, the discharge of any licensed employee, including the employee's name, occupation, and reason for the discharge.

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

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

(5) 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 **any occupation for which a license is required by this administrative regulation** ~~[his or her licensed occupation]~~ shall constitute 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 a judgment has been rendered against him or her.

Section 12. Voluntary Withdrawal of License Application. (1) A license applicant may ~~with~~~~upon~~ the approval of the license review committee voluntarily withdraw his or her license application from the license review process.

(2) If the applicant chooses to voluntarily withdraw his or her application, then the withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice.

(3) The stewards shall issue a ruling noting a withdrawal, and the ruling shall be communicated to the **Association of Racing Commissioners International [ARCI]**.

Section 13. License Review Committee. (1) The executive director, chief racing steward, or director of licensing 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 his or her designee, the director of licensing or his or her designee, the chief state steward or ~~his or her~~ designee, and at least one (1) other commission member or commission staff member as designated by the executive director. At least three (3) 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 ~~or refusal~~ of the application **may be appealed** ~~[shall be subject to appeal]~~ 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, executive director, chief racing steward, or director of licensing may ~~refuse or~~ deny a license application, and the commission or chief state steward may suspend or revoke a license, or otherwise penalize in accordance with KRS 230.320(1) a licensee, or other person participating in 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

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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 for and received a license 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 pre-arrangement of a race result, or has failed to report knowledge of this kind of activity immediately to the stewards;

(l) The licensee or applicant has demonstrated financial irresponsibility as described by Section 11 of this administrative regulation [by accumulating unpaid obligations, defaulting on obligations, or issuing drafts or checks that are dishonored or not paid];

(m) The licensee or applicant has knowingly 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 quarter horse, appaloosa, or Arabian [quarter horses, appaloosas or Arabians];

(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 stewards;

(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 knowingly 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 chief state steward, any 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 810 KAR 1:060;

(u) The licensee or applicant has failed to comply with a written order or ruling of the commission, the stewards, 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 in any conduct of a disorderly nature on association grounds which

includes, but is not limited to:

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

2. Failure to race when programmed unless excused by the stewards;

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; and

8. Disturbing the peace;

(y) The licensee or applicant has used profane, abusive, or insulting language to or interfered with a commission member, employee or agent, or racing official, while these persons are in the course of discharging 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 has failed to comply with a written directive or ruling of the commission or the chief state racing steward;

(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 knowingly 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 regulation 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 810 KAR 1:018, Section 3(5); 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 chief steward, and to the ARCI by the Division of Licensing, to ensure that other racing jurisdictions shall be advised of the license suspension, revocation, or denial.

(3) A licensee or applicant may appeal the suspension, revocation, or denial in accordance with KRS 230.320 and 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. [.]

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(2) Any change in information required for licensing shall be submitted in writing upon the Change in **Application [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) of ~~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 five hundred dollars (\$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.

Section 17. Temporary Licenses. (1)(a) Only an owner is eligible for a temporary license.

(b) 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 **Application["]** (KHRC 25-02 (01/10)), on file with the commission.

(c) A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains.

(d) The commission may refuse the license if the applicant fails to supply a name, social security number, and mailing address for a temporary license.

(e) A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the 30th day pending completion of all licensing procedures.

(f) 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.

(g) Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year.

(h) If a temporary license expires prior to the completion of all owner licensing 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 ~~if~~ prohibited by Section 19 of this administrative regulation due to a potential conflict of interest. If a person applies for more than one (1) license, he or she shall pay the license fee associated with each license.

Section 19. Conflict of Interest. (1) The license review committee and the chief state steward or designees shall deny or refuse to process the license of a person, and the commission or the chief state steward shall revoke or suspend a licensee who is determined to have a conflict of interest. A conflict of interest may exist if a spouse, immediate family member, or other person in a similar relationship to the licensee or applicant holds a license which the license review committee or chief state steward **finds [find]** 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 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 a race, shall not **participate [be employed or licensed]** in that race as any of the following:

- (a) Racing official;
- (b) Assistant starter;
- (c) Practicing veterinarian for any horse other than the owner's;
- (d) Veterinary technician, veterinary technologist, veterinary assistant, or equine therapist for any horse other than the owner's;

(e) Officer or managing employee;

(f) Track maintenance supervisor or employee;

(g) Outrider;

(h) Race track security employee;

(i) Farrier;

(j) Photo finish operator;

(k) Horsemen's bookkeeper;

(l) Racing chemist;

(m) Testing laboratory employee;

(n) Jockey;

(o) Apprentice jockey; or

(p) Jockey agent.

(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). A photo identification badge is available to a licensee 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 stewards 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 stewards, the commission director of **enforcement [security]**, 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 the stewards any knowledge the licensee has that a violation of **this administrative regulation [these rules]** has occurred or may occur.

(3) A licensee shall abide by all rulings and decisions of the stewards and the commission, and all decisions by the stewards 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 stewards may be appealed to the commission, except those made by the stewards 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 of the commission, or any wrongdoings by any person, and shall 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 (07/10[3/40]));

(b) ~~["Application for a]~~ Temporary Owner's License **Application**, (KHRC 25-02 (1/10));

(c) "Change in Application Information Form", (KHRC 25-03

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(1/10)); and

(d) "Veterinarian Approval [Authorization] Form", (KHRC 25-04 (04/10/1449)).

(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.ky.gov. [License Required. (1) A person, legal entity, or association shall not conduct any Arabian, quarter horse or appaloosa race for any stakes, purse, or reward in the commonwealth without first securing a license therefor from the commission.

(2) A person shall not participate in Arabian, quarter horse or appaloosa racing in the commonwealth as a horse owner, trainer, jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of feed, tack, medication, or horse feed, without first securing a license from the commission.

Section 2. Conditions Precedent to Issuance of License. (1) Arabian, quarter horse and appaloosa racing and participation therein in the commonwealth are privileges, not rights, granted only by the commission by license subject to the conditions precedent established in this section.

(2) Acceptance of a license shall be construed as consent and agreement to the following conditions precedent by the licensee and failure to comply with these conditions shall be grounds for immediate voidance or revocation of such license:

(a) Representations made or with license application are complete and correct.

(b) Licensee shall abide by all rulings, and decisions of the stewards and all decisions by the stewards shall remain in force unless reversed or modified only by the commission upon proper appeal.

1. Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards 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.

2. Excepted rulings and decisions by the stewards shall be final with no right of review by the commission or courts.

(3)(a) Licensee shall consent to a reasonable search of his property in his possession by the commission or its representatives, the property being restricted to that on association grounds and including tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort.

(b) Licensee shall consent to seizure of any object which may be evidence indicating a rule violation. Licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge all questions asked by the commission or its representatives pertaining to racing matters.

(4)(a) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard the horses from tampering.

(b) Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, or blood specimen taken from a horse, the trainer of the horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering.

Section 3. Standards for Granting Licenses and Racing Dates to Associations. The commission may issue a license to any association which applies for a licensee to conduct an Arabian, quarter horse or appaloosa race meeting on days as the commission may deem appropriate.

Section 4. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a

license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:

(1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where the applicant was denied a license or where his license was suspended or revoked;

(2) Conviction of a crime or violation of any narcotic administrative regulation;

(3) Falsification, misrepresentation, or omission of required information in license application to the commission; failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of Arabians, quarter horses or appaloosas.

(4) Failure to comply with any order or ruling of the commission, stewards, or racing official pertaining to a racing matter;

(5) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in these activities;

(6) Person less than sixteen (16) years of age;

(7) Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examinations prescribed by the stewards;

(8) Intoxication, use of profanity, fighting or any conduct of a disorderly nature, on association grounds;

(9) Employment or harboring of unlicensed persons required by these rules to be licensed;

(10) Discontinuance of or ineligibility for activity for which license was issued;

(11) Possession on association grounds, without written permission therefor from the commission or stewards, of:

(a) Firearms;

(b) Battery, or buzzer, or electrical device; or

(c) Other applicants other than an ordinary whip which could be used to alter the speed of a horse in a race or workout.

(12) Possession on association grounds by a person other than a licensed veterinarian of:

(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse;

(b) Narcotics, or medication, or drug, or substance which could be used to alter the speed of a horse in a race.

(13) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while persons are in the discharge of their duties;

(14) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;

(15) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;

(16) Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;

(17) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;

(18) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, would be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing; or association with persons so characterized; or

(19) Violation of any administrative regulation of the commission, or aiding or abetting any person in the violation of any administrative regulation.

Section 5. License Applications for Associations. Persons or legal entities desiring to conduct Arabian, quarter horse or appaloosa racing in the commonwealth shall apply to the commission for association license. The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office on or before September 1 of the year

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preceding the calendar year in which the license is to be in force. The application shall contain:

- (1) Name and location of track. Initial applications shall be accompanied by such physical information as the commission may require;
- (2) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with a degree of ownership or type of interest shown;
- (3) Names and addresses of persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary;
- (4) Corporations, partnerships, or other legal entities which own or control a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in such legal entities with a degree of ownership or type of interest pertaining to such ownership or control. Applications shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made;
- (5) Days and hours on which racing is requested to be conducted;
- (6) Names of racing officials and persons responsible for track security and fire protection;
- (7) Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any;
- (8) An operating report on forms prescribed by the commission if applicant is currently licensed;
- (9) Other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct Arabian, quarter horse and appaloosa racing; and
- (10)(a) Based on the daily mutuel handle, all associations and tracks shall pay a daily licensing fee to the Kentucky Quarter Horse, Appaloosa and Arabian Commission as follows:

From	But Less Than	Daily Licensing Fee
\$0	\$75,000	\$100
75,000	150,000	150
150,000	200,000	200
over 200,000		300

- (b) In the event that the commission allows two (2) racing programs on one (1) day, a separate daily fee for each racing program shall be paid.
- (c) As used in this section the term "daily mutuel" shall mean the total gross amount of money bet or wagered by the track's patrons.

Section 6. License Application for Participants in Racing. (1)(a) A person other than an association required to be licensed by Section 4 and desiring to participate in Arabian, quarter horse and appaloosa racing in the Commonwealth shall apply to the commission for a license.

- (b) The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.
- (2) Applications from persons not previously licensed in Kentucky shall include the names of two (2) reputable persons who will attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.
- (3) Applications from persons whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of a birth certificate or work permit showing applicant is sixteen (16) years or older.
- (4)(a) Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one (1) individual person desiring to race horses in the commonwealth shall, in addition to designating the person or persons to represent the entire ownership of such horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or re-

versionary interest in such horses.

- (b) Applications shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made.
- (5)(a) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that such person is currently licensed as a veterinarian by the Commonwealth of Kentucky.
- (b) An accredited practicing veterinarian not licensed by the commission or the commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not thereby be considered as participating in racing in this state.
- (6) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who will attest to the technical competence of the applicant and under whose sponsorship and direction such applicant will work on association grounds.
- (7) Applications from persons not previously licensed in the capacity of farrier shall not be forwarded with recommendations to the commission by the licensing committee until the applicant has successfully completed a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of the applicant for a farrier's license.
- (8) The following annual fees shall accompany the application and shall not be refundable:
 - (a) Thirty five (35) dollars — Owner license;
 - (b) Thirty five (35) dollars — Trainer, jockey, or forty five (45) dollars — jockey's agent license;
 - (c) Thirty five (35) dollars — Veterinarian, dental technician, assistant trainer, farrier, or apprentice farrier license;
 - (d) Five (5) dollars — Stable employee license (foreman, authorized agent, exercise boy, groom, hotwalker, watchman, or pony boy);
 - (e) Twenty five (25) dollars — Stable area supplier license (supplier of horse feed, tack, medication, or food vendors);
 - (f) Thirty five (35) dollars — Racing department employee license, steward, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, association veterinarian, testing laboratory employee, horse identifier;
 - (g) Twenty (20) dollars — Mutuel department employee license, manager, calculator sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger, runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizer employee;
 - (h) Ten (10) dollars — Occupational license, admission department manager and employees; concessions manager and employees; parking manager and employees; association security department including police chief, detectives, policemen, watchmen, fire, ambulance drivers and attendants; track superintendent, groundsman, mechanics, carpenters; maintenance department manager and employees; valet, jockey room custodian, clerk of the scales, entry clerk, photo finish operator, film patrol or video tape operator and projectionist, flagman, or outrider; all other persons employed by the association or employed by a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting.
- Section 7. Licensing Committee. (1) The commission may appoint a licensing committee including the commission secretary and commission steward or their designated representative.
- (2) The licensing committee shall review all applications for all licenses, and forward all the applications to the commission with recommendations, subject to security checks, for final action.
- (3) The licensing committee may issue to a license applicant a temporary permit to participate in the activity for which a license application was made pending administrative processing and final action on the license application by the commission.

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~~Section 8. Term of License. Licenses issued by the commission for participation in Arabian, quarter horse and appaloosa racing shall be valid from the date of issuance through the calendar year shown on the license at all race meetings conducted by associations in the commonwealth during calendar year, unless sooner suspended, revoked, or voided. The validity of a license does not preclude or infringe upon the common law right of associations to eject or exclude any persons, licensed or unlicensed, from association grounds.~~

~~Section 9. Possession of License Required. Persons required to be licensed by these administrative regulations shall not participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license therefor and having same in his possession. All licenses specified under Section 7(9)(b) to (i) of this administrative regulation shall include a color photograph of the licensee.~~

~~Section 10. Applicability of Rules and Rulings to Household. Administrative regulations pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by such affected person will in no way circumvent the intent of the rule, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a particular activity.~~

~~Section 11. Notice for Discontinuance of Employment. (1) Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities, notify the commission and respective interested persons or associations of their intention at least fifteen (15) days before their termination.~~

~~(2) The commission shall upon notice to parties in interest conduct a hearing on the matter.~~

~~(3) If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these administrative regulations, the commission shall so advise all parties in interest and shall take appropriate action against offending parties.~~

~~(4) If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these administrative regulations, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.]~~

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 8, 2010

FILED WITH LRC: June 15, 2010 at 11 a.m.

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

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(As Amended at ARRS, September 14, 2010)**

907 KAR 1:014. Outpatient hospital services.

RELATES TO: KRS 205.520, 42 C.F.R. 447.53

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.6310, 205.8453~~[194.050]~~

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity

presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to outpatient hospital services for which payment shall be made by the medical assistance program on behalf of the categorically needy and medically needy.

Section 1. Definitions. (1) "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1:022;

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; [æ]

4. The Model Waiver II Program in accordance with 907 KAR 1:595;

5. The Acquired Brain Injury Long Term Care Waiver Program in accordance with 907 KAR 3:210; or

6. The Michelle P. Waiver Program in accordance with 907 KAR 1:835; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

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

(3) "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.

(4) "Emergency medical condition" is defined by 42 U.S.C. 1395dd(e)(1).

(5) "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u-1 ~~[1396u-4]~~;

2. 42 U.S.C. 1396a(a)(52) and 1396r-6 ~~[1396r-6]~~ (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

~~(6) [(5)]~~ "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive K-TAP and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits,

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and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022; or

(h) Pregnant women.

(7) "Lock-in recipient" means a recipient enrolled in the department's lock-in program pursuant to 907 KAR 1:677.

~~(8)(6)~~ "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

~~(9)(7)~~ "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53.

~~(10)(8)~~ "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, O, or 1.

(11) "Recipient" is defined by KRS 205.8451(9).

~~(12)(9)~~ "Unlisted procedure or service" means a procedure for which there is not a specific CPT code and which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Coverage Criteria. (1) To be covered by the department:

(a) The following services shall be prior authorized and meet the requirements established in paragraph (b) ~~4, 2, and 3~~ ~~and 2~~ of this subsection:

1. Magnetic resonance imaging (MRI);
2. Magnetic resonance angiogram (MRA);
3. Magnetic resonance spectroscopy;
4. Positron emission tomography (PET);
5. Cineradiography/videoradiography;
6. Xeroradiography;
7. Ultrasound subsequent to second obstetric ultrasound;
8. Myocardial imaging;
9. Cardiac blood pool imaging;
10. Radiopharmaceutical procedures;
11. Gastric restrictive surgery or gastric bypass surgery;
12. A procedure that is commonly performed for cosmetic purposes;
13. A surgical procedure that requires completion of a federal consent form; or
14. An unlisted procedure or service; and

(b) An outpatient hospital service, including those identified in paragraph (a) of this subsection, shall be:

1. Medically necessary; and
2. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

3. For a lock-in recipient:

a. Provided by the lock-in recipient's designated hospital pursuant to 907 KAR 1:677; or

b. A screening or emergency service that meets the requirements of subsection (6)(a) of this subsection [except for a screening to determine if the lock-in recipient has an emergency medical condition in accordance with Section 3(2) of this administrative regulation, only provided by the lock-in recipient's designated hospital pursuant to 907 KAR 1:677].

(2) The prior authorization requirements established in subsection (1) of this section shall not apply to:

- (a) An emergency service;
- (b) A radiology procedure if the recipient has a cancer or trans-

plant diagnosis code; or

(c) A service provided to a recipient in an observation bed.

(3) A referring physician, a physician who wishes to provide a given service, or an advanced **practice** registered nurse ~~[practitioner]~~ may request prior authorization from the department.

(4) The following covered hospital outpatient services shall be furnished by or under the supervision of a duly licensed physician, or if applicable, a duly-licensed dentist:

(a) A diagnostic service ordered by a physician;

(b) A therapeutic service, except for occupational therapy, ordered by a physician;

(c) An emergency room service provided in an emergency situation as determined by a physician; or

(d) A drug, biological, or injection administered in the outpatient hospital setting.

~~(5)(4)~~ A covered hospital outpatient service for maternity care may be provided by:

(a) An advanced **practice** registered nurse (**APRN**) ~~[practitioner or (ARNP)]~~ who has been designated by the Kentucky Board of Nursing as a nurse midwife; or

(b) A registered nurse who holds a valid and effective permit to practice nurse midwifery issued by the Cabinet for Health and Family Services.

(6) The department shall cover:

(a) A screening of a lock-in recipient to determine if the lock-in recipient has an emergency medical condition; or

(b) An emergency service to a lock-in recipient if the department determines that the lock-in recipient had an emergency medical condition when the service was provided.

Section 3. Hospital Outpatient Services Not Covered by the Department. ~~(4)~~ The following services shall not be considered a covered hospital outpatient service:

~~(1)(a)(4)~~ An item or service that does not meet the requirements established in Section 2(1) of this administrative regulation;

~~(2)(b)(2)~~ A service for which:

~~(a)(4)(a)~~ An individual has no obligation to pay; and

~~(b)(2)(b)~~ No other person has a legal obligation to pay;

~~(3)(c)(3)~~ A medical supply or appliance, unless it is incidental to the performance of a procedure or service in the hospital outpatient department and included in the rate of payment established by the Medical Assistance Program for hospital outpatient services;

~~(4)(d)(4)~~ A drug, biological, or injection purchased by or dispensed to a patient; ~~or~~

~~(5)(e)(5)~~ A routine physical examination; ~~or~~[-]

~~(6)(4)~~ A nonemergency service, other than a screening in accordance with Section 2(6)(a) of this administrative regulation [subsection (2) of this section], provided to a lock-in recipient:

1. In an emergency department of a hospital; or

2. If provided by a hospital that is not the lock-in recipient's designated hospital pursuant to 907 KAR 1:677.

Section 4. Therapy Limits. (1) Speech therapy shall be limited to:

(a) Ten (10) visits per twelve (12) months for a recipient of the Global Choices benefit package; or

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit package; or

2. Optimum Choices benefit package.

(2) Physical therapy shall be limited to:

(a) Fifteen (15) visits per twelve (12) months for a recipient of the Global Choices benefit package; or

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit package; or

2. Optimum Choices benefit package.

(3) The therapy limits established in subsections (1) and (2) of this section shall be over-ridden if the department determines that additional visits beyond the limit are medically necessary.

(a) To request an override:

1. The provider shall telephone or fax the request to the department; and

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2. The department shall review the request in accordance with the provisions of 907 KAR 3:130 and notify the provider of its decision.

(b) An appeal of a denial regarding a requested override shall be in accordance with 907 KAR 1:563.

(4) Except for recipients under age twenty-one (21), prior authorization shall be required for each visit that exceeds the limit established in subsections (1) and (2) of this section.

(5) The limits established in subsections (1) and (2) of this section shall not apply to a recipient under twenty-one (21) years of age.

ELIZABETH A. JOHNSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Program Integrity
(As Amended at ARRS, September 14, 2010)

907 KAR 5:005. Health insurance premium payment (HIPP) program.

RELATES TO: 42 U.S.C. 1396e(a)-(e)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 42 U.S.C. 1396e(a)-(e).

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. 42 U.S.C. 1396e(a) through (e) authorizes states to establish a health insurance premium payment, or HIPP, program to provide health insurance coverage outside of Medicaid to Medicaid enrollees, and any family member of Medicaid enrollees if the department determines that HIPP program participation would be cost effective for the department. This administrative regulation establishes Kentucky's health insurance premium payment program requirements as authorized by 42 U.S.C. 1396e(a) through (e). [This administrative regulation establishes the department's health insurance premium payment, or HIPP, program provisions as authorized by 42 U.S.C. 1396e(a) through (e). The HIPP program is designed to provide health insurance coverage outside of Medicaid to Medicaid enrollees, and any family member of Medicaid enrollees if cost effective, if the department determines that HIPP program participation would be cost effective for the department.]

Section 1. Definitions. (1) "Buying in" means purchasing benefits from Medicare on behalf of an individual.

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

(3) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(4) "Group health insurance plan" means any plan, including a self-insured plan, of, or contributed to by, an employer to provide health care directly or otherwise to the employer's employees, former employees, or the families of the employees or former employees, if the plan:

(a) Meets the criteria established in 26 U.S.C. 5000(b)(1); and

(b) Includes continuation coverage pursuant to 26 U.S.C. 4980B or 29 U.S.C. 1161 to 1169 [;

(a) Of, or contributed to by, an employer including a self-insured plan to provide health care directly or otherwise to the employer's employees, former employees, or the families of the employees or

former employees; and

(b) Which:

1. Meets criteria established in Section 5000(b)(1) of the Internal Revenue Code of 1986, as amended, and

2. Includes continuation coverage pursuant to:

a. Title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986; or

b. Title VI of the Employee Retirement Income Security Act of 1974, as amended].

(5) "Health insurance premium payment program participant" or "HIPP program participant" means an individual receiving health insurance benefits in accordance with this administrative regulation.

(6) "Income" means:

(a) Wages, salary, or compensation for labor or services;

(b) Money received from a statutory benefit including Social Security, Veteran's Administration pension, black lung benefit, or railroad retirement benefit; or

(c) Money received from any pension plan, rental property, or an investment including interest or dividends.

(7) "Income deduction" means a deduction from an individual's income for the purpose of obtaining or trying to obtain Medicaid eligibility.

(8) "Medicaid" means the Kentucky Medicaid program.

(9) "Medicaid enrollee" means an individual eligible for and participating in Medicaid pursuant to 907 KAR 1:011, 907 KAR 1:605, 907 KAR 1:640, and 907 KAR 1:645.

(10) "Spend-down program" means a program by which an individual becomes eligible for Medicaid benefits:

(a) By spending down income in excess of the Medicaid income threshold; and

(b) In accordance with 907 KAR 1:640.

(11) "State plan" is defined in 42 C.F.R. 430.10

(12) "Wrap-around coverage" means coverage of a benefit not covered by an individual's group health insurance plan.

Section 2. HIPP Program Eligibility and Enrollment. (1) A Medicaid enrollee, or a person acting on the Medicaid enrollee's behalf, shall cooperate in providing information to the department necessary for the department to establish availability and cost effectiveness of a group health insurance plan by:

(a) Completing the Kentucky Health Insurance Premium Payment Program Application [Application for Health Insurance Premium Payment (HIPP) Program, Form PA 41]; and

(b) Submitting the Kentucky Health Insurance Premium Payment Program Application [Application for Health Insurance Premium Payment (HIPP) Program, Form PA 41] to the individual's local Department for Community Based Services office.

(2) If a Medicaid enrollee HIPP program applicant, participant, parent, guardian, or caretaker fails to provide information to the department, within ten (10) days of the department's request, necessary to determine availability and cost effectiveness of a group health insurance plan, the department shall not enroll the applicant in the HIPP program unless good cause for failure to cooperate is demonstrated to the department within thirty (30) days of the department's denial.

(3) Good cause for failure to cooperate shall exist if [be limited to the following circumstances]:

(a) There was a serious illness or death of the applicant, participant, parent, guardian, or caretaker or of a member of the applicant's, participant's, parent's, guardian's, or caretaker's immediate family [occurred];

(b) There was a fire, tornado, flood, or similar family emergency or household disaster [A family emergency or household disaster—for example a fire, tornado, flood, or similar];

(c) The applicant, participant, parent, guardian, or caretaker demonstrates that a good cause beyond that individual's [the applicant's participant's parent's guardian's, or caretaker's] control occurred; or

(d) There was a [1-] failure to receive the department's request for information or notification for a reason not attributable to the applicant, participant, parent, guardian, or caretaker occurred. The [2-] lack of a forwarding address shall be attributable to the applicant, participant, parent, guardian, or caretaker.

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(4) For a Medicaid enrollee who is a HIPP program participant:

(a) The department shall pay all group health insurance plan premiums and deductibles, coinsurance and other cost-sharing obligations for items and services otherwise covered under Medicaid; and

(b) 1. The individual's group health insurance plan shall be the primary payer; and

2. The department shall be the payer of last resort.

(5) For a HIPP program participating family member who is not a Medicaid enrollee:

(a) The department shall pay a HIPP program premium; and

(b) Not pay a deductible, coinsurance or other cost-sharing obligation.

(6) If an individual who was a Medicaid enrollee at the time the department initiated a HIPP program cost effectiveness review for the individual loses Medicaid eligibility by the time the cost effectiveness review has been conducted, the department shall not enroll the individual or any family member into the HIPP program.

Section 3. Wrap-around Coverage. (1) If a service to which a health insurance premium payment program participant would be entitled via Medicaid is not provided by the individual's group health insurance plan, the department shall reimburse for the service.

(2) For a service referenced in subsection (1) of this section, the department shall reimburse:

(a) The provider of the service; and

(b) In accordance with the department's administrative regulation governing reimbursement for the given service. For example, a wrap-around dental service shall be reimbursed in accordance with 907 KAR 1:626.

Section 4. Cost Effectiveness. (1) Enrollment in a group health insurance plan shall be considered cost effective ~~if~~^{if [when]} the cost of paying the premiums, coinsurance, deductibles and other cost-sharing obligations, and additional administrative costs is estimated to be less than the amount paid for an equivalent set of Medicaid services.

(2) When determining cost effectiveness of a group health insurance plan, the department shall consider the following information:

(a) The cost of the insurance premium, coinsurance, and deductible;

(b) The scope of services covered under the insurance plan, including exclusions for pre-existing conditions, exclusions to enrollment, and lifetime maximum benefits imposed;

(c) The average anticipated Medicaid utilization:

1. By age, sex, and coverage group for persons covered under the insurance plan; and

2. Using a statewide average for the geographic component;

(d) The specific health-related circumstances of the persons covered under the insurance plan; and

(e) Annual administrative expenditures of an amount determined by the department per Medicaid participant covered under the group health insurance plan.

Section 5. Cost Effectiveness Review. (1) The department shall complete a cost effectiveness review:

(a) At least once every six (6) months for an employer-related group health insurance plan; or

(b) Annually for a non-employer-related group health insurance plan.

(2) The department shall perform a cost effectiveness re-determination if:

(a) A predetermined premium rate, deductible, or coinsurance increases;

(b) Any of the individuals covered under the group health insurance plan lose full Medicaid eligibility; or

(c) There is a:

1. Change in Medicaid eligibility;

2. Loss of employment ~~if~~^{if [when]} the insurance is through an

employer; or

3. ~~[A]~~ Decrease in the services covered under the policy.

(3)(a) A health insurance premium payment program participant who is a Medicaid enrollee, or a person on that individual's behalf, shall report all changes concerning health insurance coverage to the participant's local Department for Community Based Services (DCBS), Division of Family Support within ten (10) days of the change.

(b) Except as allowed in subsection (4) of this section, if a Medicaid enrollee who is a health insurance premium payment program participant fails to comply with paragraph (a) of this subsection, the department shall disenroll ~~from the HIPP program~~ the HIPP program participating Medicaid enrollee, and any family member enrolled in the HIPP program directly through the individual if applicable~~[-, from the HIPP program]~~.

(4) The department shall not disenroll an individual from HIPP program

participation if the individual demonstrates to the department, within thirty (30) days of notice of HIPP program disenrollment, good cause for failing to comply with subsection (3) of this section.

(5) Good cause for failing to comply with subsection (3) of this section shall exist if:

~~[a]~~^[a] There was a serious illness or death of the individual, parent, guardian, or caretaker or a member of the individual's, parent's guardian's, or caretaker's ~~immediate~~ family;

~~[b]~~ ~~There was a fire, tornado, flood, or similar family emergency or household disaster~~^{[b] There was a fire, tornado, flood, or similar family emergency or household disaster}~~[- for example a fire, flood, tornado, or similar]~~;

~~[c]~~^[c] The individual, parent, guardian, or caretaker ~~demonstrates that a good cause beyond that individual's control occurred~~^{demonstrates that a good cause beyond that individual's control occurred}~~[- offers a good cause beyond the individual's, parent's, guardian's, or caretaker's control]~~; or

~~[d]~~^[d] There was a failure to receive the department's request for information or notification for a reason not attributable to the individual, parent, guardian, or caretaker. ~~The~~^{The}~~[-]~~ lack of a forwarding address shall be attributable to the individual, parent, guardian, or caretaker.

Section 6. Coverage of Non-Medicaid Family Members. (1) If determined to be cost effective, the department shall enroll a family member who is not a Medicaid enrollee into the HIPP program if the family member has group health insurance plan coverage through which the department can obtain health insurance coverage for a Medicaid-enrollee in the family.

(2) The needs of a family member who is not a Medicaid enrollee shall not be taken into consideration when determining cost effectiveness of a group health insurance plan.

(3) The department shall:

(a) Pay a HIPP program premium on behalf of a HIPP program participating family member who is not a Medicaid enrollee; and

(b) Not pay a deductible, coinsurance, or other cost-sharing obligation on behalf of a HIPP program ~~[-]~~participating family member who is not a Medicaid enrollee.

Section 7. Exceptions. The department shall not pay a premium:

(1) For a group health insurance plan if the plan is designed to provide coverage for a period of time less than the standard one-year coverage period;

(2) For a group health insurance plan if the plan is a school plan offered on the basis of attendance or enrollment at the school;

(3) If the premium is used to meet a spend-down obligation ~~and [when]~~ all persons in the household are eligible or potentially eligible only under the spend-down program pursuant to 907 KAR 1:640. ~~[a]~~ If any household member is eligible for full Medicaid benefits, the premium shall;

~~[a]~~ Be paid if it is determined to be cost effective when considering only the household members receiving full Medicaid coverage; ~~and [-]~~

~~[b]~~ ~~[In a case described in subparagraph 1 of this paragraph, the premium shall]~~ Not be allowed as a deduction to meet the spend-down obligation for those household members participating

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in the spend-down program.[-:]

(4) For a group health insurance plan if the plan is an indemnity policy which supplements the policy holder's income or pays only a predetermined amount for services covered under the policy.[-or]

Section 8. Duplicate Policies. (1) If more than one (1) group health insurance plan or policy is available, the department shall pay only for the most cost-effective plan except as allowed in subsection (2) of this section.

(2) ~~If [in a circumstance where]~~ the department is buying in to the cost of Medicare Part A or Part B for an eligible Medicare beneficiary, the cost of premiums for a Medicare supplemental insurance policy ~~shall [may]~~ also be paid if the department determines that it is likely to be cost effective to do so.

Section 9. Discontinuance of Premium Payments. (1) If all Medicaid-enrollee household members covered under a group health insurance plan lose Medicaid eligibility, the department shall discontinue HIPP program payments as of the month of Medicaid ineligibility.

(2) If one (1) or more, but not all, of a household's Medicaid-enrollee members covered under a group health insurance plan lose Medicaid eligibility, the department shall re-determine cost effectiveness of the group health insurance plan in accordance with Section 5(2) of this administrative regulation.

Section 10. Health Insurance Premium Payment Program Payment Effective Date. (1)(a) ~~HIPP[health insurance premium payment]~~ program payments for cost-effective group health insurance plans shall begin with the month the health insurance premium payment program application is received by the department, or the effective date of Medicaid eligibility, whichever is later.

(b) If an individual is not currently enrolled in a cost effective group health insurance plan, premium payments shall begin in the month in which the first premium payment is due after enrollment occurs.

(2) The department shall not make a payment for a premium which is used as an income deduction when determining individual eligibility for Medicaid.

Section 11. Premium Refunds. The department shall be entitled to any premium refund due to:

- (1) Overpayment of a premium; or
- (2) Payment for an inactive policy for any time period for which the department paid the premium.

Section 12. Notice. The department shall inform a health insurance premium payment program:

(1) Applicant, in writing, of the department's initial decision regarding cost effectiveness of a group health insurance plan and ~~HIPP[health insurance premium payment]~~ program payment; or

(2) Participating household, in writing:

(a) If ~~HIPP[health insurance premium payment]~~ program payments are being discontinued due to Medicaid eligibility being lost by all individuals covered under the group health insurance plan;

(b) If the group health insurance plan is no longer available to the family; or

(c) Of a decision to discontinue ~~HIPP[health insurance premium payment]~~ program payment due to the department's determination that the policy is no longer cost effective.

Section ~~13.[44.]~~ Federal Financial Participation. (1) The department's health insurance premium program shall be contingent upon the receipt of federal financial participation for the program.

(2) If federal financial participation is not provided to the department for the department's health insurance premium program, the program shall cease to exist.

(3) If the Centers for Medicare and Medicaid Services (CMS) disapproves a provision stated in an amendment to the state plan, which is also stated in this administrative regulation, the provision shall be null and void.

Section 14. Incorporation ~~[45. Material Incorporated]~~ by Reference. (1) The "Kentucky Health Insurance Premium Payment

Program Application", September 2010~~[Application for Health Insurance Premium Payment (HIPP) Program, Form PA 41", September 2009]~~ edition, is incorporated by reference ~~[into this administrative regulation]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., ~~or [This material may also be obtained]~~ from the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.[-:]

ELIZABETH A. JOHNSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: June 25, 2010

FILED WITH LRC: July 1, 2010

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-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
Kentucky Teachers' Retirement System
(Amended After Comments)

102 KAR 1:320. Qualified domestic relations orders.

RELATES TO: KRS 161.700, 161.310, 26 U.S.C. sec. 414(p).
STATUTORY AUTHORITY: KRS 161.700, 161.310
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Kentucky Teachers' Retirement System (KTRS) to promulgate all administrative regulations for the administration of the funds of the retirement system. KRS 161.700 requires the Board of Trustees of KTRS to promulgate administrative regulations setting forth the requirements, procedures and forms for the approval and processing of qualified domestic relations orders impacting the benefits of participants of the retirement system.

Section 1. Definitions. (1) "Alternate Payee" is defined by KRS 161.220(26).

(2) "Benefits" means, for purposes of this administrative regulation, a monthly service or disability retirement allowance or refund payable at the request of a participant covered by KTRS who terminates employment in a KTRS covered position prior to becoming eligible to receive a retirement allowance.

(3) "Member" is defined by KRS 161.220(4).

(4) "Participant" is defined by KRS 161.220(24).

(5) "Qualified domestic relations orders" or "QDRO" is defined by KRS 161.220(25).

Section 2. (1) A QDRO shall state the following:

(a) The member's name, KTRS member identification number and last-known mailing address;

(b) The alternate payee's name and last-known mailing address;

(c) Whether the order applies to an active account from which the member is not currently receiving a retirement allowance, or to a retired account from which the member is currently receiving a retirement allowance and the date on which the member retired the account;

(d) The date of marriage;

(e) The date of decree of dissolution of marriage;

(f) That the order is for the purpose of property division;

(g) The amount of the participant's monthly retirement allowance or termination refund to be paid by KTRS to the alternate payee as either;

1. A fixed dollar amount; or

2. The percentage calculated under Section 7(1) of this administrative regulation;

(h) When payments shall begin;

(i) When payments shall cease;

(j) That the alternate payee shall be paid in the same form as the participant;

(k) Whether the alternate payee spouse shall share in the participant's cost of living adjustments if the QDRO awards a fixed dollar amount to such alternate payee;

(l) Who shall be responsible for payment of the KTRS processing fee; and

(m) All information required on the form incorporated by reference in this administrative regulation.

(2) A QDRO shall be:

(a) Signed by the judge of a court of competent jurisdiction;

(b) Filed with the clerk of the court; and

(c) Certified by the clerk of the court.

Section 3. Administrative Provisions. (1) Thirty (30) days prior to filing the QDRO with KTRS, the participant or alternate payee shall present a written request for benefits information for divorce purposes. The participant, alternate payee or third party, including the party's legal counsel, shall provide a completed KTRS Authori-

zation for Release of Information form with the request.

(2) For a QDRO directed to an active account from which a participant is not currently receiving a retirement allowance, KTRS shall forward a Report for Current Year Earnings and Contributions form to the participant's employer upon receipt of the written request and release. The employer shall return the completed form to KTRS within ten (10) work days.

(3) If the QDRO is directed to an account from which the participant is not currently receiving a retirement allowance, KTRS shall not project future earnings or future service. KTRS shall provide:

(a) The participant's total accrued service credit, including service credit purchased during the marriage, and the member account balance, including the total amount of accrued contributions and interest, as posted at the end of each fiscal year during the marriage and for which an employer annual report has been received by KTRS and for which the member has not received a refund; and

(b) An estimate of the monthly retirement allowance the participant would receive if the participant retired without a statutory reduction of the basic retirement allowance based upon the participant's final compensation and total accrued service credit as of the date of dissolution of marriage.

(4) If the participant has retired, KTRS shall provide the amount of the participant's monthly retirement allowance and the participant's total accrued service credit, including any service credit purchased during the marriage.

(5) The participant or alternate payee or legal counsel shall submit a Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits form to KTRS for review forty-five (45) days prior to filing the QDRO with the court. If more than one of participant's accounts is subject to classification and division as marital property, a separate QDRO shall be issued for each KTRS account.

(6) KTRS shall not review the QDRO unless it is accompanied by the following:

(a) The KTRS Administrative Rule Compliance form which has been approved by both the participant or alternate payee or their legal counsel;

(b) A fifty (50) dollar nonrefundable processing fee, by certified check or on the attorney's trust account, made payable to the Kentucky State Treasurer, except that a processing fee shall not be charged for a QDRO issued solely for child support;

(c) The KTRS Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number, and date of birth;

(d) Copies of the participant's and alternate payee's Social Security cards;

(e) Authorization for Direct Deposit form; and

(f) Any other documents that are required to confirm additional service credit purchased, or sought to be purchased, for retirement calculation purposes under KRS 161.220 through 161.716, including Military Service Certification and Affidavit form, with a copy of discharge papers.

(7) Within twenty (20) days of receipt of the QDRO, KTRS shall notify the participant and alternate payee in writing whether the QDRO meets KTRS requirements. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel.

(8) If the QDRO does not meet KTRS requirements, KTRS shall notify the participant and alternate payee in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel. The amended QDRO shall be submitted to KTRS for review and approval prior to filing with the court.

(9) If the QDRO is subsequently amended before filing with the court, the amended QDRO shall be resubmitted to KTRS with a twenty-five (25) dollars nonrefundable processing fee.

(10) Following approval by the court, the participant, alternate

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payee or legal counsel shall file a certified copy of the QDRO with KTRS. The QDRO shall not become effective until the certified copy is received by KTRS. Upon receipt of the certified copy, KTRS shall designate the participant's account for implementation of the QDRO. While a separate account balance shall not be maintained for the alternate payee, a separate payroll account shall be established. Payments to the alternate payee shall commence in the calendar month following the date that a certified copy of the QDRO is received by KTRS.

(11) If KTRS is enforcing a QDRO which is subsequently amended or terminated by the court, the participant, alternate payee or legal counsel shall submit a certified copy of the amended QDRO or order of termination to KTRS for processing.

(12) The participant, alternate payee or legal counsel shall not submit a QDRO which is not final and under consideration by an appellate court.

(13) The alternate payee shall be responsible for notifying KTRS of any change in name or mailing address. KTRS shall provide a Name or Change of Address form upon request. KTRS shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when an annuity benefit subject to the QDRO becomes payable. Other than sending such notice, KTRS shall have no duty or responsibility to search for, or locate, the alternate payee. If the notification sent to the alternate payee's last known address is returned due to the alternate payee's failure to notify KTRS of an address change, within sixty (60) days of the return of the notification to the alternate payee, the amounts otherwise payable to the alternate payee shall be paid to the participant until a new address is provided by the alternate payee. KTRS shall have no liability to the alternate payee with respect to such amounts paid to the participant.

(14) The participant shall be responsible for notifying KTRS in writing of an event which causes benefit payments to the alternate payee spouse, child or other dependent, to cease. The participant shall provide KTRS with a certified copy of the alternate payee's death certificate or marriage certificate. The alternate payee shall also be responsible for notifying KTRS in writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that terminates the alternate payee's right to receive any payments. KTRS shall not be responsible for payments made to the alternate payee until it is given timely written notice of any event terminating those payments.

Section 4. A QDRO may apply to a participant's: (1) Retirement allowance;
(2) Disability retirement allowance; or
(3) Termination refund.

Section 5. A QDRO shall not apply to a participant's: (1) Survivor annuity that becomes payable after the member's death;

(2) Survivor benefits that become payable after an active contributing member's death;
(3) Accounts that are not vested at the time of the dissolution of marriage;
(4) Life insurance benefit;
(5) Refund as a result of an error;
(6) Refund of an active or retired account in response to a member's death;
(7) Health insurance; and
(8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's annuity benefits and dies before the participant dies, retires or withdraws his account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and payment. (1) The portion of the participant's benefits payable to the alternate payee shall be fifty (50) percent of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as pro-

vided under KRS 403.190(4), multiplied by the following fraction:

(a) The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage; and

(b) The denominator of which shall be the participant's total full and fractional years of KTRS service credit through the date of dissolution of the marriage.

(2) If the participant is or will be receiving a disability retirement allowance, the participant's total annuity benefit for purposes of this administrative regulation shall be calculated under the service retirement formula established under KRS 161.661(5), even if the entitlement period described under KRS 161.661(3) and (4) has not expired.

(3) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, the participant's total annuity benefit shall be calculated without inclusion of the discounts required under KRS 161.620(1)(b) and (d). However, if at the time of retirement the participant is subject to discounts required under KRS 161.620(1)(b) and (d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are payable to the participant and to be paid to the alternate payee, KTRS shall reduce the amount to be paid to the alternate payee under the QDRO by the amount of the discounts. KTRS shall increase the amount paid to the alternate payee in amount equal to any discounts that are subsequently eliminated as the result of the participant's return to work after retirement under the provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement benefits.

(4) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, and the participant at the time of issuance of the QDRO is not eligible for calculation of his total annuity benefit based on his three (3) highest salaries as provided under KRS 161.220(9), then his total annuity benefit shall be calculated on his five (5) highest salaries.

(5) The participant may select any retirement option but payment to the alternate payee shall be measured as though the participant had chosen Option I, Straight Life Annuity with Refundable Balance, under KRS 161.620 and 102 KAR 1:150.

Section 8. Any person who attempts to make KTRS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to KTRS for its costs and legal fees.

Section 9. KTRS and its staff shall have no liability for making or withholding payments in accordance with any of the provisions of this administrative regulation.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KTRS Authorization for Release of Information", 14 July 2010;
(b) "KTRS Report for Current Year Earnings and Contributions", 14 July 2010;
(c) "Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits", **15 September**~~[14 July]~~ 2010;
(d) "KTRS Administrative Regulatory Compliance", 14 July 2010;
(e) "KTRS Confidential Information", 14 July 2010;
(f) "KTRS Authorization for Direct Deposit", 14 July 2010;
(g) "KTRS Military Service Certification and Affidavit", 14 July 2010; and
(h) "KTRS Name or Change of Address", 14 July 2010;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

BARBARA STERRETT, Chairperson

APPROVED BY AGENCY: September 10, 2010

FILED WITH LRC: September 14, 2010 at 8 a.m.

CONTACT PERSON: Robert B. Barnes, General Counsel,

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Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508 or fax (502) 848-8599.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements, procedures and forms for the approval and processing of qualified domestic relations orders ("QDRO") by Kentucky Teachers' Retirement System ("KTRS").

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure compliance with the amendments to KRS 161.700.

(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: setting forth the procedures and timelines to be followed in filing a QDRO with KTRS, setting the filing fees, providing the formula for calculating the amount to be paid to the alternate payee, and incorporating the forms required by KTRS.

(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 informing KTRS participants, their alternate payees, legal counsel and the courts what is required to expedite approval and implementation of a QDRO.

(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 Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits (QDRO) form was amended after comments received from the Cabinet from Health and Family Services, Child Support Enforcement (CHFS) to reflect that child support payments should be made to the State Disbursement Unit.

(b) The necessity of the amendment to this administrative regulation: Per CHFS, Part D of Title IV of the Social Security Act requires the child support agency to act as a fiscal agent for collection, disbursement, and recording of a noncustodial parent's child support payment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the QDRO form ensures that child support payments are made to the appropriate office.

(d) How the amendment will assist in the effective administration of the statutes: Child support payments are made to the appropriate office.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to participants and alternate payees of participants of KTRS who are subject to a qualified domestic relations order.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The participants, their alternate payees and legal counsel will have to adhere to the requirements for filing a QDRO for approval by KTRS, including the timeframes for filing the KTRS QDRO forms, payment of the processing fee, and utilization of the formula for calculation of the alternate payee's share.

(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 a \$50 initial processing fee and a \$25 processing fee for amended QDROs to be paid by the participant, the alternate payee or shared by both parties as ordered by the court.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Alternate payees will be permitted to access participants' retirement benefits which were previously exempt from distribution during dissolution of marriage.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: Continuing costs will be determined by the number of QDROs filed with KTRS and cannot be quantified at this point.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of KTRS incurred in processing QDROs will be paid via the processing fees.

(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 establishes the fees to be assessed for processing QDROs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes a \$50 initial processing fee and a \$25 processing fee for amended QDROs.

(9) TIERING: Is tiering applied? Tiering is not applied, as all participants and alternate payees of participants 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? Kentucky Teachers' Retirement System.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.700, 161, 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.

(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 additional revenue generated by this regulation will be dependent upon the number of QDROs filed with KTRS and cannot be quantified at this time.

(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? Future revenue generated by this regulation will be dependent upon the number of QDROs filed with KTRS and cannot be quantified at this time.

(c) How much will it cost to administer this program for the first year? The cost in terms of staff time for processing the QDROs will depend upon the number of orders received.

(d) How much will it cost to administer this program for subsequent years? Future cost in terms of staff time for processing QDROs will depend upon the number of orders received and cannot be quantified at this time.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 8:100. Design, construction and approval of facilities.

RELATES TO: KRS 151.634, 224.10-110, 224.60-100,

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~~322.020(1), 322.340~~Chapter 224], 40 C.F.R. 141.5, 141.110-111~~[Part 141 (1995)]~~

STATUTORY AUTHORITY: KRS 224.10-100(2), 224.10-110, 40 C.F.R. 141.5, 141.110-111, 42 U.S.C. 300j-26~~[Part 141 (1995), 42 U.S.C. A 300f, 300g, 300j]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 **(2), (3), and (4) require** ~~[requires]~~~~[directs]~~ the cabinet to enforce administrative regulations ~~promulgated~~~~[adopted]~~ by the secretary for the regulation and control, **including construction and operation**, of the purification of water for public and semipublic use. ~~[The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility.]~~ This administrative regulation ~~establishes~~~~[sets out]~~ design plan requirements for the construction of new and expanded facilities that deliver ~~potable~~~~[pure]~~ water for public or semipublic use ~~and establishes requirements for submitting plans and specifications for~~~~[as well as stipulating certain reporting requirements and requiring]~~ modifications to existing facilities ~~[for certain line replacements, and feeding activated carbon].~~ There is ~~not a~~~~[no]~~ federal regulation that deals with this subject matter~~;~~~~[]~~ therefore, this administrative regulation is ~~not~~~~[no]~~ more stringent than ~~federal requirements~~~~[the federal regulation]~~. The plans review process specified in this administrative regulation allows plans to be reviewed and certain judgments to be made about water systems to ensure that other state and federal requirements are being met].

Section 1. Preliminary Engineering Report. ~~[Plans and Specifications.]~~ (1) A preliminary engineering report for a proposed new facility or a modification to an existing facility shall be prepared by a professional engineer and [Plans to be] submitted to the cabinet.

(a) Except as established in paragraph (b) of this subsection, ~~[Before]~~ a supplier or potential supplier of water shall submit the preliminary engineering report to the cabinet before entering ~~[may enter]~~ into a financial commitment for or ~~initiating~~~~[initiate]~~ construction of a new public water system~~;~~~~[]~~ or ~~increasing~~~~[increase]~~ the capacity of an existing public water system~~;~~~~[]~~ he shall submit the preliminary plans to the cabinet].

(b) A preliminary engineering report shall not be required for:

1. A semipublic treatment facility; or
2. Construction, extension, or improvement of a distribution system.

(c) The preliminary engineering report shall comply with 40 C.F.R. 141.5, Siting requirements.

(2) The preliminary engineering report shall contain the following information: ~~[An applicant shall demonstrate to the cabinet evidence of efforts to avoid locating part or all of the new or expanded facility at a site which is subject to a significant risk from earthquakes, floods, fires or other disasters which could cause a breakdown of the public water system or a portion thereof. Except for the intake structure, the facility shall be out of the 100-year flood plain.]~~

(2) Preliminary information. The following information shall be submitted to the cabinet by a professional engineer on behalf of the applicant along with the fee required by 401 KAR 8:050, Section 1(4):]

(a) The ~~name~~~~[names]~~ of the applicant and of the owner of the plant;

(b) A ~~[United States Geological Survey quadrangle]~~ map ~~that~~~~[which]~~ shows the location of the proposed facility;

(c) The proposed source of water and ~~the~~ quantity available, with the location of the intake or wellhead identified by latitude and longitude in degrees, minutes, and seconds;

(d) An analysis of the water from the proposed source for ~~contaminants regulated pursuant to 401 KAR Chapter 8,~~ which covers all regulated parameters, performed by a ~~certified~~ laboratory ~~[certified by the cabinet or its authorized agent];~~

(e) A ~~detailed~~ description of the proposed facility~~;~~~~[]~~ including size, flow rate through filters, settling basin size, and other general criteria; and]

(f) ~~A detailed flow diagram of the proposed facility;~~

(g) ~~Pilot study conclusions, if conducted; and~~

(h) An operation plan, including:

1. Anticipated load;
2. Hours of operation;
3. Area served; and
4. Number and certification of operational staff. ~~[the name of the plant operator.]~~

(3) Preliminary ~~engineering report~~~~[plans]~~ approval.

(a) The preliminary engineering report shall be consistent with the requirements of the materials incorporated by reference in Section 9(a) - (c) of this administrative regulation.

(b) Upon receipt and review of the preliminary engineering report ~~[plans, as set forth in subsection (1) of this section],~~ the cabinet shall either approve the preliminary engineering report ~~[plans]~~ or return it~~[them]~~ to the applicant~~[supplier of water]~~ for revision.

1. Final plans shall not be submitted until the preliminary engineering report has been approved.

2. Approval of the preliminary engineering report shall not constitute final approval for construction.

3. A ~~proposed~~~~[plans]~~ signifies approval only of the concept described in the preliminary plans and does not alter in any way the responsibility of the supplier of water to submit complete plans and specifications to the cabinet for final approval. The facility shall comply with the approved preliminary plans. Any change in the preliminary engineering report~~[final design from the concept set forth in the preliminary plans]~~ shall be submitted to the cabinet and approved prior to ~~[its]~~ incorporation in the final plans ~~[and specifications].~~

Section 2. Final Plans and Specifications. (1)~~(4)~~ Preliminary plans for semipublic treatment facilities or distribution systems. Preliminary plans are not required by the cabinet for semipublic treatment facilities or for distribution system construction, extensions or improvements.

~~(5)~~ Final plans and specifications for the construction or modification of a water treatment plant or a distribution facility [water treatment plants and distribution facilities] shall be consistent with the materials incorporated by reference in Section 9(a) - (c) of this administrative regulation.

(a) If a preliminary engineering report is required pursuant to Section 1 of this administrative regulation, the final plans and specifications shall be consistent with the approved preliminary engineering report.

~~(b)1.~~ Plans for the construction or modification of a public water system~~[systems]~~ shall be submitted by the water system or shall be accompanied by a letter from the water system confirming that the water system ~~[it]~~ has reviewed the plans, accepts the design, and has the capacity to~~[can]~~ and shall~~[will]~~ provide water service to the project.

2. A public water system that purchases~~[systems which purchase]~~ water from another public water system~~;~~~~[]~~ shall ~~[also]~~ submit a letter from the providing water system verifying the providing water system has the capacity and shall provide water service to the purchasing water system, including the proposed project~~[seller of water for all construction or modification projects]~~ if~~;~~~~[]~~ the project will result in:

a. Demand for water exceeding eighty-five (85) percent of the purchaser's current purchase contract; or

b. Increased~~[increase]~~ water~~[the project could result in a pressure reduction below thirty-five (35) pounds per square inch in either the purchaser's or the seller's system; or, the project will result in a demand [for water] by the purchaser by~~~~[in excess of a] 10,000 gallons or more~~~~[gallon] per day [increase. This requirement may be waived by the cabinet if the purchaser shows that a reasonable attempt to obtain the letter has been made and the seller of water fails to provide the required letter. This provision shall not be the sole justification for rejection of the proposed project. The intent is to alert the seller and the purchaser that they are approaching their water purchase contract limitations and the state standards on minimum water pressure].~~

(c) Engineering~~(b)~~ plans and specifications ~~[for a]~~~~[all]~~ public water system shall be submitted to the cabinet.~~[systems]~~ shall be

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prepared [and submitted to the cabinet] by a professional engineer licensed [registered] in Kentucky, and shall bear the engineer's seal, signature, and date of signature.

1. [The seal of a professional engineer shall not be [is not] required on plans and specifications for semipublic water supply.

2. Prior to the construction or modification of a public or semipublic water system, the following documents and fees shall be submitted to the cabinet:

a. Three (3) [supplies, or for public water supply projects in which the expenditure for the completed project does not exceed \$2,000. The construction or installation of any new facilities or works or the alteration or reconstruction of any existing facilities or works, in any public or semipublic water system, shall not begin until four (4) copies of the plans and specifications.] or [any] changes thereto;

b. For construction or modification of a distribution system, a complete Construction Application for Drinking Water Distribution form;

c. For the construction or modification of a treatment facility, a completed Construction Application for Drinking Water Treatment form;

d. For construction or modification of a semi-public facility, a completed Construction Application for Small **Groundwater and Semi-Public [Drinking Water] Systems** form;

e. A map that shows the location of the proposed facility;

f. Hydraulic calculations;

g. Design data and supporting documents necessary for review of the plans and specifications;

h. Chemical and microbiological analyses of a new raw water source if the plans and specifications are for a treatment facility; and

i. The fee required by 401 KAR 8:050.

3. [3.] Construction or modification of a public or semipublic water system shall not begin until the plans and specifications have been approved by the cabinet in writing.

4. [4.] [together with design data as may be required for proper review of the plans, have been submitted to the cabinet and have been approved by the cabinet in writing. A complete package, including plans, specifications, necessary fees, letters and other information, shall be submitted in the form and content as may be specified by the cabinet, and shall be submitted at least thirty (30) days prior to the date on which action is requested of the cabinet.] The front page of the plans shall identify [contain the name of] the public water system [supply], the owner of the public water system, **the public water system's [its] [ownership,] location by city and county, and [the name of] the professional engineer [person] preparing the plans.**

[d] [e] The cabinet's review of plans and specifications shall be limited to sanitary features of design and other features of public health significance and shall not include a review [an examination] of structural, mechanical, or electrical design [or economic factors].

[e] [d] The plans shall be drawn to scale and shall be accompanied by [proper] specifications, so as to allow [permit] a comprehensive engineering review, and shall include [but not be limited to,] the following:

1. [If treatment facilities are involved, chemical analyses of the proposed raw water source or sources shall be performed and evaluated before final approval is granted;

2. A] Plan and sectional views [view] with all necessary dimensions; and

2. [of the water treatment facilities;

3.] A piping diagram [showing all appurtenances, including treatment facilities,] in sufficient detail [as well as pertinent elevation data,] to allow [permit] a hydraulic analysis of the system.

[2] [and

4. Specifications containing details on all treatment equipment, including catalog identification of pumps, chlorinators, chemical feeders and related equipment.

5. A capacity to feed activated carbon shall be a part of the design for a new community or nontransient noncommunity surface water system.

6. A plan for a water line that would propose a section of line be laid within a 200-foot radius of an underground storage tank as

defined in KRS 224.60-100 or a petroleum storage tank as defined in KRS 224.60-115, shall provide that all water lines within the 200-foot radius shall be ductile iron pipe or other nonpermeable pipe approved by the cabinet. Any future replacement of an existing water line within a 200-foot radius of a storage tank, whether or not plans are submitted to the cabinet, shall also meet this requirement. The requirements of this subparagraph may be waived, in writing, if the public water system shows to the satisfaction of the cabinet, that the protection afforded by nonpermeable material is unnecessary due to hydrological, geological, or other physical conditions at a particular site.

[6] Approval of final plans.

[a] Upon receipt and review of final plans and specifications, the cabinet shall either approve the final plans and specifications in writing or return them to the applicant for revision.

[b] If approved, one (1) set of approved plans and specifications shall [stamped "approved" will] be returned to the engineer, [or person who prepared them] and one (1) set shall [will] be returned to the water system [supplier] [supply].

Section 3. [7] Construction. [1] (a) During construction, a set of approved plans and specifications shall be available at the job site [at all times].

[b] Construction [All work] shall be performed in accordance with the approved plans and specifications.

[2] [4] If the cabinet's representative observes work being performed in a manner that [which] does not conform to the approved plans and specifications, the cabinet shall notify the owner in writing.

[3] Unless construction begins within two (2) years from the date of approval of the final plans and specifications, the approval shall expire.

Section 4. [8] Final approval of facility. [1] Upon completion of construction, a professional engineer [the person who presented the plans] shall certify in writing that the project has been completed in accordance with the [approved] plans and specifications.

[2] A [The public water supply shall operate the facility consistent with the approved plans and specifications. Any] proposed change to the approved plans affecting sanitary features of design [plan] shall be submitted to the cabinet for approval in accordance with Section 2 of this administrative regulation.

[3] The public water system [supplier] [supply] shall not implement a [any] change to the approved plans [plan] without the prior written approval of the cabinet.

Section 6. [9] Expiration of approval. Unless construction is begun within one (1) year from date of approval, the approval shall expire. Extension of approval may be granted upon written request to the cabinet.

[4] Modifications and extension of service. The cabinet shall not [may refuse to] approve a modification [modifications] of a public water system or an extension of service to one (1) or more customers if the modification or extension of service is likely to [may] result in the water system's inability to supply consistent water service in compliance with 401 KAR 8:010 through 8:600.

Section 7. Treatment Techniques. A public water system shall comply with the treatment technique requirements established in 40 C.F.R. 141.10 through 141.111, General requirements and treatment techniques for acrylamide and epichlorohydrin.

Section 8. Variance. If plans and specifications deviate from the requirements of this administrative regulation, a written request for a variance shall be submitted with the plans and specifications or preliminary plans.

[1] The variance request shall include:

[a] a description of the reason for the variance request;

[b] The basis for the alternate plans or specifications, which shall be supported by current engineering practices; and

[c] Other information necessary to support the variance;

[2] A variance shall not be approved if it will not protect public health, water quality, and the environment.

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

(a) [inclusive-

(1) All plans and specifications submitted pursuant to this administrative regulation shall be consistent with "Recommended Standards for Water Works", "General Design Criteria for Surface and Groundwater Supplies", and "Water Policy Memorandum Number 84-02, General Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed Within Five Miles Upstream from Public Water Supply Sources, or for the Location of Public Water Supply Intakes Within Five Miles Downstream from Wastewater Discharges", which are incorporated by reference in Section 4 of this administrative regulation.

Section 2. Treatment Techniques for New and Existing Systems. (1) General requirements. The requirements of this section constitute primary drinking water regulations. These administrative regulations establish treatment techniques in lieu of maximum contaminant levels for specified contaminants.

(2) Treatment techniques for acrylamide and epichlorohydrin. Each public water system shall certify annually in writing to the cabinet, using third party or manufacturer's certification, that when acrylamide and epichlorohydrin are used in drinking water systems, the combination or product of dose and monomer level does not exceed the levels specified as follows:

Acrylamide = 0.05 percent dosed at one (1) ppm (or equivalent);

Epichlorohydrin = 0.01 percent dosed at twenty (20) ppm (or equivalent).

Certifications may rely on manufacturers or third parties, as approved by the cabinet.

Section 3. All existing community and nontransient noncommunity water systems using surface water as a source shall, by January 1, 1995, submit to the cabinet for approval plans to establish the capacity to feed activated carbon to the treatment system. Within twelve (12) months of the approval of the plans, the water system shall certify in writing to the cabinet that the approved plan has been implemented.

Section 4. The following documents are hereby incorporated by reference and are available for public inspection and copying, subject to copyright laws, between 8 a.m. and 4:30 p.m., Monday through Friday, except for state holidays, at the Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40604:

(4) Great Lakes - Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers "Recommended Standards for Water Works", 2007;

(b) 1992, published by and available from Health Research Inc., Health Education Services Division, P.O. Box 7126, Albany, New York 12224.

(2) "General Design Criteria for Surface and Ground Water Supplies", April 2010;

(c) July 1990, which is published by and may be obtained from the Division of Water; and

(3) "Water Policy Memorandum number 84-02, General Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed within Five Miles Upstream from Public Water Supply Sources, or for the Location of Public Water Supply Intakes within Five Miles Downstream from Wastewater Discharges", 1984;

(d) "Construction Application for Drinking Water Distribution", DW-1, 8/4/2010;

(e) "Construction Application for Drinking Water Treatment", DW-2, 8/4/2010; and

(f) "Construction Application for Small Groundwater and Semi-Public Drinking Water Systems", DW-3, 8/4/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m., which is published by and may be obtained from the Division of Water.]

LEONARD PETERS, Secretary

APPROVED BY AGENCY: June 1, 2010

FILED WITH LRC: June 4, 2010 at 11 a.m.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, 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 establishes procedures for public and semipublic water systems to submit preliminary and final construction plans to the cabinet for approval.

(b) The necessity of this administrative regulation: This administrative regulation allows the cabinet to approve or disapprove the plans and specifications for public and semipublic water systems to assure sanitary features of design.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-110 requires the cabinet to review and approve or disapprove plans for the construction or modification of water treatment plants and distribution systems

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures and guidelines to allow the cabinet to review, approve, or disapprove plans and specifications for proper construction and modification of public and semipublic water treatment plants and distribution systems.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are to incorporate the most recent version of "Recommended Standards for Water Works" and update "General Design Criteria for Surface and Groundwater Supplies". Other amendments are to update the requirements for professional engineer's seal on public water supply projects to comply with statutory requirements, outline provisions for variance, incorporate application forms to be submitted with projects, and reduce the number of copies of plans required for submittal. An amendment was made after comments to strike an exemption for a semi-public water systems. All engineering plans submitted to the cabinet must include a professional engineer's stamp, in compliance with KRS Chapter 322.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation will allow the professional engineering community to use the most current design guidelines for the construction or expansion of water treatment plants and distribution systems.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-110 requires the cabinet to review and approve or disapprove plans for the construction or modification of water treatment plants and distribution systems. The amendment will allow the cabinet to use the most current engineering design criteria in the review process.

(d) How the amendment will assist in the effective administration of the statutes: The adoption of updated design criteria will require the use of the most recent design criteria and allow the cabinet to more effectively oversee plans and specifications for the design and operation of water systems. The new applications will streamline the review process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects 480 public water systems, 52 semipublic water systems, 7 bottled water systems, and any proposed new public or semipublic water systems that may be created.

(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: Public water systems will be required to use current engineering design criteria when designing new or expanded water treatment and distribution facilities and submitting the plans to the cabinet for approval. An application will need to be included with all plans submitted to the cabinet for approval. Plans for public water supplies that cost less than \$2,000 will now require the seal of a professional engineer, as required by KRS Chapter 322.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the revised design criteria and the most current edition of "Recommended Standards for Water Works" will have a negligible impact on the cost of compliance with existing regulations. Requiring the seal of a professional engineer on public water supply projects that do not exceed \$2,000 may impact those project costs. However, since few projects cost less than \$2,000, compliance with this change will have an overall insignificant impact on the water system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Plans for the construction or expansion of water treatment or distribution systems will be able to use current engineering design criteria for those plans. Amendments to this regulation lower the number of copies required with submittal, thereby reducing printing and mailing costs. The new applications submitted with plans more efficiently communicates technical specifications needed in the review process thereby potentially resulting in reduced project costs.

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

(a) Initially: There are no additional costs to implement the amendments to this administrative regulation.

(b) On a continuing basis: There are no additional costs to implement the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The funding for the implementation and enforcement for this administrative regulation is federal funds provided for the enforcement of the Safe Drinking Water Act.

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

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

(9) TIERING: Is tiering applied? Yes. This administrative regulation makes distinctions between public and semipublic water systems. Semipublic water systems are not required to have an engineer sign plans. Semipublic water systems are typically very small, less than twenty-five people, and the different requirement reduces the financial burden to these small systems. This is not a change from the currently effective administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation applies to public and semipublic water systems. Public water systems are often owned by city governments or organized under county governments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. 142.16 requires state primacy programs to have an enforceable requirement for determining disinfection and filtration technologies appropriate to treating water to comply with federal requirements. KRS 224.10-110 requires that plans and specifications for public and semipublic water systems be approved or disapproved by the cabinet.

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 regulation will not generate any revenue for local governments for the first year.

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

(c) How much will it cost to administer this program for the first year? Additional costs are not anticipated to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? Additional costs are not anticipated to administer this program in subsequent years.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 142.10(b)(5) under Primary Enforcement Responsibility states that a state has primary enforcement responsibility for public water systems in the state if there has been "the establishment and maintenance of an activity to assure that the design and construction of new or substantially modified public water systems will be capable of compliance with the State primary drinking water regulations". Special Primacy Requirements for maintaining primacy for enacting and enforcing the Safe Drinking Water Act provisions also apply. 40 C.F.R. 142.16(b), (g), (h), (i), (m), (n), (o) and (p) have language that relates to the approval of public water system design or construction activities that will affect compliance with the SDWA.

2. State compliance standards. KRS 224.10-100, 224.10-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 142.10(b)(5) establishes the requirement for an activity to assure the design and construction of new or substantially modified public water systems will be capable of compliance with the State primary drinking water regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No. The requirements of 401 KAR 8:100 are not more stringent than 40 C.F.R. 142.16. The federal regulation gives general guidance and this regulation provides the specific requirements for submission and approval of plans. The requirements of 224.10-110 and 401 KAR 8:100 precede the development of 40 C.F.R. 142.16. However, the existence of these state requirements has allowed Kentucky to meet the primacy requirement outlined in the response to question 1.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirements of 401 KAR 8:100 are not more stringent than 40 C.F.R. 142.16. The federal regulation gives general guidance and this regulation provides the specific requirements for submission and approval of plans.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation
(Amended After Comments)

781 KAR 1:040. Rehabilitation technology services.

RELATES TO: KRS 151B.190, 29 U.S.C. 705(30), 723, 34 C.F.R. 361.42, 361.45, 361.46

STATUTORY AUTHORITY: KRS 151B.185, 151B.195
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Executive Director of the[-] Office of Vocational Rehabilitation to promulgate administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency[-] Office of Vocational Rehabilitation

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~~tion]. This administrative regulation prescribes the requirements for the provision of when, and under what conditions, rehabilitation technology services [shall be provided,] in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.~~

Section 1. Definitions. (1) "Certified driver rehabilitation specialist" means a driver rehabilitation specialist who has obtained certification to provide services from the Association for Driver Rehabilitation Specialists.

(2) "Driver evaluation" means a clinical and behind-the-wheel evaluation by a certified driver rehabilitation specialist to identify an eligible individual's driver rehabilitation needs to allow that person to drive independently.

(3) "Driver rehabilitation specialist" means an individual who plans, develops, coordinates, and implements driver rehabilitation services for individuals with disabilities.

(4) "Driver training" means behind-the-wheel instruction required to teach an individual with a disability to drive with or without vehicle modifications.

(5) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment.

~~(2)~~ "Eligible individual" means an individual who has been determined by the office~~[an appropriate office staff member]~~ to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.42.

(6) "Extended driver evaluation" means additional evaluation necessary in those cases where an individual's ability to drive cannot be determined after a driver evaluation.

(7) "Family" means spouse, children, parents, grandparents, or siblings.

(8) "Individualized plan for employment" means a written plan for a specific employment outcome as required by 34 C.F.R. 361.46.

~~(9)~~ "Office" means the Office of Vocational Rehabilitation and its ~~appropriate~~ staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(10) "Rehabilitation technology specialist" means an individual who analyzes the needs of individuals with disabilities, assists in the selection of the appropriate assistive technology, and trains the eligible individual on how to properly use the specific equipment.

(11) "Structural addition" means any improvement to real property that would increase the square footage or footprint of the property.

Section 2. Driver Rehabilitation Technology Services. (1) Driver rehabilitation technology services may be provided if:

(a) Personal transportation is required to meet the job goals specified on the individualized plan for employment;

(b) Other modes of transportation that would enable the eligible individual to effectively meet the vocational goal as stated in the individualized plan of employment, such as public transportation, are not available;

(c) The individual meets the economic need qualifications established in 781 KAR 1:030; and

(d) The individual is within a category that is presently being served in the Order of Selection as established in 781 KAR 1:030.

(2) Driver training and extended driver evaluation may be provided if:

(a) The services are recommended by a certified driver rehabilitation specialist;

(b) If vehicle modification is required, the applicant or eligible individual meets the criteria for vehicle modification, as established in Section 3 of this administrative regulation; and

(c) The applicant or eligible individual agrees to obtain additional practice as recommended by a certified driver rehabilitation specialist.

(3) Driver rehabilitation technology services may be provided to an applicant or eligible individual who does not meet the requirements of subsection (2) of this section if the Director of Program Services or designee determines:

(a) That documentation exists that failure to provide the service

will preclude the successful completion of the individualized plan for employment; or

(b) The provision of the service would result in a substantial cost savings to the office.

Section 3. Vehicle Modification Services. (1) Modification of a private vehicle shall be authorized if the eligible individual:

(a) Completes a driver evaluation and vehicle modification assessment by a rehabilitation technology specialist; and

(b) Obtains a vehicle modification prescription from a certified driver rehabilitation specialist.

(2) Modification of a private vehicle shall be provided on the most cost-effective vehicle necessary for the individual's personal transportation for employment, using the most cost-effective means of modification.

(3) Recoverable, nonpermanent modifications shall be provided for private vehicles when available and cost-effective.

(4) A vehicle modification shall not be performed on a vehicle other than that recommended by a certified driver rehabilitation specialist, unless:

(a) The vehicle can be modified to meet the individual's needs; and

(b) The individual assumes all costs associated with the modification of the vehicle in excess of the cost of modification of the recommended vehicle.

(5) An eligible individual must obtain a valid Kentucky operator's license before a vehicle modification to allow the individual to drive the vehicle will be approved.

(6) A vehicle modification costing in excess of \$5,000 shall not be delivered to the eligible individual unless the eligible individual provides proof of insurance for the replacement cost of the vehicle and vehicle modifications.

(7) A vehicle modification costing in excess of \$10,000 shall not be provided unless the eligible individual:

(a) Has a vocational objective of competitive employment;

(b) Is employed, actively seeking work, or has a reasonable expectation of beginning work within six (6) months; and

(c) The Director of Program Services or designee determines that the modification has a direct relationship to the employment objective and that failure to provide the modification would prevent the successful achievement of the employment objective.

(8) Vehicle modifications in excess of \$10,000 shall not be provided on a used vehicle unless:

(a) The vehicle is no more than two (2) years old;

(b) The odometer on the vehicle reads no more than 50,000 miles; and

(c) A rehabilitation technology specialist inspects the vehicle and determines that it is appropriate for the required modification.

(9) Vehicle modifications shall not be performed on a leased vehicle unless:

(a) A rehabilitation technology specialist inspects the vehicle and determines that it is appropriate for the required modification;

(b) Written permission for the specific modification is obtained from the leasing company; and

(c) Recoverable, nonpermanent equipment is used.

(10) The eligible individual shall be solely responsible for providing maintenance, repair, and upkeep to the modifications as specified in any relevant warranties.

(11) The eligible individual shall pay for any maintenance, service, and repairs for modifications not under warranty except as provided in Section 4(2) of this administrative regulation.

Section 4. Upgrade and Repair of Vehicle Modifications. (1) An upgrade to a vehicle modification shall not be provided unless:

(a) The upgrade is required due to a medically documented change in status or function that necessitates a change in driving equipment or vehicle chassis; and

(b) The eligible individual is employed;

(2) If the vehicle upgrade involves the purchase of a driving system, the vehicle shall be inspected by a rehabilitation technology specialist and found:

(a) To be appropriate for the proposed modification; and

(b) To meet all manufacture requirements for the proposed driving system.

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(3) A repair to a vehicle modification shall be provided if:

(a) The eligible individual is currently competitively employed, as defined in 34 C.F.R. 361.5(b)(11);

(b) The repair is not required as a result of the eligible individual's negligence, misuse, abuse of the equipment, or failure to provide proper maintenance of the equipment;

(c) The eligible individual provides the office with maintenance records for the vehicle and vehicle modifications;

(d) A rehabilitation technology specialist:

1. Inspects the maintenance records of the vehicle and vehicle modifications;

2. Determines that the maintenance has met manufacturer requirements;

3. Inspects the vehicle and modifications; and

4. Determines that is reasonable to repair the modification.

(4) An upgrade or repair to a vehicle modification costing in excess of \$10,000 shall not be provided unless the Director of Program Services or his or her designee determines that failure to provide the update or repair would prevent the successful maintenance of competitive employment or would result in a significant cost savings to the office.

(5) An upgrade or repair may be provided to an eligible individual who does not meet the requirements of this section if the Director of Program Services or designee determines:

(a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment; or

(b) The provision of the service would result in a substantial cost savings to the office.

Section 5. Repeat Vehicle Modifications. (1) Except as provided in this section, the office shall not provide more than one (1) vehicle modification per eligible individual.

(2) The office shall provide a repeat vehicle modification if:

(a) The eligible individual is currently competitively employed, as defined in 34 C.F.R. 361.5(b)(11);

(b) The eligible individual has a five (5) year work history since the last modification and has been working consistently for a minimum of two (2) years;

(c) The previously modified vehicle has at least 105,000 additional miles on it since the last modification;

(d) A rehabilitation technology specialist inspects the vehicle and modifications and recommends replacement of the vehicle or modifications;

(e) The eligible individual provides the office with a maintenance record for the vehicle and modifications that demonstrates that the maintenance has been provided according to manufacturer requirements;

(f) The eligible individual completes a driver evaluation by a rehabilitation technology specialist and obtains a vehicle modification prescription from the specialist; and

(g) The Director of Program Services or designee determines that failure to provide the repeat modification will prevent successful maintenance of competitive employment or would result in a significant cost savings for the office.

Section 6. Property Modification. (1) Permanent, nonrecoverable modification to a private home, business, or property may be provided if:

(a) A qualified rehabilitation counselor determines it is essential to achieve the employment objective of the eligible individual;

(b) The eligible individual meets economic needs qualifications established in 781 KAR 1:030;

(c) A qualified rehabilitation counselor determines that failure to provide the modification will preclude the successful achievement of the employment goal; [The eligible individual is employed, actively seeking work, or has a reasonable expectation of beginning work within six (6) months;]

(d) A property modification assessment is completed by a rehabilitation technology specialist;

(e) The eligible individual or family member owns the property to be modified and is current on any mortgage payments;

(f) The eligible individual has not received permanent, nonrecoverable modifications to a home from the office in the past; and

(g) The eligible individual is within a category that is presently being served in the order of selection as established in 781 KAR 1:030.

(2) Property modifications in excess of \$30,000 or twenty (20) percent of the Property Value Administrator (PVA) assessment value of the home or property, whichever is less, shall not be provided.

(3) Property modifications shall be limited to the most cost effective means of safely addressing the disability needs of the eligible individual as required for employment and shall:

(a) Be recoverable, nonpermanent modifications, if possible;

(b) Be cost effective;

(c) Provide access to one (1) entrance to and exit from the home, business, or property;

(d) Provide access to entrance to and exit from one (1) bathroom area and use of the facilities in that bathroom;

(e) Provide access to entrance to and exit from one (1) bedroom area; and

(f) Allow access to corridors necessary to access the bathroom and entrance and exit area of the property.

(4) Property modifications shall not be provided to homes or properties purchased within the last two (2) years unless there is medical documentation to support a finding that there has been a significant change in status or function of the eligible individual that has occurred since the initial purchase of the property, and that such a finding could not have been anticipated at the time of purchase.

(5) Property modifications shall not include structural additions to existing properties or the purchase of new property.

(6) The office shall not restore modified property to its original condition or upgrade areas of the property not affected by the modification into compliance with current local building codes.

(7)(a) All changes or additions to the recommendations of the rehabilitation technology specialist must be approved, in writing by the rehabilitation technology specialist.

(b) and the cost of all changes or additions shall be assumed by the eligible individual.

(8) The eligible individual shall provide maintenance, repair, and upkeep to the modifications as required for relevant warranties.

(9) The eligible individual shall be solely responsible for maintenance, service, and repairs for modifications not under warranty.

(10) Property modifications shall be provided to an eligible individual that does not meet all the requirements of this section if the Director of Program Services or his or her designee determines, supported by adequate documentation, that failure to provide the modification would prevent the successful achievement of the vocational objective or would result in a significant cost savings to the office. [Section 2. Vehicle Modification. (1) Modification of a van for an eligible individual determined by an office specialist to be unable to transfer independently into and out of an automobile shall not be authorized over the maximum cost of the automobile modification.

(2) A vehicle modification costing in excess of \$5,000 shall not be provided unless the eligible individual:

(a) Completes a driver evaluation and vehicle modification assessment by an office specialist;

(b) Obtains a recommendation from an office specialist;

(c) Has a vocational objective of competitive employment; and

(d) Is within two (2) years of job placement.

(3) Vehicle modifications shall be provided to an individual who is not within two (2) years of job placement if the Director of Program Services determines that documentation exists that the modification results in a substantial cost savings to the office.

(4) The office shall not provide vehicle modifications in excess of \$5,000 for vehicles older than two (2) years or with more than 25,000 miles unless the overall condition of the vehicle justifies the modifications as attested by an office specialist.

Section 3. Upgrading and Repair of Vehicle Modification. (1) Vehicle modification upgrades and repair shall be provided for an eligible individual if needed for obtaining or maintaining employment.

(2) Upgrade or repair of vehicle modifications in excess of

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~~\$10,000 shall be provided if the Director of Program Services determines that the modification has a direct relationship to the employment goal and that failure to provide the modification precludes the successful achievement of the employment goal.~~

~~Section 4. Second Time Modifications. (1) Except as provided in this section, the office shall not provide more than one (1) vehicle modification per eligible individual.~~

~~(2) The office may approve a second time vehicle modification under the following conditions:~~

~~(a) The eligible individual has demonstrated a two (2) year continuous work history;~~

~~(b) The eligible individual's employer attests that the modification is needed to maintain employment; and~~

~~(c) The modification has met a seven (7) year Internal Revenue Service depreciation schedule from the date of first modification.~~

~~Section 5. Property Modification. (1) Permanent, nonrecoverable modification to a private home, business, or property shall be an allowable expenditure if determined by an office specialist to be essential to achieve the employment objective of the eligible individual. A direct relationship between the provision of the modification and the projected employment goal shall be demonstrated. The eligible individual shall meet economic need qualifications established in 781 KAR 1:030, Section 2. The eligible individual shall use recoverable, nonpermanent modifications if possible or cost effective.~~

~~(2) Except as provided in subsection (3) of this section, property modifications in excess of \$10,000 shall not be allowed.~~

~~(3) Property modifications in excess of \$10,000 shall be provided if the Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification precludes the successful achievement of the employment goal.]~~

BETH SMITH, Executive Director

APPROVED BY AGENCY: November 15, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601, phone (502) 564-1481, fax (502) 564-9990.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick B. Shirley, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration of Kentucky's obligation under the Rehabilitation Act to provide vocational rehabilitation services to Kentuckians, specifically the provision of rehabilitation assistive technology services mandated by Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. 361.5(b)(49), 361.48(b).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. 361.5(b)(49), 361.48(b).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's provision of rehabilitation assistive technology services as set out in, and mandated by, Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. 361.5(b)(49), 361.48(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's provision of rehabilitation assistive technology services to applicants and eligible individuals with disabilities as required by Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. 361.5(b)(49), 361.48(b).

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendments are made to adapt the regulations to provide better guidance to individuals with disabilities and to provide for more efficient use of limited agency resources. The revisions enhance and more clearly set out expectations and requirements that individuals with disabilities have regarding maintenance of the technology devices that they obtain from the agency. Additionally, changes have been made to more clearly set out the limitations that the agency has with regard to modifications of real property. Changes have been made to better define and also enhance the requirements for obtaining a repeat modification of drivers technology and ensure that agency resources are used efficiently for the benefit of all applicants and eligible individuals with disabilities.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to prevent possible abuse or waste of increasingly limited resources for operation of the program. Assistive technology is a vital part of vocational rehabilitation services and the agency has found that its resources are increasingly limited for this program. The changes made to the regulation were needed to more clearly define what can be provided to each applicant and eligible individual with disabilities and when it could be provided.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of providing rehabilitation assistive technology devices to applicants or eligible individuals as necessary for the achievement of the employment outcome.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance to individuals with disabilities on what is required to obtain vocational rehabilitation assistive technology devices, when those services can be provided, and what continuing obligations the consumer may have.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any disabled individual with a disability seeking vocational rehabilitation assistive technology devices to assist in the achievement of an employment outcome, all vocational rehabilitation staff statewide that assist disabled individuals with disabilities seeking assistive technology devices.

(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: Agency staff and applicants or eligible individuals with disabilities will not have any additional requirements as a result of this amendment. The amendments only provide more specific guidance to clear up any ambiguities and to ensure that resources are used efficiently.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to the individuals, staff or businesses affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both agency staff and applicants and eligible individuals with disabilities will have a better understanding of the requirements for obtaining rehabilitation assistive technology devices because the amended regulations provide more specific guidance than what previously existed.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Rehabilitation Funds received by the Office of Vocational Rehabilitation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: There is no increase in fees or funding necessary to implement this amendment to the existing regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Vocational Rehabilitation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, 151B.180 to 151B.210, 29 U.S.C. 701 et seq., 705, 723, 34 C.F.R. 361.5, 361.48.

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

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

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

(c) How much will it cost to administer this program for the first year? There shall be no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, SEPTEMBER 15, 2010

PERSONNEL CABINET
Office of the Secretary
(Amendment)

101 KAR 2:210. 2011[2040] Plan Year Handbook for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254
STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2011[2040] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2011[2040] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan.

Section 2. Incorporation by Reference. (1) "2011[2040] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2011[2040] edition, is incorporated by reference.

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

NIKKI JACKSON, Secretary

APPROVED BY AGENCY: September 10, 2010

FILED WITH LRC: September 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2010 at 10 a.m. at 501 High Street, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: Joe R. Cowles, Deputy Executive Director, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-7603.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Joe R. Cowles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2011 plan year Benefits Selection Guide for health benefit plans offered through the Public Employee Health Insurance Program. The Benefits Selection Guide is distributed to all health plan participant plan holders. The Benefits Selection Guide contains the premiums, employee

contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the 2011 self-insured plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254 requires the Personnel Cabinet to incorporate by reference the 2011 plan year handbook distributed to the public employees covered by the Public Employee Health Insurance Program in an administrative regulation. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2011 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

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

(a) How the amendment will change this existing administrative regulation: This is an amendment. This administrative regulation constitutes a compilation of the health contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for the plan year 2011. The 2011 Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the health benefit plans to public employees for the 2011 plan year and the statutory mandate to annually update the regulations incorporating the plan year handbook contained in KRS 18A.2254.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2011 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2011 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: State and select county and local government entities, including employees of the local school boards and districts, and retirees will be affected. More specifically, this encompasses approximately 158,000 eligible employees under KRS 18A.225(1)(a) and a total of 263,000 (which would include qualifying beneficiaries and dependents).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by entities to comply with the incorporation of these provisions in an administrative regulation. The 2011 Benefits Selection Guide will provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the health benefit plans offered for the 2011 plan year; specifically, the premiums,

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employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for the 2011 plan year.

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

(c): As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants and dependents covered under the Public Employee Health Insurance Program for plan year 2011 will have comparable benefit structure to the 2010 plan year. There were necessary employee premium contribution and health benefit modifications for plan year 2011 as a result of projected health care inflation, no budgeted employer contribution increase for plan year 2011 and state and federal health care mandates effective January 1, 2011.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287, and 26 U.S.C. 105, 106, 125, 152, 129 and 152 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1-7.

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

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

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

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be simi-

lar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law an amended administrative regulation will be promulgated in 2011 and each subsequent plan year.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Licensing Board for Specialists in Hearing Instruments (Amendment)

201 KAR 7:075. Continuing education requirements.

RELATES TO: KRS 334.150

STATUTORY AUTHORITY: KRS 334.150

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to establish a continuing education program for licensed hearing instrument specialists; to set forth the basic requirements, methods of accreditation, and manner of reporting.

Section 1. Each licensee shall be required to complete a minimum of ten (10) continuing education hours in order to renew his license each year. Continuing education hours for hearing instrument specialists in excess of the number required at the time of renewal of license may not be applied to future requirements.

Section 2. A minimum of five (5) of the required ten (10) continuing education hours shall be attained through programs sponsored by entities listed in Section 3(1) of this administrative regulation and attended in person in a live, classroom presentation format. The remaining continuing education hours may be attained through any of the sources listed in Section 3 of this administrative regulation.

Section 3. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of hearing instrument specialists. They may be earned by completing any of the following educational activities:

(1) Relevant offerings provided by the following organizations or institutions and approved by the board:

(a) The Hearing Aid Association of Kentucky (HAAK);

(b) The Kentucky Speech-Language and Hearing Association (KSHA);

(c) The International Hearing Society (IHS), or any of its affiliated state chapters;

(d) The American Speech-Language and Hearing Association (ASHA), or any of its affiliated state chapters;

(e) The Academy of Dispensing Audiologists (ADA), or any of its affiliated state chapters;

(f) The American Academy of Audiology (AAA), or any of its affiliated state chapters; or

(g) The American Academy of Otolaryngology, or any of its affiliated state chapters.

(2) Relevant offerings of the following types that have been reviewed and approved by the board:

(a) Manufacturers professional seminars;

(b) Accredited schools' continuing education programs.

(3) Related areas not specifically a part of the field of hearing instruments may be approved for up to two (2) continuing education hours, if the board believes that the related areas may serve to enhance the licensee's ability to practice.

Section 4. Sponsors of continuing education programs shall be responsible for obtaining from the board accreditation for their respective continuing education programs.

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(1) A sponsor shall be any person, school, association, company, corporation, or group who wishes to develop a continuing education program.

(2) Programs shall be submitted to the board at least sixty (60) days prior to planned participation so the participants can know the value of the experience prior to actual participation.

(3) Requests for program changes shall be made to and accredited by the board. Failure to make requests for program changes to the board in compliance with this subsection shall render the evaluation and accreditation of the program null and void.

(4) Repetitious completion of a program shall not entitle the participant to additional continuing education credit.

(5) Sponsors shall maintain for three (3) years records of the name of those participants who complete a program.

Section 5. Sponsors and licensees requesting approval of continuing education for hearing instrument specialists shall submit an application to the board. Licensees shall keep valid records, receipts, and certifications of continuing education hours completed for three (3) years and submit certification to the board on request.

Section 6. Submission of fraudulent statements or certificates concerning continuing education shall subject the licensee to revocation or suspension of his license as provided in KRS Chapter 334.

Section 7. Each licensee shall submit, with the annual renewal, on forms provided by the board, a list of accredited continuing education hours completed by the licensee during the previous license year. If any licensee shall fail to submit a list of continuing education hours by the first of February, the board secretary shall notify the licensee at his last known address that his license shall be subject to suspension. Upon proper application to the board a licensee may be granted a deferral on a year to year basis at the discretion of the board for reasons as illness, incapacity, or other similar extenuating circumstances. A licensee shall be exempt from the continuing education provisions for the calendar year during which his license is first issued by the board.

Section 8. Each licensee shall keep the board informed of his correct address.

STEVEN CLARK, Chairman

APPROVED BY AGENCY: September 15, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2010 at 1 p.m. at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on November 1, 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: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does. This regulation establishes the requirements for continuing education for hearing instrument specialists.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the requirements for continuing education programs, methods of accreditation, and the manner of reporting continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish the requirements for continuing education for hearing instrument specialists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the requirement for hearing instrument specialists to receive continuing education, to be aware of new techniques, products and issues in the field.

(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 requires hearing instrument specialists to obtain at least five (5) of the required ten (10) hours of continuing education live and in person.

(b) The necessity of the amendment to this administrative regulation: This amended regulation is necessary because it requires licensees to interact with other licensees and those in related fields, in an educational setting that is unique to face-to-face learning.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation conforms to the content of the authorizing statute by establishing the requirements for continuing education for hearing instrument specialists.

(d) How the amendment will assist in the effective administration of the statutes: This amended regulation will clarify to the licensees that half of the continuing education hours they are required to obtain must be done by physically attending the courses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 260 licensees will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: The licensees will have to seek continuing education programs that are presented live and in-person to fulfill the regulation requirement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to a licensee to receive the proper continuing education credits, might be the difference between the cost of an online course and the cost of a course presented live and in-person. The board does not receive any monetary benefit from licensees complying with this amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will have direct contact with presenters, colleagues and other individuals in related industries.

(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: The board's operation is funded by fees paid by licensees and applicants.

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

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

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(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all commercial driver license training 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? The Kentucky Licensing Board for Specialists in Hearing Instruments is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 334.150

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

(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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET

Board of Speech-Language Pathology and Audiology (Amendment)

201 KAR 17:030. License fees and renewal requirements.

RELATES TO: KRS 334A.160, 334A.170

STATUTORY AUTHORITY: KRS 334A.080(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. KRS 334A.080(6) requires the board to establish fees for licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist, in accordance with the maximum limits established in KRS 334A.160 and 334A.170. This administrative regulation establishes the required fees and the requirements for inactive status.

Section 1. Fee Schedule. The following fees shall be paid in connection with speech-language pathologist and audiologist applications, renewals, and penalties.

(1) Application fee for a speech-language pathologist license, fifty (50) dollars.

(2) Application for an audiologist license, fifty (50) dollars.

(3) Combined application fee for a speech-language pathologist and audiologist license, \$100.

(4) Application fee for a speech-language pathology assistant license, fifty (50) dollars.

(5) Application fee for interim licensure for a speech-language pathologist, fifty (50) dollars.

(6) Application fee for interim licensure for an audiologist, fifty (50) dollars.

(7) Combined fee for speech-language pathologist and audiologist interim licensure, \$100.

(8) Application fee for interim licensure for a speech-language pathology assistant, fifty (50) dollars.

(9) Initial speech-language pathologist license fee of \$100 or \$150 if issued for the biennium.

(10) Initial audiologist license fee of \$100 or \$150 if issued for the biennium.

(11) Combined speech-language pathologist and audiologist license fee of \$200 if issued for the biennium.

(12) Initial speech-language pathology assistant license fee of seventy-five (75) dollars or \$125 if issued for the biennium.

(13) Biennial renewal fee for speech-language pathologist license, \$100.

(14) Biennial renewal fee for audiologist license, \$100.

(15) Biennial combined renewal fee for speech-language pathologist and audiologist license, \$200.

(16) Biennial renewal fee for speech-language pathology assistant, \$100.

(17) There shall not be a renewal fee for interim licensure. The application fee of fifty (50) dollars for full licensure shall be waived for a person who has been duly licensed as an interim licensee.

(18) Biennial renewal fee for grace period extending from January 31 to March 2:

(a) For speech-language pathologist license, \$150.

(b) For audiologist license, \$150.

(c) Combined fee for speech-language pathologist and audiologist license, \$300.

(d) For speech-language pathology assistant, \$150.

(19) In addition to the biennial renewal fees provided for in Section 1(9) through (10) delinquency fees after March 2 shall be:

(a) For speech-language pathologist license, \$150.

(b) For audiologist license, \$150.

(c) Biennial combined fee for speech pathologist and audiologist license, \$300.

(d) For speech-language pathology assistant, \$150.

Initial speech-language pathologist license fee, \$100.

Section 2. (1) A completed Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate, shall be submitted if the licensee wants to:

(a) Renew his license;

(b) Request to return to an active status from an inactive status;

(c) Request, or remain on, an inactive status; or

(d) Terminate licensure.

(2) The schedule of licensure renewals shall be as follows:

(a) Effective January 1, 2009:

1. All licensees shall renew their licenses.

2. A licensee having a license number ending in an even number shall:

a. Renew for a period of one (1) year; and

b. Pay one-half of the appropriate renewal fee established in Section 1(9)-(14) of this administrative regulation; and

3. A licensee having a license number ending in an odd number shall:

a. Renew for a period of two (2) years; and

b. Pay the appropriate renewal fee established in Section 1(9)-(14) of this administrative regulation.

(b) Effective January 1, 2010, a licensee:

1. Shall renew the license biennially on or before January 31st; and

2. Shall pay the appropriate renewal fee as established in Section 1(9) through (14) of this administrative regulation.

Section 3. If an application is filed during the period of December 1 to January 30 and a license issued, the board shall waive the renewal of the license for the ensuing licensing year.

Section 4. Inactive Licenses. (1) Fees.

(a) The inactive license fee for a speech-language pathologist for a biennial licensing period shall be twenty (20) dollars.

(b) The inactive license fee for an audiologist for a biennial licensing period shall be twenty (2) dollars.

(c) The combined inactive license fee for a speech-language pathologist and audiologist for a biennial licensing period shall be

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twenty (20) dollars.

(d) The inactive license fee for a speech-language pathology assistant for a biennial licensing period shall be twenty (20) dollars.

(2) Reactivation of an inactive license to practice speech-language pathology or audiology may be obtained by:

(a) Filing a completed Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate;

(b) Payment of the current renewal fee as set forth in Section 1 of this administrative regulation; and

(c) Compliance with the continuing education requirements established in 201 KAR 17:090, Sections 10 and 11.

(3) Application for an inactive license shall be made to the board prior to March 2 and shall be accompanied by the appropriate fee for the licensing year.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Renewal Application", September 2010 [2009]; and

(b) "Renewal Application for Speech-Language Pathology Assistants", September 2010 [2009].

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

KELLIE ELLIS, Board Chair

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 14, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2010 at 9 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: Marcia Egbert, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes license fees and renewal requirements for speech language pathologists, audiologists, and speech-language pathology assistants.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 334A.130, KRS 334A.160, and KRS 334A.170.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the licensing fees and renewal requirements for speech-language pathologists, audiologist, and speech-language pathology assistants.

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

(a) How the amendment will change this existing administrative

regulation: The amendment to this administrative regulation will modify the forms to clarify existing requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to clarify regulatory information on the relevant form.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally regarding interim licensure requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board in by clarifying forms licensees use to apply for renewal of licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2,300 individuals are licensed by the Board. The vast majority, 1985, are speech-language pathologists.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Speech Language Pathologists and Audiologists

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 334A.080(3).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Licensure for Occupational Therapy
(Amendment)

201 KAR 28:010. Definitions and abbreviations.

RELATES TO: KRS 319A.010-319A.210

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319A and pertinent parts of KRS 319A.070(3) require the Kentucky Board of Licensure for Occupational Therapy to promulgate administrative regulations pertaining to the practice and licensure of occupational therapists and occupational therapy assistants. This administrative regulation sets forth the definition of terms and phrases which will be used by the board in enforcing and interpreting the provisions of Chapter 319A and the administrative regulations.

Section 1. Definitions. (1) "Act" means the Kentucky Occupational Therapy Act as established in KRS 319A.010 to 319A.990.

(2) "AOTA" means the American Occupational Therapy Association.

(3) "ACOTE" means the Accreditation Council for Occupational Therapy Education.

(4) "Board" is defined by KRS 319A.010(1).

(5) "COTA" means a certified occupational therapy assistant.

(6) "COTA/L" means a certified occupational therapy assistant/licensed.

(7) "OTA/L" means an occupational therapy assistant/licensed.

(8) "OT/L" means an occupational therapist/licensed.

(9) "OT" means occupational therapy.

(10) "OTR/L" means an occupational therapist registered/licensed.

(11) "OTR" means an occupational therapist registered.

(12) "Adjunct" means methods, strategies, or interventions that support and advance a client's occupational therapy performance used as a precursor to enable purposeful activities or occupations.

(13) "Assistive technology" means any item, piece of equipment, or product system, whether commercially available, modified, or custom designed, that is used to increase, maintain, or enhance the occupational performance of an individual.

(14) "Basic activities of daily living" means tasks or activities that are oriented toward taking care of one's own body; those tasks that are performed daily by an individual that pertain to and support one's self-care, mobility, and communication; and includes the following activities:

(a) Bathing and showering;

(b) Bowel and bladder management;

(c) Dressing;

(d) Eating and feeding;

(e) Functional mobility;

(f) Personal device care;

(g) Personal hygiene and grooming;

(h) Sexual activity;

(i) Sleep and rest; and

(j) Toilet hygiene.

(15) "Certified hand therapist" (CHT) means a person who is certified by the Hand Therapy Certification Commission.

(16) "Cognitive components" means the skill and performance of the mental processes necessary to know or comprehend by understanding with such skills including: orientation, conceptualization, and comprehension, including concentration, attention span, memory, and cognitive integration including generalization, and problem-solving.

(17) "Components of performance" means the demands of an activity which include human, object and contextual factors such as objects, space, social demands, sequencing or timing, required actions for performance and required underlying body functions and structures needed to carry out activities.

(18) "Ergonomic principles" means:

(a) The study of:

1. Relationships between components of performance;

2. People as it relates to their occupations, the equipment they use and their environment; and

3. The application of that knowledge and skill as it focuses upon maximizing efficiency in the areas of production, quality and safety; and

(b) Principles that are utilized by occupational therapists to optimize an individual's occupational performance in the areas of self-care, productivity, work, and leisure and may include job analysis, consultation, and educational activities.

(19) "Functional mobility" means moving from one (1) position or place to another, such as in-bed mobility, wheelchair mobility, transportation of objects through space, and functional ambulating and transfers.

(20) "Gait training" means the instruction of proper walking patterns.

(21) "General supervision" means a interactive process for collaboration on the practice of occupational therapy which includes the review and oversight of all aspects of the services being provided by the individual under supervision.

(22) "Instrumental activities of daily living" means complex tasks or activities that are oriented toward interacting with the environment and are essential to self-maintenance matters which extend beyond personal care, including:

(a) Care of others;

(b) Care of pets;

(c) Child rearing;

(d) Communication device use;

(e) Financial management;

(f) Health management and maintenance;

(g) Home establishment, management, and maintenance;

(h) Meal preparation and cleanup;

(i) Safety procedures and emergency responses;

(j) Shopping; and

(k) Selection and supervision of caregivers.

(23) "Occupations" means activities, tasks or roles that individuals engage in which provide intrinsic value and meaning for the individual, society, and culture.

(24) "Performance abilities" means the utilization of performance skills in the participation of active daily life.

(25) "Performance skills" means the observable actions of a person that have implicit functional purposes, including motor skills, processing skills, interaction skills, and communication skills.

(26) "Prevention" means the skill and the performance of the person to minimize debilitation with the treatment focusing on energy conservation, including activity restriction, work simplification, and time management, joint protection and body mechanics, including proper posture, body mechanics, and avoidance of excessive weight bearing, positioning, and coordination of daily living activities.

(27) "Psychosocial component" means the skill and performance in self-management and interaction skills with such skills including: self-expression, self-control, interaction with another person, and interaction with groups of three (3) or more people.

(28) "Remediation" means an intervention approach designed to change client variables to establish a performance skill or ability that has not yet developed.

(29) "Restoration" means to restore a performance skill or ability that has been impaired.

(30) "Sensorimotor components" means the skill and performance of patterns of sensory and motor behavior of a person undergoing treatment with such skills, including neuromuscular activity, including reflex integration, range of motion, gross and fine motor coordination, strength and endurance, and sensory integration, including sensory awareness, visual-spatial awareness, and body integration.

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KELLY NASH, Chairperson

APPROVED BY AGENCY: August 5, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2010, at 2 p.m., at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 17, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Frances Short, Executive Director, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Frances Short

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the definitions and abbreviations.

(b) The necessity of this administrative regulation: KRS Chapter 319A requires the Kentucky Board of Licensure for Occupational Therapy to promulgate administrative regulations pertaining to the practice and licensure of occupational therapists and occupational therapy assistants. This administrative regulation sets forth the definition of terms and phrases which will be used by the board in enforcing and interpreting the provisions of Chapter 319A and the administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319A.070(3)(l) authorizes the board to promulgate administrative regulations.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulations sets out the definitions for terms not otherwise defined by KRS Chapter 319A.

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

(a) How the amendment will change the existing administrative regulation: This amendment sets out definitions for terms used in KRS Chapter 319A that require defining.

(b) The necessity of the amendment to this administrative regulation: This amendment sets out definitions for terms used in KRS Chapter 319A that require defining.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319A.070(3)(l) authorizes the board to promulgate administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulations sets out definitions for terms that are used in KRS Chapter 319A that have specific meaning to the field of occupational therapy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses approximately 1,700 persons in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will not be required to take any action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be experienced by the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to the entities is that terms are used in KRS Chapter 319A will have a specific definition for persons practicing occupational therapy.

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

(a) Initially: There are no costs associated with the implementation of this administrative regulation.

(b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was 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? The Kentucky Board of Licensure for Occupational Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319A.070(3), 319A.160(1).

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

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

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

(c) How much will it cost to administer this program for the first year? No new costs are anticipated from the change of renewal dates.

(d) How much will it cost to administer this program for subsequent years? See answer to 4(c)

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Occupational Therapy (Amendment)

201 KAR 28:130. Supervision of occupational therapy assistants, occupational therapy aides, occupational therapy students, and temporary permit holders.

RELATES TO: KRS 319A.010(4), (5), 319A.100

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(l) authorizes the board to promulgate administrative regulations to define appropriate supervision for persons who are delivering occupational therapy services. This administrative regulation establishes the requirements of that supervision, the documentation required in supervision, and the process for reviewing

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~~the supervision process [defines terms necessary to clarify the statutory definition of occupational therapy services].~~

Section 1. Definitions. (1) ~~["Adjunct" means methods, strategies or interventions that support and advance a client's occupational therapy performance used as a precursor to enable purposeful activities or occupations.~~

~~(2) "Assistive technology" means any item, piece of equipment, or product system, whether commercially available, modified or custom designed, that is used to increase, maintain or enhance the occupational performance of an individual.~~

~~(3) "Basic activities of daily living" means tasks or activities that are oriented toward taking care of one's own body; those tasks that are performed daily by an individual that pertain to and support one's self care, mobility, and communication and includes the following activities:~~

- ~~(a) Bathing and showering;~~
- ~~(b) Bowel and bladder management;~~
- ~~(c) Dressing;~~
- ~~(d) Eating and feeding;~~
- ~~(e) Functional mobility;~~
- ~~(f) Personal device care;~~
- ~~(g) Personal hygiene and grooming;~~
- ~~(h) Sexual activity;~~
- ~~(i) Sleep and rest; and~~
- ~~(j) Toilet hygiene.~~

~~(4) "Certified hand therapist" (CHT) means a person who is certified by the Hand Therapy Certification Commission.~~

~~(5) "Cognitive components" means the skill and performance of the mental processes necessary to know or comprehend by understanding with such skills including: orientation, conceptualization, and comprehension, including concentration, attention span, memory, and cognitive integration including generalization, and problem-solving.~~

~~(6) "Components of performance" means the demands of an activity which include human, object and contextual factors such as objects, space, social demands, sequencing or timing, required actions for performance and required underlying body functions and structures needed to carry out activities.~~

~~(7) "Countersign" means the OT/L signs the client's documentation after actively reviewing the history of the intervention provided to the client and confirming that, in light of the entire intervention plan, the OTA/L's entry is proper.~~

~~(2) [(8) "Ergonomic principles" means:~~

~~(a) The study of:~~

- ~~1. Relationships between components of performance;~~
- ~~2. People as it relates to their occupations, the equipment they use and their environment; and~~
- ~~3. The application of that knowledge and skill as it focuses upon maximizing efficiency in the areas of production, quality and safety; and~~

~~(b) Principles that are utilized by occupational therapists to optimize an individual's occupational performance in the areas of self care, productivity, work and leisure and may include job analysis, consultation, and educational activities.~~

~~(9) "Face-to-face supervision" means being physically present in the room and being able to directly communicate with an individual while observing and guiding the activities of that individual, including:~~

~~(a) A review of the occupational therapy services being provided to a client that might affect the therapeutic outcomes and the revision of the plan of care for each client; and~~

~~(b) An interactive process between the supervisor and the individual under supervision involving direct observation, cotreatment, dialogue, teaching, and instruction in a face-to-face setting.~~

~~(3) [(10) "Functional mobility" means moving from one (1) position or place to another, such as in bed mobility, wheelchair mobility, transportation of objects through space, and functional ambulating and transfers.~~

~~(11) "Gait training" means the instruction of proper walking patterns.~~

~~(12) "General supervision" means a interactive process for collaboration on the practice of occupational therapy which includes the review and oversight of all aspects of the services being~~

~~provided by the individual under supervision.~~

~~(13) "Instrumental activities of daily living" means complex tasks or activities that are oriented toward interacting with the environment and are essential to self-maintenance matters which extend beyond personal care, including:~~

- ~~(a) Care of others;~~
- ~~(b) Care of pets;~~
- ~~(c) Child rearing;~~
- ~~(d) Communication device use;~~
- ~~(e) Financial management;~~
- ~~(f) Health management and maintenance;~~
- ~~(g) Home establishment, management, and maintenance;~~
- ~~(h) Meal preparation and cleanup;~~
- ~~(i) Safety procedures and emergency responses;~~
- ~~(j) Shopping; and~~
- ~~(k) Selection and supervision of caregivers.~~

~~(14) "Occupations" means activities, tasks or roles that individuals engage in which provide intrinsic value and meaning for the individual, society, and culture.~~

~~(15) "Performance abilities" means the utilization of performance skills in the participation of active daily life.~~

~~(16) "Performance skills" means the observable actions of a person that have implicit functional purposes, including motor skills, processing skills, interaction skills, and communication skills.~~

~~(17) "Prevention" means the skill and the performance of the person to minimize debilitation with the treatment focusing on energy conservation, including activity restriction, work simplification, and time management, joint protection and body mechanics, including proper posture, body mechanics, and avoidance of excessive weight-bearing, positioning and coordination of daily living activities.~~

~~(18) "Psychosocial component" means the skill and performance in self-management and interaction skills with such skills including: self-expression, self-control, interaction with another person, and interaction with groups of three (3) or more people.~~

~~(19) "Remediation" means an intervention approach designed to change client variables to establish a performance skill or ability that has not yet developed.~~

~~(20) "Restoration" means to restore a performance skill or ability that has been impaired.~~

~~(21) "Sensorimotor components" means the skill and performance of patterns of sensory and motor behavior of a person undergoing treatment with such skills, including neuromuscular activity, including reflex integration, range of motion, gross and fine motor coordination, strength and endurance, and sensory integration, including sensory awareness, visual-spatial awareness, and body integration.~~

~~(22) "Supervisor" means the OT/L who is providing supervision.~~

Section 2. General Policy Statement for Supervision. (1) The OT/L shall have the ultimate responsibility for occupational therapy outcomes. Supervision shall be a shared responsibility.

(2) The supervising OT/L shall have a legal and ethical responsibility to provide supervision and the supervisee shall have a legal and ethical responsibility to obtain supervision.

(3) Supervision by the OT/L of the supervisee's provision of occupational therapy services shall always be required, even when the supervisee is experienced and skilled in a particular practice area.

Section 3. Supervision of Licensed Occupational Therapy Assistants. (1) An OTA/L shall assist in the practice of occupational therapy only under the supervision of an OT/L.

(2) The supervisor shall provide no less than four (4) hours per month of general supervision for each occupational therapy assistant which shall include no less than two (2) hours per month of face-to-face supervision.

(3) The amount of supervision time shall be prorated for a part-time OTA/L.

(4) The supervisor or the OTA/L may institute additional supervision based on the competence and experience of the OTA/L.

(5) The supervisor shall assign and the OTA/L shall accept only those duties and responsibilities for which the OTA/L has

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been specifically trained and which the OTA/L is qualified to perform.

(6) Specific responsibilities for supervising OT/Ls and OTA/Ls.

(a) Assessment and reassessment.

1. Client evaluation is the responsibility of the OT/L.

2. The OTA/L may contribute to the evaluation process by gathering data, administering structured tests, and reporting observations.

3. The OTA/L may not evaluate independently or initiate therapy prior to the OT/L's evaluation.

(b) Intervention planning.

1. The OT/L shall take primary responsibility for the intervention planning.

2. The OTA/L may contribute to the intervention planning as directed by the OT/L.

(c) Intervention.

1. The OT/L shall be responsible for the outcome and delivery of the occupational therapy intervention.

2. The OTA/L shall be responsible for assigning appropriate therapeutic interventions to the OTA/L.

(d) Discontinuation of intervention.

1. The OT/L shall be responsible for the discontinuation of occupational therapy services.

2. The OTA/L may contribute to the discontinuation of intervention as directed by the OT/L.

(7) Documentation requirements.

(a) The supervisor shall countersign those aspects of the initial evaluation, the plan of care, and the discharge summary recorded by the OTA/L within fourteen (14) calendar days of the notation, which documentation shall be included in the client's permanent record.

(b) The supervising OT/L and individuals under supervision shall each maintain a ~~[supervising OT/L's]~~ log which shall document:

1. The frequency~~[and type]~~ of the supervision provided;~~[and]~~

2. The~~[process of supervision utilized, such as]~~ observation, dialogue and discussion, and instructional techniques employed;

3. The type of supervision provided, either general or face-to-face;

4. The dates on which the supervision occurred; and

5. The number of hours worked by the OTA/L each month.

(c) It shall be the responsibility of the supervising OT/L to maintain a list of any OTA/L that he or she has supervised with the OTA/L's name and license number.

(d) It shall be the responsibility of the OTA/L under supervision to maintain a list of his or her supervising OT/L with that individual's name and license number.

(8) A supervising OT/L shall not have more than the equivalent of three (3) full time OTA/Ls under supervision at any one (1) time.

(9)(a) In extenuating circumstances, when the OTA/L is without supervision, the OTA/L may continue carrying out established programs for up to thirty (30) calendar days under agency supervision while appropriate occupational therapy supervision is sought.

(b) It shall be the responsibility of the OTA/L to notify the board of these circumstances and to submit, in writing, a plan for resolution of the situation.

(10) A supervisor shall be responsible for ensuring the safe and effective delivery of OT services and for fostering the professional competence and development of the OTA/Ls under his or her supervision.

Section 4. Supervision of Occupational Therapy Aides. (1) An occupational therapy aide shall provide supportive services only with face-to-face supervision from an OT/L or OTA/L.

(2) The supervising OT/L or OTA/L shall be in direct verbal and visual contact with the occupational therapy aide, at all times, for all therapy-related activities.

Section 5. Occupational Therapy Students. (1) A person practicing occupational therapy and performing occupational therapy services under KRS 319A.090(1)(c) shall be enrolled in an ACOTE accredited occupational therapy or occupational therapy assistant educational program or its equivalent.

(2) When an occupational therapy student is participating in

supervised fieldwork education experiences, the student may, at the discretion of the supervising OT/L or OTA/L, be assigned duties or functions commensurate with his or her education and training.

(3) A supervisor shall be responsible for ensuring the safe and effective delivery of OT services and for fostering the professional competence and development of the students under his or her supervision.

Section 6. Temporary Permits. (1) A temporary permit holder shall be:

(a) Supervised by an OT/L; and

(b) The OT/L shall be responsible for all occupational therapy outcomes.

(2) The supervising OT/L shall be available at all times to provide supervision.

(3) Face-to-face supervision shall be provided for at least thirty (30) minutes daily.

(4) The temporary permit holder who is applying for a license as an OT/L may perform all of the functions of the OT/L, with the exception of supervision.

(5) A temporary permit holder who is applying for a license as a OTA/L may perform all of the functions of a OTA/L, with the exception of supervision.

Section 7. Audit of Supervision Activities. (1) The board shall perform a random audit of supervision logs for up to ten (10) percent of all licensees.

(2) The licensee who is audited by shall be required to furnish documentation of the completed supervision log required by Section 3(7) of this administrative regulation.

(3) The licensee that is audited by the board shall respond to the audit within sixty (60) days of the date of the request.

(4) A licensee that fails to comply with the supervision requirements of this administrative regulation shall be subject to disciplinary action that may include suspension or revocation of the person's license.

KELLY NASH, Chairperson

APPROVED BY AGENCY: June 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2010, at 2 p.m., at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 17, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Frances Short, Executive Director, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602; phone (502) 564-4233; fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Frances Short

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for supervision.

(b) The necessity of this administrative regulation: This administrative regulation establishes the requirements of that supervision, the documentation required in supervision, and the process for reviewing the supervision process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319A.070(3)(l) authorizes the board to promulgate administrative regulations to define appropri-

ate supervision for persons who are delivering occupational therapy services.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulations sets out the requirements for supervision which the board will administer.

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

(a) How the amendment will change the existing administrative regulation: This amendment specifies the supervision log required for persons under supervision.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to implement clarify what is required from persons involved with supervision.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319A.070(3)(l) authorizes the board to promulgate administrative regulations to define appropriate supervision for persons who are delivering occupational therapy services

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets out the requirements for documenting the supervision that is required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses approximately 1,700 persons in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees who supervise and who receive supervision will be required 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): No direct cost is associated with compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits which will accrue to the entities is that they will document the supervision process.

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

(a) Initially: There are no costs associated with the implementation of this administrative regulation.

(b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as this administrative regulation sets out the criteria that are applicable to all persons who are involved in supervision.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Occupational Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319A.070(3), 319A.160(1)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

(c) How much will it cost to administer this program for the first year? No new costs are anticipated from the change of renewal dates.

(d) How much will it cost to administer this program for subsequent years? See answer to 4(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Licensure for Massage Therapy
(Amendment)**

201 KAR 42:010. Goals for massage therapy sessions.

RELATES TO: KRS 309.350(7), ~~KRS 309.350(6)~~, 309.355(3)
STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) authorizes the board to promulgate administrative regulations setting standards of practice. This administrative regulation establishes the goals of massage therapy and possible means of achieving these goals.

Section 1. (1) Goals for massage therapy include:

- (a) Maintaining health;
- (b) Providing relaxation;
- (c) Preserving or increasing functional capacity;
- (d) Diminishing soft-tissue pain arising from stress, anxiety, adhesions, and overuses; and
- (e) Providing treatment that is professionally appropriate for the client.

(2) In order to reach these objectives, the massage therapist shall:

- (a) Provide consultation with a client or a referring professional on soft-tissue issues;
- (b) Evaluate clients for the appropriate approaches for their session;
- (c) Plan sessions;
- (d) Provide direct treatment; and
- (e) Provide draping and treatment in a way that ensures the safety, comfort, and privacy of the client.

(3) With client permission, the massage therapist may interact with the client's physician or other healthcare providers if the client is under direct medical care.

Section 2. Client Management. (1) The massage therapist shall:

- (a) Evaluate each client through:
 - 1. Intake interviews;
 - 2. Observation;
 - 3. Palpation; and
 - 4. Relevant records provided by the client.
- (b) Plan and implement a treatment session or program individualized for the client;
- (c) Refer to a licensed healthcare provider any client whose condition is determined by the massage therapist to be beyond the therapist's scope of practice.

(2) If the basis for a massage appointment is a referral from a healthcare provider, the massage therapist may confer with the referring healthcare provider after obtaining the client's permission.

(3) If the client is self-referred and under the care of a doctor,

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the massage therapist may seek permission to:

- (a) Advise the doctor that the patient is seeking massage treatment;
- (b) Provide to the doctor the massage therapist's evaluation results;
- (c) Advise the doctor of the noted treatment plan; and
- (d) Provide a follow-up report upon completion of the massage treatment plan to enhance communication between the multidisciplinary care-giving team.

Section 3. Massage Therapists Credentialed by Other Jurisdictions.

(1) Persons duly licensed, certified in another state or territory, the District of Columbia, or a foreign country when incidentally in this Commonwealth shall:

(2) Restrict their practice of massage therapy in this state to those for whom they are providing instruction and consultation if the credentialed massage therapist is teaching a course related to massage therapy or consulting with licensee of the Board; or

(3) Only administer massage therapy to those who have travelled into this state as part of the same response, response, event, or performance if the credentialed massage therapist is in the Commonwealth to provide massage as part of an emergency response team, charity event, athletic event, or artistic performance.

THERESA CRISLER, Chair

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2010 at 9 a.m. at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 2010 at the close of business. 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: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

- (1) Provide a brief summary of
 - (a) What this administrative regulation does: This regulation establishes goals for massage therapy sessions.
 - (b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 309.355(3) related to standards of practice.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by establishing goals for the provision of massage therapy.
- (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: A section is added to define goals for therapists credentialed elsewhere who are entitled to practice in the Commonwealth on a limited basis.
 - (b) The necessity of the amendment to this administrative

regulation: The necessity of amendment is to define goals for therapists credentialed elsewhere who are entitled to practice in the Commonwealth on a limited basis.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify goals for massage therapists to pursue in practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2149 licensed massage therapists. It is unknown how many therapists are unlicensed and practice massage therapy on a limited basis.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None, the measure is necessary for the protection of the public. The individuals may avert legal or disciplinary action by maintaining compliance.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Massage Therapy
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(3)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
 - (c) How much will it cost to administer this program for the first year? None
 - (d) How much will it cost to administer this program for subse-

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quent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (Amendment)

201 KAR 42:020. Fees.

RELATES TO: KRS 309.357, 309.362(2), (3)

STATUTORY AUTHORITY: KRS 309.355(3), 309.357

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357 requires the board to establish reasonable fees for the licensure [~~and renewal~~ and reinstatement] of massage therapists. KRS 309.362(2) and (3) authorize the issuance of an inactive license and reinstatement. This administrative regulation establishes the fees relating to massage therapy (MT) licensure.

Section 1. Fee Payments. (1) All fees established in Section 2 of this administrative regulation shall be:

(a) Made payable as required by KRS 309.356 to the State Treasury; and

(b) Paid by:

1. Cashier's check;

2. Certified check;

3. Money order; ~~or~~

4. Personal check; or

5. Online payment by credit card, debit card, or electronic check.

(2) A payment for an application fee that is incorrect shall be returned to the applicant and the application shall not be posted until the correct fee is received.

(3) The application fee and the initial licensure fee established in Section 2(1) of this administrative regulation shall be nonrefundable pursuant to KRS 309.357(1) and (2).

(4) If it is determined that a refund of any fee is required, the refund shall be issued to the applicant or licensee.

Section 2. Fees. (1) The fee for an initial massage therapist license shall be \$125~~[paid according to the following schedule:~~

~~(a) Fifty (50) dollars of the \$125 shall be nonrefundable and due at the time of application.~~

~~(b) The remaining seventy five (75) dollar balance of the \$125 fee shall be due at the time the license is approved].~~

(2)(a) The biennial renewal fee for a massage therapist license renewed on or before the renewal date shall be \$100.

(b) If the license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late renewal shall be \$150.

(c) If the license is renewed sixty-one (61) to ninety (90) days~~sixty (60) days or more] after the expiration of the license, the late renewal fee shall be \$200.~~

(d) If a license is not renewed within ninety (90) days~~two (2) years of expiration] of the license, the applicant shall apply for a license pursuant to KRS 309.358(2) or 309.359 or demonstrate to the board that the applicant was unable to renew in a timely manner due to circumstances beyond his or her control pursuant to KRS 309.357(6)(a).~~

(3)(a) The application fee for Active to Inactive status shall be thirty-five (35) dollars.

(b) A licensee shall be in active and in good standing at the time when the licensee elects inactive status.

(4)(a) The annual renewal date for an inactive license shall remain the original issue date of the license.

(b) The annual renewal fee for an inactive license shall be thirty-five (35) dollars.

(5) If the inactive license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late inactive renewal shall be \$52.50.

(6) If the inactive license is renewed sixty (60) to ninety (90) days~~or more] after the expiration of the license, the late renewal fee shall be seventy (70) dollars.~~

(7) The application fee for moving a license from Inactive to Active status shall be fifty (50) dollars and shall not be prorated.

THERESA CRISLER, Chair

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2010 at 9 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) 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 November 1, 2010 at the close of business. 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: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes fees for licensure as a massage therapist.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 309.357.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to establish reasonable fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board by establishing the required fees which generate the revenue that funds the board's operation.

(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: Allows payment online, establishes procedure for obtaining refund, and reflects statutory timeframe for payment of fees during the late renewal period.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to reflect statutory changes and allow the licensee or applicant to pay their fees by alternative means.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to charge a reasonable fee.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify fees associated with application and licensure and the procedure for payment of those fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage therapists.

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

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

(b) In complying with this administrative regulation or amend-

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ment, how much will it cost each of the entities identified in question (3): It will cost only the respective fee as reflected. No fees have been changed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals will have more options as to form of payment of fees.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.357

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation funds the operation of the board. The amendment will have no impact on net revenue.

(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 regulation funds the operation of the board and generates all board funds. The amendment will have no impact on net 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 regulation funds the operation of the board and generates all board funds. The amendment will have no impact on net revenue.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Massage Therapy
(Amendment)

201 KAR 42:030. Licensee's change of name, home address, or place of business.

RELATES TO: KRS 309.355(4)

STATUTORY AUTHORITY: KRS 309.355(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

309.355(4) requires the board to keep a register of all persons licensed as massage therapists. This administrative regulation provides the mechanism for a massage therapist to change the name, home address, or place of business under which the therapist is originally licensed.

Section 1. A massage therapist licensed pursuant to KRS Chapter 309 shall notify the board electronically or in writing of any change in the person's name, home address, or place of business within thirty (30) days after the change has taken place.

Section 2. A name change shall be made only after submission of a legal document - that authorizes the change. A change in name, home address, or place of business shall be made by filing the "Name/Home Address/Place of Business Change Form".

Section 3. Incorporation by Reference. (1) "Name/Address/Place of Business Change Form (October 2006)" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.]

THERESA CRISLER, Chair

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2010 at 9 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) 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 November 1, 2010 at the close of business. 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: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes procedures for a licensee to change his or her address.

(b) The necessity of this administrative regulation: This regulation is necessary to provide for the efficient operation of the Board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by ensuring that the board has the most up-to-date contact information for its licensees.

(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: Licensee may change their address or contact information by e-mail and the form was eliminated.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to give licensees more options to complete the desired objective of supplying up-to-date

contact information.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that the board has up-to-date contact information for its licensees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage therapists.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensee will be on greater notice to actions by the board.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(3)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (Amendment)

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

RELATES TO: KRS 309.358, 309.359

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. The board is required to issue a license to an applicant meeting the standards in KRS ~~309.358(309.358(2))~~ or 309.359. This administrative regulation establishes the application process and curriculum requirements for licensure.

Section 1. An applicant for licensure as a massage therapist shall:

(1) File a completed, signed, and dated application and required documentation with the board, meeting the requirements set forth in ~~309.358(309.358(2))~~; and

(2) Pay the application fee as established in 201 KAR 42:020.

Section 2. To comply with KRS ~~309.358(4)(309.358(2)(d))~~, an applicant shall submit to the board, at the time of application, [a curriculum statement,] official transcript or certificate that shows the completion of at least 600 classroom hours, itemizing ~~consisting of~~ the following minimum requirements:

(1) 125 hours of sciences to include anatomy, physiology, and kinesiology;

(2) 200 hours of massage or bodywork theory, technique, and practice focusing on:

- (a) Gliding strokes;
- (b) Kneading;
- (c) Direct pressure;
- (d) Deep friction;
- (e) Joint movement;
- (f) Superficial warming techniques;
- (g) Percussion;
- (h) Compression;
- (i) Vibration;
- (j) Jostling;
- (k) Shaking; and
- (l) Rocking.

(3) 200 hours of approach to the business of massage, including:

- (a) Contraindications;
- (b) Benefits;
- (c) Business;
- (d) History;
- (e) Ethics;
- (f) Client documentation;
- (g) Legalities of massage; and
- (h) Modality courses designated to meet the school's specific program objectives;

(4) Forty (40) hours of pathology; and

(5) The school may use discretion in allotting the additional thirty-five (35) curricular hours that are required under KRS 309.358.

Section 3. Examinations. (1.) An examination shall be approved by the board as meeting the standard in KRS 309.358(5) if the board determines that the examination:

(a) Has been scientifically constructed to be valid and objective;

(b) Reflects the curriculum content established in 201 KAR 42:035(2);

(c) Has security procedures to protect the exam content; and

(d) Has clear application, reporting and appeal procedures.

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(2) Approval of exams shall be noted in the board minutes and on the board Web-site.

(3) The following examinations have been approved:

(a) Examinations pertaining to massage and bodywork that are administered by a certifying agency approved by the National Commission for Certifying Agencies such as the National Certification Board for Therapeutic Massage and Bodywork or the National Certification Commission for Acupuncture and Oriental Medicine;

(b) The MBLex or other exam administered by the Federation of State Massage Therapy Boards;

(c) The State of Ohio Massage Therapy Licensing Exam;

(d) The State of New York Massage Therapy Licensing Exam.

Section 4. Upon receipt of an application for licensure, the board administrator shall verify that the documentation accompanying the application is complete and the fee is paid.

(1) Applications shall be received ten (10) calendar days prior to the next scheduled applications committee meeting as posted on the board Web site.

(2) If the application, documentation and fee are complete and meet all the requirements of KRS 309.358, the board administrator shall issue the license and add the licensee's name to a list to be ratified at the next board meeting.

(3) If the application, documentation or fee is incomplete, the board administrator shall notify the applicant in writing or electronically of the deficiencies and add the applicant's name to list of pending applications that shall be available to the Applications Committee of the board for its next meeting.

(4) If the application, documentation and fee are complete and the applicant is applying for licensure by endorsement pursuant to KRS 309.359, the board administrator shall process the application pursuant to 201 KAR 42:070.

(5) If the application or documentation contain information that indicates that the applicant has a felony conviction or other reason to doubt good moral character, has not graduated from a school with an existing Certificate of Good Standing, or has passed an examination not previously approved by the board, then the board administrator shall hold the application on the deferred list for the Applications Committee to consider at its next scheduled meeting.

(a) If the requirements set out in KRS 309.358 have been met, the Applications Committee shall issue the license and add the licensee's name to the list to be ratified by the board at its next scheduled meeting.

(b) The Applications Committee may place the application on the agenda for the next scheduled board meeting if the application is complete but requires further consideration by the board.

Section 5.[3-] Appeals. An applicant may appeal a decision denying his or her licensure application in accordance with KRS 309.362(2).

Section 6.[4-] Incorporation by Reference. (1) "Application for Licensure as a Massage Therapist", August 2010, is incorporated by reference [December 2006].

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

THERESA CRISLER, Chair

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2010 at 9 a.m. at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) 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 November 1, 2010 at the close of business. 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: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes application procedures for becoming a licensed massage therapist.

(b) The necessity of this administrative regulation: This regulation is necessary to provide appropriate procedures and notice of those procedures to potential licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by ensuring that the board has a clear process for the issuance of licenses.

(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 specifies approved examinations and provides greater insight into the timeline for application processing.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to give licensees more options for completion of the exam requirement.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify, for the board staff and potential licensees, the process by which applications are approved.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage therapists. The change in this regulation will affect only prospective licensees.

(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: Prospective licensees will have greater options with regard to exams which will qualify them for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Possibly fees associated with the exam that the individual selects to become licensed and normal application fees as established by regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The prospective licensees will have greater options on the selection of an exam to become licensed.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

(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: No fees will be required to implement this administrative regulation amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government including cities, counties, fire departments, or school districts will be impacted by this administrative regulation? Kentucky Board of Licensure for Massage Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(3)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (Amendment)

201 KAR 42:040. Renewal~~[and reinstatement procedures.]~~

RELATES TO: KRS 309.357(3), (4), (5), ~~(6)~~, 309.361

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357(3) requires all licenses to be renewed. This administrative regulation provides directions for the renewal of these licenses.

Section 1. A license to practice massage therapy may be renewed upon:

(1) Payment of the biennial renewal fee as established in 201 KAR 42:020, Section 2(2) on or before the anniversary date of issue of license; and

(2) Submission of the "Application for Renewal" form with the following written information to the board:

(a) Current complete home address and telephone number;

(b) Current complete name, address, and telephone number of each location in which massage therapy service is provided.

(c) ~~A list [Documentation]~~ of completion of continuing education units taken~~[requirements]~~ during the licensure renewal period established in 201 KAR 42:110.

1. The list of units shall itemize clock hours credited for each course.

2. The list shall designate the courses that fulfill the three (3)

required hours of ethics training.

3. Documentation shall be required of audited renewal applications.

(d) Written confirmation that, since the license was issued or renewed, the licensee has not:

1. Been convicted of a felony;

2. Had his or her license disciplined and is not currently under disciplinary review in another state;

3. Engaged in any other unprofessional conduct, stated in KRS 309.362(1); or

4. Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) per KRS 164.772.

Section 2. A licensee convicted of a felony or disciplined in the interim period between issuance and renewal of the license, or between renewal periods, shall submit notice of the conviction or discipline to the board within sixty (60) days of the discipline or conviction~~[prior to license renewal]~~.

Section 3. If payment and complete information are not received by the board on or before the anniversary date of issue of license, the license shall expire and the person shall not practice nor represent themselves~~[work]~~ as a massage therapist in Kentucky.

Section 4. An expired license may be reinstated within ninety (90) days~~[two (2) years]~~ of expiration if the applicant submits:

(1) A completed "Application for Renewal of License as a Massage Therapist" form;

(2) Documentation of successful completion of twenty-four (24) hours of continuing professional education, which:

(a) Includes studies in ethics, business practices, science, and techniques related to massage therapy;

(b) Have been credited within two (2) years prior to the renewal deadline; and

(c) Have not been previously used within the same renewal period to satisfy Kentucky license renewal requirements; and

(3) The appropriate fee for renewal, as required by 201 KAR 42:020, Section 2(2)(b), (c), or (d), or (d) or subsection (d), (5) or (6)~~[Section 2(2)(a), (b), or (c)]~~.

Section 5. (1) Upon initial licensing, a licensee shall be furnished:

(a) A billfold license identification card; and

(b) A wall certificate to be displayed at the primary massage therapy service location.

(2) Upon each subsequent renewal, a licensee shall be furnished a billfold license identification card.

(3) Official verification of licensure status shall be available through the online verification Web site.

Section 6. Reactivation Requirement for Inactive Status Massage Therapist. (1)(a) Before the expiration of five (5) years of inactive status, a licensee requesting to return to active status shall:

1. Provide proof to the board of continuing education required by KRS 309.362(3);

2. Complete the Application for Renewal; and

3. Pay the fee prescribed by 201 KAR 42:020, Section 2(7).

(b) The continuing education hours provided pursuant to paragraph (a)1 of this subsection may be used for the next regular renewal period.

(2) After more than five (5) years of inactive status, a person requesting to return to active status shall reapply and meet the requirements of 309.358~~(2)~~ as provided by KRS 309.362(3).

Section 7. Incorporation by Reference. (1) "Application for Renewal of License as a Massage Therapist", September 2010~~[December 2006]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

VOLUME 37, NUMBER 4 – OCTOBER 1, 2010

THERESA CRISLER, Board Chair

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2010 at 9 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) 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 November 1, 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: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, P.O. Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes renewal procedures for individuals already licensed as massage therapists.

(b) The necessity of this administrative regulation: This regulation is necessary to provide appropriate procedures for the renewal of one's massage therapy license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by ensuring that licensees are notice of the requirements for the renewal of their license.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the time period for late renewals to accurately reflect recent statutory changes.

(b) The necessity of the amendment to this administrative regulation: This amendment changes the time period for late renewals to accurately reflect recent statutory changes.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the regulation into conformity with the recently amended statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage therapists.

(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: Among other things, this amendment will change the type of documentation that a licensee is required to provide upon renewal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(3)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (Amendment)

201 KAR 42:050. Complaint procedure and disciplinary action.

RELATES TO: KRS 309.355(1), (2), (6), 309.362

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) authorizes the board to regulate the practice of massage therapy. KRS 309.355(2) authorizes the board to investigate every alleged violation and take action, as it may deem appropriate. This administrative regulation establishes the procedure for filing a complaint and the action to be taken by the board on a complaint and disciplinary action of a licensee or applicant in violation of KRS 309.351 or 309.362.

Section 1. Definitions. (1) "Complaint committee" means a

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committee of the board that:

- (a) Reviews an initiating complaint; and
- (b) Recommends dismissal or further investigation of the complaint, or
- (c) Determines the existence of sufficient evidence to bring a formal complaint.

(2) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth a charge against a licensee or applicant and commences a formal disciplinary proceeding under KRS Chapter 13B.

(3) "Initiating complaint" means a written complaint alleging a violation of KRS 309.350 through 309.364 or the administrative regulations of the board by a licensee or applicant for licensure as a massage therapist.

(4) "Respondent" means the person against whom an initiating complaint or formal complaint has been made.

Section 2. Initiating Complaint. (1) A complaint may be initiated by:

- (a) An individual;
- (b) A state or government agency;
- (c) Another member of the massage therapy profession; or
- (d) The board.

(2) An initiating complaint shall be made in writing to the board and received in the board office.

(3) The board may conduct an investigation on its own initiative, without receipt of a complaint, if the board has reason to believe that there may be a violation of KRS 309.350 through 309.364, or administrative regulations promulgated in relation thereto.

(4) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid reason for an initiating complaint. The complaint should be submitted on a board-approved form.

Section 3. Procedure Upon Receipt of Initiating Complaint. (1) Upon receipt of the initiating complaint, the board office shall send a copy of the initiating complaint to the respondent at the respondent's last address of record with the board.

(2) The respondent shall file a response to the initiating complaint with the board within twenty (20) days after the board mails the initiating complaint to the respondent.

(3) The allegations in an initiating complaint shall be considered true if respondent fails to respond to the initiating complaint in a timely fashion.

Section 4. The complaint committee shall:

(1) Review the initiating complaint and the response filed by the respondent at its next meeting; and

(2) Recommend one (1) of the following options to the board at the board's next meeting:

- (a) Dismissal;
- (b) Further investigation; ~~or~~
- (c) Issuance of a formal complaint; or
- (d) Referral to another government agency.

(3) A complaint committee member having any known conflict of interest shall recuse from the matter and disclose the existence of a conflict in a regular board meeting.

Section 5. Board Action upon Recommendation of Complaint Committee. At the board's next meeting following review by the complaint committee, the board shall review the committee's recommendations and may accept or reject the recommendations in whole or in part.

Section 6. Dismissals. The complainant and respondent shall be notified if a case is dismissed.

Section 7. Investigations. (1) If investigation is warranted, the board may appoint one (1) of its members or an agent or representative of the board to conduct an investigation of the respondent.

- (2) In its investigation, the board may be assisted by:
 - (a) Board staff;

- (b) A board agent; or
- (c) The Office of the Attorney General.

Section 8. Formal complaints. If the board finds that sufficient evidence exists to file a formal complaint, the board may:

- (1) Resolve the case informally by agreed order; or
- (2) File a formal complaint, in accordance with KRS Chapter 13B.

Section 9. Settlement by Informal Proceedings. (1) The board, through counsel, may enter into informal discussions or negotiations with the respondent for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through informal proceedings shall be approved by the board and signed by the chair of the board, the respondent and the respondent's attorney and a copy shall be placed in the licensee's file.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 10. Procedures for Disciplinary Hearings. (1) All procedures for disciplinary hearings shall conform to KRS Chapter 13B.

(2) Testimony to be considered by the board, hearing panel, or hearing officer, if any, may be taken by deposition. A party or witness may be allowed to testify by deposition, rather than attend the hearing, upon a showing of inability to attend and a showing that other parties shall have an opportunity to cross-examine at the deposition. The presiding officer or hearing officer, if any, shall rule upon motions to allow testimony to be considered by deposition, subject to review and approval by the board.

(3) The presiding officer or hearing officer, if any, may order that at least five (5) days prior to the hearing, each party shall file a summary of each witness' expected testimony.

Section 11. Final Disposition. Upon reaching a decision, the board shall notify the respondent in writing, by certified mail or personal service, of its final disposition of the matter and the complainant shall be notified by regular mail.

Section 12. Incorporation by Reference. (1) The "Complaint Form" October 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

THERESA CRISLER, Chair

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2010 at 9 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) 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 November 1, 2010 at the close of business. 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: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

VOLUME 37, NUMBER 4 – OCTOBER 1, 2010

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes procedures for the processing of complaints against licensees.

(b) The necessity of this administrative regulation: This regulation is necessary to provide appropriate procedures and safeguards for the complaint process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by ensuring that the board has a clear process for conducting investigations and taking disciplinary action.

(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 provides greater options to the board for disposition of cases and requires board members to disclose conflicts of interest.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to give the board more options for disposing of disciplinary actions and improves board member ethical standards.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will give the board more options for the disposition of cases and ensure that the disciplinary process is conducted in an ethical manner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2149 licensed massage therapists.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board will have greater options related to the disposition of disciplinary cases.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(3)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (Amendment)

201 KAR 42:060. Code of ethics, and standards of practice for massage therapists.

RELATES TO: KRS 309.355(3), 309.362

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) authorizes the Board of Licensure for Massage Therapy to establish by administrative regulation a code of ethics, and standards of practice for massage therapists. This administrative regulation establishes those standards, which, if violated, are a basis for disciplinary action under KRS 309.362.

Section 1. Code of Ethical Standards for the Massage Therapist. A massage therapist shall:

(1) Maintain the confidentiality of all client information, unless law or court order mandates disclosure;

(2) Keep the client well informed of procedures and methods that will be employed during the session;

(3) Report to the board if the massage therapist has first-hand knowledge or evidence indicating any unethical, incompetent, or illegal act has been committed by another licensee;[-]

(4) Take precautions to do no harm to the physical, mental, and emotional well being of clients and associates;[-]

(5) Make every reasonable effort to report unlicensed massage practice to the board;[-]

(6) Represent his or her educational and professional qualifications honestly;

(7) Inform clients of the limitations of the licensee's practice;

(8) Consistently take measures to improve professional knowledge and competence by a regular assessment of personal and professional strengths and weaknesses through continuing education training;

(9) Respect the client's right to treatment with informed and voluntary consent, either verbal or written, and to refuse, modify, or

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terminate treatment regardless of prior consent;

~~(10)~~~~(9)~~ Not initiate or engage in sexual conduct or activities with a client;

~~(11)~~~~(40)~~ Not engage in an interest, activity, or influence that conflicts with the practitioner's obligation to act in the best interest of the client;

~~(12)~~~~(44)~~ Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and client's reasonable expectations of professional behavior;

~~(13)~~~~(42)~~ Refuse to accept gifts or benefits, which are intended to influence a referral or treatment that are purely for personal gain and not for the good of the client;

~~(14)~~~~(43)~~ Conduct all business and professional activities with honesty and integrity.

~~(15)~~~~(44)~~ Respect the inherent worth of all clients;

~~(16)~~~~(45)~~ Provide only those services that the licensee is qualified to perform; and

~~(17)~~~~(46)~~ Respect the client's autonomy.

Section 2. Standards of Practice for the Massage Therapist. When engaged in the practice of massage therapy, a massage therapist shall:

(1) Perform a written or verbal intake interview with the client to determine whether any contraindications to massage therapy exist and whether modifications including pressure, technique, and duration of treatment are appropriate;

(2) Acknowledge the limitations of, and contraindications for, massage;

(3) Refer the client to other professionals or services if the treatment or service is beyond the massage therapist's scope of practice;

(4) Maintain for a minimum period of five (5) years accurate, timely, and organized records of every client;

(5) Provide massage therapy services that meet or exceed the generally accepted practice of the profession;

(6) If a plan of care or treatment is appropriate, explain the plan to the client, to others designated by the client, and to appropriate professionals with client permission;

(7) Unless prohibited by law, be allowed to pool or apportion fees received with other members of a business entity in accordance with any business agreement;

(8) Practice massage therapy in sanitary and safe conditions; and

(9) Have the right to refuse to treat any person or part of the body at the licensee's discretion.

Section 3. Standards for Documentation. The massage therapist and client shall agree upon the purpose of the massage session.

(1) No documentation is required if the massage session is for general relaxation, a sports event massage, or public demonstration as in chair massage.

(2) If a written plan of treatment is requested or required, the client file shall include the following documentation:

(a) The initial evaluation, which shall include:

1. The client's name, age, and gender;

2. Date of the session;

3. Pertinent medical history, including:

a. Client sensitivities and allergies;

b. Medical diagnoses, if available, and the source of the diagnosis;

c. Contraindications; and

d. Medications as disclosed by the client.

(b) Progress notes signed by a massage therapist rendering the massage therapy, which shall include:

1. Subjective information including the area of complaint as stated by the client and the date of onset;

2. Objective information including any observations and objective testing, if applicable;

3. Ongoing assessments, if applicable;

4. Actions taken by the massage therapist; and

5. Client response to massage therapy treatment.

(c) A plan of treatment, if applicable, consisting of:

1. Modalities to be rendered;

2. Frequency and duration of treatment;

3. Referral to other professionals, if indicated;

4. Client self-help education and instruction; and

5. Goals or desired outcome of the treatment.

THERESA CRISLER, Chair

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2010 at 9 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) 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 November 1, 2010 at the close of business. 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: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes a code of ethics for massage therapists.

(b) The necessity of this administrative regulation: This regulation is necessary to provide appropriate ethical standards for massage therapists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering the statute by putting licensees on notice of the ethical standards that they will be held to.

(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 creates a requirement that licensees make efforts to report unlicensed practice.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to provide the board with greater reporting of unlicensed practice so that it can take the appropriate action.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the board with greater notice of illegal practice so that it can discharge its statutory duty to prevent the same.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage therapists.

(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: Make reasonable efforts to report unli-

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censed practice when it comes to their attention.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A better reputation as a professional in this occupation.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(3)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (Amendment)

201 KAR 42:070. Endorsement.

RELATES TO: KRS 309.358, 309.359

STATUTORY AUTHORITY: KRS 309.359

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.359 authorizes the board to issue a license to a person holding a credential in another state of the United States. This administrative regulation establishes the application process for issuance of a license to a person holding a credential in another state of the United States.

Section 1. An applicant Meeting Equal or Higher Standards. An applicant holding a license issued by another state with licensure standards equal to or higher than the requirements of KRS 309.358(2) shall submit:

(1) A completed Application for Licensure as a Massage Therapist form which is incorporated by reference in 201 KAR 42:035;

(2) Verifiable/Certified proof of the individual's current licensure, registration, or certification from the state where the individual is credentialed, provided to the board directly from the licensure, certification, or accreditation board, on the Endorsement Form which the applicant shall obtain from the Kentucky Board of Licensure for Massage Therapy and send to their current credentialing board;

(3) A verifiable/certified statement that the individual is in good standing as a massage therapist from the credentialing authority of the jurisdiction in which the applicant holds a license or credential including duration of the license or credential; and

(4) The appropriate fee for licensure as required by 201 KAR 42:020, Section 2(1)(a)(b).

Section 2. An Applicant Meeting Lesser Standards. An applicant who is credentialed as a massage therapist in another state with less stringent requirements than KRS 309.358(2) shall submit:

(1) A completed Application for Licensure as a Massage Therapist form which is incorporated by reference in 201 KAR 42:035;

(2) Certified proof of the individual's current licensure, registration, or certification from the state where the individual is credentialed, provided to the board directly from the licensure, certification, or accreditation board on the Endorsement Form which the applicant shall obtain from the Kentucky Board of Licensure for Massage Therapy and send to their current credentialing board;

(3) A certified statement that the individual is in good standing as a massage therapist from the credentialing authority of the jurisdiction in which the applicant holds a license or credential including duration of the license or credential;

(4) The appropriate fee for licensure as required by 201 KAR 42:020, Section 2(1)(a)(b); and

(5) Documents evidencing the applicant's combined initial training, professional experience, continuing education, or other credentials constituting equivalency to KRS 309.358. Acceptable documentation may include:

(a) Passage of the National Certification Board of an examination that has been approved by the board, [Therapeutic Massage and Bodywork's National Certification Exam (NCE) or other exam administered by a certifying agency that has been approved by the National Commission for Certifying Agencies];

(b) Certified school transcripts received directly from the massage school;

(c) Copies of continuing education certificates from studies completed after or not included as part of the initial training;

(d) Certified transcript of health care related academic course work;

(e) Proof of teaching massage therapy relevant curriculum as stated in KRS 309.363;

(f) Other credentials that may constitute equivalence to the standards in KRS 309.358(2)(d) which may also include research, clinical internships, publications, and massage therapy leadership positions; or

(g) Current proof of hands-on therapeutic massage or body-work sessions. Supporting documentation for the hours or years of massage therapy work, including appointment books, employer verification, log books, or appointment books for self employed individuals. If this is the only documentation to establish equivalency, a minimum of four (4) years experience is required.

Section 3. Upon receipt of an application for endorsement, the board administrator shall verify that documentation accompanying the application is complete and that the fee is paid.

(1) The board administrator shall forward the application to the applications committee for review under KRS 309.359.

(2) If the application, documentation or fee is incomplete, the board administrator shall notify the applicant in writing or electronically within two (2) weeks indicating the deficiency and add the

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applicant's name to the list of pending applications that shall be made available to the applications committee of the board prior to the next board meeting.

(3) If the application or documentation contain information that indicates that the applicant has a felony conviction or other reason to doubt good moral character, has not graduated from a school with an existing Certificate of Good Standing, or has not passed a board-approved examination, the board administrator shall hold the application on a deferred list for the applications committee to consider prior to the next board meeting.

a. If the requirements set out in KRS 309.358 have been met or the committee determines that standards equivalent to those found in KRS 309.358 have been met as indicated in KRS 309.359(2), the applications committee shall issue the license and add the licensee's name to the list to be ratified by the board at the next board meeting.

b. The applications committee may place an application on the agenda of the next board meeting if the committee determines that further consideration is necessary.

Section 4. [3:] Incorporation by Reference. (1) "Endorsement Form", September 2010 [December, 2006], is incorporated by reference.

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

THERESA CRISLER, Chair

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2010 at 9 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) 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 November 1, 2010 at the close of business. 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: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes a process for becoming licensed by endorsement.

(b) The necessity of this administrative regulation: This regulation is necessary to provide a process by which an individual can become licensed by endorsement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering the statute by delineating a process for approval of license applications seeking admission by endorsement.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the process by which an ap-

plication is considered for the benefit of the staff and the prospective licensee.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to provide the board staff and prospective licensees with clarity related to approval of applications filed pursuant to this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the board staff and prospective licensees with clarity related to approval of applications filed pursuant to this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage therapists. The number that will apply for licensure by endorsement constitutes a very small number each year.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(3)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Licensure for Massage Therapy
(Amendment)

201 KAR 42:110. Continuing education requirements.

RELATES TO: KRS 309.355, 309.361

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. KRS 309.361 identifies the requirements for continuing education and prescribes the types of courses required during the renewal period. This administrative regulation establishes the procedures and standards for submitting documentation to meet the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "ABMP" means the Associated Bodywork and Massage Professionals.

(2) "AMTA" means the American Massage Therapy Association.

(3) "AOBTA" means the American Organization for Bodywork Therapies of Asia.

(4) "Board" is defined by KRS 309.350(1).

(5) "CE hour" means continuing education hours consisting of fifty (50) minutes of an organized learning activity that is either didactic or clinical experience and shall exclude meals, breaks, and registration.

(6) "Competency" means the study, development, and demonstration of knowledge and skills in meeting professional expectations as a massage therapist.

(7) "Continuing education" means participation in an approved program or learning experience that is designed to facilitate continued competency including ethical and legal practice in the therapeutic massage and bodywork profession through participation in a learning process that enhances the licensee's current knowledge, skills, and abilities in the profession.

(8) "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(9) "NCCAOM" means the National Certification Commission for Acupuncture and Oriental Medicine.

(10) "Provider" means an organization, entity, or individual that has met the requirements of the board to provide educational courses that are designed to ensure continued competence in the practice of massage therapy. [acknowledged or recognized by the board as having the capacity to provide quality continuing educational activities over an extended period.]

(11) "Self-paced learning" means a course designated for an individual to learn at his or her own pace and is often referred to as correspondence or home study with testing or an evaluation process.

Section 2. Accrual of CE Hours; Computation of Accrual. (1) A licensee shall accrue a minimum of twenty-four (24) continuing education hours during a two (2) year licensure period for renewal of a license, beginning on the date of license issue.

(2) A minimum of three (3) of the twenty-four (24) hours required by subsection (1) shall be accrued in the field of professional ethics.

(3) All hours shall be in or related to the field of massage therapy.

Section 3. Acquisition of CE Hours. (1) CE hours applicable to

the renewal of a license shall be directly related to the professional growth and development of massage therapy practitioners. CE hours may be earned by completing any of the following educational activities:

(a) Courses not requiring board review and approval. Courses from the following sources shall be deemed relevant to the practice of massage therapy and shall be approved:

1. Courses and Learning Opportunities approved by the NCBTMB;

2. Courses offered by the AMTA and its state affiliates;

3. Courses approved by the NCCAOM;

4. Courses offered by the AOBTA and its state affiliates;

5. Courses offered by the ABMP;

6. Kentucky board approved massage therapy programs of instruction or massage therapy programs duly licensed to operate in other states; and

7. Relevant academic courses completed in a degree-granting college or university accredited by an agency that is approved by the Council on Higher Education Accreditation (CHEA).

(2) Programs requiring board review and approval. All other programs, including home study courses and in-service training provided by organizations, educational institutions, or other service providers not listed in subsection (1)(a) of this section, and programs or academic courses presented by the licensee require approval by the board.

(3) Presenters of relevant programs or academic courses may earn double continuing education credit for the length of presentation time, not to exceed twelve (12) hours per renewal cycle.

(4) Credit shall not be issued for repeated instruction of the same course.

(5) A licensee may not receive credit for completing the same CE course within the two (2) year renewal period.

Section 4. Documentation of CE Hours. (1) A licensee shall furnish the following information regarding completion of the appropriate number of CE hours for the current renewal period:

(a) Name of course, date, and the author or instructor;

(b) Name of providing organization and the location of the course;

(c) The number of hours attended;

(d) Provider number;

(e) Provider name and telephone number for board verification;

(f) Official transcripts with a raised seal showing academic credits and grades awarded if courses are received from a university, college, or vocational technical adult education facility; and

(g) Documentation of completion, if requested by the board.

(2) A licensee who supplies false information to the board in order to comply with the CE requirements of this administrative regulation may be subject to disciplinary action that may include suspension or revocation of license.

Section 5. Procedures for Preapproval of Continuing Education Courses. (1) An entity seeking to obtain approval of a continuing education course prior to its offering shall complete a Continuing Education Program Application and submit it to the board at least sixty (60) days in advance of the commencement of the course, stating the:

(a) Type of learning activity;

(b) Subject matter;

(c) Names and qualifications of the instructors;

(d) Number of continuing education hours offered; and

(e) Statement of how the CE course relates to massage therapy.

(2) A CE activity shall be preapproved if the board determines the activity being presented:

(a) Is an organized course of learning;

(b) Pertains to subject matters that integrally relate to the practice of massage therapy;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have educational training or experience acceptable to the board.

(3) The board shall review preapproval requests at the board meeting immediately following the submittal and receipt of all re-

quired materials.

Section 6. Responsibilities and Reporting Requirements of Licensees. A licensee shall:

- (1) Identify the licensee's own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills, and attitudes;
- (2) Select approved activities by which to earn CE hours;
- (3) Maintain records of CE hours, for a period of two (2) years from the date of renewal; and
- (4) Document attendance and participation in a CE activity by providing official transcripts, copies of certificates, or verification of completion, if requested.

Section 7. Carry-over of CE Hours. (1) A maximum of twelve (12) CE hours may be carried over into the next renewal period.

(2) A licensee shall maintain records related to carry-over continuing education hours and submit those continuing education hours to the board when the licensee elects to utilize those hours for the fulfillment of the continuing education requirement for the current renewal period.

(3) A continuing education course shall only be used for the fulfillment of the continuing education requirement for a single renewal period and shall not be subdivided for utilization in multiple renewal periods.

Section 8. Appeal Procedure When Approval for CE Hours is Denied. (1) If an application for approval of CE hours is disapproved, the licensee may request reconsideration by the board. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of the CE hours.

Section 9. Audit of CE Activities. The board may audit the documentation of a licensee's CE hours for the current renewal period. If notified by the board, the licensee shall respond to the audit within thirty (30) days of the date of the request.

Section 10. Waiver or Extension of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, undue hardship, active military service, or other similar extenuating circumstance which preclude the individual's completion of the requirements, waive CE requirements or grant an extension of time within which to fulfill the requirements if the board receives:

- (a) A written request for waiver or extension of time;
- (b) Verifying documentation signed by a licensed physician; or
- (c) Other documentation to support the waiver.

(2) A waiver of the minimum CE requirements or an extension of time within which to fulfill the CE requirements may be granted by the board for a period not to exceed one (1) calendar year. If the circumstance extends beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

Section 11. Incorporation by Reference. (1) "Continuing Education Program Application", October 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

THERESA CRISLER, Chair

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2010 at 9 a.m. at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) 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 November 1, 2010 at the close of business. 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: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes a process for fulfilling the continuing education requirements of the board.

(b) The necessity of this administrative regulation: This regulation is necessary to provide a process for the fulfillment of continuing education to ensure continued competence in the practice of massage therapy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering the statute by delineating a process for fulfillment of a licensee's continuing education requirement.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the procedure related to utilization of carry-over CE hours.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to simplify record keeping and review for board staff and members.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the board staff and members greater clarity when reviewing submission of CE credits required for renewal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage therapists.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to retain documentation of CE hours that they intend to carry-over for use in the next renewal period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

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board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(3)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

RELATES TO: KRS 150.010, 150.015, 150.305, 150.320, ~~150.330,~~ 150.990

STATUTORY AUTHORITY: KRS, 150.025, ~~150.180(6),~~ ~~150.480,~~ 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS ~~150.180(6)~~ authorizes the department to regulate the importation of wildlife into Kentucky ~~to obtain a permit from the department~~. KRS 150.280 authorizes the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. This administrative regulation establishes the procedure for obtaining a transportation permit for exotic wildlife, prohibits the importation and possession of exotic species with the potential to damage native ecosystems, and places restrictions on importing, transporting, and holding species that are potentially dangerous to human health and safety. ~~EQ-2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts, and Heritage Cabinet.~~

Section 1. Definitions. [(4)] "Exotic wildlife" means terrestrial

wildlife species which have never naturally existed in the wild in Kentucky including introduced species that have become naturalized.

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

(a) Importing exotic wildlife into Kentucky; or

(b) Transporting exotic wildlife into and through the state to a destination outside Kentucky;

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

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

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

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

Section 3. Applying for Permits. (1) A person shall apply for a transportation permit on a form supplied by the department.

(2) The department shall deny a permit to an applicant that:

(a) Is less than eighteen (18) years of age;

(b) Has been convicted within the last year of a violation of:

1. This administrative regulation; or

2. 301 KAR 2:081.

(c) Does not submit a completed application; or

(d) Does not remit the correct fee pursuant to 301 KAR 3:022.

(3) Failure to provide accurate, factual, and complete information on the application form shall result in:

(a) Immediate withdrawal or revocation of the permit; and

(b) Confiscation of the wildlife imported under the permit.

(4) An annual transportation permit holder shall notify the department of any amendments to the original application at least forty-eight (48) hours prior to any wildlife shipment by calling the department by telephone at 800-858-1549, Monday through Friday, between 8 a.m. and 4:30 p.m.

(5) A person importing and possessing exotic wildlife shall be responsible for following local ordinances and rules regarding the wildlife to be held in a locality.

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

(a) Baya weaver (Ploceus philippinus);

(b) Blackbirds (Genus Agelaius), except native species;

(c) Cape sparrow (Passer melanurus);

(d) Cowbirds (Genus Molothrus), except native species;

(e) Cuckoo (Family Cuculidae), except native species;

(f) Dioc or red-billed quelea (Quelea quelea);

(g) European blackbird (Turdus merula);

(h) Fieldfare (Turdus pilaris);

(i) Flying fox or fruit bat (Genus Pteropus);

(j) Gambian giant pouched rat (Cricetomys gambianus);

(k) Giant, marine, or cane toad (Bufo marinus);

(l) Hawaiian rice bird or spotted munia (Lonchura punctulata);

(m) Jack rabbit (Genus Lepus);

(n) Java sparrow (Padda oryzivora);

(o) Madagascar weaver (Foudia madagascariensis);

(p) Mistle thrush (Turdus viscivorus);

(q) Monk or Quaker parakeet (Myiopsitta monachus);

(r) Multimammate rat (Genus Mastomys);

(s) Mute swan (Cygnus olor);

(t) Nutria (Myocastor coypus);

(u) Prairie dog (Cynomys spp.);

(v) Raccoon dog (Nyctereutes procyonoides);

(w) San Juan rabbit (Oryctolagus cuniculus);

(x) Sky lark (Alauda arvensis);

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- (y) Song thrush (*Turdus philomelos*);
- (z) Starlings (Family Sturnidae) including pink starlings or rosy pastors (*Sturnus roseus*), except for Indian Hill mynahs (*Gracula religiosa*);
- (aa) Suricate or slender-tailed meerkat (Genus *Suricata*);
- (bb) Tongueless or African clawed frog (*Xenopus laevis*);
- (cc) Weaver finches (Genus *Passer*), except *Passer domesticus*;
- (dd) White eyes (Genus *Zosterops*);
- (ee) Wild European rabbit (also called the San Juan Rabbit) not distinguishable morphologically from native wild rabbits;
- (ff) Yellowhammer (*Emberiza citrinella*);
- (gg) A member of the following families:
 - 1. Suidae (pigs or hogs), except for domestic swine, pursuant to 302 KAR 20:040 and 20:065;
 - 2. Viverridae (civits, genets, lingsangs, mongooses and foscas);
 - 3. Tayassuidae (peccaries and javelinas).
- (2) Except as specified in Section 5 of this administrative regulation, a person shall not import or possess the following species of inherently dangerous wildlife:
 - (a) Alligators or caimans (Family Alligatoridae);
 - (b) African buffalo (*Syncerus caffer*);
 - (c) Bears (Family Ursidae);
 - (d) Cheetah (*Acinonyx jubatus*);
 - (e) Clouded leopard (*Neofelis nebulosa*);
 - (f) Crocodiles (Family Crocodylidae);
 - (g) Elephants (Family Elephantidae);
 - (h) Gavials (Family Gavialidae);
 - (i) Gila monsters or beaded lizards (Family Helodermatidae);
 - (j) Hippopotamus (*Hippopotamus amphibius*);
 - (k) Honey badger or ratel (*Mellivora capensis*);
 - (l) Hyenas (Family Hyaenidae), all species except aardwolves (*Proteles cristatus*);
 - (m) Lions, jaguars, leopards or tigers (Genus *Panthera*);
 - (n) Old world badger (*Meles meles*);
 - (o) Primates, nonhuman (Order Primates);
 - (p) Rhinoceroses (Family Rhinocerotidae);
 - (q) Snow leopard (*Uncia uncia*);
 - (r) Venomous exotic snakes of the families Viperidae, Atractaspidae, Elapidae, and Colubridae, except for hognose snakes (Genus *Heterodon*);
 - (v) Wolverine (*Gulo gulo*); or
 - (w) Hybrids of all species contained in this list.

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

- (a) Not be required to obtain a transportation permit for exotic wildlife; and
- (b) Be allowed to import, transport, and possess the prohibited exotic species listed in Section 4(1) and (2) of this administrative regulation.
- (2) Upon written request, the department shall consider an exemption for the importation of prohibited exotic species for the following entities:
 - (a) A facility that is designated as the official zoo of a municipality;
 - (b) A government agency that is conducting official research on a prohibited species;
 - (c) A college or university;
 - (d) A licensed or accredited educational research institution; or
 - (e) A person or organization qualified to have a service animal, as defined by the Americans with Disabilities Act.

(3) The following entities may apply for a thirty (30) day exemption to temporarily transport and possess the species listed in Section 4(2) of this administrative regulation:

- (a) A lawfully operated circus; or
- (b) An exhibitor sponsored or contracted by a lawfully operated state or county fair.
- (4) Wildlife possessed or imported into Kentucky per subsection (2), (3), or (5) of this section shall be maintained within an enclosure sufficient to prevent:
 - (a) Escape; and
 - (b) Direct contact with the public, unless the applicant:

1. Submits a completed Local Government Authorization of Intent to Exhibit Inherently Dangerous Wildlife form; and

2. Keeps the inherently dangerous wildlife within the designated county listed on the form during the allotted time period.

(5) A person that does not meet the exemption requirements of subsection (2) or (3) of this section may apply for and obtain a transportation permit to temporarily transport or possess prohibited wildlife listed in Section 4(1) and (2) of this administrative regulation provided that the wildlife is only in the state for less than ninety-six (96) hours.

(6) A person who legally possessed wildlife listed in Section 4(2) of this administrative regulation prior to July 13, 2005, may continue to possess the animal and shall maintain:

- (a) Veterinary records;
- (b) Acquisition papers for the animal; or
- (c) Any other evidence that establishes that the person possessed the animal in Kentucky prior to July 13, 2005.

(7) A person who legally possesses wildlife pursuant to subsection (6) of this section shall not:

- (a) Replace the wildlife without an exemption pursuant to subsection (2) and (3) of this section; or
- (b) Allow the wildlife to reproduce without an exemption pursuant to subsections (2) and (3) of this section.

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

Section 6. Permit-exempt Animals. (1) The following exotic animals shall not require permits from the department for importation, transportation, or possession:

- (a) Alpaca (*Vicugna pacos*);
- (b) American bison (*Bison bison*);
- (c) Breeds and varieties of goats derived from the wild goat or bezoar (*Capra hircus*);
- (d) Camels (*Camelus bactrianus* and *Camelus dromedarius*);
- (e) Chinchillas (*Chinchilla laniger*);
- (f) Cockatoos (family *Cacatuidae*);
- (g) Domesticated races of ducks and geese (family *Anatidae*) distinguishable morphologically from wild ducks or geese;
- (h) Domesticated races of the European rabbit (*Oryctolagus cuniculus*) distinguishable morphologically from wild rabbits;
- (i) Domesticated races of mink (*Mustela vison*), if:
 - 1. Adults are heavier than 1.15 kilograms; or
 - 2. The fur color can be distinguished from wild mink;
- (j) Domesticated races of rats (*Rattus norvegicus* or *Rattus rattus*) or mice (*Mus musculus*);

(k) Domesticated races of turkeys (*Meleagris gallopavo*) recognized by the American Poultry Association and the U.S. Department of Agriculture; but shall not include captive held or bred wild turkeys;

- (l) Domestic yak (*Bos grunniens*);
- (m) Gerbils (*Meriones unguiculatus*);
- (n) Guinea fowl (*Numida meleagris*);
- (o) Guinea pigs (*Cavia porcellus*);
- (p) Hamsters (*Mesocricetus spp.*);
- (q) Indian Hill mynahs (*Gracula religiosa*);
- (r) Llama (*Lama glama*);
- (s) Parrots, lovebirds, cockatiels, budgerigars, macaws (family *Psittacidae*), and parakeets, except for monk or quaker parakeets pursuant to Section 4(1) of this administrative regulation;
- (t) Peafowl (*Pavo cristatus*);
- (u) Pigeons (*Columba domestica* or *Columba livia*) or domesticated races of pigeons;
- (v) Ratites, as defined by KRS 247.870; and
- (w) Toucans (family *Rhamphastidae*).

Section 7. Inspections and Permit Revocation. (1) A person holding exotic wildlife shall allow a conservation officer to inspect the holding facilities at any reasonable time.

(2) Captive wildlife may be confiscated and the permit revoked if the permit holder violates any provision of this administrative regulation.

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Section 8. Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.

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

(a) "Annual Transportation Permit Application, September 2010 edition";

(b) "Individual Transportation Permit Application, September 2010 edition"; and

(c) "Local Government Authorization of Intent to Exhibit Inherently Dangerous Wildlife Form, September 2010 edition."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. [starling (*Sturnus vulgaris*), English or house sparrow (*Passer domesticus*), and Eurasian collared dove (*Streptopelia decaocto*).

(2) "Circus" means a traveling public entertainment show consisting of acrobats, clowns, and trained animals.

(3) "Permit" means an individual or annual transportation permit issued by the department.

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

Section 3. Prohibited Species. (1) Except as specified in Section 2 of this administrative regulation and subsection (3) of this section, a person shall not import or transport through Kentucky or possess in Kentucky the following:

- (a) Baya weaver (*Ploceus philippinus*);
- (b) Blackbirds (Genus *Agelaius*), except native species;
- (c) Cape sparrow (*Passer melanurus*);
- (d) Cowbirds (Genus *Molothrus*), except native species;
- (e) Cuckoo (Family *Cuculidae*), except native species;
- (f) Dioch or red-billed quelea (*Quelea quelea*);
- (g) European blackbird (*Turdus merula*);
- (h) Fieldfare (*Turdus pilaris*);
- (i) Flying fox or fruit bat (Genus *Pteropus*);
- (j) Gambian giant pouched rat (*Cricetomys gambianus*);
- (k) Giant, marine, or cane toad (*Bufo marinus*);
- (l) Hawaiian rice bird or spotted munia (*Lonchura punctulata*);
- (m) Jack rabbit (Genus *Lepus*);
- (n) Java sparrow (*Padda oryzivora*);
- (o) Madagascar weaver (*Foudia madagascariensis*);
- (p) Mistle thrush (*Turdus viscivorus*);
- (q) Monk or Quaker parakeet (*Myiopsitta monachus*);
- (r) Multimammate rat (Subgenus *Mastomys*);
- (s) Mute swan (*Cygnus olor*);
- (t) Nutria (*Myocastor coypus*);
- (u) Prairie dog (*Cynomys* spp.);
- (v) Raccoon dog (*Nyctereutes procyonoides*);
- (w) San Juan rabbit (*Oryctolagus cuniculus*);
- (x) Sky lark (*Alauda arvensis*);
- (y) Song thrush (*Turdus philomelos*);
- (z) Starlings (Family *Sturnidae*) including pink starlings or rosy pastors (*Sturnus roseus*), except for Indian Hill mynahs (*Gracula religiosa*);
- (aa) Suricate or slender-tailed meerkat (Genus *Suricata*);
- (bb) Tongueless or African clawed frog (*Xenopus laevis*);
- (cc) Weaver finches (Genus *Passer*), except *Passer domesticus*;
- (dd) White eyes (Genus *Zosterops*);
- (ee) Wild European rabbit (also called the San Juan Rabbit not distinguishable morphologically from native wild rabbits);
- (ff) Yellowhammer (*Emberiza citrinella*);
- (gg) A member of the following families:
 1. Suidae (pigs or hogs), except for domestic swine;
 2. Viverridae (civits, genets, lingsangs, mongooses and foscas);
 3. Tayassuidae (peccaries and javelinas).
- (2) Prohibited inherently-dangerous wildlife. Except as speci-

fied in Section 2 of this administrative regulation and subsections (3), (5), and (6) of this section, a person shall not import or possess in Kentucky the following:

- (a) Adders or vipers (Family *Viperidae* and *Crotalidae*) (except native species);
- (b) Alligators or caimans (Family *Alligatoridae*);
- (c) African buffalo (*Syncerus caffer*);
- (d) Bears (Family *Ursidae*);
- (e) Cheetah (*Acinonyx jubatus*);
- (f) Clouded leopard (*Neofelis nebulosa*);
- (g) Cobras mambas or coral snakes (Family *Elapidae*);
- (h) Crocodiles (Family *Crocodylidae*);
- (i) Elephants (Family *Elephantidae*);
- (j) Gavials (Family *Gavialidae*);
- (k) Gila monsters or bearded lizards (Family *Holodermatidae*);
- (l) Hippopotamus (*Hippopotamus amphibius*);
- (m) Honey badger or ratel (*Mellivora capensis*);
- (n) Hyenas (Family *Hyaenidae*), all species except aardwolves (*Proteles cristatus*);
- (o) Lions, jaguars, leopards or tigers (Genus *Panthera*);
- (p) Old world badger (*Moles moles*);
- (q) Primates nonhuman (Order *Primates*);
- (r) Rhinoceroses (Family *Rhinocerotidae*);
- (s) Sea snakes (Family *Hydrophidae*);
- (t) Snow leopard (*Uncia uncia*);
- (u) Venomous rear-fanged species (Family *Colubridae*) except hognose snakes (Genus *Heterodon*);
- (v) Wolverine (*Gulo gulo*); or
- (w) Hybrids of all species contained in this list.

(3) Upon written request, the commissioner may authorize the importation or possession of the species listed in this section by:

- (a) A zoo or facility that is designated as the official zoo of a municipality;
- (b) A government agency;
- (c) A college or university;
- (d) A licensed or accredited educational or research institution;
- (e) A lawfully operated circus;
- (f) An exhibitor sponsored or contracted by a lawfully operated state or county fair; or

(g) A person or organization requesting exemption for a service animal, as defined by the Americans with Disabilities Act.

(4) Wildlife possessed or imported into Kentucky per subsections (3) or (5) of this section shall be maintained within an enclosure sufficient to prevent:

- (a) Escape;
- (b) Direct contact with the public; and
- (c) Bodily injury to the public.

(5) A person may apply for a transportation permit to temporarily transport or possess a prohibited animal listed in this section if the animal is within the state for less than ninety-six (96) hours. Transportation permits shall not be issued for consecutive ninety-six (96) hour periods.

(6) Possession of an inherently dangerous animal prior to the effective date of the amendment to this administrative regulation.

(a) A person who legally possessed in Kentucky an inherently dangerous animal as defined in subsection (2) of this section prior to July 13, 2005 may continue to possess the animal and shall maintain:

1. Veterinary records;
2. Acquisition papers for the animal; or
3. Any other evidence that establishes that the person possessed the animal in Kentucky prior to July 13, 2005.

(b) A legally possessed inherently dangerous animal shall not be bred or replaced without an exemption as established in Sections 2 and 3(3) of this administrative regulation.

(7) If any inherently dangerous animal escapes, either intentionally or unintentionally, the owner of the animal shall immediately contact local emergency services and the department at 800-252-3578 to report the escape or release.

Section 4. Exotic Wildlife. Unless listed in Section 3(1) of this administrative regulation, or otherwise protected by state or federal law, exotic wildlife shall not:

- (1) Be classified as protected wildlife; and

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(2) Require a permit from the department for possession.

Section 5. Transportation Permits and Certificate of Veterinary Inspection. (1) Prior to entry into Kentucky, an annual or individual transportation permit as established in 301 KAR 2:081 shall be obtained for all shipments of wildlife. A person shall be responsible for applying for a transportation permit before the person:

- (a) Receives a shipment of wildlife;
- (b) Imports wildlife for their own use or possession; or
- (c) Transports wildlife into and through the state to a destination outside Kentucky;

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

(a) An individual transportation permit shall be valid for one (1) shipment of wildlife and shall also permit possession of the wildlife for the designated time period.

(b) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue and shall also permit possession of the wildlife for the designated time period.

(c) An annual transportation permit holder shall:

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

2. Notify the wildlife division by telephone at 502-564-3400 or 800-858-1549 Monday through Friday between 8 a.m. and 4:30 p.m. at least forty-eight (48) hours prior to each shipment of wildlife of with:

- a. The date of expected shipment;
- b. The source of the shipment;
- c. The species being shipped;
- d. The number of individuals of each species; and
- e. The period of time when the wildlife will be inside the state of Kentucky.

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

Section 6. The following animals shall not require permits from the department for importation:

- (1) Alpaca (*Vicugna pacos*);
- (2) American bison (*Bison bison*);
- (3) Breeds and varieties of goats derived from the wild goat or bezoar (*Capra aegagrus*);
- (4) Camels (*Camelus bactrianus* and *Camelus dromedarius*);
- (5) Chinchillas (*Chinchilla laniger*);
- (6) Cockatoos (family *Cacatuidae*);
- (7) Domesticated races of ducks and geese (family *Anatidae*) distinguishable morphologically from wild ducks or geese;
- (8) Domesticated races of the European rabbit (*Oryctolagus cuniculus*) distinguishable morphologically from wild rabbits;
- (9) Domesticated races of mink (*Mustela vison*), if:
 - (a) Adults are heavier than 1.15 kilograms; or
 - (b) The fur color can be distinguished from wild mink;
- (10) Domestic swine, except free-roaming or feral wild boars or wild swine;
- (11) Domesticated races of rats (*Rattus norvegicus* or *Rattus rattus*) or mice (*Mus musculus*);
- (12) Domesticated races of turkeys (*Meleagris gallopavo*) recognized by the American Poultry Association and the U.S. Department of Agriculture; but shall not include captive held or bred wild turkeys;
- (13) Domestic yak (*Bos grunniens*);
- (14) Gerbils (*Meriones unguiculatus*);
- (15) Guinea fowl (*Numida meleagris*);
- (16) Guinea pigs (*Cavia porcellus*);
- (17) Hamsters (*Mesocricetus* spp.);
- (18) Indian Hill mynahs (*Gracula religiosa*);
- (19) Llama (*Lama glama*);
- (20) Parrots, lovebirds, cockatiels, budgerigar, parakeets (except monk parakeet (*M. monachus*), macaws (family *Psittacidae*);
- (21) Peafowl (*Pavo cristatus*);

(22) Pigeons (*Columba domestica* or *Columba livia*) or domesticated races of pigeons;

(23) Ratites, as defined by KRS 247.870; and

(24) Toucans (family *Rhamphastidae*).

Section 7. Applying for Permits. (1) An application for a permit shall be made on the appropriate form permits shall be made on standard forms:

(2) The applicant shall indicate the source of supply of the wildlife.

(3) After the permit is issued, the permit holder shall retain a bill of sale or other written proof to show that the wildlife was obtained from a legal source.

(4) A permit holder shall show this written proof to a conservation officer upon request.

(5) An applicant shall possess an approved permit before transporting exotic wildlife into Kentucky.

(6) A permit application may be denied if the permit holder has been convicted of a violation of:

- (a) Any provision in this administrative regulation; or
- (b) Another federal or state wildlife law regarding the holding or transportation of exotic wildlife.

(7) Failure to provide accurate, truthful and complete information on the application form shall result in:

- (a) Immediate withdrawal or revocation of the permit; and
- (b) Confiscation of the wildlife imported under the permit.

(8) An applicant shall be responsible for knowing and following local ordinances and rules regarding the wildlife to be held in a locality.

Section 8. Endangered Species. A permit may be issued for the transportation or possession of federally endangered or threatened species if:

- (1) It is not listed in Section 3 of this administrative regulation; and
- (2) Proof of lawful possession and acquisition is provided.

Section 9. Inspections and Permit Revocation. (1) A person holding exotic wildlife shall allow a conservation officer to inspect the holding facilities at any reasonable time.

(2) Captive wildlife may be confiscated and the permit revoked if the permit holder violates any provision of this administrative regulation.

Section 10. Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.

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

- (a) "Annual Transportation Permit Application, June 2008 edition"; and
- (b) "Individual Transportation Permit Application, June 2008 edition."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]

BENJY KINMAN, Deputy Commissioner,

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2010, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five (5) business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of

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the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by November 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes restrictions on the possession and transportation of exotic wildlife.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control the indiscriminate possession and commercialization of wildlife, protect the public and native wildlife from wildlife-borne diseases, and to prevent the introduction of wildlife that might be detrimental to native fauna and flora.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.180 requires any person transporting live wildlife into Kentucky to obtain a permit from the department. KRS 150.280 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish the procedures for propagation and holding of protected wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will fulfill the purposes of KRS 150.025, 150.180, and 150.280 by defining the permits and procedures that are required for transportation and holding of exotic wildlife.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow state and county fairs and lawfully operated circuses to import inherently dangerous exotic species and provides for an exemption system allowing contact with the public if operators receive approval from the local or municipal government. In particular, this amendment will allow such things as elephant rides by state and county fair attendees. The amendment will also dictate permit issuance procedures.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure conformity with statutory compliance governing inherently dangerous wildlife and to reasonably accommodate public safety and welfare.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who transport or possess species listed as prohibited exotic wildlife will be affected by this amendment. There were approximately 107 transportation permits issued to individuals during 2009.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who import exotic dangerous wildlife and intend to allow the public to have direct contact with the animals during special events shall submit to the department a "County Authorization of Intent to Exhibit Inherently Dangerous Wildlife" for each shipment of wildlife into Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): There will be no additional cost to individuals who transport or possess exotic wildlife.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): State and county fairs and circuses will benefit from this amendment by being able to allow patrons to have direct contact with certain animals for activities such as elephant rides.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals who transport or possess exotic wildlife are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.180 requires a person transporting live wildlife into Kentucky to obtain a permit from the department. KRS 150.280 authorizes the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

RELATES TO: KRS 150.330, 150.340, 150.603

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21

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

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

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

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

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

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

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

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

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

(a) Dove, beginning on:

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

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

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

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

(c) Common snipe, beginning on:

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

2. Thanksgiving Day for sixty (60) consecutive days.

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

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

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

1. Ballard reporting area;

2. Public lands in the West-Central Goose Zone; and

3. The Northeast Goose Zone.

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

(a) Dove:

1. Daily limit ~~of~~ fifteen (15); and

2. Possession limit ~~of~~ thirty (30).

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

1. The head; or

2. A fully-feathered wing.

(c) Woodcock:

1. Daily limit ~~of~~ three (3); and

2. Possession limit ~~of~~ six (6).

(d) Common snipe:

1. Daily limit ~~of~~ eight (8); and

2. Possession limit ~~of~~ sixteen (16).

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

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

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

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

1. Daily limit ~~of~~ fifteen (15); and

2. Possession limit ~~of~~ thirty (30).

(g) Wood duck and teal:

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

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

(h) Canada goose:

1. Daily limit ~~of~~ two (2); and

2. Possession limit ~~of~~ four (4).

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

(a) The head; or

(b) A fully-feathered wing.

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

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

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

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

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

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

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

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

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

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. 20.1 21 for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:

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

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

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

(2) A person hunting dove on any of the following areas shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. 20.1 21:

(a) Ballard WMA;

(b) Boatwright WMA;

(c) Doug Travis WMA;

(d) Duck Island WMA;

(e) Kaler Bottoms WMA;

(f) Kentucky River WMA;

(g) Ohio River Islands WMA;

(h) Sloughs WMA;

(i) South Shore WMA;

(j) Yatesville Lake WMA; ~~and~~ ~~or~~

(k) A WMA wetland management unit that is ~~units as~~ posted by sign.

(3) At Ballard WMA, a person shall not hunt:

(a) Dove, Virginia rail, sora rail, common moorhen, purple gal-

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linule, or snipe after October 13; or

(b) Woodcock.

(4) In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:

(a) ~~On or over Swan Lake proper;~~

~~(b)~~ Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or

~~(b)~~ Woodcock.

(5) At Miller Welch - Central Kentucky WMA, a person shall not hunt:

(a) Dove or snipe after October 13; or

(b) Woodcock.

(6) At Grayson Lake WMA, a person shall not hunt:

(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;

(b) On Deer Creek Fork; or

(c) On Camp Webb property or the state park, except for youths drawn for the quota dove hunt on Camp Webb property on the first Saturday in September.

(7) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.

(8) At West Kentucky WMA, a person shall not hunt:

(a) On "A" Tracts; or

(b) Canada geese during the September season.

(9) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.

(10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: June 11, 2010

FILED WITH LRC: AUGUST 18, 2010 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2010, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made available unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by November 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

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

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2010–2011 migratory bird seasons in accordance with the USFWS.

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

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will open the body of water known as Swan Lake on the Boatwright WMA to waterfowl hunting during the September season.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to provide more public waterfowl opportunity during the September seasons.

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

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

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

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

(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 current changes in season dates, bag limits and/or wildlife management area requirements will be published in the annual Migratory Bird Hunting Guide and on the department's website. Hunters must review the hunting guide or website for the updated information to hunt legally during the specified season.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be increased opportunity to hunt migratory game birds.

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

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

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

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession

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limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

DEPARTMENT OF AGRICULTURE Office of State Veterinarian Division of Animal Health (Amendment)

302 KAR 20:065. Sale and exhibition of Kentucky origin animals in Kentucky.

RELATES TO: KRS Chapter 257, 9 C.F.R. Chapter 1

STATUTORY AUTHORITY: KRS 246.295, 257.030, 257.315, 257.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS

257.020(3) requires the board to prevent, control, and eradicate any communicable disease of animals. KRS 257.030(2) authorizes the board to establish necessary quarantines and other measures to control the movement of animals into, through, or within Kentucky. This administrative regulation establishes health requirements for the sale, movement, and exhibition of Kentucky animals within Kentucky.

Section 1. General Requirements. (1) All animals moving within Kentucky shall be subject to the requirements as established in 302 KAR 20:020.

(2) All animals offered for sale shall be accompanied by a Certificate of Veterinary Inspection (CVI), or other official movement document except for exemptions listed under each species of this administrative regulation or 302 KAR 20:040 section. Examples of an official movement document shall include a way bill with a permit number or Federal Movement Form VS 9-3 or VS 1-27. A CVI for sale purposes shall:

(a) Be valid for thirty (30) days from the date of issuance; and

(b) List a valid destination and be void upon arrival at that destination unless a Reconsignee Certificate for movement from the sale premises to a new destination is executed and attached to the original CVI.

(3) All animals entering venues for exhibition purposes where commingling of animals occurs shall be accompanied by a CVI.

(a) A CVI for Kentucky origin animals for purposes other than sale shall be valid as noted under each individual species.

(b) A CVI written for exhibition purposes shall be void upon change of ownership of the listed animals.

(4) All required tests shall be conducted by a state-federal approved laboratory as defined by 9 C.F.R. Chapter 1.

(5) An animal that originated from a quarantined area or quarantined herd shall not be transported intrastate within Kentucky unless permitted by OSV on VS Form 1-27 or a CVI with a quarantine movement permit obtained from OSV and attached to the CVI.

Section 2. Cattle and Other Bovine Species. (1) General requirements.

(a) Cattle or other bovine species moving intrastate for sale except as provided in paragraph (b) of this section, change of ownership, or exhibition purposes shall meet the requirements established in subsections (2) and (3) of this section.

(b) Cattle and other bovine species moving directly to and for sale by a state-federal approved stockyard or a recognized slaughtering center shall meet the requirements established in subsections (3) and (4) of this section.

(2) Certificate of Veterinary Inspection.

(a) All cattle and other bovine species moving intrastate for sale, exhibition or change of ownership shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(d) Cattle or other bovine species sold or bartered by private treaty and moving directly from farm to farm shall be exempt from the CVI requirement if the seller or barterer's name and premises of origin information are recorded and maintained for two (2) years by the recipient of the animal.

(3) Specific diseases.

(a) Brucellosis. Testing shall not be required for sale or exhibition if one (1) of the following applies:

1. Kentucky has class free status; or

2. The animals are moving from a brucellosis certified herd. The herd number and last test date shall be recorded on the CVI.

(b) Tuberculosis. Testing shall not be required for sale or exhibition if one of the following applies:

1. Kentucky has class free status; or

2. The animals are from a tuberculosis accredited herd. The herd number and last test date shall be recorded on the CVI.

(c) Cattle or other bovine species infected with warts, ringworm, or any other communicable disease shall not be eligible for exhibition.

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(4) The seller's name and address and either the animal's premises of origin or PIN shall be provided for cattle or other bovine species moving to a state-federal approved stockyard or directly to a recognized slaughtering center.

Section 3. Horses and Other Equine Species. (1) General requirements.

(a) Equine moving intrastate for sale, racing, change of ownership, exhibition or into a public stable, fairgrounds, or showgrounds except as provided in paragraphs (b) and (c) of this subsection shall meet the requirements established in subsections (2) and (3) of this section.

(b) Equine moving directly to a state approved horse sale shall meet the requirements established in subsection (4) of this section.

(c) Equine moving farm to farm with no change of ownership or to a veterinary facility shall not be required to meet the requirements established in subsections (2) and (3) of this section.

(2) Certificate of Veterinary Inspection or Equine Interstate Event Permit.

(a) All equine moving intrastate shall be accompanied by a valid ~~[Equine Only]~~ CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the duration of the EIA test certificate not to exceed one (1) year.

(d) An Equine Interstate Event Permit issued within the previous twelve (12) months shall be accepted in lieu of a CVI and EIA test report for exhibition purposes.

(e) A CVI or an Equine Interstate Event Permit shall be void upon change of ownership.

(3) Equine Infectious Anemia.

(a) Except as provided in paragraph (b) of this subsection, horses or other equidae shall be negative to an USDA official test, pursuant to 9 C.F.R. 75.4, for EIA within the previous twelve (12) months.

(b) A copy of Form VS 10-11 or EIA test form verifying a negative EIA from a laboratory approved by the USDA, pursuant to 9 C.F.R. Part 75, shall accompany~~[be attached to]~~ the CVI and the laboratory accession number and date of test shall be recorded on the CVI.

(c) Unweaned foals accompanied by their dam shall be exempt from paragraph (a) of this subsection.

(4) Approved Kentucky horse sales.

(a) Horses or other equidae may move directly to an approved Kentucky horse sale without a CVI or negative EIA test certificate.

(b) Approved Kentucky horse sales shall meet the requirements of 302 KAR 20:261.

(c) All horses or other equidae presented without valid negative EIA test certificates shall have a blood sample drawn for EIA testing by the approved market veterinarian at the seller's expense.

Section 4. Swine. (1) General requirements.

(a) Swine moving intrastate for sale, change of ownership, or exhibition shall meet the requirements established in subsections (2) and (3) of this section.

(b) Swine moving directly to and for sale by a state-federal approved stockyard or a recognized slaughtering center shall meet the requirements established in subsections (3) and (4) of this section.

(c) Swine listed in this paragraph shall not be moved for any purpose, except under jurisdiction of the OSV or the USDA APHIS VS:

1. Garbage fed swine; or

2. Wild, captive wild, or feral swine, *Sus scrofa* per definition, including Russian wild boars and Eurasian wild boars.

(2) Certificate of Veterinary Inspection.

(a) All swine moving intrastate for sale, exhibition or change of ownership shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days

whichever is greater.

(d) Swine sold or bartered by private treaty and moving directly from farm to farm shall be exempt from the CVI requirement if the seller or barterer's name and premises of origin information are recorded and maintained for two (2) years by the recipient of the animal.

(3) Specific diseases.

(a) Brucellosis. Testing shall not be required for sale or exhibition if one (1) of the following apply:

1. Kentucky is a class free state; or

2. The animal is from a validated brucellosis free herd and the validation number and last test date are recorded on the CVI.

(b) Pseudorabies. Testing shall not be required for sale or exhibition if Kentucky maintains a Stage V Pseudorabies status.

(4) Swine moving to a Kentucky state-federal approved stockyard or directly to a recognized slaughtering center shall be identified with:

(a) Official identification in accordance with 302 KAR 20:020, Section 1(2); and

(b) The seller's name and address and either the animal's premises of origin or PIN.

Section 5. Sheep or Other Ovine Species. (1) General requirements.

(a) Sheep or lambs for sale, except as provided in paragraph (b) of this subsection, exhibition, breeding, or feeding purposes shall meet the requirements established in subsections (2) and (3) of this section.

(b) Sheep moved directly to and for sale by a state-federal approved stockyard, graded sale, telemarketing sale, or a recognized slaughtering center shall meet the requirements established in subsections (3) and (4) of this section.

(c) Sheep that require a CVI for movement shall be identified with an official USDA Scrapie Program identification tag or other official identification method in accordance with 302 KAR 20:020, Section 1(2).

(2) Certificate of Veterinary Inspection.

(a) All sheep or lambs moving intrastate for sale, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership or sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(d) Sheep sold or bartered by private treaty and moving directly from farm to farm shall be exempt from the CVI requirement if the seller or barterer's name and premises of origin information are recorded and maintained for two (2) years by the recipient of the animal.

(3) Specific diseases.

(a) Scrapie. Sheep or lambs that originate from known trace, source or infected Scrapie flocks as determined by the USDA APHIS VS in compliance with 9 C.F.R. Part 79 shall not be allowed movement except as permitted by USDA APHIS VS or the OSV.

(b) Scabies. Sheep affected with or exposed to scabies or from an area quarantined because of scabies shall not be eligible for sale or exhibition.

(c) Sore mouth (Contagious Ecthyma). Any sheep or lambs showing lesions of contagious ecthyma shall not be eligible for exhibition or sale.

(4) Other movements. Sheep or lambs moving to state-federal approved stockyards, graded sales, telemarketing sales, or directly to a recognized slaughtering center shall be identified with:

(a) Identification in accordance with 9 C.F.R. Part 79; and

(b) The seller's name and address and either the animal's premises of origin or PIN.

Section 6. Goats or Other Caprine Species. (1) General requirements.

(a) Goats moving for sale, except as provided in paragraph (b) of this subsection, exhibition, breeding, or feeding purposes shall meet the requirements established in subsections (2) and (3) of this section.

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(b) Goats moving directly to and for sale by a state-federal approved stockyard, graded sale, telemarketing sale, or a recognized slaughtering center shall meet the requirements established in subsections (3) and (4) of this section.

(c) Goats that require a CVI for movement shall be identified with an official USDA Scrapie program identification tag or other official identification method in accordance with 302 KAR 20:020, Section 1(2).

(2) Certificate of Veterinary Inspection.

(a) All goats moving intrastate for sale, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership or sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(d) Goats sold or bartered by private treaty and moving directly from farm to farm shall be exempt from the CVI requirement if the seller or barterer's name and premises of origin information are recorded and maintained for two (2) years by the recipient of the animal.

(3) Specific diseases.

(a) Scrapie. Goats that originate from known trace, source or infected Scrapie flocks as determined by the USDA APHIS VS in compliance with 9 C.F.R. Part 79 shall not be allowed movement except as permitted by USDA APHIS VS or the OSV.

(b) Brucellosis. Any goat that originates from a premises that has been infected with or exposed to *B. melitensis* or other *Brucella* sp. within the previous twelve (12) months shall be negative to a *Brucella* test within thirty (30) days for sale or exhibition.

(c) Tuberculosis. Testing shall not be required for sale or exhibition if Kentucky has class free status.

(d) Goats infected with a communicable disease shall not be eligible for sale or exhibition.

(4) Other movements. Goats moving to state-federal approved stockyards, graded sales, telemarketing sales, or directly to a recognized slaughtering center shall be identified with:

(a) Identification in accordance with 9 C.F.R. Part 79; and

(b) The seller's name and address and either the animal's premises of origin or PIN.

Section 7. Poultry or Farm Raised Upland Game Birds. (1) General requirements.

(a) Birds four (4) months or older for ~~sale or~~ exhibition purposes shall meet the requirements established in subsections (2) and (3) of this section;.

(b) Chicks or hatching eggs for sale shall meet the requirements established in subsections (2) and (3)(b) of this section.

(c) Birds moving to an approved slaughter facility or between a commercial company's facilities shall meet the requirements established in subsection (4) of this section.

(2) Certificate of Veterinary Inspection.

(a) A CVI, Non-NPIP Flock Report, or NPIP Flock Certificate ~~VS Form 9-3~~ with the flock number shall be required for movement and exhibition.

(b) A CVI or Non-NPIP Flock Report shall be valid for the remainder of the ninety (90) day *S. pullorum* test period for intrastate exhibition. An NPIP certificate shall be valid for one (1) year from the date issued for intrastate exhibition.

(c) The official individual identification, leg or wing band, shall be recorded on the CVI or Non-NPIP Flock Report.

(3) Salmonella Pullorum.

(a) Birds four (4) months of age or older shall be negative to an official *Salmonella pullorum* test within ninety (90) days or originate from a NPIP flock. The NPIP flock number or both the test date and the laboratory of test shall be recorded on the CVI.

(b) Chicks or hatching eggs shall originate from a flock as required by KRS 257.400.

(4) Other movements.

(a) Persons moving commercial poultry between company facilities shall maintain a log book or possess a way bill stating the origination of the birds and intended destination with the flock NPIP number.

(b) Persons moving birds directly to slaughter shall provide the name and address for premises of origin.

Section 8. Ratites. (1) General requirements.

(a) Ratites moving for sale or exhibition purposes shall meet the requirements established in subsections (2) and (3) of this section.

(b) A permit number shall be obtained from OSV prior to the sale of ratites in Kentucky. This permit number shall be recorded on the CVI accompanying the animals.

(c) All ratites shall have a permanent official identification in accordance with 302 KAR 20:020, Section 1(2).

(d) Any ratite with evidence of a communicable disease shall not be eligible for sale or exhibition.

(2) Certificate of Veterinary Inspection.

(a) All ratites moving intrastate for sale or exhibition shall be accompanied by a valid CVI or NPIP certificate as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for ninety (90) days.

(3) Specific diseases.

(a) Avian Influenza. Ratites shall be negative to an official test as defined by 9 C.F.R. Part 145, within ninety (90) days prior to sale or exhibition or originate from a NPIP AI Clean flock.

(b) *Salmonella pullorum*. Ratites shall be negative to an official test as defined by 9 C.F.R. Part 145, within ninety (90) days prior to sale or exhibition or originate from a NPIP flock.

Section 9. Dogs, Cats, or Ferrets. General Requirements for exhibition.

(1) All dogs, cats, or ferrets for exhibition shall be accompanied by a Small Animal CVI Form as required by 302 KAR 20:020, Section 1(3)(c).

(2) CVI shall be valid for the duration of the rabies vaccination not to exceed one (1) year.

(3) All dogs, cats or ferrets over four (4) months of age shall be vaccinated against rabies per the "Compendium of Animal Rabies Prevention and Control" prepared by the National Association of State Public Health Veterinarians, Inc.

Section 10. Camelids. (1) General requirements.

(a) Camelids moving for sale or exhibition shall meet the requirements established in subsections (2) and (3) of this section.

(b) All camelids shall be identified with an official identification tag or other official identification method in accordance with 302 KAR 20:020, Section 1(2).

(2) Certificate of Veterinary Inspection.

(a) All camelids moving intrastate for sale or exhibition shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(3) Specific diseases.

(a) Brucellosis. Testing shall not be required for sale and exhibition if Kentucky has class free status.

(b) Tuberculosis. Testing shall not be required for sale and exhibition if Kentucky has class free status.

Section 11. Cervid. (1) General requirements.

(a) Cervids moving for export, sale or other purposes except as provided in paragraphs (b) and (d) of this subsection shall meet the requirements established in subsections (2) and (3) of this section.

(b) Cervids moving to a recognized slaughtering center or a veterinary clinic shall meet the requirements as required by subsection (4) of this section.

(c) All cervids shall be identified with an official identification tag or other official identification method in accordance with 302 KAR 20:020, Section 1(2).

(d) Cervids moved by wildlife rehabilitators permitted under 301

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KAR 2:075 shall be exempt from this section.

(e) All farm held cervids shall meet the requirements established in 302 KAR 20:066.

(2) Certificate of Veterinary Inspection and Movement Permit.

(a) All cervids moving for export, intrastate sale or other purposes shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for sale shall include the following:

1. Consignor's name, address, and the Cervid Chronic Wasting Disease Surveillance and Identification program herd number; and

2. Consignee's name, address, and Cervid Chronic Wasting Disease Surveillance and Identification program herd number.

(c) A CVI for change of ownership or sales shall be valid for thirty (30) days.

(d) A permit shall be obtained from OSV prior to the export, sale, or other movement of all cervids in Kentucky. The permit number shall be recorded on the CVI.

(3) Specific diseases.

(a) Brucellosis. Cervids six (6) months of age or older shall:

1. Be negative to an official brucellosis test, as defined in 9 C.F.R. Part 78, within thirty (30) days prior to date of sale;

2. Originate from a brucellosis certified herd; or

3. Be exempt from testing if:

a. Kentucky has bovine or cervid brucellosis free status; and

b. Brucellosis has not been diagnosed within Kentucky in any class of cervids in the previous five (5) years.

(b) Tuberculosis. Cervids twelve (12) months of age or older shall:

1. Be negative to a single cervical tuberculin (SCT) test within sixty (60) days prior to date of sale;

2. Originate from a tuberculosis accredited herd; or

3. Be exempt from testing if:

a. Kentucky has bovine or cervid tuberculosis free status; and if

b. Tuberculosis has not been diagnosed within Kentucky in any class of cervids in the previous five (5) years.

(4) Other movement. Cervids from captive cervid premises moving to a recognized slaughtering center or a veterinary clinic shall obtain a movement permit from the OSV prior to movement.

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

(a) "Certificate of Veterinary Inspection Form", Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-72, (Apr. 2005);

(b) "Equine Only Certificate of Veterinary Inspection Form", Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-73, (Sept. 2006);

(c) "Small Animal Certificate of Veterinary Inspection Form", Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-74, (Jan. 2006);

(d) "Equine Infectious Anemia (EIA) Test Form", Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-301, (July 2005);

(e) "EIA Laboratory Test Form", USDA APHIS VS Form 10-11, (May 2003);

(f) "Compendium of Animal Rabies Prevention and Control", (2006);

(g) "Non-NPIP Flock Report, Kentucky Department of Agriculture", Office of State Veterinarian, KYSV-800, (Sept. 2005);

(h) "Report of Sales of Hatching Eggs, Chicks and Poults", USDA APHIS VS Form 9-3, (June 1998); and

(i) "Permit for movement of restricted animals the USDA APHIS", VS Form 1-27, (June 1989).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: September 15, 2010

FILED WITH LRC: September 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2010, at 10 a.m., at Office of State Veterinarian, 100 Fair Oaks Lane,

Suite 252, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 November 1, 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) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines the requirements for the intrastate movement, sale and exhibition of livestock and poultry in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to prevent introduction of an animal disease, to control and eradicate animal diseases and to protect the livestock industry of the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.020(3) requires the board to prevent, control, and eradicate any communicable disease of animals. Because movement of animals and close proximity to each other in sale or exhibition creates an opportunity for disease transferal, this regulation is necessary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clearly establishes the requirements for movement of animals and the requirements for sale and exhibition to control disease transferal.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation will allow animals offered for sale by a state/federal approved stockyard to be moved without a CVI. This amendment also will add the laboratory accession number and test date to EIA test requirements for equine animals.

(b) The necessity of the amendment to this administrative regulation: The changes are necessary for the cost efficient movement of animals to a state/federal approved stockyard.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 257.020(3) requires the board to prevent, control, and eradicate any communicable disease of animals. Because movement of animals and close proximity to each other in sale or exhibition creates an opportunity for disease transferal, this regulation is necessary. This amendment will help eliminate one possible duplication of needed CVI.

(d) How the amendment will assist in the effective administration of the statutes: The changes are necessary for the cost efficient movement of animals to a state/federal approved stockyard. This will eliminate some animals being checked twice for the same transaction.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Potentially all persons wishing to move animals to a stockyard for sale by them would be affected, as they would no longer have the requirement to obtain a CVI prior to movement. The EIA test change would affect those moving equine in the Commonwealth. Approximately 96,000 CVI papers with EIA tests were sent to the KDA in 2009.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required for those persons moving their animals to a state/federal approved stockyard for sale

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by the state/federal approved stockyard. No action would be required for the EIA change, as this is a requirement for the labs that perform those tests.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit for the movement without a CVI will be the cost savings to the owner.

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

(a) Initially: No additional costs will be incurred by the KDA.

(b) On a continuing basis: No additional costs will be incurred by the KDA.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: No Fees or funding are being increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are being established either directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.020(3)

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

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

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

(c) How much will it cost to administer this program for the first year? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

(d) How much will it cost to administer this program for subsequent years? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

DEPARTMENT OF AGRICULTURE Office of State Veterinarian Division of Animal Health (Amendment)

302 KAR 20:066. Chronic wasting disease surveillance in farmed cervids.

RELATES TO: KRS 150.720(2), Chapter 246, 246.295(2),

257.550, Chapter 251

STATUTORY AUTHORITY: KRS 150.720(1), 246.295(1), 257.030, 257.550, 257.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.720(1) and 246.295(1) require the Department of Agriculture in cooperation with the KDFWR to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately-owned and farm-raised cervids maintained for the production of meat and other products. This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky, develop a herd monitoring system, and to establish requirements for intrastate movement of cervids.

Section 1. Definitions. (1) "Adjacent herd" means a herd of cervids occupying premises that border a positive[an affected] herd, including herds separated by roads or streams; or a herd of cervids occupying premises that were previously occupied by a positive[an affected] herd within the past five (5) years [as determined by the designated epidemiologist].

(2) "Animal" means any farmed cervid.

(3) "Animal identification" means a device or means of animal identification approved for use under this part by the State veterinarian.

(4) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(5) "Approved laboratory" means the National Veterinary Service Laboratory, Ames, Iowa, or any other laboratory approved by the Administrator of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

(6) "Certified" means the status achieved by a herd that has met the standards of the CWD HCP continuously for at least five (5) years.

(7) "Certified CWD cervid herd" means a herd of cervids that has achieved "Certified" status in the Kentucky HCP, the federal Chronic Wasting Disease Herd Certification Program or a state Chronic Wasting Disease Certification Program approved by APHIS or the Kentucky State veterinarian.

(8) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof.

(9) "Cervid CWD Surveillance and Identification" or "CCWDSI" means a Cervid Management Plan that includes two (2) programs the CWD Herd Certification Program (HCP) and the CWD Herd Monitoring Program (HMP).

(10) "Chronic wasting disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(11) "Commingled" means animals are that have had direct contact with each other, that have had less than ten (10) feet of physical separation, or that have shared equipment, pasture, or water sources/watershed. Animals are considered commingled if they have had contact with a positive animal or contaminated premises within the last five (5) years.

(12) "CWD exposed animal" means an animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous five (5) years.

(13) "CWD exposed herd" means a herd in which a CWD positive animal has resided within five (5) years prior to that animal's diagnosis as CWD positive, as determined by an APHIS or state representative.

(14) "CWD Herd Certification Program" or "HCP" means a program established by this regulation to determine the CWD status of farmed cervid herds.

(15) "CWD Herd Monitoring Program" or "HMP" means a program established by this administrative regulation to monitor farmed cervids in harvesting facilities for CWD. Herds enrolled in this program cannot achieve certified status.

(16) "CWD positive animal" means an animal that has had a diagnosis of CWD confirmed by means of two (2) official CWD tests.

(17) "CWD positive herd" means a herd in which a CWD positive animal resided when it was diagnosed and which has not been released from quarantine.

(18) "CWD source herd" means a herd that is identified

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through testing, tracebacks, or epidemiological evaluations to be the source of CWD-positive animals identified in other herds.

(19) "CWD suspect animal" means an animal for which an APHIS or state representative has determined that unofficial CWD tests results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, but for which official laboratory results are inconclusive or not yet conducted.

(20) "CWD suspect herd" means a herd for which unofficial CWD test results, laboratory evidence or clinical signs suggest a diagnosis of CWD as determined by an APHIS employee or state representative, but for which official laboratory results have been inconclusive or not yet conducted.

(21) "Farmed cervid" means cervid livestock that are enrolled in a CCWDSI program and are maintained for propagation, selling, trade or barter or for taking by any harvest or slaughter method. Farmed cervid shall exclude any cervid that has not originated from and been continuously maintained within a herd that is enrolled in and complies with a CWD certified or monitored program.

(22) "Harvest" means to take or kill farmed cervids for meat and other products.

(23) "Herd" means a group of cervids that are:

(a) Under common ownership or supervision and are grouped on one (1) or more parts of any single premises (lot, farm, or ranch).

(b) All animals under common ownership or supervision on two (2) or more premises which are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.

(24) "Herd plan" means a written herd agreement or premises management agreement developed by APHIS in collaboration with the herd owner, state representatives, and other affected parties. A herd plan sets out the steps to be taken to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.

(25) "KDFWR" means the Kentucky KDFWR.

(26) "Licensed, accredited veterinarian" means a veterinarian approved by the Deputy Administrator of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, and the State Veterinarian, in accordance with 9 C.F.R. Part 161, to perform functions required by cooperative state-federal animal disease control and eradication programs, that is licensed to practice in the Commonwealth of Kentucky.

(27) "Official animal identification" means a device or means of animal identification approved for use under this part by APHIS and the state veterinarian to uniquely identify individual animals.

(28) "Official CWD test" means any test for the diagnosis of CWD approved by APHIS and conducted in a laboratory approved by APHIS in accordance with 9 C.F.R. Part 55.

(29) "Quarantine" means an imposed restriction prohibiting movement of live or dead cervids or parts thereof to any location without specific written approval of the State veterinarian.

(30) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U. S. Virgin Islands, or Guam.

Section 2. CCWDSI Surveillance Programs. (1) All farmed cervid herds shall be enrolled in one (1) of the state CCWDSI programs, either the CWD Herd Certification Program (HCP) or the CWD Herd Monitoring Program (HMP) maintained by the Office of the State Veterinarian. The HCP and the HMP require annual renewal.

(2) HCP Requirements. Herds enrolled in this program shall meet the requirements provided herein this administrative regulation and the requirements in 9 C.F.R. Part 55, Subpart B.

(a) Animal identification requirement.

1. All animals twelve (12) months of age and older shall be required to have at least two (2) forms of animal identification, one of which shall be an official animal identification approved by APHIS and one form that is a visual (flop tag) type of identification.

2. All animals of any age shall be required to have official animal identification before being moved from the premises for any purpose.

(b) The herd premises shall have a valid KDFWR permit and perimeter fencing that is approved by KDFWR.

(c) The herd veterinarian shall be notified within twenty-four (24) hours of observance of an animal with clinical signs suggestive of CWD.

(d) The owner shall report to the Office of State veterinarian all animals that escape or disappear, and all deaths (including animals killed by harvest or slaughter) of animals in the herd aged twelve (12) months or older.

1. The reporting time frame will be as follows:

a. For animals that escape or disappear a report shall be made within forty-eight (48) hours.

b. For animals taken by harvest or slaughter a report shall be submitted by the last day of each calendar month.

c. For animals that die from illness or unknown reason a report shall be submitted within seven (7) days.

2. The report shall include all animal identification numbers, the estimated time and date of the death, disappearance, escape, slaughter or killing of the animal.

3. Animals that die or are killed by harvest or slaughter shall have the required tissue specimens collected for CWD testing except as exempted by 9 C.F.R. Part 55.24.

4. An APHIS or state representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(e) The owner shall maintain herd records that include the following:

1. Complete inventory of animals that includes the official identification number and other ID, the age, and sex of each animal;

2. A record for each purchased or natural addition to the herd shall include:

a. The official identification number, species, age, and sex of the cervid.

b. The name and address of the person from whom the cervid was purchased.

c. The address of the herd from which the cervid was purchased.

d. A copy of the Certificate of Veterinary Inspection that accompanied the animal for intra- or interstate movement.

e. Date purchased additions entered the herd.

f. Approximate date of birth for natural additions.

3. A record of each cervid leaving the herd shall include the following:

a. If the cervid was shipped live other than to slaughter report the date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment.

b. If the cervid died on the premises report the date of death, the apparent cause of death, the cervid's age, sex, state-federal official individual animal identification, date and laboratory submitted for CWD testing, if required, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient.

c. If the cervid was shipped to slaughter report the date of movement, the cervid's age, sex, state-federal official individual animal identification, and the name and address of the slaughter establishment.

d. If the cervid was killed by harvest report the date, the name and address of the hunter and the disposition of the carcass.

e. The date of death or escape of all animals not removed for sale or by harvest or slaughter.

4. A record of all individual animal tests conducted on cervids in the herd.

5. Records received from the herd veterinarian related to veterinary services provided to the herd.

6. All individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal.

7. Provide records on request to the state veterinarian or APHIS representative for review and at the annual inventory visit.

(f) Animal inventory requirement.

1. A physical inventory verifying all animal identification and records shall be required when a herd is enrolled in the HCP.

2. An annual herd inventory shall be conducted that reviews all records and includes observation of unrestrained animals in an enclosed area to reconcile all visible identification devices with available records.

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3. The state veterinarian or APHIS representative may request a physical inventory if they find it necessary to verify herd compliance with program standards.

4. The owner will be responsible for assembling, handling and restraining the animals and for all costs incurred to present the animals for inspection

(g) Maintenance of separate herds by the same owner shall meet the requirements in 9 C.F.R. Part 55.23.

(h) The herd enrollment date shall be the date the physical inventory shall be completed following completion of Section 3(c) of this administrative regulation and the application is approved by the state veterinarian.

(i) Surveillance procedures for the HCP shall include the following:

1. HCP Certified Herds Cervids twelve (12) months and older that die for any reason except slaughter or harvest shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representative.

2. Non-certified HCP Herds Cervids twelve (12) months of age or older that die for any reason including slaughter or harvest shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representatives.

3. All animals in an enrolled herd shall have official identification before reaching the age of twelve (12) months.

(3) HCP Permit.

(a) A HCP permit shall be required to participate in the program. A HCP permit is valid for one (1) calendar year from the date of enrollment. The applicant shall submit the following:

1. A permit application provided by the department.

2. A written statement by a Kentucky licensed and accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship.

3. A fee of \$150.

(b) The department shall grant or deny a permit under subsection (2) of this section within thirty (30) days after the department receives the completed application package with the required fee.

(c) After the permit is issued, the participant shall enroll his herd into the HCP as follows:

1. Conduct a physical inventory of all animals with a representative of the State veterinarian to establish the baseline herd inventory.

2. Provide records of all animals to the state veterinarian.

(d) Herd status levels:

1. When a herd is first enrolled in the HCP, it shall be placed in first-year status, except that if the herd is comprised solely of animals obtained from herds already enrolled in the HCP, the newly enrolled herd shall have the same status as the lowest status of any herd that provided animals for the herd.

2. If a herd continues to meet the requirements of the HCP, the herd status shall be upgraded by one (1) year on the program enrollment date.

3. One (1) year from the date a herd is placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as it is enrolled in the program, provided its status is not been revoked or suspended in accordance with this regulation or 9 C.F.R. Part 55.24.

4. Herds currently enrolled in the CCDWSI program shall be aligned to the appropriate status level provided in the C.F.R. Title 9.

5. A herd owner shall be issued a certificate of "Certified" status upon complying with the HCP Program, as defined in this administrative regulation.

6. Renewal of a Certified Cervid Herd. A herd is certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and rules pertaining to holding cervids shall be required.

7. A herd's certification status shall be immediately revoked and a herd investigation shall be initiated, if CWD positive or exposed animals are found in the herd.

(e) New animals shall only be introduced into the herd from other herds enrolled in the Kentucky HCP or a state Chronic Wasting Disease Certification Program approved by the Kentucky State Veterinarian or the Federal CWD Certification Program.

1. If animals are introduced from a herd of lower status, the

receiving herd status shall revert to the lower status.

2. If animals are introduced from a herd not participating in a certification program, the receiving herd shall revert to first-year status in the certification program.

(4) Annual HCP permit renewal required.

(a) To continue in the Program persons shall comply with the following:

1. Submit a permit renewal application thirty (30) days prior to the expiration of the prior year permit.

2. Pay a \$150 renewal fee.

3. Make all animals and records available to state veterinarian.

(b) Facilities and herds that have met the requirements in Section 2.(2) of this administrative regulation shall receive a renewal permit.

(5) CWD Herd Monitoring Program (HMP) Requirements. Herds enrolled in the HMP surveillance program shall meet the requirements provided herein. HMP herds shall not be eligible for "certified" status.

(a) All cervids entering a HMP facility shall originate from a CWD Certified Herd.

(b) No cervid shall be permitted to leave the HMP facility alive.

(c) Animal identification requirement:

1. All animals greater than twelve (12) months of age shall be required to be identified with an official identification device and to have a visual (flop tag) form of animal identification that is approved by the state veterinarian.

2. Permit holders failing to meet identification requirements shall be subject to compliance plans and penalties as provided in Section 8 of this administrative regulation.

(d) The herd premises shall have a valid KDFWR permit.

(e) The herd veterinarian shall be notified within twenty-four (24) hours of observance of an animal with clinical signs suggestive of CWD.

(f) The owner shall report to the state veterinarian all animals that escape or disappear, and all deaths (including animals killed by harvest) of animals in the herd aged twelve (12) months or older.

1. The reporting time frame shall be:

a. For animals that escape or disappear a report shall be made within forty-eight (48) hours.

b. For animals taken by harvest a report shall be submitted by the last day of each calendar month.

c. For animals that die from illness or unknown reason a report shall be submitted within seven (7) days.

2. The report shall include all animal identification numbers, the estimated time and date of the disappearance, escape, or killing of the animal.

3. Animals twelve (12) months of age or older that die or are killed by harvest shall have the required tissue specimens collected for CWD testing and submitted to an approved laboratory.

4. An APHIS or representative of the state veterinarian shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(g) The owner shall maintain and provide to the state veterinarian or APHIS representative upon request herd records that include the following:

1. Census of animals that includes identification number, the age and sex of each animal;

2. A record for each purchased or natural addition to the herd shall include:

a. The identification number, species, age, and sex of the cervid.

b. The name and address of the person from whom the cervid was purchased.

c. The address of the herd from which the cervid was purchased.

d. A copy of the Certificate of Veterinary Inspection that accompanied the animal for movement.

e. Date purchased additions entered the herd.

f. Approximate date of birth for natural additions.

3. A record of each cervid leaving the herd shall include the following:

a. If the cervid died on the premises: report the date of death, the apparent cause of death, the cervid's age, sex, state-federal

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official individual animal identification, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient and provide CWD testing information for test eligible animals.

b. If the cervid was killed by harvest report the date, name, and address of the hunter and the disposition of the carcass and CWD testing information.

c. All removals and deaths shall be reported monthly to the state veterinarian.

d. All untagged animals that die or are killed shall be identified with an official identification device and shall be tested for CWD and shall be reported to the state veterinarian.

4. A record of all CWD individual animal tests conducted on cervids in the herd.

5. Records received from the herd veterinarian related to veterinary services provided to the herd.

6. The date of death or escape of all animals not removed for sale or by harvest.

7. All individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal.

(j) Animal inventory requirements.

1. An initial premises assessment shall include a physical inventory of each animal and associated the herd records to determine baseline inventory.

2. An annual herd census will be conducted that reviews all records and includes observation of unrestrained animals in an enclosed area.

3. The state veterinarian or APHIS representative may request a physical inventory if it is necessary to verify herd compliance with program standards.

(i) Cervids twelve (12) months and older in the following categories that die shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representatives.

1. All cervids that are not officially identified.

2. All cervids that die for any reason other than harvest.

3. The first ten (10) cervids that are harvested within a calendar year.

(h) The owner will be responsible for assembling, handling and restraining the animals and for all costs incurred to present the animals for inspection.

(6) HMP Permit.

(a) A HMP permit shall be required for participation in the program. The applicant shall submit the following:

1. A permit application provided by the department.

2. A written statement by a Kentucky licensed and accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship.

3. A fee of \$150.

(b) The department shall grant or deny a permit under subsection (2) of this section within thirty (30) days after the department receives the completed application package with the required fee.

(c) After the permit is issued, the participant shall enroll his herd into the HMP as follows:

1. Conduct a census of all animals with a representative of the state veterinarian to establish the baseline herd inventory.

a. Provide origin documentation on all animals in herd.

b. Provide identification numbers, sex, age, and species for all animals in herd.

2. Provide records on animals to the state veterinarian for quarterly reviews.

(7) Annual HMP permit renewal required.

(a) To continue in the HMP Program persons shall comply with the following:

1. Submit a permit renewal application thirty (30) days prior to the expiration of prior year permit.

2. Pay a \$150 renewal fee.

(b) Facilities that have met the requirements in subsection (5) of this section shall receive a renewal permit.

Section 3. Intrastate Movement Requirements. All intrastate movements of cervids, other than to a state- federal-inspected slaughter establishment, shall be accompanied by an intrastate movement Certificate of Veterinary Inspection signed by a licensed

and accredited veterinarian as relates to 302 KAR 20:065. The intrastate movement certificate shall include the following:

(1) Consignor's name, address, and state veterinarian issued farmed cervid permit number;

(2) Consignee's name, address, and state veterinarian issued farmed cervid permit number;

(3) Official individual animal identification for each animal shall be listed.

(4) The movement permit number to ship, which may be obtained by telephone, issued by the state veterinarian prior to movement.

Section 4. Requirements for Entry into Kentucky. (1) Only cervids from "Certified CWD Herds" shall enter Kentucky.

(2) All cervids on the CVI shall meet the requirements in 302 KAR 20:040, Section 13.

(3) The following statements shall be included on the CVI:

(a) "All cervids identified on this certificate originate from a Certified herd meeting requirements for certified CWD herd status as determined by the Kentucky State veterinarian."

(b) "No cases of CWD in cervids have been diagnosed within a twenty-five (25) mile radius of the consignor premises in the last five (5) years."

Section 5. Surveillance Testing Procedures. (1) Official CWD tests and approved labs to conduct official CWD testing shall be in accordance with C.F.R. 9 part 55.

(2) A diagnosis of CWD by an approved laboratory shall be confirmed by the National Veterinary Service Laboratory.

(3) If required tissues from test eligible cervids are not submitted for laboratory diagnosis, the state veterinarian shall reevaluate the status of the herd.

Section 6. Investigation of Cervid CWD-positive Animals. An epidemiological investigation in accordance with 9 C.F.R. Part 55 shall be conducted for all animals diagnosed at an approved laboratory as CWD positive or suspect. All positive herds and all source, exposed and adjacent herds shall be investigated epidemiologically. All positive herds and premises and all source, exposed and adjacent herds and premises shall be quarantined.

Section 7. Duration of Quarantine. Quarantines placed in accordance with this administrative regulation shall be removed in accordance with the following:

(1) A premises may be removed from quarantine after completion of the herd plan and five (5) years of compliance with all provisions of the 9 C.F.R. Part 55.

(2) An adjacent or exposed herd/premises may be removed from quarantine only after an epidemiological investigation and by order of the designated epidemiologist.

Section 8. Penalties. (1) Penalties for failure to comply with standards set forth in this administrative regulation for the CCWDSI HCP or HMP.

(a) The department may, pursuant to KRS Chapter 257, revoke or suspend a herd's permit for the HCP or the HMP under this section if:

1. A person falsifies information on an enrollment application, or falsifies subsequent information required for continued enrollment.

2. A person fails to comply with requirements in this administrative regulation on animal identification, animal inventory, herd records, CWD testing, or animal movement.

3. A person or facility fails to remain in compliance with KDFWR KAR Title 301 statutes and regulations.

(b) In accordance with KRS 257.990, permit holder may be subject to a fine for violation of this administrative regulation.

1.(a) Any person who violates Section 2(4)(a) or (7)(a) of this administrative regulation involving an untimely payment of a renewal fee, shall be charged a penalty of ten (10) percent and shall be required to pay this penalty in addition to the original renewal fee.

2. The original renewal fee and penalties shall be compounded by ten (10) percent monthly until paid in full.

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3. Any renewal fee and penalties remaining unpaid for three (3) successive months may result in a permit revocation.

(2) Penalties for failure to comply with Section 4 of this administrative regulation.

(a) In accordance with KRS 150.740 a person shall be guilty of a Class D felony upon conviction for violating this Section 4. of this administrative regulation.

(b) Upon conviction of a second violation of Section 4 of this administrative regulation and in addition to all other penalties, a person shall be permanently ineligible for renewal of a captive cervid permit.

(3) The KDFWR shall have the authority to immediately, and without compensation to the owner, seize captive cervids that have been imported into the Commonwealth contrary to Section 8 of this administrative regulation. The individual whose cervids were seized may request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the department's seizure and may appeal the final decision to Franklin Circuit Court in accordance with KRS Chapter 13B. Pending the final outcome of all appeals, the seized cervids may be disposed of by the department without compensation to the owner.

(4) The KDFWR shall have the authority to immediately, and without compensation to the owner, seize and destroy captive cervids that are in the process of being imported into the Commonwealth contrary to Section 4 of this administrative regulation.

Section 9. Incorporation by Reference. (1) CCWDSI Herd Certification Program and Herd Monitoring Program application packet, 10/2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Animal Health, 100 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (2) "Affected cervid herd" means a cervid herd from which any animal has been diagnosed as affected with CWD or is not in compliance with the provisions of the control program for CWD as described in this administrative regulation.

(3) "Approved laboratory" means the National Veterinary Service Laboratory, Ames, Iowa, or laboratories accredited by the American Association of Veterinary Laboratory Diagnosticians.

(4) "Certificate of Veterinary Inspection" means an official document issued by the State veterinarian, federal animal health official, or by a licensed, accredited veterinarian at the point of origin that documents the state federal official individual animal identification, the number of animals shipped, the purpose of the movement, the points of origin and destination, and the consignor and consignee.

(5) "Certified CWD cervid herd" means a herd of cervids that has qualified for and has been issued a certified CWD cervid herd certificate signed by the State veterinarian.

(6) "Certified monitored CWD cervid herd" means a herd of cervids that has complied with the CCWDSI Program and that has been defined as one (1) year, two (2) year, three (3) year, or four (4) year monitored in accordance with the time in years the herd has complied with the CCWDSI Program.

(7) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the cervidae family and hybrids thereof.

(8) "Cervid herd of origin" means a cervid herd, or any farm or other premises, where the animals were born or where they are kept for at least one (1) year before the date of shipping.

(9) "Cervid CWD surveillance identification program" or "CCWDSI Program" means a CWD surveillance program requiring identification and laboratory diagnosis including brain tissue as directed by the State veterinarian, on all deaths, including deaths by slaughter, hunting (including hunting on hunting preserves), illness, and injury, of cervids six (6) months of age or greater or any cervid displaying clinical signs of CWD. The diagnosis as established in Section 3 of this administrative regulation.

(10) "Chronic wasting disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(11) "Closed herd" means a cervid herd which has had no imported animals for a period of three (3) years.

(12) "CWD exposed" or "exposed" means a designation ap-

plied to cervids that are either part of an affected herd or for which epidemiological investigation indicates contact with CWD affected animals or contact with animals from a CWD affected herd in the past five (5) years.

(13) "CWD affected" means a designation applied to cervids diagnosed as affected with the CWD prion based on laboratory results, clinical signs, or epidemiological investigation.

(14) "CWD suspect" means a designation applied to cervids for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results are inconclusive.

(15) "Designated epidemiologist" means a state or federal veterinarian who is appointed by the State veterinarian, the USDA Area Veterinarian in Charge, and the USDA Animal Plan Health Inspection Service.

(16) "Herd" means a group of cervids that are under common ownership or supervision.

(17) "Humanely harbored cervid" means a captive cervid or a group of captive cervids six (6) months of age or older that has required rehabilitation or was abandoned at a young age.

(18) "Imported animal" means an animal introduced into a herd from any source.

(19) "Individual herd plan" means a written herd management plan that is designed by the herd owner, the owner's veterinarian, if requested, and a designated epidemiologist to identify and eradicate CWD from a known affected, exposed, or adjacent herd.

(20) "KDFWR" means the Kentucky KDFWR.

(21) "Licensed, accredited veterinarian" means a veterinarian approved by the Deputy Administrator of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, and the State veterinarian, in accordance with 9 C.F.R. Part 161, to perform functions required by cooperative state federal animal disease control and eradication programs, and is licensed to practice in the state of Kentucky.

(22) "Monitored CWD herd" means a cervid or a herd of cervids that are humanely harbored or a herd permitted by the KDFWR as a shooting/hunting preserve.

(23) "99/1 Surveillance Program" means a statistical sampling of cervids sixteen (16) months of age or older for any one (1) population of cervids that determines a ninety-nine (99) percent probability of no disease within that population.

(24) "Official cervid CWD test" means an approved test conducted at an approved laboratory to diagnose CWD.

(25) "Quarantine" means an imposed restriction prohibiting movement of cervids to any location without specific written permits.

(26) "Shooting/hunting preserve" means a KDFWR cervid permitted, fenced premises used for commercial shooting and hunting.

(27) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U. S. Virgin Islands, or Guam.

(28) "State federal official individual animal identification" means an identification eartag that conforms to the alphanumeric National Uniform Eartagging System as defined in 9 C.F.R. Part 71.1 or other identification as defined in 9 C.F.R. Part 77.20.

(29) "Traceback" means the process of identifying the herd or origin of CCWDSI Program positive animals, including herds that were sold for slaughter.

Section 2. The State veterinarian shall provide routine supervision of the CCWDSI and the monitored CWD herd programs.

Section 3. Surveillance Procedures. Surveillance procedures for the CCWDSI Program shall include the following:

(1)(a) Upon death, cervids sixteen (16) months of age or older or any cervids less than sixteen (16) months of age showing clinical signs of a central nervous system disease shall have designated brain or retropharyngeal lymphoid tissue submitted to an approved laboratory for CWD surveillance and diagnostic testing.

(b) A diagnosis of CWD by an approved laboratory shall be confirmed by the National Veterinary Service Laboratory.

(c) Surveillance may also include a surveillance of animals which are slaughtered, including animals killed in a shooting/hunting preserve, which would give a 99/1 surveillance proba-

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bility for CWD.

(d) If tissues associated with a cervid death are not submitted for laboratory diagnosis due to postmortem changes or unavailability, the state veterinarian shall reevaluate the status of the herd.

(2) Surveillance for CWD, as provided in subsection (1) of this section, shall be maintained for all cervid herds.

Section 4. Official Cervid Tests. Official cervid tests for CWD are:

- (1) Histopathology;
- (2) Immunohistochemistry;
- (3) Western Blot;
- (4) Negative Strain Electron Microscopy;
- (5) Bioassay; and
- (6) Any state-federal approved test performed by an approved laboratory to confirm the diagnosis of CWD.

Section 5. Investigation of Cervid CWD Surveillance Identification Affected Animals. Traceback shall be performed for all animals diagnosed at an approved laboratory as affected with CWD. All herds of origin and all adjacent herds and herds having contact with affected animals as determined by the CCWDSI Program shall be investigated epidemiologically. All herds of origin, adjacent herds, and herds having contact with affected animals or exposed animals shall be quarantined.

Section 6. Duration of Quarantine. Quarantines placed in accordance with this administrative regulation shall be removed in accordance with the following:

(1) A herd of origin may be removed from quarantine after five (5) years of compliance with all provisions of this administrative regulation.

(2) A herd having contact with affected or earlier if the animals from the affected or exposed herd have been determined not to be infected with CWD by an approved laboratory.

(3) An adjacent herd may be removed from quarantine only after an epidemiological investigation and by order of the designated epidemiologist.

Section 7. CCWDSI Program. (1) General. A person who keeps captive cervids in this state shall enroll the herd in the cervid CWD Surveillance Identification Program.

(2) Application. To enroll a herd in the surveillance program, a person shall complete and submit an application provided by the department. The application shall include all the following:

(a) The name, address, and telephone number of the herd owner, and any trade names under which the herd owner does business.

(b) The name, address, and telephone number of the herd custodian, if other than the herd owner.

(c) The herd location or locations, including the street address and county.

(d) A complete herd census report compiled no more than thirty (30) days prior to the date of application. The applicant shall submit the census report on a form provided by the department. The census report for captive cervids classified as a breeding herd shall include:

1. The number, species, age, and sex of cervids in the herd.
2. The state-federal official individual animal identification.

(e) A written statement, by a licensed, accredited veterinarian, that certifies all the following:

1. The veterinarian and the herd owner have a valid veterinarian-client relationship.
2. The veterinarian has access to all herd health records and can document all disease events that have occurred in the herd within the past twelve (12) months.
3. That no cervid in the herd has shown any signs or symptoms of CWD in the past sixteen (16) months.

(3) Action on application. The department shall grant or deny an application under subsection (2) of this section within thirty (30) days after the department receives a complete application. The herd shall be enrolled in the CCWDSI Program on the day that the department accepts the application.

(4) Annual enrollment. To continue in the CCWDSI Program

persons shall comply with the following:

(a) For a designated cervid breeding herd and for a designated humanely-harbored cervid herd, each cervid six (6) months of age or older shall be identified as defined in Section 1(28) of this administrative regulation. Cervids shall be tagged on or before six (6) months of age.

(b) Upon death, all cervids sixteen (16) months of age or older shall have brain or retropharyngeal lymphoid tissue submitted to an approved laboratory. A positive diagnosis of CWD by an approved laboratory shall be confirmed by the National Veterinary Service Laboratory or other laboratories approved by the National Veterinary Service Laboratory.

(c) The herd veterinarian shall be notified within twenty-four (24) hours of observance of an animal with clinical signs suggestive of CWD.

(d) Complete and file an annual herd census.

(e) Create and maintain complete herd records under subsection (6) of this section.

(f) Provide the department with an annual written statement from the herd veterinarian. A licensed, accredited veterinarian shall sign and submit the statement within thirty (30) days before or after the anniversary of the herd's enrollment under subsection (3) of this section. The statement shall certify all the following:

1. The herd owner and the herd veterinarian have established a veterinarian-client relationship.

2. The veterinarian has access to all herd health records and can document all disease events that have occurred in the herd within the past twelve (12) months.

3. The herd had no clinical signs or symptoms of CWD in the past sixteen (16) months.

(5) Annual herd census. A person shall complete an annual herd census under subsection (4)(d) of this section within thirty (30) days before or after the anniversary date of the herd's enrollment under subsection (3) of this section. The person shall file an annual census report under subsection (4)(d) of this section, on a form provided by the department, within ten (10) days after completing the annual herd census. The report shall include all the following:

(a) The number, species, age, and sex of cervids in the herd.

(b) The state-federal official individual animal identification and all secondary identifications.

(c) The number, species, age, and sex for cervids added to the herd since the last herd census report. The report shall document additions to the herd as natural additions or as a purchased addition. For a purchased addition, the report shall identify the source of purchase, date of purchase, and document that the cervid met all the CWD herd surveillance requirements prior to entry into the herd.

(d) The number, species, age, and sex for cervids that left the herd since the last herd census report. The report shall document the reason for removing from the herd:

1. Cervid died on the premises. For a premises death, the report shall document cervid age, state-federal official individual animal identification, disposition of carcass, and brain or retropharyngeal lymphoid tissue collected for laboratory submission.

2. Cervid sold and moved to a new premises, the report shall document the name and address of purchaser.

3. Cervid was shipped to slaughter, the report shall document the cervid's age, state-federal official individual animal identification, the name and address of the slaughter establishment, and documentation that tissue was collected for CWD diagnostics.

(6) Herd records. A person shall keep the following herd records under subsection (4)(e) of this section and shall make all records available to the department upon request.

(a) A record for each purchased addition to the herd shall include:

1. The species, age, and sex of the cervid.
2. The name and address of the person from whom the cervid was purchased.
3. The address of the herd from which the cervid was purchased.
4. A copy of the Certificate of Veterinary Inspection that accompanied the animal for intra- and interstate movement.

(b) A record of each cervid leaving the herd shall include the

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following:

1. Whether the cervid died on the premises, was shipped to slaughter, or was shipped live other than to slaughter.

2. If the cervid was shipped live other than to slaughter, the name of the person to whom it was shipped, the place to which it was shipped and a copy of the Certificate of Veterinary Inspection related to the shipment.

3. If the cervid died on the premises, the apparent cause of death, the cervid's age, sex, state federal official individual animal identification, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination or recipient.

4. If the cervid was shipped to slaughter, the cervid's age, sex, state federal official individual animal identification, and the name and address of the slaughter establishment.

(e) A record of all CWD individual animal tests conducted on cervids in the herd.

(d) Records received from the herd veterinarian related to veterinary services provided to the herd.

(7)(a) Humanely harbored cervids shall not be designated as a breeding unit and shall not be eligible for sale or exhibition.

(b) Humanely harbored cervids shall not be removed from a permitted premises except for disposition of the carcass or slaughter.

(c) Humanely harbored cervids shall comply with the record-keeping requirements of subsection (6) of this section.

(8) Suspending enrollment.

(a) The department may, pursuant to KRS Chapter 13B, suspend a herd's enrollment in the CCWDSI Program or herd monitoring program under this section if any of the following apply:

1. A person falsifies information on an enrollment application, or falsifies subsequent information required for continued enrollment.

2. A person fails to comply with requirements under subsection (4) of this section for continued enrollment.

(b) The State veterinarian or designee may issue a suspension order under paragraph (a) of this subsection.

Section 8. Identification and Disposition Requirements. CWD affected and exposed cervids shall be quarantined and remain under quarantine. Movement from the premises and disposition of cervids shall be in compliance with requirements of KRS 257.160.

Section 9. Methods of Obtaining Certified CWD Cervid Herd Status. Certified CWD cervid herd status shall include all cervids in the cervid herd. They shall not be commingled with other cervids that are not certified or commingled with cervids of a lesser certification. A herd may qualify for status as a certified CWD cervid herd as follows:

(1) Purchasing a certified CWD cervid herd: Upon request and with proof of purchase, the State veterinarian shall issue a new certified CWD cervid herd certificate in the new owner's name. The anniversary date and the herd number, as assigned by the department, shall remain the same. If part or all of the purchased herd is moved directly to premises that have no other cervids, the herd may retain certified CWD status, and the State veterinarian shall issue a new certification number. The anniversary date of the new herd is the date of the most recent herd certification status certificate.

(2) Upon request and with proof of records, a herd owner shall be issued a certified CWD cervid herd certificate by complying with the CCWDSI Program, as defined in Section 1 of this administrative regulation, for a period of five (5) years.

Section 10. Recertification of a Certified CWD Cervid Herd. A herd is certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and rules pertaining to raising cervids is required. A herd's certification status is immediately terminated and a herd investigation shall be initiated when CWD affected or exposed animals are found in the herd.

Section 11. Movement Into a Certified CWD or Monitored CWD Herd. (1) Animals originating from a certified CWD cervid herd may

move into another certified CWD cervid herd. Animals originating from a herd not certified as a CWD cervid herd shall not be certified until the animals remain in a certified CWD cervid herd for five (5) years. Animals originating from a CWD monitored herd shall not be certified until the combination of the CWD monitored status and the years present in the certified CWD herd total five (5) years.

(2) Animals originating from a monitored CWD herd may move into another monitored CWD herd of the same status. Animals originating from a herd which is not a monitored CWD herd or from a lower status monitored CWD herd shall not be assigned a monitored status until the cervids have been in the monitored herd for a number of years equal to the designated herd's monitored status at time of entry.

Section 12. Recognition of Monitored CWD Herds. The State veterinarian shall issue a monitored CWD herd certificate indicating CWD monitored herd status as CWD monitored one (1), CWD monitored two (2), CWD monitored three (3), or CWD monitored four (4), according to the number of years the herd has qualified for the status.

Section 13. Recognition of Certified CWD Cervid Herds. The State veterinarian shall issue a certified CWD cervid herd certificate when the herd first qualifies. For recertification, the State veterinarian shall issue a renewal form annually.

Section 14. Intrastate Movement Requirements. All intrastate movements of cervids, other than to a state or federally inspected slaughter establishment, shall be accompanied by an intrastate movement Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian. The intrastate movement certificate shall include the following:

(1) Consignor's name, address, and State veterinarian issued permit number;

(2) Consignee's name, address, and State veterinarian issued permit number; and

(3) The permit number to ship, which may be obtained by telephone, issued by the State veterinarian prior to movement and one of the following statements:

(a) "All cervids identified on this certificate are from a closed herd as defined in Section 1 of 302 KAR 20:066";

(b) "All cervids identified on this certificate originate from a herd with a minimum of a three (3) year monitored status"; or

(c) "All cervids identified on this certificate originate from a certified CWD cervid herd".

Section 15. Requirements for Entry into Kentucky. All cervids entering Kentucky shall be accompanied by a Certificate of Veterinary Inspection, issued by a licensed, accredited veterinarian, and a telephone entry permit number requested by the licensed, accredited veterinarian signing the certificate and issued by the State veterinarian before movement. One (1) of the following statements shall appear on the certificate:

(1) "All cervids identified on this certificate originate from a herd in which all cervids have been kept for at least three (3) years or into which they were born. There has been no exposure to or additions from any other source in the past three (3) years. There have been no diagnoses, signs, or epidemiological evidence of CWD in this state for the past five (5) years. Records and causes of death for the past three (3) years in the herd of origin are available to the animal health official of the state of origin";

(2) "All cervids identified on this certificate originate from a herd which has been determined to have a minimum of a three (3) year monitored status by the animal health official of the State of Kentucky"; or

(3) "All cervids identified on this certificate originate from a herd meeting requirements for a certified CWD herd status as determined by the State veterinarian.

Section 16. For cervid herds in existence prior to the effective date of this administrative regulation, eligibility for closed herd status shall commence on the date of the last import into the herd or the last herd mortality not tested for CWD, whichever occurs last.

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Section 17. KDFWR Cervid Permitted Shooting/Hunting Preserves. (1) A shooting/hunting preserve shall be enrolled in an official CWD monitoring program. The CWD monitoring program requirements shall include:

- (a) An annual statistical herd census;
(b) All additions to the shooting/hunting preserve shall originate from a three (3) year or greater CCWDSI Program cervid herd; and
(c) All additions prior to entry into the preserve shall be identified in accordance with 9 C.F.R. Part 77.20.
(2) A CWD surveillance program shall be established that will give a 99/1 surveillance probability that CWD does not exist within the preserve's cervid population.
(a) A 99/1 surveillance program shall be established for the hunter kill removal of animals from the shooting/hunting preserve or may be documented by the preserve owner kill of animals or by a combination of both.
(b) The preserve owners shall be responsible for documenting cervid removal and for the collection of brain tissue or retropharyngeal lymphoid tissue.
(c) All records shall document:
1. Date cervid removed;
2. Age and sex of cervid;
3. Cervid identification in accordance with 9 C.F.R. Part 77.20;
4. Approved personnel designated for the collection of tissue sample. Approved personnel shall be trained by Animal Plant Health Inspection Service in the identification and proper removal of tissue. Approved personnel shall submit documentation of training to the Office of the State veterinarian;
5. Tissue collection date and type of tissue collected;
6. Laboratory responsible for testing and date of submission; and
7. Laboratory CWD report.
(d) All records shall be made available to an agent of the State Board of Agriculture upon request.
(e) Purchased additions shall comply with 302 KAR 20:065 and 302 KAR 20:040 before entry into shooting/hunting preserves.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Monitoring Program Application Packet, 8/14/02"; and
(b) "Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Monitoring Annual Census Report, 8/14/02".
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Agriculture, Division of Animal Health, 100 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

RITCHIE FARMER, Commissioner
APPROVED BY AGENCY: September 15, 2010
FILED WITH LRC: September 15, 2010 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2010, at 10 a.m., at Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 November 1, 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) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

- (1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky, develop a herd monitoring system, and establish requirements for intrastate and interstate movement of farmed cervids.
(b) The necessity of this administrative regulation: Provides uniformity with USDA CWD rule as stated in 9 C.F.R. part 55.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.720(1), 246.295(1), and 257.550 require the Department of Agriculture in cooperation with the KDFWR to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately-owned and farm-raised cervids maintained for the production of meat and other products.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will outline standards of the CCWDSI programs.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky, develop a herd monitoring system, and establish requirements for intrastate and interstate movement of farmed cervids. The amendments provide uniformity between USDA CWD rule as stated in 9 C.F.R. part 55.
(b) The necessity of the amendment to this administrative regulation: The changes are necessary for uniformity between USDA CWD rule as stated in 9 C.F.R. part 55.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 150.720(1) and 246.295(1) require the Department of Agriculture in cooperation with the KDFWR to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately-owned and farm-raised cervids maintained for the production of meat and other products.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify standards for the CCWDSI programs. With clear, easy to understand regulation the enforcement of these provisions will be made easier for the OSV.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 79 farmed cervid producers, Kentucky Department of Agriculture, and KDFWR.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The farmed cervid producers will need to conduct physical inventories of animals, and maintain herd records.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$150 for farmed cervid producers yearly. Kentucky Department of Agriculture inspects producers bi-annually and maintains herd records which will allow for interstate movement.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Farmed cervid producers will have enhanced markets intrastate and interstate. Kentucky Department of Agriculture will have improved records and documentation on each farmed cervid producer.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Kentucky Department of Agriculture will be spending more time with farmed cervid producers and will conduct an annual physical inventory upon entry of the program.
(b) On a continuing basis: No additional costs other than staff

time and materials are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds and farmed cervid producer fees.

(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 new fee is requested and necessary due to increased personal and administrative cost to fully implement programs that will benefit farmed cervid producers.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes fees for new Herd Certification Program and Herd Monitoring Program annually.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 9 C.F.R. Part 55.

2. State compliance standards. KRS 150.720(1), 246.295(1), and 257.030

3. Minimum or uniform standards contained in the federal mandate. 9 C.F.R. Part 55.

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 will impose additional responsibilities, as Herd Certification Program and Herd Monitoring Program are new additional programs.

5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional responsibilities will provide markets for farmed cervids with the Herd Monitoring Program and to allow interstate movement for cervids.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.550

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? Approximately \$12,000 will be generated in fees.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately \$12,000 will be generated in fees at current herd number levels.

(c) How much will it cost to administer this program for the first year? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation, however the fees will be used to offset the cost of staff time for the program.

(d) How much will it cost to administer this program for subsequent years? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation, however the fees will be used to offset the cost of staff time for the program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," September 13, 2010~~[December 8, 2009]~~, are incorporated by reference. Department of Corrections Policies and Procedures include:

1.2 News Media (Amended 12/08/09)

1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)

2.1 Inmate Canteen (Amended 2/15/06)

~~2.2 Warden's Fund (Amended 10/14/05)~~

3.1 Code of Ethics (Amended 07/09/07)

~~3.3 Holding of Second Jobs by Corrections' Employees (Amended 5/15/08)~~

3.5 Sexual Harassment and Anti-Harassment (Amended 5/15/08)

3.9 Student Intern Placement Program (Added 9/13/2010)

3.10 Appearance and Dress for Nonuniformed Staff (Amended 9/13/10~~8/25/09~~)

3.11 Drug Free Workplace Employee Drug Testing (Amended 9/13/10~~07/09/07~~)

3.14 Employee Time and Attendance Requirements (Added 9/13/2010)

3.17 Uniformed Employee Dress Code (Amended 4/10/06)

~~3.20 Communication and Recording Devices (Amended 8/25/09)~~

3.23 Internal Affairs Investigation (Added 8/25/09)

4.4 Educational Assistance Program (Amended 8/25/09)

5.1 Research and Survey Projects (Amended 5/15/08)

6.1 Open Records Law (Amended 5/14/07)

8.2 Fire Safety (Amended 2/15/06)

8.7 Notification of Extraordinary Occurrence (Amended 12/13/05)

9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 11/9/04)

9.6 Contraband (Amended 12/13/05)

9.8 Search Policy (Amended 9/13/10~~4/9/07~~)

9.13 Transport to Court - Civil Action (Amended 07/09/07)

9.18 Informants (Amended 9/13/10~~4/14/05~~)

9.19 Found Lost or Abandoned Property (Amended 10/14/05)

9.20 Electronic Detection Equipment (Amended 10/14/05)

10.2 Special Management Inmates (Amended 8/25/09)

10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)

11.2 Nutritional Adequacy of Inmate Diet (Amended 5/15/08)

11.4 Alternative Dietary Patterns (Amended 5/15/08)

13.1 Pharmacy Policy and Formulary (Amended 8/25/09)

13.2 Health Maintenance Services (Amended 9/13/10~~8/25/09~~)

13.3 Medical Alert System (Amended 10/14/05)

13.5 Advance Healthcare Directives (Added 4/12/05)

13.6 Sex Offender Treatment Program (Amended 5/15/08)

13.7 Involuntary Psychotropic Medication (Amended 10/14/05)

13.8 Substance Abuse Program (Amended 9/13/10~~5/15/08~~)

13.9 Dental Services (Amended 10/14/05)

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- 13.10 Serious Infectious Disease (Amended 12/13/05)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 9/13/10[10/14/05])
- 14.3 Marriage of Inmates (Amended 10/14/05)
- 14.4 Legal Services Program (Amended 07/09/07)
- 14.5 Board of Claims (Amended 10/14/05)
- 14.6 Inmate Grievance Procedure (Amended 5/15/08)
- 14.7 Sexual Abuse Assault Prevention and Intervention Programs (Amended 11/15/06)
- 15.1 Hair, Grooming and ID Card Standards (Amended 9/13/10[5/15/08])
- 15.2 Rule Violations and Penalties (Amended 9/13/10[11/15/06])
- 15.3 Meritorious Good Time (Amended 12/13/05)
- 15.4 Treatment Program Time Credit (Amended 12/08/09)
- 15.5 Restoration of Forfeited Good Time (Amended 5/14/07)
- 15.6 Adjustment Procedures and Programs (Amended 10/14/05)
- 15.7 Inmate Account Restriction (Amended 9/13/10[8/25/09])
- 15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
- 16.1 Inmate Visits (Amended 8/25/09)
- 16.2 Inmate Correspondence (Amended 9/13/10[5/15/08])
- 16.3 Inmate Access to Telephones (Amended 9/13/10[5/15/08])
- 16.4 Inmate Packages (Amended 07/09/07)
- 17.1 Inmate Personal Property (Amended 8/25/09)
- 17.2 Assessment Center Operations (Amended 11/15/06)
- 17.3 Controlled Intake of Inmates (Amended 5/15/08)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
- 18.1 Classification of the Inmate (Amended 07/09/07)
- 18.2 Central Office Classification Committee (Amended 10/14/05)
- 18.5 Custody and Security Guidelines (Amended 5/15/08)
- 18.7 Transfers (Amended 07/09/07)
- 18.9 Out-of-state Transfers (Amended 2/15/06)
- 18.11 Placement for Mental Health Treatment in CPTU, KCIW-PCU, or KCPC (Amended 1/9/07)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 07/09/07)
- 18.15 Protective Custody (Amended 11/15/06)
- 18.16 Information to the Parole Board (Effective 11/15/06)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 07/09/07)
- 19.2 Sentence Credit for Work (Added 2/13/04)
- 19.3 Inmate Wage/Time Credit Program (Amended 12/08/09)
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 22.1 Privilege Trips (Amended 10/14/05)
- 23.1 Religious Programs (Amended 9/13/10[05/15/08])
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
- 25.3 Prerelease Program (Effective 11/15/06)
- 25.4 Institutional Inmate Furloughs (Amended 07/09/07)
- 25.6 Community Center Program (Amended 07/09/07)
- 25.8 Extended Furlough (Amended 4/12/05)
- 25.10 Administrative Release of Inmates (Amended 9/13/10[8/25/09])
- 25.11 Victim Services Notification (Amended 8/25/09)
- 26.1 Citizen Involvement and Volunteer Service Program (Added 9/15/04)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LaDONNA H. THOMPSON, Commissioner
APPROVED BY AGENCY: August 24, 2010
FILED WITH LRC: September 13, 2010 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2010 at 9 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Debbie Kays (502) 564-2220
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Corrections including the rights and responsibilities of employees and the inmate population.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet ACA requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Corrections.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment brings the Kentucky Department of Corrections into compliance with ACA Standards and updates current practices for the department and its facilities.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.
(c) How the amendment conforms to the content of the authorizing statutes: It permits the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.
(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the state correctional institutions.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,939 employees and 21,388 inmates, and all visitors, volunteers, and others who enter state correctional institutions.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the

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changes made in the policies and procedures. The institutional employees and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation. Others who enter correctional institutions will have to comply with policies concerning entry, search, contraband and others when they enter an institution.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the state correctional institutions.

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

- (a) Initially: none
- (b) On a continuing basis: none

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Budgeted Funds will be used.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation establishes fees for inmates, e.g. health services co-pays. The change to CPP 13.2 may indirectly increase fees for inmates seeking to address more than two clinical concerns in one sick call request.

(9) TIERING: Is tiering applied? NO. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Department of Corrections and each state correctional institution.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this regulation do not create any revenue for the Kentucky Department of Corrections, state correctional institutions, or other government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendments to this regulation do not create any revenue for the Kentucky Department of Corrections, state correctional institutions, or other government entity.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Kentucky Department of Corrections and

state correctional institutions operate, but do not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

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

- Revenues (+/-):
- Expenditures (+/-):
- Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:090. Frankfort Career Development Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

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

Section 1. Incorporation by Reference. (1) Frankfort Career Development Center policies and procedures, September 13, 2010~~[March 11, 2004]~~, are incorporated by reference. Frankfort Career Development Center policies and procedures include:

- FCDC 01-04-01 Roles of Consultants, Contract Personnel, Volunteers, Employees, and Employees of Other Agencies (Amended 3/11/04)
- ~~FCDC 01-09-01 Organization and Assignment of Responsibilities (Amended 1/13/03)~~
- ~~FCDC 02-02-01 Inventory Control (As Amended 5/11/04)~~
- FCDC 02-09-01 Inmate Accounts~~[Account]~~ (Amended 9/13/10~~[4/13/03]~~)
- ~~FCDC 02-10-01 Fiscal Management and Control (As Amended 5/11/04)~~
- ~~FCDC 02-11-01 Fiscal Management: Accounting Procedures (Amended 1/13/03)~~
- ~~FCDC 02-12-01 Fiscal Management: Checking Accounts (Amended 3/11/04)~~
- ~~FCDC 02-13-01 Purchasing and Receiving (Amended 3/11/03)~~
- FCDC 02-14-01 Inmate Canteen (Added 9/13/10)
- FCDC 05-01-01 Participation in Authorized Research and Use of Research (Added 9/13/10)
- FCDC 06-01-01 Records Requests (Added 9/13/10)
- FCDC 06-02-01 Offender Information Services~~[Records]~~ (Amended 9/13/10~~[4/13/03]~~)
- FCDC 08-01-01 Fire Safety Practices (Amended 3/11/04)
- FCDC 09-04-01 Inmate Death (Added 9/13/10)
- FCDC 09-06-08 Searches and Contraband Procedures: Disposition of Contraband (Amended 11/14/95)
- FCDC 09-11-01 Identification Card (Added 9/13/10)
- FCDC 10-01-01 Temporary Holding Area (Added 9/13/10)
- FCDC 11-03-01 Food Service; General Guidelines (As Amended 9/13/10)
- FCDC 11-08-01 Inmate Work Schedule for Food Service (Added 9/13/10)~~[5/11/04]~~
- ~~FCDC 11-04-02 Menu, Nutrition and Special Diets (Amended~~

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~~3/11/04)~~
 FCDC 11-06-01 ~~Inspection and Sanitation (As Amended 5/11/04)~~
 FCDC 11-07-01 ~~Purchasing and Storage of Food Products (As Amended 5/11/04)~~
 FCDC 12-03-01 Laundry, Clothing, Hygiene and Grooming Services (Amended 4/15/02)
 [FCDC 12-04-01 ~~Safety and Sanitation Practices and Inspections (Amended 8/14/97)~~
 FCDC 13-01-01 Use of Pharmaceutical Products (Amended 4/15/02)
 FCDC 13-01-02 Medical Emergencies and Medical Psychiatric Transfers (Amended 4/15/02)
 FCDC 13-01-03 Informed Consent (Amended 9/13/10)
 FCDC 13-01-04 ~~Self Administered Medication (Added 9/13/10)[3/15/99]~~
 FCDC 13-02-01 Inmate Medical Screenings and Health Evaluations (Amended 9/13/10)[3/14/04]
 FCDC 13-03-01 Psychiatric and Psychological Services (Amended 4/15/02)
 FCDC 13-05-01 Family Notification: Serious Illness, Injury, or Major Surgery[er ——— Death](Amended 9/13/10)[11/14/95]
 FCDC 13-06-01 ~~Chronic and Convalescent Care (Amended 4/15/02)~~
 FCDC 13-08-01 Sick Call, Special Health Care Programs and Physician's [Weekly] Clinic (Amended 09/13/10)[4/15/02])
 FCDC 13-09-01 Management of Serious and Infectious Diseases (Amended 4/15/02)
 FCDC 13-11-01 Health Education: Provision of Special Health Care Needs (Amended 4/15/02)
 FCDC 13-13-01 Physicians Referrals (Amended 4/15/02)
 FCDC 13-14-01 Health Records (Amended 9/13/10)[3/15/99])
 FCDC 13-15-01 Routine and Emergency Dental Appointments (Amended 9/13/10)[4/15/02])
 FCDC 13-16-01 Routine and Emergency Eye Examinations (Amended 9/13/10)[4/15/02])
 FCDC 14-01-01 Prohibiting Inmate Authority Over Other Inmates (Amended 1/13/03)
 [FCDC 14-02-01 ~~Inmate Grievance System (Amended 11/14/95)~~
 FCDC 14-03-01 ~~Inmate Rights and Responsibilities (Amended 1/13/03)~~
 FCDC 14-04-01 Legal Services Program (Amended 9/13/10)
 FCDC 15-00-01 ~~Operational Procedures and Rules for the Dormitory (Added 9/13/10)[3/14/04]~~
 FCDC 15-01-01 Good Time Credits (Amended 4/15/02)
 [FCDC 15-01-02 ~~Restoration of Forfeited Good Time (Amended 1/13/03)~~
 FCDC 15-03-01 ~~Due Process and Disciplinary Procedure (Amended 1/13/03)~~
 FCDC 15-04-01 Detention Orders and Protective Custody Requests (Amended 8/14/97)
 FCDC 16-01-01 Visiting (Amended 1/13/03)
 FCDC 16-02-01 Inmate Correspondence (Amended 3/11/04)
 FCDC 16-03-01 Inmate Access to Telephones (Amended 4/15/02)
 FCDC 17-01-01 Inmate Property Control (Amended 3/11/04)
 FCDC 17-02-01 Assessment and Orientation (Amended 3/11/04)
 FCDC 18-01-01 Inmate Classification and Review (Amended 8/14/97)
 FCDC 19-01-01 Security and Operation of the Governmental Services Program (Amended 9/13/10)[3/14/04])
 FCDC 19-02-01 Inmate Work Programs (Amended 3/11/04)
 FCDC 20-01-01 Academic and Vocational Education (Amended 1/13/03)
 FCDC 21-01-01 ~~Library Services (Added 9/13/10)~~
 FCDC 22-01-01 Privilege Trips (Amended 9/13/10)[4/15/02])
 FCDC 22-02-01 Recreation and Inmate Activities (Amended 4/15/02)
 FCDC 23-01-01 Religious Services (Amended 3/11/04)
 FCDC 24-01-01 ~~Social Services and Substance Abuse Programs[Program] (Amended 9/13/10)[3/14/04]~~
 FCDC 24-02-01 ~~Substance Abuse Programs (Amended 3/11/04)~~
 FCDC 25-01-01 ~~Escorted Leaves (As Amended 5/11/04)~~

FCDC 25-03-01 Release Preparation Program (Amended 4/15/02)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [Office of Legal Services,] Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd floor[Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400], Frankfort, Kentucky 40601 [40602-2400], Monday through Friday, 8 a.m. to 4:30 p.m.

LaDONNA H. THOMPSON, Commissioner
 APPROVED BY AGENCY: September 13, 2010
 FILED WITH LRC: September 13, 2010 at 4 p.m.
 PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2010 at 9 a.m. at the Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: Jonathan Milby, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Debbie Kays (502) 564-2220
 (1) Provide a brief summary of:
 (a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing Frankfort Career Development Center including the rights and responsibilities of employees and the inmate population.
 (b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and to meet ACA requirements.
 (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of Frankfort Career Development Center.
 (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.
 (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 (a) How the amendment will change this existing administrative regulation: The amendment brings Frankfort Career Development Center into compliance with ACA Standards and updates current practices for the institution.
 (b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020, and comply with ACA Standards.
 (c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Frankfort Career Development Center.
 (d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the institution.
 (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Frankfort Career Development

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Center 48 employees and 205 inmates, and all visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the FCDC will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institutions.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Frankfort Career Development Center budgeted funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Budgeted funds will be used.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulations and amendments do not establish or increase fees.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the daily operations of Frankfort Career Development Center.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Changes to this regulation do not create any revenue for Frankfort Career Development Center or other government entity.

(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? Changes to this regulation do not create any revenue for Frankfort Career Development Center or other government entity

(c) How much will it cost to administer this program for the first year? No new programs have been created and FCDC budgeted

funds are expected to cover any costs.

(d) How much will it cost to administer this program for subsequent years? Changes to this regulation are not expected to increase costs from what will be budgeted to Frankfort Career Development Center.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

502 KAR 31:020. Sex Offender Registration System.

RELATES TO: KRS 17.500-17.540, 42 U.S.C. 14071[~~42 U.S.C. 1407~~]

STATUTORY AUTHORITY: KRS 15A.160, 17.500(6), 17.520(5), 42 U.S.C. 14071[~~17.080, 17.500(3), 17.540, 42 U.S.C. 1407~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.510 and 42 U.S.C. 14071[~~1407~~] require the Justice Cabinet to develop and implement a Sex Offender Registration System. This administrative regulation establishes the definitions, defines the processes, and establishes the forms necessary for the administration of the Sex Offender Registration System.

Section 1. Definitions. (1) "Authorizing Official[~~witness~~]" means an official identified in KRS 17.510(3), (4), and (5).

(2) "Cabinet" is defined in KRS 17.500(2)[~~at KRS 17.500(1)~~].

(3) "Department" means the Department of Kentucky State Police.

(4) "LINK" means the Law[~~Enforcement~~] Information Network of Kentucky.

(5) "NCIC" means the National Crime Information Center[~~Computer~~].

(6) "Registrant" is defined by KRS 17.500(5).

(7) "Registrant information" means the specific information set forth in KRS 17.500(6) as well as the name and address of any place where the registrant is a student.

(8) "SOR" means the Sex Offender Registry.[~~"SORS" means the Sex Offender Registration System.~~

(7) "Sex offender" means a person meeting one (1) of the criteria of KRS 17.510(2), (6), or (7)-

(8) "Sex offender information" means the specific information set forth in KRS 17.500(3) and shall include:

(a) The date of release from custody;

(b) Maximum date of sentence or supervision, whichever is longer;

(c) Date of registry expiration;

(d) Name of person completing the form, if registrant is assisted;

(e) Office phone number of the releasing entity;

(f) Signature of the registrant;

(g) Signature of the authorizing witness;

(h) The date the form is signed;

(i) Fingerprints; and

(j) Photograph].

Section 2. Sex Offender Duty to Register Notification Form. (1) A registrant[~~sex offender~~] shall provide the[~~sex offender~~] information required to complete[~~on~~] the Sex Offender Duty to Register Notification Form #P:227[~~#JC-4~~].

(2) Completion of Sex Offender Duty to Register Notification Form #p:227[~~#JC-4~~].

(a) The Division of Probation and Parole shall complete the Sex Offender Duty to Register Notification Form #P:227[~~#JC-4~~] for the sentencing court.

(b) A registrant[~~sex offender~~] shall, in the presence of the sentencing judge, sign the Sex Offender Duty to Register Notification

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Form #P:227 on the registrant's signature line, in ink. ~~#[JC-4 in the "defendant's signature" block, in ink.]~~

(c) A copy of the completed form shall be provided to the registrant ~~[offender]~~.

Section 3. Kentucky Sex Offender Registrant Responsibility Form. (1) If incarcerated, a registrant shall provide the information required to complete Kentucky Sex Offender Registrant Responsibility form.

(2) Completion of Kentucky Sex Offender Registrant Responsibility form.

(a) An authorizing official shall complete the Kentucky Sex Offender Registrant Responsibility form.

(b) A registrant shall, in the presence of an authorizing official, sign the Kentucky Sex Offender Registrant Responsibility form on the inmate signature line, in ink.

(c) An authorizing official shall sign and date the Kentucky Sex Offender Registrant Responsibility form in ink.

Section 4. SOR[SORS] Registration Forms. (1) The following Three (3) Sex Offender Registry[Entry] Forms have been established:

(a) The Kentucky Sex Offender Registry Entry and Modification Form #P:225 shall ~~is to~~ be completed by all persons required to register pursuant to KRS 17.510(2) as follows:

1. Persons initially registering with the Sex Offender Registry; and

2. Persons changing registrant information.

(b) The Kentucky Sex Offender Registry Move-In Form (#P:226) shall be completed by all parties required to register pursuant to KRS 17.510(6) or (7).

~~[Sex Offender Registry Entry Form #P:227 is to be completed by all persons required to register pursuant to KRS 17.510(6).~~

~~(c) Sex Offender Registry Entry Form #P:228 is to be completed by all persons required to register pursuant to KRS 17.510(7).]~~

(2) Completion of the #P:225 and the P#:226. ~~[Sex Offender Registry Entry Registration Form].~~

(a) The #P:225 and #P:226, as appropriate, ~~[Entry Form]~~ shall be completed either in the presence of or by the authorizing official and shall include:

1. The date of release from custody;

2. Maximum discharge date of supervised release, or serve out date, whichever is later;

3. Initial date of registry expiration;

4. Name of person completing the form, if registrant is assisted;

5. Office phone number of the releasing entity; and

6. The date the form is signed ~~[witness].~~

(b) The registrant ~~[offender]~~ shall read the #P:225 or #P:226, as appropriate, ~~[Entry Form]~~ in the presence of the authorizing official ~~[witness].~~

(c) The registrant ~~[offender]~~ shall sign the #P:225 or #P:226, as appropriate, on the registrant's signature line ~~[Entry Form, in the "signature of offender" block]~~ of the form in ink.

(d) The authorizing official ~~[witness]~~ shall sign the #P:225 or #P:226, as appropriate, on the authorizing official signature line ~~[Entry Form, in the "signature of offender" block]~~ of the ~~Entry Form].~~

(e) The authorizing official ~~[witness]~~ shall mail one (1) copy of the completed #P:225 or #P:226 ~~[Entry Form]~~ to the department on the day the form is completed.

(3) A #P:225 or #P:226 ~~[An Entry Form]~~ shall not be considered complete if:

(a) It does not contain the registrant ~~[sex-offender]~~ information required by KRS 17.500(6) ~~[17.500(3)]~~ and this administrative regulation;

(b) It contains erroneous or false information;

(c) An item on the ~~[Entry]~~ form cannot be read or understood; or

(d) The registrant ~~[offender]~~ or authorizing official ~~[witness]~~ fails to sign the appropriate ~~line~~ ~~[block].~~

(4) If the department determines that a #P:225 or #P:226 ~~[an Entry Form]~~ is incomplete, the department shall notify the submitting authorizing official ~~[witness, without entry into the SORS],~~ of:

(a) The reason the #P:225 or #P:226 ~~[an Entry Form]~~ Entry Form was determined to be incomplete; and

(b) The action required to complete the #P:225 or #P:226 ~~[the Entry Form prior to inclusion in the SORS].~~

(5) When the deficiencies of an incomplete #P:225 or #P:226 ~~[Entry Form]~~ are corrected, the department shall enter the corrected information ~~[record]~~ into the SOR[SORS], LINK and NCIC.

(6) The department shall enter correct information from an incomplete #P:225 or #P:226 into SOR, LINK, and NCIC. ~~[Section 4. Sex Offender Registry Modification Form. A sex offender shall complete a Sex Offender Registry Modification Form #P:226 if there is a change in an item of the sex offender information previously supplied.~~

~~(1) Completion of Sex Offender Registry Modification Form.~~

~~(a) The Modification Form shall be completed either in the presence of or by the authorizing witness.~~

~~(b) The offender shall read the Modification Form in the presence of the authorizing witness.~~

~~(c) The offender shall sign the Modification Form in the "signature of offender" block of the form, in ink.~~

~~(d) The authorizing witness shall sign the Modification Form in the "authorizing witness" block of the Modification Form.~~

~~(e) The authorizing witness shall mail one (1) copy of the completed Modification Form to the department on the day the form is completed.~~

~~(2) A Modification Form shall not be considered complete if:~~

~~(a) It does not contain the information required;~~

~~(b) It contains erroneous or false information;~~

~~(c) An item on the form cannot be read or understood; or~~

~~(d) The offender or authorizing witness fails to sign in the appropriate block.~~

~~(3) If the department determines that a Modification Form is incomplete, the department shall notify the submitting authorizing witness of:~~

~~(a) The reason the Modification Form was determined to be incomplete; and~~

~~(b) The action required to properly complete the Modification Form before that information shall be included in the SORS.~~

~~(4) When the deficiencies of an incomplete Modification Form are corrected, the department shall enter the corrected information into that offender's SORS, LINK, and NCIC records.]~~

Section 5. Sex Offender Registry Address ~~[Information]~~ Verification Forms ~~[Form].~~ A registrant ~~[sex-offender]~~ shall verify the accuracy of the registrant information contained in the appropriate ~~[SORS on the] Sex Offender Registry Address ~~[Information]~~ Verification Form (#SOR 1T, #SOR 1L, #SOR 1WL, and #SOR 1WT) mailed to him or her by the department ~~[#SOR 1].~~~~

(1) Annually, the department shall mail, during the birth month ~~[no later than fourteen (14) days prior to the anniversary date] of each ten (10) or twenty (20) year ~~[low and "moderate" risk] registrant that resides in Kentucky, an Address ~~[a]~~ Verification Form #SOR 1T ~~[4]~~ to the last known address of the registrant.~~~~

(2) Annually, the department shall mail, during the birth month of each ten (10) or twenty (20) registrant that resides in another state, but has entered Kentucky for employment, to carry on a vocation, or as a student, an Address Verification Form (#SOR 1WT) to the last known address of the registrant.

(3) At least once every ninety (90) days, the department shall mail an Address Verification Form (#SOR 1L) to the last known address of each lifetime registrant that resides in Kentucky.

(4) At least once every ninety (90) days, the department shall mail to the last known address of each lifetime registrant that resides in another state, but has entered Kentucky for employment, to carry on a vocation, or as a student, an Address Verification Form (#SOR 1WL).

~~(5) Quarterly, the department shall mail a Verification Form #SOR 1 to the last known address of each "high risk" registrant.~~

~~(3) Completion of Sex Offender Registry Address ~~[Information]~~ Verification Forms. A registrant shall ~~[Form #SOR 1. A sex-offender shall]:~~~~

(a) Complete each item in the Address Verification Form ~~[#SOR 4];~~

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- (b) Sign the Address Verification Form on the signature line[#SOR 1 in the "registrant signature" block,] in ink; and
- (c) Mail the completed Address Verification Form[#SOR-4] to the department on the day the form is completed.
- (4) An Address[A] Verification Form[#SOR-4] shall not be considered complete if:
 - (a) It does not contain the information required;
 - (b) It contains erroneous or false information;
 - (c) An item on the form cannot be read or understood; or
 - (d) The registrant fails to sign on[in] the appropriate line[block].
 - (5) If the department determines that an Address[a] Verification Form [#SOR-4] is incomplete, the department shall return the form to the submitting registrant, notifying the submitting registrant of:
 - (a) The reason the Address Verification Form[#SOR-4] was returned; and
 - (b) The action required by the registrant to properly complete the Address Verification Form [#SOR-4] prior to validation thereof.

Section 6. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) Sex Offender Duty to Register Form #P:227, June 2006[#JC-4];
 - (b) Sex Offender Registry Entry and Modification Form #P:225, June 2006;
 - ~~(c) Sex Offender Register Entry Form #P:227;~~
 - ~~(d) Sex Offender Register Entry Form #P:228;~~
 - ~~(e) Sex Offender Registry Move-In~~[Modification] Form #P:226, June 2006;
 - ~~(d) and~~
 - (f) Sex Offender Registry Address[Information] Verification Form #SOR 1T, May 2009;
 - (g) Sex Offender Registry Address Verification Form #SOR 1L, May 2009;
 - (h) Sex Offender Registry Address Verification Form #SOR 1WT, May 2009;
 - (i) Sex Offender Registry Address Verification Form #SOR 1WL, May 2009; and
 - (j) Kentucky Sex Offender Registrant Responsibility Form, July 2006.[4-]
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Data Processing Section, 1250 Louisville Road, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: September 9, 2010

FILED WITH LRC: September 10, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 22nd day of October, 2010 at 9 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 15th day of October, 2010, five (5) work-days prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide accommodations, please notify us of your requirement by the 15th day of October, 2010. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the 1st day of November, 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: Emily M. Perkins, Kentucky State Police 919 Versailles Rd., Frankfort, Kentucky 40601, (502) 695-6391, Emilym.perkins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily M. Perkins

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation sets forth the provisions regarding the definitions, processes and forms necessary for the administration of the Sex Offender Registry.
 - (b) The necessity of this administrative regulation: To update the forms, definitions and procedures utilized in the registration of sex offenders in the Commonwealth of Kentucky.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the applicable forms, definitions, information collected and procedures for the registration of sex offenders.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the forms to be utilized by the Department of Kentucky State Police, the Department of Probation and Parole, and registrants in regard to registration, address verification and updating registrant information.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: Updates statute and form references; updates definitions and address verification procedures.
 - (b) The necessity of the amendment to this administrative regulation: To reflect changes in forms and procedures.
 - (c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation reflects the changes in the registration requirements and procedures, as well as the forms utilized by registrants, the Department of Probation and Parole, and the Department of Kentucky State Police.
 - (d) How the amendment will assist in the effective administration of the statutes: The registration periods in the Sex Offender Registration Act and the registration forms have changed.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All registrants, Department of Probation and Parole, and the Department of Kentucky State Police.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Registrants will be required to complete the applicable forms; the Department of Probation and Parole will collect the specified information and process the applicable forms; and the Department of Kentucky State Police will maintain the updated information and forms.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments will not result in any cost to the registrants and minimal if any additional costs to the Department of Probation and Parole or the Department of Kentucky State Police.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The registration process will be clarified and updated for registrants, Department of Probation and Parole, and the Department of Kentucky State Police.
 - (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
 - (a) Initially: Minimal if any additional costs.
 - (b) On a continuing basis: Minimal if any additional costs.
 - (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: No increase required.
 - (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. The process is applied

equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 17.500 and 520; 42 U.S.C. 14071; The Sex Offender Registration and Notification Act (Pub.L. 109-248).

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? Minimal if any additional costs.

(d) How much will it cost to administer this program for subsequent years? Minimal if any 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: See (4)(a)-(d) for explanation.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amendment)

704 KAR 3:303. Required core academic standards[~~program of studies~~].

RELATES TO: KRS 156.070, 156.160, 158.6451, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected outcomes for students and schools established in KRS 158.6451. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation incorporates by reference the Kentucky core academic standards[~~program of studies~~], which contains the general courses for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky core academic standards[~~Program of Studies~~].

Section 2. Incorporation by Reference. (1) The "Kentucky Core Academic Standards, June 2010"[~~Program of Studies for Kentucky Schools, Grades Primary-12", June 2006~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Curriculum Development, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.

TERRY HOLLIDAY, Ed.D., Commissioner

JOE BROTHERS, Chairperson

APPROVED BY AGENCY: August 18, 2010

FILED WITH LRC: August 23, 2010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 28, 2010, 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 (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 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 November 1, 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, Bureau of Operations and Support Services, 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 incorporates by reference the Kentucky Core Academic Standards, which contains the minimum content requirements across all content areas students shall meet before graduating from a Kentucky public high school.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.160.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation incorporates by reference the document that provides the specific minimum curriculum content requirements for Kentucky schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the document that provides the specific minimum curriculum content requirements for Kentucky schools.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: The amendment to this regulation both changes the name from the Program of Studies to Kentucky Core Academic standards and replaces the current content standards in English/language arts and mathematics with the new revised standards in the document incorporated by reference.

(a) How the amendment will change this existing administrative regulation: The amendment to this regulation both changes the name from the Program of Studies to Kentucky Core Academic standards and replaces the current content standards in English/language arts and mathematics with the new revised standards in the document incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: Changes to the Program of Studies document are necessary due to changes in the name of the document incorporated by reference and the new revised English/language arts and mathematics standards.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to establish courses of study to comply with the expected outcomes for students and schools established in KRS 158.6451.

(d) How the amendment will assist in the effective administration of the statutes: The Kentucky Core Academic Standards will assist schools in developing instructional courses primary through grade 12 that contain the minimum content required for high school

graduation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 school districts

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Districts will assist schools in aligning the educational programs in schools to meet the requirements in the Kentucky Core Academic Standards.

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

(a) Initially: The professional development to implement the new revised content standards in English/language arts and mathematics will be approximately \$1,000,000 for professional development at the statewide level. This was provided for in the 2010 state budget. The KDE will be funding the regional networks that are supporting the implementation of the standards but the districts will be covering the cost of their leadership team participants' travel and substitutes (if needed).

(b) On a continuing basis: The ongoing costs to support the implementation of standards the redirection of some state grant dollars and Race to the Top, if funded.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KDE administrative program 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 in fees will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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 will include the establishment of the networks to help implement the standards. These costs will be covered in part by redirection of state grant funds and RTTT funds if awarded. The cost to the school districts will be funding leadership team participants' travel and stipends or substitutes (if needed) to attend training. The school districts will also have costs involved with implementing the new standards in their districts. These costs would be permissible expenditures of current PD dollars.

(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? About \$1 million at the statewide level which will be covered

by dollars allocated by the legislature, redirection of some state grant dollars, and proposed federal funding.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing new standards for other content areas will be decreased due to this work with English/language arts and mathematics because capacity will be built around the process.

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
Department of Workforce Investment
Office of Employment and Training
(Amendment)

787 KAR 1:320. Priority of deductions from benefits.

RELATES TO: KRS 341.395, 26 U.S.C. 3304~~[Pub.L. 103-465, Sec. 702(b)]~~

STATUTORY AUTHORITY: KRS 151B.020(8), 341.115, 341.395(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.395(4) provides that amounts shall be deducted and withheld from unemployment benefit payments in accordance with priorities established in administrative regulation by the secretary. 26 U.S.C. 3304~~[Pub.L. 103-465, Sec. 702(b)]~~ requires that federal individual income tax from unemployment compensation be deducted and withheld if an individual receiving this compensation voluntarily requests the deduction and withholding. This administrative regulation establishes the priority of deductions from benefits.

Section 1. If deductions and withholding from benefit payments are required under more than one (1) statute or for more than one (1) purpose, the priority for deduction shall be as follows:

(1) Deduction of wages, remuneration in lieu of notice, and pension compensation as required under KRS 341.390~~[-]~~

(2) Deduction for recoupment of a previous overpayment as required under KRS 341.415~~[-]~~

(3) Child support obligations as required under KRS 341.392~~[-]~~

(4) Any other mandatory deduction imposed under a federal or Kentucky statute or administrative regulation; and

(5) Voluntary withholding of income tax requested by a claimant as provided;

(a) Under KRS 341.395 for federal income tax; or
(b) Under 103 KAR 18:070 for state income tax ~~[under KRS 341.395].~~

WILLIAM MONTEROSSO, Executive Director

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2010 at 10 a.m. at the offices of the Office of Employment and Training, 275 E. Main Street, 2nd floor, Executive Director's Office, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 2010, 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 November 1, 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: William Monterosso, Executive Director,

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Office of Employment and Training, 275 East Main, 2C; Frankfort, Kentucky 40602, phone (502) 564-5331, fax (502) 564-7452.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Monterosso, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides that amounts shall be deducted and withheld from unemployment benefit payments in accordance with priorities established in administrative regulation by the secretary.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the priority for deductions from unemployment benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will specify the requirements for the priority of deductions from unemployment benefits.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow recipients of unemployment benefits the option to have state income taxes withheld from their benefits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the option to withhold state income taxes from benefits. Providing this option is a service to the unemployed worker and also captures revenue for the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS 341.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a service to the unemployed worker by allowing them to voluntarily elect to have state income taxes withheld from their benefits. Additionally, the Commonwealth will benefit from the revenue generated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Recipients of unemployment benefits will be affected, and their participation is voluntary. The Finance and Administration Cabinet, Department of Revenue and the Education and Workforce Development Cabinet, Department of Workforce Investment, Division of Unemployment Insurance also will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Participation in the withholding would be voluntarily and would be part of the unemployment benefit claim filing process. The Office of Employment and Training would provide technical resources to accommodate the necessary programming updates. The Department of Revenue will be receiving the state income taxes that will be withheld.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There would be no cost to participate for the unemployed worker. However, if the unemployed worker chooses to participate the amount withheld would be 4 percent of their weekly benefit amount. The Office of Employment and Training will be responsible for funding the technical upgrades necessary.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Unemployment benefits are taxable wages. Currently, the state allows for federal taxes to be withheld from benefits. By allowing for the voluntary election to withhold state income taxes the unemployed workers will have paid the

necessary state withholding to the Commonwealth before they file their annual taxes thus allowing them to avoid penalty and interest that may accrue. Also, it is anticipated this will accelerate the collection of individual income taxes.

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

(a) Initially: It will be necessary that changes are made to the processing system. These programming changes will not be significant and will be absorbed in the course of normal operating expenses.

(b) On a continuing basis: There is no cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Unemployment Insurance is entirely federally funded. Unemployment Insurance administrative funds will be used to make the necessary programming changes.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There will be no fees necessary for this change. The unemployment insurance program is entirely federally funded and technical changes necessary will be funded by unemployment insurance administrative funds.

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

(9) TIERING: Is tiering applied? This amendment addresses the priority of deduction from unemployment benefits. The amendment will be applied uniformly to all individuals who elect to participate and tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Employment and Training, Division of Unemployment Insurance and the Finance and Administration Cabinet, Department of Revenue 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 341.395, Pub.L. 103-465 Sec. 702 (b), KRS 151 B.020(8), 341.115, 341.395(4)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are currently approximately 172,000 individuals who elect to have federal taxes withheld from their benefits. It is difficult to determine how many unemployed workers will elect to have state income taxes withheld. Of the unemployed workers who choose to enroll, four (4) percent of their weekly benefit amount will be withheld. Currently the minimum weekly benefit amount in Kentucky is \$39 per week and the maximum is \$415 per week. The weekly benefit amount is determined by the wages earned in covered employment during the base period.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There are currently approximately 172,000 individuals who elect to have federal taxes withheld from their benefits. It is difficult to determine how many unemployed workers will elect to have state income taxes withheld. Of the unemployed workers who choose to enroll, 4 percent of their weekly benefit amount will be withheld. Currently

the minimum weekly benefit amount in Kentucky is \$39 per week and the maximum is \$415 per week. The weekly benefit amount is determined by the wages earned in covered employment during the base period.

(c) How much will it cost to administer this program for the first full year? Implementation of this amendment will create no additional administrative costs, beyond technical upgrades, in the first year.

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:318. Electrical.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1910.301-1910.399

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. 29 C.F.R. 1910.301-1910.399 establishes the federal requirements relating to electrical safety. This administrative regulation establishes electrical safety standards to be enforced by the Office of Occupational Safety and Health in general industry.

Section 1. Definitions. (1) "Assistant Secretary" means Commissioner of Labor, Kentucky Department of Labor or Executive Director, Office of Occupational Safety and Health, Kentucky Department of Labor.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

Section 2. (1) General industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions established in Section 1 and the requirements in Section 3 of this administrative regulation:

(a) 29 C.F.R. 1910.301 through 29 C.F.R. 1910.399, and Appendices, revised July 1, 2010[2006; and

~~(b) The revision to Subpart S published in the February 14, 2007, Federal Register, Volume 72, Number 30 (72 Fed. Reg. 7400).~~

(2) The term "may not" as used in the federal regulations shall be considered a prohibition.

Section 3. (1) 29 C.F.R. 1910.333(b)(2)(iii)(C) is amended to read as follows: "If a lock cannot be applied, tagging procedures shall provide a level of safety equivalent to that obtained by the use of a lock, as outlined in paragraph (b)(2)(iii)(D)."

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 31, 2010

FILED WITH LRC: August 31, 2010 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Oct. 26, 2010 at 10 a.m. at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) work-

ing 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: Bob Elkins, Safety Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2010 and clarifies the use of the words "may not" in the federal regulations. Section 3 of this administrative regulation adds requirements which are worded differently than those required by OSHA. This section sets forth requirements pertaining to the use of tags, instead of locks, for tagging out electrical equipment. This requirement was inadvertently deleted, without approval from the Kentucky Occupational Safety and Health Standards Board, during a change to the regulation in August of 2007. On May 4, 2010, the Kentucky Occupational Safety and Health Standards Board unanimously adopted to restore this provision of the regulation. As a result, 803 KAR 2:318 must be amended to include the adopted changes. Before the inadvertent deletion of this provision, this specific amendment had been effective in the state of Kentucky since 1991. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. The amendment to the regulation is not new, but is being restored after an inadvertent deletion of the proposed wording in Section 3 occurred to the regulation in 2007. While the wording set forth in Section 3 of this regulation was deleted in 2007, it remained in all Kentucky OSH Program publications and employers were never informed of the change because it was accidentally changed without the authority of the Kentucky OSH Standards Board. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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 administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2010 and clarifies the use of the words "may not" in the federal regulations. Section 3 of this administrative regulation adds requirements which are worded differently than those required by OSHA. This section sets forth requirements pertaining to the use of tags, instead of locks, for tagging out electrical equipment. This requirement was inadvertently deleted, without approval from the Kentucky Occupational Safety and Health Standards Board, during a change to the regulation in August of 2007. On

May 4, 2010, the Kentucky Occupational Safety and Health Standards Board unanimously adopted to restore this provision of the regulation. As a result, 803 KAR 2:318 must be amended to include the adopted changes. Before the inadvertent deletion of this provision, this specific amendment had been effective in the state of Kentucky since 1991. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. The amendment to the regulation is not new, but is being restored after an inadvertent deletion of the proposed wording in Section 3 occurred to the regulation in 2007. While the wording set forth in Section 3 of this regulation was deleted in 2007, it remained in all Kentucky OSH Program publications and employers were never informed of the change because it was accidentally changed without the authority of the Kentucky OSH Standards Board. The inadvertent deletion was discovered by a Kentucky OSH employee in 2010 and the matter was presented to the Kentucky OSH Standards Board for a vote on May 4, 2010. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(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 does not add new requirements to the regulation; it merely amends an inadvertent deletion to the regulation which had been in place since 1991.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no costs are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment promotes worker safety and health throughout the Commonwealth and keeps the state program effective as the federal program.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

1. Federal statute or regulation constituting the federal mandate.

Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. The amendment to the regulation is not new, but is being restored after an inadvertent deletion of the wording in Section 3 occurred to the regulation in 2007. While the wording proposed in Section 3 of this regulation was deleted in 2007, it remained in all Kentucky OSH Program publications and employers were never informed of the change because it was accidentally changed without the authority of the Kentucky OSH Standards Board. The inadvertent deletion was discovered by a Kentucky OSH employee in 2010 and the matter was presented to the Kentucky OSH Standards Board for a vote on May 4, 2010. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. The amendment to the regulation is not new, but is being restored after an inadvertent deletion of the wording in Section 3 occurred to the regulation in 2007. While the wording proposed in Section 3 of this regulation was deleted in 2007, it remained in all Kentucky OSH Program publications and employers were never informed of the change because it was accidentally changed without the authority of the Kentucky OSH Standards Board. The inadvertent deletion was discovered by a Kentucky OSH employee in 2010 and the matter was presented to the Kentucky OSH Standards Board for a vote on May 4, 2010. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 3 of this administrative regulation carries requirements which are different than those required by OSHA. This section sets forth requirements pertaining to the use of tags, instead of locks, for tagging out electrical equipment. This provision was inadvertently deleted from the regulation without the approval of the Kentucky OSH Standards Board in 2007. It was originally adopted and effectively enforced by the Kentucky OSH Program since 1991. On May 4, 2010, the Kentucky OSH Standards Board voted to restore the change to the regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Section 3 of this administrative regulation carries requirements which are different than those required by OSHA. This section sets forth requirements pertaining to the use of tags, instead of locks, for tagging out electrical equipment. This provision was inadvertently deleted from the regulation without the approval of the Kentucky OSH Standards Board in 2007. It was originally adopted and effectively enforced by the Kentucky OSH Program since 1991. On May 4, 2010, the Kentucky OSH Standards Board voted to restore the accidental change to the regulation.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in general industry activities.

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3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051 and 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? This amendment will not impose any cost to the employer, it simply restores a requirement of the regulation that has been effective since 1991 but was inadvertently deleted without approval from the Kentucky OSH Standards Board during a regulation change in 2007.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost to the employer, it simply restores a requirement of the regulation that has been effective since 1991 but was inadvertently deleted without approval from the Kentucky OSH Standards Board during a regulation change in 2007.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: non-applicable

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:400. Adoption of 29 C.F.R. 1926.1-29, 1926.4, 1926.6. [Part 1926.4-14].

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 ~~require~~authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. ~~[Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board.]~~ The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.

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 KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" is defined by KRS 338.015(3).

Section 2. The construction industry shall comply with the following federal regulation published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1926.1-4, revised July 1, 2010; and

(2) The addition of Section 29 C.F.R.1926.6 as published in the August 9, 2010 Federal Register Volume 75, Number 152. [The

~~Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.1-4 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 C.F.R. Part 1926.1 shall read as follows: The provisions of this administrative regulation incorporate and extend the applicability of established federal standards contained in 29 C.F.R. Part 1926 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021.~~

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. – 4:30 p.m. (EST), Monday through Friday.]~~

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2010, at 10 a.m. at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal regulations. Section 2 requires the construction industry to comply with the requirements of 29 Code of Federal Regulations C.F.R. 1926.1 through 1926.4, revised July 1, 2010, thus updating the C.F.R.; and Section 1926.6 is added that lists consensus standards that have been incorporated by reference. This new section was published in the August 9, 2010 Federal Register, Volume 75, Number 152. On August 9, 2010, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register, revising its Cranes and Derricks in Construction standards by promulgating a new subpart, CC, in the 29 C.F.R. 1926 standards for the construction industry. This section is an addition that contains references to consensus standards published by standards developing organizations (SDO). This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rule-making likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010

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promulgation date of final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. 29 C.F.R. 1952.5 mandates the Kentucky OSH Program to implement this requirement no later than February 8, 2011. The amendment to 803 KAR 2:400 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

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

(a) How the amendment will change this existing administrative regulation: This section of the administrative regulation, 1926.6, is added to list consensus standards that have been incorporated by reference. Section 1 of this administrative regulation, defines terms not found in the federal regulations. Section 2 requires the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.1 through 1926.4, revised July 1, 2010, thus updating the C.F.R.; and Section 1926.6 is added that lists consensus standards that have been incorporated by reference as published in the August 9, 2010 Federal Register, Volume 75, Number 152. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. This amendment to 803 KAR 2:400 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not have to take any action to comply with this amendment. This amendment adds a section which lists the applicable consensus standards that have been 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): This amendment requires no expenditures by entities in

question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953.

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

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

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covered by KRS Chapter 338 and engaged in construction activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? This amendment will not impose any cost.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET

Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:402. General safety and health provisions.

RELATES TO: 29 C.F.R. 1926.20-~~1926.30, 1926.35~~~~[1926.35, 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. 1926.20 to 1926.30 and 1926.32 to 1926.35 establish federal safety and health requirements relating to construction.~~[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 general safety and health standards to be enforced by the Department of Workplace Standards in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" is defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2~~[4]~~ The construction 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. 1926.20-1926.30 and 1926.32-1926.35, revised July 1, 2010~~[2008]~~ and

(2) 29 C.F.R. 1926.31 is removed and reserved as published in the August 9, 2010 Federal Register, Volume 75, Number 152.~~[The addition of section 29 C.F.R. 1926.20(f) as published in the December 12, 2008 Federal Register, Volume 73, Number 240.]~~

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2010, at 10 a.m. at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal regulations. Section 2 requires the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.20 through 1926.30 and 1926.32 through 1926.35, revised July 1, 2010, thus updating the C.F.R.. 29 C.F.R. 1926.31 is removed and reserved as published in the August 9, 2010 Federal Register, Volume 75, Number 152. On August 9, 2010, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register, revising its Cranes and Derricks in Construction standards by promulgating a new subpart, CC, in the 29 C.F.R. 1926 standards for the construction industry. 1926.31 that was removed contained references to consensus standards that was a duplication of information found in another standard. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. 29 C.F.R. 1952.5 mandates that the Kentucky OSH Program also implements this requirement no later than February 8, 2011. The amendment to 803 KAR 2:402 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and

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338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

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

(a) How the amendment will change this existing administrative regulation: This section of the administrative regulation, 1926.31, was removed because it concerned consensus standards incorporated by reference that were already contained in another standard. Section 2 requires employers in the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.20 through 1926.30 and 1926.32 through 1926.35. Section 2 also updates the C.F.R. to July 1, 2010 and removes 1926.31 as published in the August 9, 2010 Federal Register, Volume 75, Number 152.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. This amendment to 803 KAR 2:402 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not have to take any action to comply with this amendment. This amendment adds a section which lists the applicable consensus standards that have been 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): This amendment requires no expenditures by entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continu-

ing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051 and 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? N/A

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(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:411. Scaffolds.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. ~~1926.450-454~~[1926]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1926

NECESSITY, FUNCTION, AND FUNCTION: KRS 338.051(3) ~~requires~~[authorizes] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. [KRS 338.061(2) ~~provides that the board may incorporate by reference established federal standards and national consensus standards.~~] The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" is defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. The construction 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. 1926.450-1926.454, revised July 1, 2010; and

(2) The revision of 29 C.F.R. 1926.450, paragraph (a), as published in the August 9, 2010 Federal Register, Volume 75, Number 152. [The requirements relating to scaffolds shall be governed by 29 C.F.R. Part 1926, as published in the Code of Federal Regulations, July 1, 1996.]

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

(a) 29 C.F.R. Part 1926.450-453, revised as of July 1, 1996,

~~published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.~~

~~(b) The revisions to 29 C.F.R. 1926, Subpart L, "Scaffolds", as published in the Federal Register, Volume 61, Number 170, August 30, 1996, are incorporated by reference.~~

~~(c) The revisions to 29 C.F.R. 1926, Subpart L, "Scaffolds", as published in the Federal Register, Volume 61, Number 228, November 25, 1997, are incorporated by reference.~~

~~(2) This material may be inspected and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. through 4:30 p.m. (ET), Monday through Friday.]~~

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2010, at 10 a.m. at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal regulations. Section 2 requires the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.450 through 1926.454, revised July 1, 2010, thus updating the C.F.R.. 29 C.F.R. 1926.450 is revised as published in the August 9, 2010 Federal Register, Volume 75, Number 152. On August 9, 2010, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register, revising its Cranes and Derricks in Construction standards by promulgating a new subpart, CC, in the 29 C.F.R. 1926 standards for the construction industry. 1926.450 that was revised, thus removing references to crane or derrick suspended personnel platforms. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. 29 C.F.R. 1952.5 mandates that the Kentucky OSH Program also implement this requirement no later than February 8, 2011. The amendment to 803 KAR 2:411 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How this administrative regulation conforms to the content

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of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

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

(a) How the amendment will change this existing administrative regulation: Section 1 defines terms not found in the federal regulations. Section 2 requires employers in the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.450 through 1926.454. Section 2 also updates the C.F.R. to July 1, 2010 and removes language from 1926.450 that is no longer applicable as published in the August 9, 2010 Federal Register, Volume 75, Number 152.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. This amendment to 803 KAR 2:411 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not have to take any action to comply with this amendment. This amendment removes language from the Scaffolds standard that now belongs in the new Cranes and Derricks in Construction standard.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment requires no expenditures by entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051 and 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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,

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fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:412. Fall protection.

RELATES TO: KRS 338.015, 338.031, 338.051, 338.061, 29 C.F.R. 1926.500-1926.503

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061(1) and 338.061(1) require[requires, and KRS 338.061(1)] authorizes, the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations.[KRS 338.061(2) authorizes the board to use established federal standards and national consensus standards in Kentucky.] This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance[office in the construction industry] relating to fall protection. This administrative regulation requires employers to comply with federal standards except for certain limited construction activities in which the fall protection trigger height is changed from six (6) feet to ten (10) feet. When engaged in those limited activities, employers may choose compliance options not provided in the federal standards.[Although this administrative regulation differs from the federal standards, it comports with federal enforcement policy.]

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Eave" means the horizontal lower edge of a roof.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Fall restraint system" means a system that:

(a) Is used to prevent an employee from falling any distance consisting of an anchorage, connectors, and body belt or harness; and

(b) May include lanyards, lifelines, or rope grabs designed for that purpose.

(6) "Guardrail system" is defined in 29 C.F.R. 1926.500(b).

(7) "Leading edge" is defined in 29 C.F.R. 1926.500(b).

(8) "Personal fall arrest system" is defined in 29 C.F.R. 1926.500(b).

(9) "Rake edge" means the roof edge at the gable end of a structure.

(10) "Residential construction" means construction work on a standalone single family dwelling, duplex, threeplex, or fourplex structure.

(11) "Roofing work" is defined in 29 C.F.R. 1926.500(b).

(12) "Safety monitoring system" is defined in 29 C.F.R. 1926.500(b).

(13) "Safety net system" means a system used in accordance with 29 C.F.R. 1926.502(c).

(14) "Slide guard system" means an equipment system that:

(a) Is designed to prevent employees from sliding off a sloped roof to a lower level; and

(b) Consists of manufactured roof brackets used in conjunction with dimensional lumber or may be a site-built system of similar design and dimension.

(15) "Slope" means the roof vertical rise in inches for every horizontal twelve (12) inch length, with:

(a) The horizontal twelve (12) inch length referred to as the run;

(b) The slope referred to as pitch; and

(c) The slope expressed with the rise (vertical) mentioned first and the run (horizontal) mentioned second, such as "4 in 12" or "4 on 12" and written as "4 in 12" or "4:12" or "4/12."

(16) "Standard" is defined in KRS 338.015(3).

(17) "Three (3) points of contact" means either:

(a) One (1) hand and both feet; or

(b) One (1) foot and both hands.

(18) "Visible defect" means saw cuts, warps, twists, holes, splits, breaks, or gouges.

(19) "Walking/working surface" is defined in 29 C.F.R. 1926.500(b).

Section 2. (1) The construction industry shall comply with the following federal regulations, except as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation:

(a) 29 C.F.R. 1926.500 through 29 C.F.R. 1926.501(b)(12), revised July 1, 2010;[2005; and]

(b) 29 C.F.R. 1926.501(b)(14) through 29 C.F.R. 1926.503, revised July 1, 2010; and

(c) The amendment to 29 C.F.R. 1926.500 as published in the August 9, 2010 Federal Register, Volume 75, Number 152.[2005-]

(2) An employer may utilize Appendices A, B, C, D, and E to Subpart M of 29 C.F.R. Part 1926, revised July 1, 2005, except the Sample Fall Protection Plan for Residential Construction found in Appendix E.

(3) The Nonmandatory Sample Fall Protection Plan for Residential Construction may be used and is incorporated by reference in Section 4 of this administrative regulation.

Section 3. Residential Construction. (1) General.

(a) While engaged in residential construction activities, employees working ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or a measure provided in this section while exposed to any of the following:

1. Unprotected sides and edges;

2. Leading edges;

3. Hoist areas;

4. Form work and reinforcing steel; or

5. Roofing work on roof slopes three (3) in twelve (12) or less.

(b) The employer shall use a measure that meets the criteria established in this section and shall not be required to demonstrate that it is infeasible or creates a greater hazard to use guardrail systems, safety net systems, or personal fall arrest systems before using a measure provided in this section.

(c) If an employer can demonstrate that it is infeasible or creates a greater hazard to use guardrail systems, safety net systems, personal fall arrest systems, or a measure established in this section, for a particular workplace situation, the employer shall develop and implement a written fall protection plan which meets the requirements of 29 C.F.R. 1926.502(k) for a particular workplace situation in lieu of implementing guardrail systems, safety net systems, personal fall arrest systems, or a measure provided in this section.

(2) Floor system.

(a) Employees engaged in residential construction floor system work exposed to a fall hazard ten (10) feet or more above a lower level to the exterior of the structure being constructed shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or personal fall restraint systems.

(b) Employees engaged in residential construction floor system work exposed to an interior fall hazard ten (10) feet or more above

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a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or, if the floor joists or trusses are eighteen (18) inches on center or less, the measures established in this paragraph.

1. The first joist or truss shall be placed into position and secured by workers on the ground, from ladders, or from a scaffold system.

2. Successive joists or trusses shall be placed into position and then secured from a secured temporary platform.

3. The temporary platform shall be at least eighteen (18) inches wide and secured.

4. An employee performing the work shall work from the platform and remain on the platform.

(c) Employees engaged in leading edge residential construction floor system work ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or, if the floor joists or trusses are eighteen (18) inches on center or less, the measures established in this paragraph.

1. The first row of floor sheathing shall be placed into position, installed, and secured from the ground, from ladders, from a scaffold system, or from a secured temporary platform at least eighteen (18) inches wide.

2. An employee performing the work shall work from the platform and remain on the platform.

3. After the first row of sheathing has been installed and secured, only employees performing the installation shall work from the established and secured deck or from a secured temporary platform at least eighteen (18) inches wide.

4. After two (2) rows of sheathing have been installed, only an employee performing the installation shall work from the established and secured deck or from a secured temporary platform at least eighteen (18) inches wide.

5. All other employees shall remain at least four (4) feet away from the leading edge.

(3) Roof system.

(a) Employees engaged in residential construction roof truss or rafter work ten (10) feet or more above a lower level shall:

1. Be protected by guardrail systems, safety net systems, personal fall arrest systems; or

2. Personal fall restraint systems or implement the measure established in paragraph (b) of this subsection.

(b) The employee releasing the hoist line or installing the bracing shall:

1. Move or work from within the webbing of the truss or within the rafters on a secured temporary platform at least eighteen (18) inches wide; or

2. Maintain three (3) points of contact while moving or working within the webbing of the trusses or within the rafters.

(c) Employees shall not move or work outside the webbing of the trusses or outside the rafters unless utilizing a personal fall arrest system or personal fall restraint system.

(d) Employees engaged in roof sheathing may utilize a slide guard system in accordance with the provisions established in subsection (6) of this section.

(e) Employees engaged in residential construction attic work ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or the measures established in this paragraph.

1. Employees shall move or work from within the webbing of the trusses or within the rafters on a secured temporary platform at least eighteen (18) inches wide.

2. Employees shall remain on the platform while performing the work.

(4) Roofing work.

(a) Supplies or materials shall not be placed or stored within six (6) feet of the roof edge.

(b) A person shall not ascend, work on, or descend the roof within six (6) feet of the rake edge except while applying or removing roofing materials or equipment.

(c) Warning line systems.

1. Employees engaged in residential construction roofing work ten (10) feet or more above a lower level on roof slopes three (3) in

twelve (12) or less shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or a combination of warning line system and guardrail system, warning line system and safety net system, warning line system and personal fall arrest system, warning line system and personal fall restraint system, or warning line system and safety monitoring system. On roofs fifty (50) feet or less in width, a safety monitoring system alone may be used. Appendix A to Subpart M of 29 C.F.R. Part 1926, revised July 1, 2005, may be used as a guideline to determine roof width.

2. Employees performing residential construction roofing work between a roof edge and a warning line shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or personal fall restraint systems.

(5) Slide guard systems.

(a) Employers and employees installing residential construction roof sheathing with a ground to eave height up to twenty-five (25) feet or engaged in residential construction roofing work with a ground to eave height up to twenty-five (25) feet may utilize a slide guard system in accordance with the provisions established in this subsection with a safety monitor system meeting the requirements of 29 C.F.R. 1926.502(h)(1) through (h)(4).

(b) Slide guards systems shall not be used with a slope less than four (4) in twelve (12) or greater than eight (8) in twelve (12).

(c) Employers and employees installing residential construction roof sheathing who utilize a slide guard system shall install the slide guard system immediately after the first row of sheathing is installed.

(d) Slide guard systems shall comply with the following provisions.

1. Each slide guard system shall be installed, utilized, and removed under the supervision of a competent person.

2. Each slide guard system shall be used in accordance with the manufacturer's specifications, limitations, and recommendations.

3. Each slide guard system shall be maintained in accordance with the manufacturer's specifications and recommendations.

4. The manufacturer's specifications shall be available at the jobsite for review if the slide guard system is not utilized and maintained in accordance with this subsection.

5. Each slide guard system shall be inspected for visible defects by a competent person before each work shift and after any occurrence which could affect the slide guard system's structural integrity.

6. For each slide guard system, each damaged or weakened component shall be immediately replaced or repaired.

7. For each slide guard system, if replacement or repair of a damaged or weakened component is not feasible, work shall be suspended until:

a. The damaged or weakened component is replaced or repaired; or

b. Another form of fall protection is utilized.

8. The face of all slide guard members shall be ninety (90) degrees perpendicular to the roof surface.

9. Unless required otherwise by the manufacturer's specifications, all perpendicular slide guard members shall:

a. Be number two (2) or better construction grade lumber;

b. Have a minimum dimension of two (2) inches nominal by six (6) inches nominal;

c. Use lumber that is free from cracks or other visible defects; and

d. Use other type of material that meets the same dimensions and is equivalent in strength, with the engineering specifications available at the site for review.

10. All perpendicular slide guard members shall be secured to the brackets and protected against cantilevering or failure due to material flex.

11. All slide guard systems shall be on the same walking/working surface as the employee being protected.

12. A continuous slide guard system below the walking or working area shall be installed along the eave no closer than six (6) inches from the eave and remain in place until the work is completed.

13. Additional continuous slide guards systems shall be in-

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stalled below each walking or working area no more than eight (8) feet apart vertically.

14. The additional slide guards shall be installed using the following procedure:

- a. The employee, while standing on the slide guard below, shall secure the roof bracket, or jack, for the next slide guard;
- b. The employee shall install and secure the next perpendicular slide guard member;
- c. The employee shall then climb up to the new slide guard to continue work;
- d. This sequence shall be repeated as work proceeds up the roof;
- e. Once the work is complete and the slide guards are to be removed, the employee shall climb down to the next lower slide guard;
- f. The employee shall remove the perpendicular slide guard member from the slide guard above;
- g. The employee shall remove the roof brackets, or jacks, above;
- h. The employee shall repeat the sequence down the roof; and
- i. When all above slide guards have been removed, the slide guards at the eave shall be removed.

15. Manufactured roof brackets, or jacks, shall:

- a. Be a minimum of six (6) inch brackets;
- b. Be secured according to the manufacturer's specifications, limitations, and recommendations;
- c. Bear on a solid surface so that all anchors penetrate the roof's surface and the rafter or truss below, unless specified otherwise by the manufacturer's specifications;
- d. Not be spaced greater than eight (8) feet apart horizontally or according to the manufacturer's specifications, whichever is less; and,
- e. Have the manufacturer's specifications available at the job-site for review if the manufactured roof brackets, or jacks, are not utilized in accordance with the provisions established in this subparagraph.

16. Nonmanufactured, job, or site made slide guard systems shall comply with the provisions established in this subparagraph.

- a. Horizontal members shall be anchored with a minimum of two (2) sixteen (16) "penny", or 16d, common nails at least every four (4) feet so that all nails penetrate the roof's surface and the rafter or truss below.
- b. The face of all slide guard members shall be ninety (90) degrees perpendicular to the roof surface.
- c. Horizontal and perpendicular members shall be number two (2) or better construction grade lumber and have a minimum dimension of two (2) inches nominal by six (6) inches nominal.
- d. Perpendicular members shall be anchored to the horizontal members with a minimum of one (1) sixteen (16) "penny", or 16d, common nail at least every two (2) feet.
- e. The perpendicular member shall be provided with support bracing at least every six (6) feet.
- f. More than one (1) person shall not occupy any given eight (8) feet of a job made slide guard system.
- g. Engineering specifications shall be available at the site for review if the design or installation does not meet the minimum specifications established in this subparagraph. An engineer's seal shall not be required. Engineering specifications shall establish that nonmanufactured, job, or site made slide guard systems shall be equivalent to a system constructed in accordance with the provisions established in this subparagraph. ~~[Section 4. Incorporation by Reference. (1) A "Non-Mandatory Sample Fall Protection Plan for Residential Construction," August 2005, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Labor, 1047 US Highway 127 South, Suite 4, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the agency's Web site at www.labor.ky.gov.~~

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on October 26, 2010, at 10 a.m. at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards to be enforced by the Division of OSH Compliance in the construction industry relating to fall protection, especially in residential construction. Section 1 defines terms for the regulation. Section 2 requires the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.500 through 1926.501(b)(12) and 1926.501(b)(14) through 1926.503, revised July 1, 2010, thus updating the C.F.R.. 29 C.F.R. 1926.500 is amended as published in the August 9, 2010 Federal Register, Volume 75, Number 152. Section 3 lists the Kentucky requirements for residential construction that are more stringent than the federal standards. On August 9, 2010, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register, revising its Cranes and Derricks in Construction standards by promulgating a new subpart, CC, in the 29 C.F.R. 1926 standards for the construction industry. 1926.500 that was amended removed references to fall protection for cranes and derricks since they are now contained in the new Cranes and Derricks in Construction subpart. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. 29 C.F.R. 1952.5 mandates that the Kentucky OSH Program also implements this requirement no later than February 8, 2011. The amendment to 803 KAR 2:412 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

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

(a) How the amendment will change this existing administrative regulation: Section 2 of the administrative regulation, 1926.500, was amended because it contained standards that have been incorporated into another more appropriate standard. Section 2 requires employers in the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.500 through 1926.501(b)(12) and 1926.501(b)(14) through 1926.503, revised July 1, 2010, thus updating the C.F.R. 29 C.F.R. 1926.500 is amended as published in the August 9, 2010 Federal Register, Volume 75, Number 152.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. This amendment to 803 KAR 2:412 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not have to take any action to comply with this amendment. This amendment adds a section which lists the regulation in which certain requirements for cranes and derricks are shifted to the new standard.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment requires no expenditures by entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to

implement these revisions.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051 and 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost.

Note: If specific dollar estimates cannot be determined, provide

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a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:413. Subpart N - Helicopters, hoists, elevators, and conveyors. [Adoption of 29 C.F.R. Part 1926.550-556.]

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.550-556
STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 ~~require~~[authorize] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. ~~[Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board.]~~ The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.]~~

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined in KRS 338.015(10).

(7) "National consensus standard" is defined in KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" is defined in KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. The Construction 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. 1926.550 - 1926.556, revised July 1, 2010; and

(2) The revision of 29 C.F.R. 1926.550 and 553 as published in the August 9, 2010 Federal Register, Volume 75, Number 152.

Section 3. (1) The language in paragraph (2) of this subsection shall apply in lieu of 29 C.F.R. 1926.552(b)(8).

(2) All material hoists shall conform to the requirements of ANSI A10.5-1969, Safety Requirements for Material Hoists, with the exception that material hoists manufactured prior to January 1, 1970 may be used with a drum pitch diameter at least eighteen (18) times the normal rope diameter provided the hoisting wire rope is at least equal in flexibility to 6 x 37 classification wire rope. ~~[The Occupational Safety and Health Standards Board hereby adopts 29 C.F.R. Part 1926.550 - 556 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:~~

(1) 29 C.F.R. 1926.550(b)(2), "Cranes and Derricks," shall be

revised as follows: revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987 are incorporated by reference.

(a) Additions to 29 C.F.R. 1926.550 (Section g), "Cranes and Derricks," as published in Federal Register, Volume 53, Number 148, August 2, 1988, are incorporated by reference.

(b) Additions to 29 C.F.R. 1926.550, as published in the Federal Register, Volume 54, Number 73, April 18, 1989, is incorporated by reference.

(c) The addition to 29 C.F.R. 1926.550, "Cranes and Derricks", as published in Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(d) The revisions to 29 C.F.R. 1926.550, "Cranes and Derricks", as published in Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference.

(2) 29 C.F.R. 1926.552(b)(8) of the paragraph on "Material Hoists," shall read as follows: All material hoists shall conform to the requirements of ANSI A10.5-1969, Safety Requirements for Material Hoists, with the exception that material hoists manufactured prior to January 1, 1970 may be used with a drum pitch diameter at least eighteen (18) times the normal rope diameter provided the hoisting wire rope is at least equal in flexibility to 6 x 37 classification wire rope.

(3) 29 C.F.R. 1926.552(c)(15), "Material Hoists, Personnel Hoists and Elevators," shall be revised as follows: revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987 are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2010, at 10 a.m. at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal regulations. Section 2 requires the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.550 and 553, revised July 1, 2010, thus updating the C.F.R.. 29 C.F.R. 1926.550 and 553 are revised as published in the August 9, 2010 Federal Register, Volume 75, Number 152. Section 3 states that the language in paragraph (2) of Section 3 shall amend and apply in lieu of 29 C.F.R. 1926.552(b)(8). On August 9, 2010, the Occupational Safety and Health Administration (OSHA) pub-

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lished a final rule in the Federal Register, revising its Cranes and Derricks in Construction standards by promulgating a new subpart, CC, in the 29 C.F.R. 1926 standards for the construction industry. 1926.550 was revised by redesignating it as a section of a new subpart, and .553 was revised by removing references to cranes and derricks, which are now covered in subpart CC. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. 29 C.F.R. 1952.5 mandates that the Kentucky OSH Program also implements this requirement no later than February 8, 2011. The amendment to 803 KAR 2:413 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

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

(a) How the amendment will change this existing administrative regulation: Section 1 defines terms not found in the federal regulations. Section 2 requires employers in the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.550 through 1926.556. Section 2 also updates the C.F.R. to July 1, 2010 and redesignates 1926.550 to a more appropriate standard in subpart CC, as published in the August 9, 2010 Federal Register, Volume 75, Number 152, as well as clarification of .553 which no longer applies to cranes and derricks, also published in the August 9, 2010 Federal Register. Section 3(2) amends and applies in lieu of 29 C.F.R. 1926.552(b)(8).

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. This amendment to 803 KAR 2:413 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and

public sector employers in the Commonwealth engaged in construction activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not have to take any action to comply with this amendment. This amendment removes language from the Scaffolds standard that now belongs in the new Cranes and Derricks in Construction standard.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment requires no expenditures by entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953.

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

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

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responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1926 and 1926.600.

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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:414. Motor vehicles, mechanized equipment, and marine operations.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1926

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires~~authorizes~~ the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations.~~[KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards.]~~ The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

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 KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" is defined by KRS 338.015(3).

Section 2. The construction 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. 1926.600-1926.606, revised July 1, 2010; and

(2) The revision of 29 C.F.R. 1926.600 as published in the August 9, 2010 Federal Register, Volume 75, Number 152.~~[Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Chapter 29, Part 1926.600-606 of the Code of Federal Regulations, revised as of July 1, 1998, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration;~~

~~(b) The revision to 29 C.F.R. 1926.602 "Material Handling Equipment", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained at Kentucky Department of Labor, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. to 4:30 p.m. (ET), Monday through Friday.]~~

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2010, at 10 a.m. at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1 defines terms not found in the federal regulations. Section 2 requires the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.600, revised July 1, 2010, thus updating the C.F.R.. 29 C.F.R. 1926.600(a)(6) is revised as published in the August 9, 2010 Federal Register, Volume 75, Number 152. On August 9, 2010, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register, revising its Cranes and Derricks in Construction standards by promulgating a new subpart, CC, in the 29 C.F.R. 1926 standards for the construction industry. 1926.600 referenced the requirements of section (a)(15) in 1926.550. Since 1926.550 was redesignated as a section of a new subpart, this revision of.600 moves the requirements of.550(a)(15) to 1926.600. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1926 and

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1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. 29 C.F.R. 1952.5 mandates that the Kentucky OSH Program also implements this requirement no later than February 8, 2011. The amendment to 803 KAR 2:414 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

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

(a) How the amendment will change this existing administrative regulation: Section 1 defines terms not found in the federal regulations. Section 2 requires employers in the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.600 through 1926.606. Section 2 also updates the C.F.R. to July 1, 2010 and revises 1926.600(a)(6) as published in the August 9, 2010 Federal Register, Volume 75, Number 152.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. This amendment to 803 KAR 2:414 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not have to take any action to comply with this amendment. This amendment removes language from the Scaffolds standard that now belongs in the new Cranes and Derricks in Construction standard.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment requires no expenditures by entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all with a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction activi-

ties.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051 and 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:417. Steel erection.

RELATES TO: 29 C.F.R. 1926.750-1926.761[~~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. 1926.750 to 1926.761 establish the federal requirements relating to steel erection.[~~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 standards to be enforced by the Department of Workplace Standards in the construction industry relating to steel erection.

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration, except as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation:

(1) 29 C.F.R. 1926.750 through 1926.761, and Appendices, revised July 1, 2010[~~2008~~]; and

(2) The amendment to 29 C.F.R. 1926.754 as published in the May 17, 2010 Federal Register, Volume 75, Number 94; and [1926.761 as published in the December 12, 2008 Federal Register, Volume 73, Number 240].

Section 3. Fall Hazards. (1)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(a)(1).

(b) Each employee engaged in a steel erection activity who is on a walking/working surface with an unprotected side or edge ten

(10) feet or more above a lower level shall be protected from fall hazards by guardrail systems, safety net systems, personal fall arrest systems, positioning device systems, or fall restraint systems.

(2)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(a)(3).

(b) Connectors and employees working in controlled decking zones shall be protected from fall hazards in accordance with subsections (5) and (6) of this section, respectively.

(3)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(b)(1).

(b) Each connector shall be protected in accordance with subsection (2) of this section from fall hazards of ten (10) feet or more above a lower level.

(4)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(b)(3).

(b) Each connector shall be provided with, wear, and utilize, at heights of ten (10) feet or more above a lower level, a personal fall arrest system, positioning device system, or fall restraint system; or be provided with other means of protection from fall hazards in accordance with subsection (1) of this section.

(5)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(c).

(b) A controlled decking zone (CDZ) may be established in that area of the structure over six (6) feet and up to ten (10) feet above a lower level if metal decking is initially being installed and forms the leading edge of a work area. In each CDZ, the following shall apply:

1. The language in subparagraph 2 of this paragraph shall apply in lieu of 29 C.F.R. 1926.760(c)(1).

2. Each employee working at the leading edge in a CDZ shall be protected from fall hazards of ten (10) feet or more above a lower level.

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on October 26, 2010, at 10 a.m. at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2010 and establishes the amendments to 29 C.F.R. 1926.754 published in the May 17, 2010 Federal Register, Volume 75, Number 94, which adds a non-mandatory note to the OSHA standards regarding existing Federal Highway Administration regulations. Additionally, Section 2 also establishes the amendments to 29 C.F.R. 1926.753 published in the August 9, 2010 Federal Register, Volume 75, Number 152, which removes hoisting and rigging standards from the original Crane standard, which has been removed and re-

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served, and places them in the new Subpart CC. Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section sets forth requirements pertaining to work at levels of 10 feet or more above a lower level. This provision has been in place since December 16, 2002. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment. As a result of the adoption of the final rule published in the March 17, 2010 Federal Register 803 KAR 2:417 must be amended to include the adopted changes. After a fatal highway accident occurred on May 15, 2004, that killed three occupants of a passenger vehicle, an investigation was conducted and the probable cause of the accident was determined to be insufficient design and installation of a steel girder. Had the construction project followed Federal Highway Administration (FHWA) regulations the accident may have been prevented. Even though the fatality did not involve employees of the worksite, OSHA believes that the knowledge of the FHWA requirements will enhance the safety of employees working on similar worksites where structural steel is used. Therefore a nonmandatory note informing construction employers of FHWA requirements is being added to 29 C.F.R. 1926.754.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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 administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 of this administrative regulation updates the C.F.R. to July 1, 2010 and establishes the amendments to 29 C.F.R. 1926.754 published in the May 17, 2010 Federal Register, Volume 75, Number 94, which adds a non-mandatory note to the OSHA standards regarding existing Federal Highway Administration regulations. Also amended is 29 C.F.R. 1926.753 as published in the August 9, 2010 Federal Register. Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section sets forth requirements pertaining to work at levels of 10 feet or more above a lower level.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirement, providing all a clear understanding of the

requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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 does not add occupational safety and health requirements of the employer, it merely adds a nonmandatory note regarding FHWA regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no cost are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplace.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953.

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment to 1926.754 did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. 29 C.F.R. 1926.753 as published in the August 9, 2010 Federal Register, Volume 75, Number 152, is required to be adopted unless Kentucky has an effective alternative to the final rule. Kentucky does not have an alternative to this final rule. Consequently, it must incorporate this final rule by February 8, 2011. This amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is

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mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment to 1926.754 did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment. OSHA's amendment to 1926.753 is required to be adopted by Kentucky since there is not an effective alternative. It was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section sets forth requirements pertaining to work at levels of 10 feet or more above a lower level. This provision has been in place since December 16, 2002.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section sets forth requirements pertaining to work at levels of 10 feet or more above a lower level. This administrative regulation imposes the same requirements required by the federal mandate and retains the more protective twenty-one (21) year old ten (10) foot steel erection fall hazard protection requirement applicable in the Commonwealth of Kentucky. This provision has been in place since December 16, 2002.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051 and 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? N/A

(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? This amendment will not impose any cost to the employer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost to the employer.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.800-1926.804, 1926 Subpart S[A] App. A

STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1926.800-1926.804 and Subpart S App. A establish federal requirements relating to underground construction, caissons, cofferdams, and compressed air. This administrative regulation establishes the underground construction, caissons, cofferdams, and compressed air standards to be enforced by the Division [Office] of Occupational Safety and Health in the area of construction.

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 KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" is defined by KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.800 - 1926.804, and 29 C.F.R. 1926 Subpart S Appendix A, revised as of July 1, 2010; and

(2) The amendment to 29 C.F.R. 1926.800 as published in the August 9, 2010 Federal Register, Volume 75, Number 152. [The construction industry shall comply with the requirements of 29 C.F.R. 1926.800 through 1926.804, and 29 C.F.R. 1926 Subpart S Appendix A, revised as of July 1, 2006]

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2010, at 10 a.m. at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: 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.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates 29 C.F.R. 1926.800-804 to July 1, 2010 and establishes the amendment to 29 C.F.R. 1926.800 published in the August 9, 2010 Federal Register, Volume 75, Number 152. This amendment removes hoisting and rigging standards from the original crane standard, which has been removed and reserved, and places them in the new cranes and derricks standard in Subpart DD. On August 9, 2010, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register, revising its Cranes and Derricks in Construction standards by promulgating a new subpart, CC, in the 29 C.F.R. 1926 standards for the construction industry. The previous crane and derricks standard, 1926.550, has been removed and reserved. This section of 1926.800 that has been amended, has references to requirements in 1926.550 that have been assigned to other subparts. In this instance, hoisting unique to underground construction has been amended to reflect these changes. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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 administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2010 and establishes the amendments to 29 C.F.R. 1926.800 published in the August 9, 2010 Federal Register, Volume 75, Number 152.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. This amendment to 803 KAR 2:418 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirement, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-

tive regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not add occupational safety and health requirements of the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no cost are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplace.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. 29 C.F.R. 1926.800 as published in the August 9, 2010 Federal Register, Volume 75, Number 152, is required to be adopted unless Kentucky has an effective alternative to the final rule. Kentucky does not have an alternative to this final rule. Consequently, it must incorporate this final rule by February 8, 2011. This amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. OSHA's amendment to 1926.800 is required to be adopted by Kentucky since there is not an effective alternative. It was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

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FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051 and 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost to the employer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost to the employer. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET

Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:419. Adoption of 29 C.F.R. Part 1926.850-860.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 ~~require [authorize]~~ the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. ~~[Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board.]~~ The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.]~~

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 in KRS 338.015(2).

(4) "Employer" is defined in KRS 338.015(1).

(5) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records

Services, General Services Administration:

(1) 29 C.F.R. 1926.600-1926.606, revised July 1, 2010; and

(2) 29 C.F.R. 1926.856 and 1926.858 as amended and published in the August 9, 2010 Federal Register, Volume 75, Number 152. ~~[The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.850-860 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.~~

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. – 4:30 p.m. (EST), Monday through Friday.]

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2010, at 10 a.m. at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates 29 C.F.R. 1926.850- 1926.860 to July 1, 2010 and establishes the amendment to 29 C.F.R. 1926.856 and 1926.858 published in the August 9, 2010 Federal Register, Volume 75, Number 152. This amendment of 1926.856 requires all equipment that falls under this section to comply with subparts N and O, along with the new subpart DD as applicable. Under 1926.858, cranes and derricks and other hoisting equipment shall meet the requirements specified in 1926.1501 of subpart DD. However, digger derricks doing pole work or handling materials that will be installed on poles must comply with 29 C.F.R. 1910.269. Also stated is the safe distance that equipment covered by this part is allowed to approach any energized line or other equipment. On August 9, 2010, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register, revising its Cranes and Derricks in Construction standards by promulgating a new subpart, CC, in the 29 C.F.R. 1926 standards for the construction industry. This amendment will ensure that safety requirements are in the proper standard. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's

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Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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 administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2010 and establishes the amendments to 29 C.F.R. 1926.856 and 1926.858, published in the August 9, 2010 Federal Register, Volume 75, Number 152.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. This amendment to 803 KAR 2:419 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirement, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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 does not add occupational safety and health requirements of the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no cost are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplace.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to

implement this revision.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. 29 C.F.R. 1926.856 and 1926.858 as published in the August 9, 2010 Federal Register, Volume 75, Number 152, is required to be adopted unless Kentucky has an effective alternative to the final rule. Kentucky does not have an alternative to this final rule. Consequently, it must incorporate this final rule by February 8, 2011. This amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. OSHA's amendment to 1926.856 and 1926.858 is required to be adopted by Kentucky since there is not an effective alternative. It was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? This amendment will not impose any cost to the employer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost to the em-

ployer.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:421. Adoption of 29 C.F.R. Part 1926.950-960.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051

and 338.061 ~~require[authorize]~~ the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. ~~[Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board.]~~ The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.]~~

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 KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" is defined by KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation and the requirements of subsection (1) of this section, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: ~~The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:~~

(1) Amend subparagraph 1926.950(c)(1)(i) to read as follows: "The employee is insulated or guarded from the energized part. Insulating gloves, as well as insulating sleeves when necessary, rated for the voltage involved shall be considered insulation of the employee from the energized part, or...."

(2) 29 C.F.R. 1926.950-1926.960, revised as of July 1, 2010; and

(3) 29 C.F.R. 1926.952 as amended and published in the August 9, 2010 Federal Register, Volume 75, Number 152.

~~[The revision to 29 C.F.R. 1926.951, "Tools and Protective Equipment", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.~~

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. through 4:30 p.m., Monday through Friday.]~~

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2010, at 10 a.m. at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates 29 C.F.R. 1926.950-1926.960 to July 1, 2010; retained the state-specific amendment to 29 C.F.R. 1926.952(c)(1)(i); and establishes the amendment to 29 C.F.R. 1926.952 as published in the August 9, 2010 Federal Register, Volume 75, Number 152. This amendment of 1926.952 requires all equipment that falls under this section to comply with subparts CC and O. However, digger derricks doing pole work or handling materials that will be installed on poles must comply with 29 C.F.R. 1910.269. Also stated is the safe distance that equipment covered by this part is allowed to approach any energized line or other equipment. On August 9, 2010, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register, revising its Cranes and Derricks in Construction standards by promulgating a new subpart, CC, in the 29 C.F.R. 1926 standards for the construction industry. This amendment will ensure that safety requirements are in the proper standard. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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 administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 of this administrative regulation updates the C.F.R. to July 1, 2010 and establishes the amendments to 29 C.F.R. 1926.952, published in the August 9, 2010 Federal Register, Volume 75, Number 152. It also retains the state-specific regulation that amends 1926.950(c)(1)(i).

(b) The necessity of the amendment to this administrative

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regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011.

This amendment to 803 KAR 2:421 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirement, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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 does not add occupational safety and health requirements of the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no cost are expected to be associated with the amendment

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplace.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953.

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. 29 C.F.R. 1926.952 as published

in the August 9, 2010 Federal Register, Volume 75, Number 152, is required to be adopted unless Kentucky has an effective alternative to the final rule. Kentucky does not have an alternative to this final rule. Consequently, it must incorporate this final rule by February 8, 2011. This amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. OSHA's amendment to 1926.952 is required to be adopted by Kentucky since there is not an effective alternative. It was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051 and 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost to the employer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost to the employer. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:423. Adoption of 29 C.F.R. Part 1926.1050-1060.

RELATES TO: KRS Chapter 338

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STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 ~~require~~authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards.~~[Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board.]~~ The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.~~[The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.]~~

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 KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" is defined by KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1050 - 1926.1060 as revised July 1, 2010; and

(2) 29 C.F.R. 1926.1050 as amended in the August 9, 2010 Federal Register, Volume 75, Number 152. [The Occupational Safety and Health Standards Board hereby adopts 29 C.F.R., Part 1926.1050 - 1926.1060 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.

(1) Revisions to 29 C.F.R. 1926.1050 - 1926.1060, as published in the Federal Register, Volume 55, Number 220, November 14, 1990, are incorporated by reference.

(2) The revision to 29 C.F.R. 1926.1050, "Scope, Application, and Definitions Applicable to this Subpart", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(3) Amendments, revisions and additions to 29 C.F.R. 1926.1052, "Stairways and Ladders," as published in the Federal Register, Volume 56, Number 164, August 23, 1991, are incorporated by reference.

(4) Amendments, revisions and additions to 29 C.F.R. 1926.1053, "Stairways and Ladders," as published in the Federal Register, Volume 56, Number 164, August 23, 1991, are incorporated by reference.

(5) Revisions to 29 C.F.R. 1926.1060, as published in the Federal Register, Volume 56, Number 15, January 23, 1991, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2010, at 10 a.m. at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates 29 C.F.R. 1926.1050-1926.1060 to July 1, 2010, and establishes the amendment to 29 C.F.R. 1926.1050 as published in the August 9, 2010 Federal Register, Volume 75, Number 152. This amendment states that it does not apply to integral components that are required in Subpart CC. CC sets forth the circumstances when ladders and stairways must be provided on equipment that is covered by CC. On August 9, 2010, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register, revising its Cranes and Derricks in Construction standards by promulgating a new subpart, CC, in the 29 C.F.R. 1926 standards for the construction industry. This amendment will ensure that safety requirements are in the proper standard. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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 administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2010 and establishes the amendments to 29 C.F.R. 1926.1050, published in the August 9, 2010 Federal Register, Volume 75, Number 152.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the August 9, 2010 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by February 8, 2011. This amendment to 803 KAR 2:423 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with

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the federal requirement, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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 does not add occupational safety and health requirements of the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no costs are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplace.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. 29 C.F.R. 1926.1050 as published in the August 9, 2010 Federal Register, Volume 75, Number 152, is required to be adopted unless Kentucky has an effective alternative to the final rule. Kentucky does not have an alternative to this final rule. Consequently, it must incorporate this final rule by February 8, 2011. This amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. OSHA's amendment to 1926.1050 is required to be adopted by Kentucky since there is not an effective alternative. It was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment

does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost to the employer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost to the employer. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET

Department of Workers' Claims (Amendment)

803 KAR 25:089. Workers' compensation medical fee schedule for physicians.

RELATES TO: KRS ~~342.0011(32)~~, 342.019, 342.020, 342.035
STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the ~~commissioner~~~~[executive director]~~ of the ~~Department~~~~[Office]~~ of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. KRS 342.035(4) requires the ~~commissioner~~~~[executive director]~~ to promulgate an administrative regulation establishing the workers' compensation medical fee schedule for physicians. Pursuant to KRS 342.035, a schedule of fees is to be reviewed and updated, if appropriate, every two (2) years on July 1.~~[EO 2008-472, effective June 2, 2008, reorganized the Office of Workers' Claims as the Department of Workers' Claims and established the commissioner, rather than executive director, as the head of the department.]~~ This administrative regulation establishes the medical fee schedule for physicians.

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Section 1. Definitions. (1) "Medical fee schedule" means the Kentucky Workers' Compensation Medical Fee Schedule for Physicians.

(2) "Physician" is defined by KRS 342.0011(32).

Section 2. Services Covered. (1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342.

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) Another fee schedule of the Department of Workers' Claims applies;

(b) A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110; or

(c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

Section 3. Fee Computation. (1) The appropriate fee for a procedure covered by the medical fee schedule shall be obtained by multiplying a relative value unit for the medical procedure by the applicable conversion factor; and

(2) The resulting fee shall be the maximum fee allowed for the service provided.

Section 4. (1) A physician or healthcare or medical services provider located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) Pursuant to KRS 342.035, medical fees due to an out-of-state physician or healthcare or medical services provider shall be calculated under the fee schedule in the same manner as for an in-state physician.

Section 5. Incorporation by Reference. (1) The Kentucky Workers' Compensation Medical Fee Schedule for Physicians, September 15, 2010[July 31, 2008] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DWIGHT T. LOVAN, Commissioner

APPROVED BY AGENCY: September 9, 2010

FILED WITH LRC: September 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2010, at 10:30 a.m. at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: Charles E. Lowther, General Counsel, Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles E. Lowther

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the medical fee schedule for physicians and the requirements for using the fee schedule.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the commissioner is required to promulgate an administrative regulation regarding fee schedules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates the extensive fee schedule for physicians and requirements for the fee schedule.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have fee schedules to control the medical costs of the workers' compensation system. Injured employees should receive quality medical care and physicians should be appropriately paid.

(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 medical fee schedule has been updated and will be incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The statute requires the schedules to be updated every two (2) years, if appropriate.

(c) How the amendment conforms to the content of the authorizing statutes: The medical fee schedule has been appropriately updated to insure that medical fees are fair, current, and reasonable for similar treatment in the same community for general health insurance payments.

(d) How the amendment will assist in the effective administration of the statutes: The updated fee schedule assists the workers' compensation program by updated fees for physicians to insure injured workers get qualified and appropriate medical treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, injured employees, insurance carriers, self-insurance groups, and self-insured employers and employers, third party administrators.

(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: Insurance carriers, self-insured groups, self-insured employers, third party administrators, and medical providers must purchase the new medical fee schedule to accurately bill and pay for medical services. Other parties to workers' compensation claims are only indirectly impacted by the new fee schedule.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Insurance carriers, self-insured groups, self-insured employers or third party administrators and medical providers can purchase the fee schedule book with disk for seventy-five (75) dollars or the disk for thirty-five (35).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medical providers will receive fair, current, and reasonable fees for services provided to injured workers. Injured workers will be treated by qualified medical providers.

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

(a) Initially: The contract for reviewing and updating the physicians fee schedule and all fee schedules is \$64,800.00.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

(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: No increase in fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation sets forth an updated medical fee schedule for physicians. Some fees have been updated to be fair, current, and reasonable for similar treatment in the same community as paid by health insurers.

(9) TIERING: Is tiering applied? Tiering is not applied, because the updated fee schedule applies to all parties 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? All parts of government with employees.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035.

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. As an employer, there may be some increased costs for medical services. It is impossible to estimate not knowing what medical services will be needed by injured workers.

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

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

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

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

LABOR CABINET

Department of Workers' Compensation (Amendment)

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS 216B.105, 342.020, 342.035, 342.315

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) and 342.260(1) require the Commissioner of the Department [requires the Executive Director of the Office] of Workers' Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. [EO 2008-472, effective June 2, 2008, reorganized the Office of Workers' Claims as the Department of Workers' Claims and established the commissioner, rather than executive director, as the head of the department.] This administrative regulation establishes hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Ambulatory surgery center" means a public or private institution that is:

(a) Hospital based or freestanding;

(b) Operated under the supervision of an organized medical staff; and

(c) Established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) "Hospital" means a facility, surgical center, or psychiatric, rehabilitative, or other treatment or specialty center that is licensed pursuant to KRS 216B.105.

(3) "Hospital-based practitioner" means a provider of medical services who is an employee of the hospital and who is paid by the hospital.

(4) "Independent practitioner" means a physician or other practitioner who performs services that are covered by the Workers' Compensation Medical Fee Schedule for Physicians on a contract basis and who is not a regular employee of the hospital.

(5) "New hospital" means a hospital that has not completed its first fiscal year.

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital fees for each hospital for each compensable service or supply.

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1)(a) The commissioner shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year.

(b) A hospital's base cost-to-charge ratio shall be based on the latest cost report, or HCFA-2552, which has been supplied to the Cabinet for Health and Family Services, Department of Medicaid Services, pursuant to 907 KAR 1:815 and utilized in 907 KAR 1:820 and 1:825 on file as of October 31 of each calendar year.

(c) The base cost-to-charge ratio shall be determined by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95, plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 12, 13, and 35 of Worksheet A-8, by the total patient revenues as reflected on Worksheet G-2 of the HCFA-2552. The adjusted cost-to-charge ratio shall be determined as set forth in paragraph (c) of this subsection.

(d) 1. The base cost-to-charge ratio shall be further modified to allow for a return to equity by multiplying the base cost-to-charge ratio by 132 percent except that a hospital with more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's Web site or a hospital that is designated as a Level I trauma center by the American College of Surgeons shall have a return to equity by multiplying its base cost-to-charge ratio by 138 percent.

2. If a hospital's base cost-to-charge ratio falls by ten (10) percent or more of the base for one (1) reporting year, the next year's return to equity shall be reduced from 132 percent to 130 percent or 138 percent to 135 percent as determined by subparagraph 1. of this paragraph.

a. This reduction shall be subject to an appeal pursuant to Section 4 of this administrative regulation.

b. Upon written request of the hospital seeking a waiver and a showing of extraordinary circumstances the commissioner shall waive the reduction for no more than one (1) consecutive year.

c. The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

(e) 1. Except as provided in subparagraph 2 of this paragraph, a hospital's adjusted cost-to-charge ratio shall not exceed fifty (50) percent, including the return to equity adjustment.

2. The adjusted cost-to-charge ratio shall not exceed sixty (60) percent for a hospital that:

a. Has more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's Web site;

b. Is designated as a Level I trauma center by the American College of Surgeons;

c. Services sixty-five (65) percent or more patients covered and reimbursed by Medicaid or Medicare as reflected in the

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records of the Cabinet for Health and Family Services, Department of Medicaid Services; or

d. Has a base cost-to-charge ratio of fifty (50) percent or more.

(2)(a) Except as provided in paragraph (b) of this subsection, the reimbursement to a hospital for services or supplies furnished to an employee ~~that~~~~which~~ are compensable under KRS 342.020 shall be calculated by multiplying the hospital's total charges by its adjusted cost-to-charge ratio after removing any duplicative charges, billing errors, or charges for services or supplies not confirmed by the hospital records.

(b) If part of a bill for services or supplies is alleged to be non-compensable under KRS 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of this subsection.

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this administrative regulation shall be notified of its proposed base cost-to-charge ratio by the commissioner by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Commissioner of the Department of Workers' Claims.

(2)(a) A hospital may request a review of its assigned ratio. ~~A written appeal to request a review shall be filed [by filing a written appeal]~~ with the commissioner no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

(b) The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

Section 5. Calculations of New Hospitals, Hospitals that do not file Worksheets A and G-2 of HCFA-2552 and ASC's within the Commonwealth of Kentucky.

~~(1)(a) [Revision of Hospital Cost-to-charge Ratio. (1)(a) The commissioner shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year.~~

~~(b)]~~ A new hospital shall be assigned a cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals until it has been in operation for one (1) full fiscal year.

~~(b)](c)]~~ A hospital that does not file Worksheets A and G-2 of HCFA 2552 shall be assigned a cost-to-charge ratio as follows:

1. A psychiatric, rehabilitation, or long-term acute care hospital shall be assigned a cost-to-charge ratio equal to 125 percent of the average adjusted cost-to-charge ratio of all in-state acute care hospitals;

2. An ambulatory surgery center shall be assigned a cost-to-charge ratio equal to:

a. ~~120~~~~Seventy (70)~~ percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the ambulatory surgery center; ~~or~~

b. If no acute care hospital is located in the county of the ambulatory surgery center, ~~120~~~~seventy (70)~~ percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in counties contiguous to the county in which the ambulatory surgery center is located; or

c. The adjusted cost-to-charge ratio of the base hospital if:

i. The center is hospital based;

ii. ~~It~~ is a licensed ambulatory surgery center pursuant to 902 KAR 20:105; and

iii. ~~It~~ is a Medicare provider based entity; and

3. All other hospitals not specifically mentioned in subparagraphs 1 or 2 of this paragraph shall be assigned a cost-to-charge ratio equal to:

a. The average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the facility; or

b. If there are no hospitals in the county, the average of all acute care hospitals located in contiguous counties.

(2) An assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the commissioner.

Section 6. Calculation for Hospitals and Ambulatory Surgery

Centers Located Outside the Commonwealth of Kentucky. (1) A hospital or ambulatory surgery center located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA 2552.

(3) An out-of-state ambulatory surgery center having no contiguous Kentucky counties shall be assigned a cost-to-charge ratio equal to seventy (70) percent of the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals.

(4) An out-of-state ambulatory surgery center having one (1) or more contiguous Kentucky counties shall be assigned a cost-to-charge ratio in accordance with Section 5(1)(~~b~~)(~~c~~)2.b. of this administrative regulation.

Section 7. Reports to be Filed by Hospitals. Each bill submitted by a hospital pursuant to this administrative regulation shall be submitted on a statement for services, Form UB-04 (Formerly UB-92), as required by 803 KAR 25:096.

Section 8. Billing and Audit Procedures. (1) A hospital providing the technical component of a procedure shall bill and be paid for the technical component.

(2)(a) An independent practitioner providing the professional component shall bill for and be paid for the professional component.

(b) An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate statement for services, HCFA 1500, as required by 803 KAR 25:096.

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the commissioner setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2)(a) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the statement for services defined by 803 KAR 25:096 ~~if~~~~when~~ billing for professional services and shall be compensated pursuant to the Kentucky Workers' Compensation Medical Fee Schedule for Physicians incorporated by reference in 803 KAR 25:089.

(b) An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital.

(c) The hospital may bill for the professional component of the service under the Kentucky Workers' Compensation Medical Fee Schedule for Physicians if the independent practitioner is directly compensated for services by the contracting hospital.

(3) A hospital-based practitioner shall not bill for a service he performs in a hospital if the service is regulated by 803 KAR 25:089, but he shall receive payment or salary directly from the employing hospital.

Section 10. Incorporation by Reference. (1)The following material is incorporated by reference:

(a) Form UB-40, "Universal Billing Form", 10-23-06; and

(b) HCFA 1500, "Health Care Financing Administration", 12-90.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DWIGHT T. LOVAN, Commissioner

APPROVED BY AGENCY: September 9, 2010

FILED WITH LRC: September 15, 2010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2010, at 1:30 p.m. (EST) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5)

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workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: Charles E. Lowther, General Counsel, Department of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Charles E. Lowther, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the hospital fee schedule and regulates hospital fees and supplies provided to workers' compensation patients.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the Department of Workers' Claims is charged with the duty of setting fee schedules, and KRS 342.020 requires that hospital treatment be reimbursed on behalf of injured workers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth how hospital fees and supplies are reimbursed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements for charging and reimbursing for hospital treatment of injured employees.

(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 Department of Workers' Claims will recalculate the cost-to-charge ratios to keep all charges at certain levels and avoid the impact of enormous markups for individual services. This approach should protect claimants, insurance carriers, and avoid a huge administrative burden on hospitals.

(b) The necessity of the amendment to this administrative regulation: When last changed percentages applied to Hospitals and other entities such as ambulatory surgery centers and stand alone rehabilitation facilities that are within the hospital definition but do not file the HCFA 2552 were inequitably impacted. This change is intended to correct any inequity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments make the fees fair, current, and reasonable for similar treatment as paid by health insurers.

(d) How the amendment will assist in the effective administration of the statutes: The certainty of these hospital charges should reduce medical fee dispute issues in this area. Hospitals will avoid administrative costs. Claimants and insurance carriers will get more consistent charges from hospitals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Injured employees, hospitals, medical providers, insurance carriers, self-insurance groups, individual self-insurers and third party administrators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Workers' Claims will calculate the hospital cost-to-charge ratio pursuant to the new calculation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): Some hospitals will receive a different cost-to-charge ratio which is designed to provide fair and consistent charges.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurance carriers, self-insured groups and individual self-insured employers will receive consistent prices for hospital services. Anytime medical costs are reduced, employers could benefit on workers' compensation insurance policies.

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

(a) Initially: The Department of Workers' Claims will use normal budget to implement administrative regulation. There would be no cost.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims' budget will be used which is restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees or funding will be increased. Payments to hospitals may be reduced and for some they may be increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Hospitals and other facilities within the definitions of this regulation which do not file HCFA Form 2552 cost-to-charge ratios are adjusted by new calculation. This should result in more consistent and fair charges.

(9) TIERING: Is tiering applied? Tiering is not applied because it applies to all hospitals and other parties in an equal manner to a workers' compensation claim.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035

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. As an employer, there may be some increased costs for medical services. It is impossible to estimate not knowing what medical services will be needed by injured workers. Pursuant to KRS 342.035, the fee schedule is designed to be similar to commercial costs for similar procedures.

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

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

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

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

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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of Mine Safety and Licensing
(Amendment)

805 KAR 3:100. Equipment use and operation.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070

authorizes the Secretary of the Energy and Environment Cabinet to promulgate, amend, or rescind any administrative regulations as necessary and suitable for the proper administration of KRS Chapter 351. This administrative regulation establishes [is to establish] safety standards controlling the use of equipment and the operation thereof in the Commonwealth's surface type coal and clay mines, [mines] which include strip and auger mining operations.

Section 1. The following items shall be guarded to prevent injury:

- (a) Gears;
- (b) Sprockets;
- (c) Chains;
- (d) Drive, head, tail, and take-up pulleys;
- (e) Flywheels;
- (f) Couplings;
- (g) Shafts;
- (h) Sawblades;
- (i) Fan inlets; and

(j) Similar exposed moving machine parts that may cause injury to persons. [Gears; sprockets; chains; drive, head, tail and take-up pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may cause injury to persons, shall be guarded.]

(2) An overhead belt [belts] shall be guarded if the whipping action from a broken belt ~~may~~ [would] be hazardous to a person [persons] below.

(3) A guard [Guards] at conveyor drive, head and tail pulleys shall be sufficient to prevent a person from reaching behind the guard and becoming caught between the belt and the pulley.

(4) A protruding set screw [Protruding set screws] on revolving parts shall be guarded.

(5) Except when testing the machinery, a guard [guards] shall be securely in place while machinery is being operated.

(6) A guard [Guards] shall be sufficiently strong and maintained to provide the required protection.

(7) A stationary grinding machine [Stationary grinding machines] other than special bit grinder [grinders] shall be equipped with [wit];

(a) Peripheral hoods (less than ninety (90) degree throat openings) capable of withstanding the force of a bursting wheel;

(b) Adjustable tool rests set as close as practical to the wheel; and

(c) Safety washers.

(8) A face shield [Face shields] or goggles, in good condition, shall be worn when operating a grinding wheel.

(9) A hand-held power tool [Hand-held power tools], other than rock drill [drills], shall be equipped with controls requiring constant hand or finger pressure to operate the tools or shall be equipped with friction or other equivalent safety devices.

(10) A guard or shield [Guards or shields] shall be provided in areas where flying or falling materials present a hazard.

(11)(a) A vehicle such as a fork lift, truck, front-end loader, and bulldozer shall be provided with rollover protection if necessary to protect the operator.

(b)1. An excavator manufactured after January 1, 2011 shall be provided with rollover protection. The rollover protection shall meet current International Organization for Standardization (ISO) standards in place at the time the machine was manufactured.

2. Effective January 1, 2016, an excavator that operates in an application with the risk of a rollover shall be equipped with rollover protection that shall meet, at a minimum, the ISO 12117-2:2008 standard or an equivalent.

(12)(a) A vehicle such as a fork lift, truck, front-end loader, and

bulldozer, shall be provided with falling object protection if necessary to protect the operator against falling material.

(b)1. An excavator manufactured after January 1, 2011 shall be provided with falling object protection. The falling object protection shall meet ISO standards in place at the time the machine was manufactured.

2. Effective January 1, 2016, an excavator that operates in an application with the risk of falling objects shall be equipped with falling object protection that shall meet, at a minimum, the ISO 10262:1998 Level II standard or an equivalent. [Vehicles such as fork lifts, trucks, front-end loaders, and bulldozers shall be provided with rollbar protection when necessary to protect the operator.

(12) Fork lift trucks, front-end loaders, and bulldozers, shall be provided with substantial canopies when necessary to protect the operator against falling material.]

(13) Unsafe equipment or machinery shall be removed from service immediately.

(14) Machinery and equipment shall be operated only by an authorized and experienced person [persons].

(15) A repair [Repairs] or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except if [where] machinery motion is necessary to make an adjustment or if [adjustments or where] nonenergized components of large machinery can be safely repaired while the machine is operating.

(16) A person [Men] shall not work on mobile equipment in a raised position until it has been blocked in place securely. This does not preclude the use of equipment specifically designed, such as elevated mobile work platforms.

(17) A drive belt [Drive belts] shall not be shifted while in motion unless the machine is [machines are] provided with mechanical a shifter [shifters].

(18) A belt, chain, or rope shall not be guided onto a power driven moving pulley, sprocket, or drum [Belts, chains, and ropes shall not be guided onto power driven moving pulleys, sprockets, or drums] with the hands except on slow moving equipment especially designed for [er] hand feeding.

(19) A pulley or conveyor [Pulleys or conveyors] shall not be cleaned manually while the conveyor is in motion.

(20) A belt dressing [dressings] shall not be applied manually while the belt is [belts are] in motion unless an aerosol-type dressing is used.

(21) Machinery shall not be lubricated while in motion if [where] a hazard exists unless equipped with extended fittings or cups.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 26, 2010

FILED WITH LRC: August 26, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2010 at 10 a.m. at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business November 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator
Office of the Commissioner, 2 Hudson Hollow Road, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-6764, and e-mail Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins, Regulation Coordinator

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(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes safety standards controlling the use of equipment and the operation thereof in the Commonwealth's surface type coal and clay mines which include strip and auger mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to require safety standards for equipment used on surface coal mines and clay mines within the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.070(12) provides that the Commissioner may "prescribe reasonable safety standards governing the use of explosives, and electrical and mechanical equipment in the operation of open-pit or surface mines." This administrative regulation provides safety standards for equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides details concerning safety requirements for equipment used at surface type coal and clay mines which include strip and auger mining operations.

(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 introduce new requirements for rollover and fallen object protection. These new standards are issued by the International Organization for Standardization.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase safety for equipment that requires fallen object protection and rollover protection.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by introducing new, more detailed standards related to rollover and fallen object protection.

(d) How the amendment will assist in the effective administration of the statutes: KRS 351.070(12) provides that the Commissioner may "prescribe reasonable safety standards governing...mechanical equipment in the operation of open-pit or surface mines." This amendment will assist in the effective administration of the authorizing statutes by including new standards related to rollover and fallen object protection for equipment operating in surface type coal and clay mines.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 214 surface mines currently, at last count there were 300 excavators at these locations. Therefore all surface mines in the Commonwealth and a few underground mines, depending on if they are using excavators in areas where there are dangers of roll over or from falling objects, could be impacted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be required to purchase equipment that complies with the ISO standards listed in Section 1 (11) and (12) after January 1, 2011. Equipment owned prior to January 1, 2011 will be given until January 1, 2016 to comply with the standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is difficult to provide a cost associated with all entities in the Commonwealth. The current average cost of an excavator that may be used on a mine site is \$328,000. Retrofitting some of the excavator units currently in use would have an upfront cost of several thousand dollars for initial engineering costs. After the engineering plans were developed for a particular make an model the price would drop significantly.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These entities will provide a safer working environment for the operators of the equipment to which these standards relate.

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

(a) Initially: There will be no costs to the administrative body with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the administrative body with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be 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 amendments to this administrative regulation will not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? No. The same standards will apply to every entity listed in question (3) above.

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 Office of Mine Safety and Licensing will be minimally impacted by this amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.070 authorizes the Commissioner of the Department for Natural Resources to prescribe reasonable safety standards governing the use of explosives, and electrical and mechanical equipment in the operation of open-pit or surface mines. The Office of Mine Safety and Licensing administers this program on behalf of the Commissioner.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will neither increase the revenues nor the expenditures of the agency.

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

(c) How much will it cost to administer this program for the first year? There is not a cost associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will not be a cost associated with this administrative regulation 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 (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

PUBLIC PROTECTION CABINET Department of Insurance Health and Life Division (Amendment)

806 KAR 12:150. Annuity disclosures.

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230, 26 U.S.C. 4010, 403, 414, 457, 29 U.S.C. 1001-1461
STATUTORY AUTHORITY: KRS 304.2-110

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the ~~Commissioner of the Department~~~~Executive Director of the Office~~ of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current ~~Life Insurance and~~ Annuity Buyer's Guide published by the Commonwealth of Kentucky ~~Department~~~~Office~~ of Insurance.

(2) "Charitable gift annuity" is defined in KRS 304.1-120(6)(b).

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements derived from processes or methods that are guaranteed at issue and not subject to company discretion, but ones in which the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine at issue. An element is determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one (1) or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated.

(7) "Guaranteed elements" means the premiums and credited interest rates, including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(8) "Nonguaranteed elements" means the premiums and credited interest rates including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(9) "Structured settlement annuity" means

(a) A "qualified funding asset" as defined in 26 U.S.C. 130(d); or

(b) An annuity that would be a qualified funding asset pursuant to 26 U.S.C. 130(d) except for the fact that it is not owned by an assignee under a qualified assignment.

Section 2. Applicability. This administrative regulation shall apply to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products;

(2)(a) Annuities used to fund:

1. An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;

2. A plan described by 26 U.S.C. 401(a), (k), or 403(b), if the plan, for purposes of ERISA, is established or maintained by an employer;

3. A governmental or church plan defined in 26 U.S.C. 414 or a deferred compensation plan of a state or local government or a tax exempt organization under 26 U.S.C. 457; or

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(b)1. Notwithstanding paragraph (a) of this subsection, this administrative regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and if the insurance company has been notified that plan participants

may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract.

2. As used in this subsection, direct solicitation shall not include a meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

(3) Structured settlement annuities;

(4) Charitable gift annuities; and

(5) Funding agreements.

Section 3. Standards for the Disclosure Document and Buyer's Guide. (1)(a) If the application for an annuity contract is solicited personally by an agent, the applicant shall be given both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than the time of application.

(b) If the application for an annuity contract is taken by means other than a personal solicitation by an agent, the applicant shall be sent both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

1. With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application; or

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

2. With respect to an application received via the Internet:

a. Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's Web site shall satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application; or

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's Web site shall satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

3. A solicitation for an annuity contract that is not personally solicited by an agent shall include a statement that the proposed applicant may obtain a free Annuity Buyer's Guide by contacting the ~~Department~~~~Office~~ of Insurance or the insurer.

(c)1. If the Buyer's Guide and disclosure document described in subsection (3) of this section are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty.

2. This free look period shall run concurrently with any other free look period provided under state law or administrative regulation.

(2) The following information shall be included in the disclosure document:

(a) The generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) The insurer's name and address;

(c) A description of the contract and its benefits, emphasizing its long-term nature, including the following information:

1. The guaranteed, nonguaranteed, and determinable elements of the contract and their limitations, if any, and an explanation of how they operate;

2. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and shall not be guaranteed;

3. Periodic income options both on a guaranteed and nonguaranteed basis;

4. Value reductions caused by withdrawals from or surrender of the contract;

5. How values in the contract can be accessed;

6. The death benefit, if available, and how it will be calculated;

7. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

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8. An explanation of the impact of a rider, such as a long-term care rider;

(d) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(3) The disclosure statement shall comply with the minimum standards for readability and intelligibility established in 806 KAR 14:121.

Section 4. Report to Contract Owners. For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(1) The beginning and end date of the current report period;

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(3) The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and

(4) The amount of outstanding loans, if any, as of the end of the current report period.

Section 5. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on July 1, 2011~~[January 1, 2008]~~.

Section 6. Incorporation by Reference. (1) "~~The Life Insurance and~~ Annuity Buyer's Guide, Commonwealth of Kentucky", September 2010~~[June 2007]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department~~[Office]~~ of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(3) This material is also available on the department's Web site at <http://insurance.ky.gov/>.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2010, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 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 November 1, 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: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502)564-0888, fax (502)564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration

(b) The necessity of this administrative regulation: This admin-

istrative regulation will provide guidance and a consumer guide to insurer to assist in educating Kentucky citizens prior to purchasing an annuity.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation and the material incorporated by reference will aid insurer to educate consumer regarding the purchase of annuities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance, procedures and the Life Insurance and Annuities buyer's guide to insurers for use with consumers.

(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 make technical corrections and will amend the material incorporated by reference to remove the life insurance information. There will be a separate buyer's guide for life insurance.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate appropriate changes into the buyer's guide.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This amendment will make technical changes to the regulation due 2010 Ky. Acts Ch. 24 and the material incorporated by reference will aid insurers to educate consumers regarding the purchase of annuities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the information provided in the buyer's guide, which is incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect approximately 470 insurers offering annuity products.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These entities will be required to provide a copy of the new buyer's guide to consumers due to this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since these insurers and agents are already providing the previous version of the buyer's guide, the costs associated with providing the amended version should be minimal. The insurer or agent may print or e-mail a link to the buyer's guide which is published on the Department of Insurance Web site.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers and agents will be in compliance with state law and will have resources to aid consumers in purchasing an annuity.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

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(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all insurers who have annuity products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance code.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of administering this program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program will not change.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(Amendment)

806 KAR 12:170. Life insurance disclosures.

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230
STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [Executive Director of the Office] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation establishes requirements for insurers to deliver information to purchasers of life insurance that is designed to improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current Life Insurance [and Annuity] Buyer's Guide published by the Commonwealth of Kentucky Department [Office] of Insurance.

(2) "Generic name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

(3) "In force illustration" means an illustration furnished after the policy has been in force for one (1) year or more.

(4) "Nonguaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, non-interest

based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(5) "Policy data" means a display or schedule of numerical values, both guaranteed and nonguaranteed, for each policy year or a series of designated policy years of the following information:

(a) Illustrated annual, other periodic, and terminal dividends;

(b) Premiums;

(c) Death benefits; and

(d) Cash surrender values, outstanding policy loans, current policy loan interest rate, and endowment benefits.

(6) "Policy summary" means a separate document describing the elements of the policy and complying with the requirements established in Section 3 of this administrative regulation.

Section 2. Application. (1) Except as provided in subsection (2) of this section of this administrative regulation, this administrative regulation shall apply to:

(a) A solicitation, negotiation, or procurement of life insurance occurring within this state; and

(b) An issuer of life insurance contracts including fraternal benefit societies.

(2) This administrative regulation shall not apply to:

(a) Individual and group annuity contracts;

(b) Credit life insurance;

(c) Group life insurance;

(d) Life insurance policies issued in connection with pension and welfare plans which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 et seq. as amended; or

(e) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

Section 3. Policy Summary. A policy summary shall describe the elements of the policy including the following:

(1) A permanently placed title stating: "STATEMENT OF POLICY COST AND BENEFIT INFORMATION";

(2) The name and address of the insurance agent or, if an agent is not involved, a statement of procedure to be followed in order to receive responses to inquiries regarding the policy summary;

(3) The full name and home office or administrative office address of the life insurance company issuing the policy;

(4) The generic name of the basic policy and each rider;

(5) The following amounts shall be listed in total, not on a per thousand or per unit basis and, if applicable for the first ten (10) policy years and representative policy years thereafter, the amounts shall be listed sufficiently to clearly illustrate the premium and benefit patterns, including at least an age from sixty (60) through sixty-five (65) and policy maturity:

(a) The annual premium of the basic policy;

(b) The annual premium for each optional rider;

(c) 1. The amount payable upon death at the beginning of the policy year pursuant to the basic policy with additional benefits for each rider shown separately.

2. If more than one (1) insured is covered pursuant to one (1) policy or rider, death benefits shall be displayed separately for each insured or for each class of insured's if death benefits do not differ within the class;

(d) The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider; and

(e) Endowment amounts payable pursuant to the policy that are not included pursuant to the cash surrender values described in this subsection;

(6)(a) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether the rate is applied in advance or in arrears.

(b) If the policy loan interest rate is adjustable, the policy summary shall state that the annual percentage rate shall be determined in accordance with the provisions of the policy and the ap-

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plicable law; and

(7) The date on which the policy summary was prepared.

Section 4. Duties of Insurers. (1) Requirements for new issues.

(a)1. Except as provided in subparagraph 2 of this paragraph, the insurer shall provide the Buyer's Guide to each prospective purchaser [purchasers] prior to accepting the applicant's initial premium or premium deposit.

2. If the policy for which application is made contains an unconditional refund provision of at least ten (10) days, the Buyer's Guide may be delivered with the policy or prior to delivery of the policy.

(b) The insurer shall provide a policy summary to prospective purchasers in which the insurer shall identify the policy form as not marketed with an illustration.

1. The policy summary shall show guarantees only.

2. The policy summary shall consist of a separate document with all required information set out in a manner that does not minimize or render any portion of the summary obscure.

3. Amounts that remain level for two (2) or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year.

4. Amounts in Section 3(5) of this administrative regulation shall be listed in total, not on a per thousand or per unit basis.

5. If more than one (1) insured is covered under one (1) policy or rider, death benefits shall be displayed separately for each insured or for each class of insured's if death benefits do not differ within the class.

6. Zero amounts shall be displayed as a blank space.

7. Delivery of the policy summary shall be consistent with the time for delivery of the Buyer's Guide as specified in paragraph (a) of this subsection.

(2) Requirements applicable to existing policies.

(a) Upon request by the policy owner, the insurer shall furnish the policy data or an in force illustration as follows:

1. For policies issued prior to January 1, 2008, the insurer shall furnish policy data, or, at its option, an in force illustration meeting the requirements of 806 KAR 12:140.

2. For policies issued on and after January 1, 2008 and declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has chosen not to furnish an in force illustration meeting the requirements of 806 KAR 12:140.

3. If the policy was issued on and after January 1, 2008 and declared to be used with an illustration, an in force illustration shall be provided.

4. Unless otherwise requested, the policy data shall be provided for twenty (20) consecutive years beginning with the previous policy anniversary.

5. The insurer may charge a reasonable fee for the policy data, not to exceed ten (10) dollars.

(b)1. If a life insurance company changes its method of determining scales of nonguaranteed elements on existing policies, it shall notify each affected policy owner of the change and its effect on the policy no later than the date of the first payment on the new basis.

2. The requirement established in subparagraph 1. of this paragraph shall not apply to policies for which the death benefit pursuant to the basic policy on the date of notice does not exceed \$5,000.

(c) If the insurer makes a material revision in the terms and conditions which will limit its right to change any nonguaranteed factor, it shall notify each affected policy owner of the change no later than the first policy anniversary following the revision.

Section 5. General Rules. (1)(a) Prior to commencing a life insurance sales presentation, an agent shall inform the prospective purchaser that the agent is acting as a life insurance agent.

(b) The agent shall inform the prospective purchaser in writing of the full name of the insurance company which the agent represents.

(c) In sales situations in which an agent is not involved, the insurer shall identify the insurer's full name.

(2)(a) An insurance producer marketing insurance products

shall not use a title or designation, including "financial planner," "investment advisor," "financial consultant," or "financial counseling" to imply that the insurance producer is engaged in an advisory or consulting business in which compensation is unrelated to sales.

(b) This subsection shall not preclude:

1. A person recognized as having a financial planning or consultant designation from using the designation even if only selling insurance; or

2. Members of a recognized trade or professional association from having these terms as part of the organization's name from citing membership. If authorized only to sell insurance products, a person citing membership shall disclose that fact.

(c) A person shall not charge an additional fee for services customarily associated with the solicitation, negotiation, or servicing of policies.

(3)(a) A reference to nonguaranteed elements shall include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements.

(b) If a nonguaranteed element would be reduced by the existence of a policy loan, a statement to that effect shall be included in each reference to nonguaranteed elements.

Section 6. Failure to Comply.[44] Failure of an insurer to provide or deliver the Buyer's Guide, an in force illustration, a policy summary, or policy data shall constitute an omission that misrepresents the benefits, advantages, conditions, or terms of an insurance policy.

Section 7. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on July 1, 2011[January 1, 2008].

Section 8. Incorporation by Reference. (1) "The Life Insurance[and Annuity] Buyer's Guide, Commonwealth of Kentucky", September 2010[June 2007], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[Office] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's[office's internet] Web site at: <http://insurance.ky.gov/> [<http://doi.ppr.ky.gov/kentucky>].

SHARON P. CLARK, Commissioner

ROBERT D.VANCE, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2010, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 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 November 1, 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: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires insurers to deliver information to purchasers of life insurance that will improve the buyer's ability to select

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the most appropriate product for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration

(b) The necessity of this administrative regulation: This administrative regulation will provide guidance and a consumer guide to insurers to assist in educating Kentucky citizens prior to purchasing life insurance.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation and the material incorporated by reference will aid insurers to educate consumers regarding the purchase of life insurance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance, procedures and The Life Insurance and Annuities buyer's guide to insurers for use with consumers.

(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 make technical corrections and will amend the material incorporated by reference to remove the annuities information. There will be a separate buyer's guide for annuities.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate appropriate changes into the buyer's guide.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This amendment will make technical changes to the regulation due 2010 Ky. Acts ch.24 and the material incorporated by reference will help insurers to educate consumer regarding the purchase of life insurance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the information provided in the buyer's guide, which is incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect approximately 470 insurers offering life insurance products and approximately 47,700 individual agents and 3,500 business entities licensed to sell life insurance products.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These entities will be required to provide a copy of the new buyer's guide to consumers due to this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since these insurers and agents are already providing the previous version of the buyers guide, the costs associated with providing the amended version should be minimal. The insurer or agent may print or e-mail a link to the buyer's guide which is published on the Department of Insurance website.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers and agents will be in compliance with state law and will have resources to aid consumers in purchasing life insurance.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: No increase in fees or funding will be required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all insurers who have life insurance products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statute 304.2-110 (1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance code.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of administering this program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program will not change.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

811 KAR 1:220. Harness racing at county fairs.

RELATES TO: KRS 230.215~~(4)~~, 230.260~~(4)~~, 230.280, 230.290, 230.300, 230.310, 230.398

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.398~~(4)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the commission~~[Authority]~~ to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.398 authorizes the commission to promulgate administrative regulations as may be necessary for the conduct of county fair races. This administrative regulation establishes conditions, races, purses and payments in races conducted at county fairs in which funds for purses are provided by the commission~~[Authority]~~, and regulates eligibility for participation in harness racing at county fairs.

Section 1. ~~Definition. "Person domiciled in Kentucky" means:~~

~~(1) A person who has his permanent home in Kentucky, to which he has an intention of returning whenever he is absent; and~~

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~~(2) Corporations wholly owned by a person domiciled in Kentucky.~~

~~Section 2. (1) The Authority shall determine all questions of domicile.~~

~~(2) In determining questions of domicile, the Authority shall weigh:~~

~~(a) The eligibility factors set forth in Section 3 of this administrative regulation; and~~

~~(b) Factors which indicate domicile and intent, including:~~

~~1. The amount of time a person spends in Kentucky each year as compared to the amount of time spent elsewhere;~~

~~2. Whether the person or corporation owns real estate in Kentucky;~~

~~3. Whether the person is registered to vote in Kentucky, or whether the corporation was organized under Kentucky law;~~

~~4. The permanent residence of the person, as indicated by the records of the Authority and the United States Trotting Association; and~~

~~5. Whether the person has a Kentucky automobile driver's license.~~

~~Section 3-]Eligibility. (1)(a) In order to qualify to participate in a stake race at a county fair:~~

~~(a) The participating horse shall be either a two (2) or three (3) year old standardbred that is the product of the mating of a mare with a Kentucky Standardbred Development Fund registered stallion;~~

~~(b) An owner of the participating horse shall be a current member of the Kentucky Colt Racing Association, Inc.;~~

~~(c) An owner of the participating horse shall be currently licensed by the commission; and~~

~~(d) The trainer and driver of the participating horse shall be currently licensed by the commission.~~

~~Section 2. [A horse is eligible to participate in a stake race at a county fair if:~~

~~(1) The horse is either:~~

~~(a) A two (2) or three (3) old that is sired by a stallion that was registered with the Kentucky Standardbred Development Fund at the time of conception; or~~

~~(b) A two (2) or three (3) year old whose dam was partially or wholly owned by a person domiciled in Kentucky at the time of conception;~~

~~(2) An owner of the participating horse is a current member of the Kentucky Colt Racing Association, Inc.;~~

~~(3) An owner of the participating horse holds a current license with the Authority; and~~

~~(4) The trainer and driver of the participating horse hold a current license with the Authority.]~~

~~Section 4-] (1) A fair shall have a safe and adequate track, and the entire track, including start and finish lines, shall be visible to judges and spectators.~~

~~(2) The track shall be inspected and approved by a representative of the commission[Authority].~~

~~Section 3. [5-] A track shall have a hub rail or pylons approved by the commission[Authority].~~

~~Section 4. [6-] (1) A fair shall have safe and adequate stalls for participating horses.~~

~~(2) If permanent stalls are not available, either on or off the fairgrounds, tents or other tie-in type stalls may be used.~~

~~(3) A county fair shall not charge stall rent for horses racing at the county fairs with the exception of state-owned property.~~

~~Section 5. [7-] (1) The Kentucky Colt Racing Association county fair fee shall be as follows:~~

~~(a) A nomination fee of fifty (50) dollars per horse due before February 15 of the year in which the fair is being conducted;~~

~~(b) A sustaining fee of \$200 per horse due before April 15;~~

~~(c) A starting fee of fifty (50) dollars per horse, per fair, due at the time of entry to the fair; and~~

~~(d) A twenty-five (25) dollar fee per horse for starting in an overnight race, due at the time of entry to the fair.~~

~~(2) A \$200 payment shall be due at the time of entry for a horse eligible for the fair finals.~~

~~Section 6. [8-] Officials at county fairs. (1) The Kentucky Colt Racing Association shall submit to the commission[Authority], at least sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.~~

~~(2) At a county fair, there shall be at least one (1) presiding judge approved by the commission[Authority] in the judges' stand. In addition, at a meeting in which races are charted, the association member shall provide both a licensed charter and licensed clerk of the course.~~

~~(3) A fair shall use licensed United States Trotting Association judges to preside over the racing.~~

~~(4) The judges shall review the ownership of any horse that is entered in order to ensure that it is eligible to race.~~

~~(5) The judges may determine the validity for racing purposes of any lease, transfer, or agreement pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.~~

~~(6) The judges may declare a horse ineligible to race if the ownership or control of the horse is in question.~~

~~Section 7. [9-] A fair shall use a licensed starter with adequate equipment.~~

~~Section 8. [10-] (1) The entry fees established in Section 5[7] of this administrative regulation shall be collected by a fair and used:~~

~~(a) To pay racing officials;~~

~~(b) To provide purses for overnight racing events; and~~

~~(c) To promote fair racing as otherwise needed.~~

~~(2) A fair shall, upon request, make a full accounting of the entry fees to the commission[Authority].~~

~~Section 9. [11-] A fair shall apply to the commission[Authority] for a license to conduct a harness racing event[~~race~~] and for approval of funds by December 15 of the year prior to the ~~racing~~ year of the event. At the time of application, the request for pari-mutuel wagering shall be included.~~

~~Section 10. [12-] A fair shall have the right to change the order of its program and to postpone or cancel an event due to bad weather or unavoidable cause. If a race is canceled ~~because of lack of entries,~~ entry fees shall be refunded.~~

~~Section 11. [13-] An early closing event, and all divisions of that event, shall race a single heat at a distance of one (1) mile and shall be contested for a purse ~~approved~~ ~~determined~~ by the commission[Authority] annually.~~

~~Section 12. [14-] There shall be no more than nine (9) starters in any race. If a race is divided into divisions the purse shall be divided so that each division races for an equal portion thereof. The purses shall be divided as follows:~~

~~(1) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;~~

~~(2) Four (4) starters - fifty (50) percent, twenty-five (25) percent, fifteen (15) percent, and ten (10) percent;~~

~~(3) Three (3) starters - fifty-five (55) percent, thirty (30) percent, and fifteen (15) percent;~~

~~(4) Two (2) starters - sixty-five (65) percent and thirty-five (35) percent; and~~

~~(5) One (1) starter - 100 percent.~~

~~Section 13. [15-] (1) Points shall be awarded in an early closing race, and any division of an early closing race, as follows:~~

~~(a) First place finisher - fifty (50) points;~~

~~(b) Second place finisher - twenty-five (25) points;~~

~~(c) Third place finisher - twelve (12) points;~~

~~(d) Fourth place finisher - eight (8) points;~~

~~(e) Fifth place finisher - five (5) points; and~~

~~(f) Each starter that finishes out of the money - one (1) point.~~

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(2) If two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for that position and one-half (1/2) the points awarded for the next lower position. The same procedure shall be used for the allocation of points in the event of a dead-heat of three (3) or more horses.

(3) A horse that is declared in and then is the subject of a judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision shall be final.

(4) A horse that starts in a Kentucky Sires Stake race within three (3) days of a scheduled county fair race of the same class shall be awarded a county fair start and one (1) point.

(5) If there is a tie among two (2) or more horses with the same number of points, the tie shall be resolved in favor of the horse with the higher earnings in the early closing fair events in which the horses have competed.

Section ~~14.[46.]~~ A horse shall not be allowed to compete in more than one (1) race at any fair.

~~Section 15.[47. In order for a horse, for whom the nomination fee has been paid, to remain eligible to race at a county fair after there has been a transfer of ownership, the following payments shall be required:~~

~~(1) \$300 the first time ownership is transferred from the owner at the time of nomination; and~~

~~(2) An additional \$600 thereafter if the same horse is transferred.~~

~~Section 18.]~~ (1) The winning horse at a fair race and any other horse or horses as selected by the judges may be subjected to a drug test as set forth in 811 KAR 1:090~~[-if necessary to determine if there has been a violation of 811 KAR 1:090].~~

(2) A fair shall provide two (2) enclosed stalls and bedding to be used by the commission[~~state~~] veterinarian for drug testing.

(3) The stalls required by subsection (2) of this section shall be located as close to the race track as possible.

(4) The stalls shall be positioned so as to allow the track announcer to be heard.

Section ~~16.[49.]~~ A current negative Coggins test shall be required for each horse racing at a fair.

Section ~~17.[20.]~~ A driver shall wear full colors, white pants, an approved vest, and an approved helmet when on the track less than one (1) hour before the start of a fair racing program.

Section ~~18.[24.]~~ A fair shall provide a trophy or blanket to the winner of a race. If a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest heat or division.

Section ~~19.[22.]~~ An early closing race shall be contested regardless of the number of entries. However, a fair may cancel an overnight race with less than five (5) entries.

Section ~~20.[23.]~~ The deadline for entries at a fair shall be set by the Kentucky Colt Racing Association at its annual October meeting preceding the racing year.

Section ~~21.[24.]~~ A county fair track holding races for purses shall provide a printed program available to the public containing the following information for:

(1) Nonpari-mutuel tracks:

(a) Horse's name and sex;

(b) Color and age of horse;

(c) Sire and dam of horse;

(d) Owner's name and colors;

(e) Driver's name;

(f) Trainer's name; and

(g) Summary of starts in purse races, earnings, and the best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race;

(2) Pari-mutuel tracks:

(a) Horse's name and sex;

(b) Color and age of horse;

(c) Sire and dam of horse;

(d) Owner's name;

(e) Driver's name and colors;

(f) Trainer's name;

(g) Summary of starts in purse races, earnings, and best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race.

(h) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:

1. Date of race;

2. Location of race;

3. Size of track if other than a one-half (1/2) mile track;

4. Symbol for free-legged pacers;

5. Track condition;

6. Type of race;

7. Distance;

8. The fractional times of the leading horse including race times;

9. Post position;

10. Position of the one-quarter (1/4), the one-half (1/2), and the three-quarters (3/4);

11. Stretch with lengths behind leader;

12. Finish with lengths behind leader;

13. Individual time of the horse;

14. Closing dollar odds;

15. Name of the driver;

16. Names of the horses that placed first, second, and third by the judges; and

17. The standard symbols for breaks and park-outs shall be used if applicable;

(i) Indicate drivers racing with a provisional license; and

(j) Indicate pacers that are racing without hobbles.

Section ~~22.[25.]~~ Payments. Nomination and sustaining payments shall be made to the Kentucky Colt Racing Association. Entry fees shall be paid to the fair for which the entry is taken.

Section ~~23.[26.]~~ A person or association that violates a provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095, Section 4(1).

Section 24. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 28, 2010 at 10 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by Thursday, October 21, 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 November 1, 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-

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2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation governs the conduct of harness racing at county fairs. It establishes the eligibility requirements and the fees for participation in harness racing at county fairs, as well as the licensing requirements and rules for the county fairs.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to exercise regulatory oversight over the county fairs and their participants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.398 grants the commission the authority to promulgate administrative regulations as may be necessary for the conduct of harness racing at county fairs. This regulation governs the conduct of harness racing at county fairs. It establishes the eligibility requirements and the fees for participation in harness racing at county fairs, as well as the licensing requirements and rules for the county fairs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation governs the conduct of harness racing at county fairs. It establishes the eligibility requirements and the fees for participation in harness racing at county fairs, as well as the licensing requirements and rules for the county fairs.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the eligibility requirements for participation in county fairs to make them consistent with the eligibility requirements for participation in the Kentucky Sire Stakes, and eliminates the imposition of a fee when a horse is transferred from one owner to another.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary for the commission to respond to the needs of the Kentucky Colt Racing Association, who is responsible for running the county fairs. The Kentucky Colt Racing Association had requested that the commission make the eligibility requirements for participation in harness racing at county fairs consistent with the eligibility requirements for participation in the Kentucky Sire Stakes. The amendment was also necessary to remove the language regarding the transfer fee because the fee is no longer charged.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.398 grants the commission the authority to promulgate administrative regulations as may be necessary for the conduct of harness racing at county fairs. The amendment addresses the conduct of harness racing at county fairs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment was made at the request of the Kentucky Colt Racing Association to make the eligibility requirements for participation in harness racing at county fairs consistent with the eligibility requirements for participation in the Kentucky Sire Stakes. The amendment will make the commission's regulation of the county fairs more efficient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the county fairs and the owners and trainers with horses that participate in harness racing in county fairs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The owners and trainers who participate in harness racing at county fairs will be required to adhere to the

same eligibility requirements as are currently in place for the Kentucky Sire Stakes. The county fairs will not have any new obligations under the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from consistency in the eligibility requirements between the county fairs and the Kentucky Sire Stakes.

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

(a) Initially: The amendment will not result in additional costs.

(b) On a continuing basis: The amendment will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260, and 230.398.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment will not generate any 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? None

(c) How much will it cost to administer this program for the first year? The amendment will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? The amendment will not result in 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:

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction Division of Building Code Enforcement (Amendment)

815 KAR 7:120. Kentucky Building Code.

RELATES TO: KRS 132.010(9), (10), 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990, 227.300, 227.550(7), ~~EO 2009-535~~

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050, ~~EO~~

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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, 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) "~~Commissioner~~"["~~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) "~~Department~~"["~~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 complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) Shall not be connected to any other unit or building.

(15) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(16) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Administration and Enforcement of the Building Code. (1) Notwithstanding the requirements of the International Building Code 2006, the Kentucky changes established in the 2007 Kentucky Building Code shall be mandatory and shall supersede any conflicting provision of the international code.

(2)(a) Except as provided in paragraph (b) of this subsection and as superseded by the provisions of this administrative regulation and the 2007 Kentucky Building Code, the International Building Code 2006, shall be the mandatory state building code for Kentucky for all buildings.

(b) One (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 7:125.

Section 3. State Plan Review and Inspection Fees. The fees

required by this section shall apply for plan review and inspection by the office.

(1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings.

(a) The office's inspection fees shall be calculated by:

1. Multiplying the total building area under construction by the cost per square foot of each occupancy type as listed in subsection (3) of this section; and

2. Computing the square footage by the outside dimensions of the building.

(b) The fee for buildings with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.

(3) Table 121.3.1, Basic Office Fee Schedule. The basic plan review or inspection fee shall be:

(a) Assembly occupancies, fourteen (14) cents;

(b) Business occupancies, thirteen (13) cents;

(c) Day care centers, thirteen (13) cents;

(d) Educational occupancies, thirteen (13) cents;

(e) High hazard occupancies, twelve (12) cents;

(f) Industrial factories, twelve (12) cents;

(g) Institutional occupancies, fourteen (14) cents;

(h) Mercantile occupancies, thirteen (13) cents;

(i) Residential occupancies, thirteen (13) cents;

(j) Storage, eleven (11) cents; or

(k) Utility and miscellaneous, eleven (11) cents.

(4) Additions to existing buildings.

(a) Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition.

(b) The minimum fee for review of plans under this subsection shall be \$250.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions.

(b) The minimum fee for review of plans under this subsection shall be \$250.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of:

1. Multiplying the cost for the alterations or repairs by 0.0025; or

2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans under this subsection shall be \$275.

(7) Specialized fees. In addition to the fees listed in subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule:

1. An inspection of four (4) through twenty-five (25) sprinklers shall be a fee of \$150;

2. An inspection of twenty-six (26) through 100 sprinklers shall be a fee of \$200;

3. An inspection of 101 through 200 sprinklers shall be a fee of

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\$250;

4. An inspection of 201 through 300 sprinklers shall be a fee of

\$275;

5. An inspection of 301 through 400 sprinklers shall be a fee of

\$325;

6. An inspection of 401 through 750 sprinklers shall be a fee of

\$375; and

7. An inspection of over 750 sprinklers shall be a fee of \$375 plus thirty (30) cents per sprinkler over 750.

(b) Fire detection system review fee:

1. Zero to 20,000 square feet shall be \$275; and

2. Over 20,000 square feet shall be \$275 plus thirty (30) dollars for each additional 10,000 square feet in excess of 20,000 square feet.

(c) The standpipe plan review fee shall be \$275. The combination stand pipe and riser plans shall be reviewed under the automatic sprinkler review fee schedule.

(d) Carbon dioxide suppression system review fee:

1. One (1) through 200 pounds of agent shall be \$275; and

2. Over 200 pounds of agent shall be \$275 plus five (5) cents per pound in excess of 200 pounds.

(e) Clean agent suppression system review fee:

1.a. Up to thirty-five (35) pounds of agent shall be \$275;

b. Over thirty-five (35) pounds shall be \$275 plus ten (10) cents per pound in excess of thirty-five (35) pounds.

2. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than \$150.

(f) Foam suppression system review fee.

1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed under the automatic sprinkler review fee schedule.

3. The fee for review of plans under subparagraph 1 of this paragraph shall not be less than \$275 or more than \$1,500.

(g) The commercial range hood review fee shall be \$225 per hood.

(h) Dry chemical systems review fee (except range hoods). The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be \$275; and

2. Over thirty (30) pounds of agent shall be \$275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds.

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and overflow detection, cathodic protection, or associated components.

(j) Boiler and unfired pressure vessel fees. Plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "International Building Code, 2006", First Edition, International Code Council, Inc.; and

(b) "2007 Kentucky Building Code", Ninth Edition, 2007, revised ~~September 2010~~ ~~March 2010~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Chair

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 9, 2010

FILED WITH LRC: September 10, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

October 21, 2010, at 9 a.m. 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 October 14, 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 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 November 1, 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 uniform Kentucky Building Code as required pursuant to KRS 198B.050.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to adopt the Kentucky Building Code as required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation utilizes the International Building Code as the basis for construction standards and allows the Board of Housing, Buildings and Construction to make amendments unique to Kentucky after due consideration of equivalent safety measures as required by KRS 198B.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth standards authorized by the statute for the enforcement of the building code, incorporating all applicable laws into its processes.

(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: Amends the Kentucky Building Code, Chapter 9, and adds a new section, Section 914 to require carbon monoxide alarms be installed in new construction; Chapter, 10, Section 1025, discontinuous handrails to improve safety and prevent injuries; and Chapter 35, Referenced Standards, to update the International Energy Conservation Code from the 2006 edition to the 2009 edition.

(b) The necessity of the amendment to this administrative regulation: To implement code changes approved by the Board of Housing, Buildings and Construction on February 18, 2010 and August 19, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 198B mandates the Board of Housing, Buildings and Construction to establish a uniform Kentucky Building Code. These amendments were approved by the Board to update and amend the current 2007 Kentucky Building Code.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Building Code are intended to enhance public safety and to allow the construction industry to utilize an updated version of the International Energy Conservation Code.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Construction projects subject to the Kentucky Building Code will be affected by the amendments to this regulation; architects; engineers; contractors; project managers; businesses; and local government.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-

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tive regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The identified entities must comply with the new amendments to the building code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Carbon monoxide alarms, discontinuous rails and the energy code adoption will be based upon the number of the units and the size of the structure constructed. Therefore, the total cost to the builder/contractor will depend upon the size of the project.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include enhanced safety features and enhanced energy savings.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments are anticipated to result in no additional costs to the agency.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendments will not necessitate an increase in fees or require funding to the Department for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no establishment of fees. Any costs resulting from these administrative amendments will be borne by the builder and owners.

(9) TIERING: Is tiering applied? Tiering is not applied as all builders, contractors and owners will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Building Codes Enforcement, Local Jurisdiction Inspection Programs, Contractors, Builders, Construction Trade Licensees and Owners.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.040(7) and 198B.050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The regulatory amendments are not anticipated to generate additional revenues for the agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The regulatory amendments are not anticipated to generate additional revenues for the agency.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer these regulatory amendments.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer these regulatory amendments.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Code Enforcement (Amendment)

815 KAR 7:125. Kentucky Residential Code.

RELATES TO: KRS 132.010(9), (10), 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990, 227.550(7) [~~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 state building code, based on a model code, which establishes standards for construction of buildings in the state. [~~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 basic mandatory uniform statewide code provisions relating to construction of one(1) and two(2) family dwellings and townhouses.

Section 1. Definitions. (1) "Board of Housing" or "Board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Commissioner" means the commissioner of the Department of Housing, Buildings, and Construction.

(4) "Department" means the Department of Housing, Building, and Construction.

(5) "Farm" means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) that is qualified by and registered with the property valuation administrator in the county in which the property is located.

(6) "KBC" means the Kentucky Building Code as established in 815 KAR 7:120.

(7) "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(8) "Modular home" means an industrialized building system, which is designed to be used as a residence and that is not a manufactured or mobile home.

(9) "Ordinary repair" is defined by KRS 198B.010(19).

(10) "Single-family dwelling" or "one-family dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, and which shall not be connected to any other unit or building.

(11) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Mandatory Building Code Requirements for Dwellings. (1) Except as provided in subsection (2) of this section, a single-family dwelling, two (2) family dwelling, or townhouse shall not be constructed unless it is in compliance with the International Residential Code, 2006 for one (1) and two (2) Family Dwellings, as amended by this administrative regulation and the 2007 Kentucky Residential Code.

(2) Exceptions.

(a) Permits, inspections, and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies which are not single-family, two-family, or townhouses shall comply with the International Building Code for one (1) and two (2) Family Dwellings, 2006, and the 2007

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Kentucky Building Code.

(3) The International Residential Code for one (1) and two (2) Family Dwellings, 2006, shall be amended as established in the 2007 Kentucky Residential Code.

(4) Plans for single-family or one (1) family dwellings, two (2) family dwellings, and townhouses shall be designed and submitted to conform to this administrative regulation.

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

(a) "International Residential Code for One(1)- and Two(2)-Family Dwellings, 2006", International Code Council, Inc., February 2006; and

(b) "2007 Kentucky Residential Code", August 2008, revised ~~October 2009~~ September 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Chair
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 9, 2010

FILED WITH LRC: September 10, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2010, at 9 a.m. 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 October 14, 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 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 November 1, 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 building construction requirements for one and two family dwellings and townhouses.

(b) The necessity of this administrative regulation: This administrative regulation established the Kentucky Residential Code as part of the Uniform State Building Code required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This is the portion of the uniform mandatory statewide building code for single family dwellings as authorized by KRS Chapter 198B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation contains all the enforcement requirements and technical standards for small residential construction.

(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 a new section, R325, to Chapter 3 of the 2007 Kentucky Residential Code, requiring installation of carbon monoxide alarms in new construction.

(b) The necessity of the amendment to this regulation: The

amendment is necessary to implement a legislative request to enhance the safety in new construction by installing a carbon monoxide alarm outside each separate sleeping area in the immediate vicinity of the bedrooms in dwelling units with fuel-fired appliances and in dwelling units that have attached garages.

(c) How the amendment conforms to the content of the authorizing statute: KRS 198B.050 requires the adoption of a uniform state building code and continuing review and modification.

(d) How the amendment will assist in the effective administration of the statutes: Will provide the amendment to the 2007 Kentucky Residential Code approved by the Board of Housing, Buildings and Construction on August 19, 2010.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Home builders and purchasers. Local governments that elect to have a building inspection program for single family dwellings will also be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The referenced entities will have to conform to the new code requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The new code will require that carbon monoxide alarms be installed in new construction. Increased construction costs will depend upon the size of the building and should be modest.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The carbon monoxide alarms will result in safer homes being built.

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

(a) Initially: No additional implementation costs are expected.

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No increases in fees are provided by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not applied as the code would be enforced for all new construction.

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? Local governments that have implemented a residential inspection program will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.050 and 198B.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? This regulatory amendment will generate no additional revenues.

(b) How much revenue will this administrative regulation gen-

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erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulatory amendment will generate no additional revenues.

(c) How much will it cost to administer this program for the first year? This regulatory amendment will result in no additional costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

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

RELATES TO: KRS Chapter 13B, 216.2920-216.2929

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services [te] promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the Commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions. (1) "Agent" means any entity with which the cabinet may contract to carry out its statutory mandates, and which it may designate to act on behalf of the cabinet to collect, edit, or analyze data from providers.

(2) "Ambulatory facility" is defined by KRS 216.2920(1).

(3) "Cabinet" is defined by KRS 216.2920(2).

(4) "Coding and transmission specifications" or "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals" [~~Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals~~] or Kentucky Data Coordinator's Manual for Ambulatory Facilities [~~Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities~~] means the document containing the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(5) "Hospital" is defined by KRS 216.2920(6).

(6) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds, and hospice care.

(7) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(8) "Outpatient services" means services performed on an outpatient basis in a hospital in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 4 of this administrative regulation.

(9) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals [~~Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals~~] or the Kentucky Data Coordinator's Manual for Ambulatory Facili-

ties [~~Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities~~].

(10) "Record" means the documentation of a hospitalization or outpatient service in the format prescribed by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals [~~Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals~~] or the Kentucky Data Coordinator's Manual for Ambulatory Facilities [~~Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities~~] as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(11) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals. (1) Inpatient Hospitalization records. Hospitals shall document every hospitalization they provide on a Standard Billing Form and shall, from every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(2) Outpatient services records.

(a) Hospitals shall document on a Standard Billing Form the outpatient services, as defined in Section 1 of this administrative regulation, they provide and shall from every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(b) Hospitals shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals [~~Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals~~].

(3) Data collection on patients. Hospitals shall submit required data on every patient as provided in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities. (1) Outpatient Services Records.

(a) Ambulatory facilities shall document on a Standard Billing Form the outpatient service, as defined in Section 1 of this administrative regulation, they provide and shall, for every record, copy and provide to the cabinet the data specified in Section 14 of the administrative regulation.

(b) Ambulatory facilities shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities [~~Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities~~].

(2) Data collection on patients. Ambulatory facilities shall submit required data on every patient as provided in Section 14 of this administrative regulation, regardless of the patient's billing or payment status.

Section 5. Data Finalization and Submission by Providers. (1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless of whether the record has actually been submitted to a payor.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(c) Data on hospitalizations shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized

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medical technology service, or another situation where one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by hospitals shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals [~~Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals~~].

(b) Records submitted to the cabinet by ambulatory facilities shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Data Coordinator's Manual for Ambulatory Facilities [~~Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities~~].

(c) All providers shall submit records on computer-readable electronic media.

(d) Providers shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's date log and a verification notice.

Section 6. Data Submission Timetable for Providers. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data, which during that quarter became final as specified in Section 5(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. Providers may submit data after records become final as specified in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

Section 7. Data Corrections for Hospitals. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals [~~Inpatient and Outpatient Coordinator Manual for Kentucky Hospitals~~].

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals [~~Inpatient and Outpatient Coordinator Manual for Kentucky Hospitals~~].

(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(d) For the first data submission, the cabinet shall not count as errors any data for patients admitted prior to thirty (30) days of the effective date of this administrative regulation.

Section 8. Data Corrections for Ambulatory Facilities. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities [~~Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities~~].

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within the thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities [~~Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities~~].

(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall verify an error rate per quarter of no more than one (1) percent of records or not more than (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is more.

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Section 9. Fines for Noncompliance for Providers. (1) A provider failing to meet quarterly submission guidelines as established in Sections 6, 7, and 8 of this administrative regulation shall be assessed a fine of \$500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed \$1,500 per provider.

Section 10. Extension or Waiver of Data Submission Timelines. (1) Providers experiencing extenuating circumstances or hardships may request from the cabinet, in writing, a data submission extension or waiver.

(a) Providers shall request an extension or waiver from the Office of Health Policy on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) Extensions and waivers shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:

(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 11. Appeals for Providers. (1) A provider notified of its noncompliance and assessed a fine pursuant to Section 9(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, it shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) Appeals shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 12. Working Contacts for Providers. (1) By January 1 of each calendar year, a provider shall report by letter to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name of the replacing person shall be reported immediately to the cabinet.

Section 13. Required Data Elements for Hospitals. (1) Hospitals

shall ensure that each record submitted to the cabinet contains at least the following data elements as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals [~~Inpatient and Outpatient Coordinator Manual for Kentucky Hospitals~~].

(3) Additional data elements, as specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals [~~Inpatient and Outpatient Coordinator Manual for Kentucky Hospitals~~], shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Provider Assigned Patient Control Number
Yes	*Provider Assigned Medical Record Number
Yes	*Type of Bill (inpatient, outpatient or other)
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Facility-specific NPI
Yes	*Statement Covers Period
Yes	*Patient City and Zip Code
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Admission/Start of Care Date
Yes	Admission Hour
Yes	*Type of Admission
Yes	*Source of Admission
Yes	*Patient Status (at end of service or discharge)
No	Occurrence Codes & Dates
No	Value Codes and Amounts, including birth weight in grams
Yes	*Revenue Codes/Groups
Yes	*HCPCS/Rates/Hipps Rate Codes
No	Units of Service
Yes	*Total Charges by Revenue Code Category
Yes	*Payor Identification - Payor Name
Yes	*National Provider Identifier
Yes	*Diagnosis Version Qualifier - ICD version 9.0 or 10.0
Yes	*Principal Diagnosis Code
No	Principal Diagnosis Code present on admission identifier for non-Medicare claims
Yes	*Principal Diagnosis Code present on admission identifier for Medicare claims
Yes	*Secondary and Other Diagnosis Codes if present
No	Secondary and Other Diagnosis code present on admission identifier if present for non-Medicare claims
Yes	*Secondary and Other Diagnosis code present on admission identifier if present for Medicare claims
No	Inpatient Admitting Diagnosis or Outpatient reason for visit
Yes	*External Cause of Injury Code (E-code) if present
No	External Cause of Injury (E-code) present on admission identifier on non-Medicare claims if present
Yes	*External Cause of Injury (E-code) present on admission identifier on Medicare claims if present
Yes	*Principal Procedure Code & Date if present
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*Attending Physician NPI/QUAL/ID
No	Operating Clinician ID Number/NPI
No	Other Physician NPI/QUAL/ID
Yes	*Race
Yes	*Ethnicity
Yes	*Procedure Coding Method

Section 14. Required Data Elements for Ambulatory Facilities.

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(1) Ambulatory Facilities shall ensure that each record submitted to the cabinet contains at least the following data elements as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities~~[Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities]~~.

(3) Additional data elements, as specified in Kentucky Data Coordinator's Manual for Ambulatory Facilities~~[Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities]~~, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Zip Code
Yes	*1st Individual Payer ID#
Yes	*Admission/Start of Care Date
Yes	*Type of Bill
Yes	*Principal Diagnosis Code
Yes	*Secondary and Other Diagnosis Codes if present
Yes	*Principal Procedure Code & Date
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*1st Units of Service
Yes	*1st Charge
No	Secondary and Other Units of Service and Charge
Yes	*Total Charges for the Case
Yes	*Attending Clinician NPI
Yes	*Provider Assigned Patient ID#
Yes	*1st Insurer Group #
No	2nd Insurer Group #
Yes	*Operating Clinician NPI
Yes	*Billing Facility-specific NPI
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Statement Covers Period
Yes	*Primary Payor Name
No	Secondary Payor Name
Yes	*Race
Yes	*Ethnicity
Yes	*HCPCS/Rates/Hipps Rate Codes

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised July 1, 2010~~[Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals, updated 10/5/2009]~~; and

(b) "Kentucky Data Coordinator's Manual for Ambulatory Facilities", revised July 1, 2010~~[Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities, updated 10/5/2009]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CARRIE BANAHAN, Executive Director
 JANIE MILLER, Secretary

APPROVED BY AGENCY: September 10, 2010

FILED WITH LRC: September 10, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2010, at 9 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any

person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi, 564-9592

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides clarification and instruction to specified health care providers on the process necessary to submit copies of administrative claims data to the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data. The administrative regulation contains the updated manuals for both hospitals and ambulatory facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data to enable the cabinet to publish the data as required by KRS 216.2925.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed instructions to specified health care providers relating to the data elements, forms and timetables necessary to comply with statute.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation incorporates by reference updated data reporting manuals. Updated manuals are necessary as facilities currently submit data to COMPData and with hospital discharge dates and outpatient services date of service on or after July 1, 2010, facilities will now be submitting data to the Kentucky Hospital Association. This change occurred as a result of a contract with the Kentucky Hospital Association (KHA) to provide collection services. The data elements and file formats for submission will not be changed. The significant changes are related to where facilities will submit data (i.e. to KHA instead of COMPdata) and the mechanism that will be used to correct error records.

(b) The necessity of the amendment to this administrative regulation: As a result of the contract with KHA, this amendment is necessary to provide new data submission manuals to facilities that submit data.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment continues to conform to the content of the authorizing statutes by providing a standardized method of reporting by facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes as it provides detailed instructions on how to submit required data elements.

(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 approximately 175 hospitals and ambulatory facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will collect and submit data

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as required. Entities are already required to submit data, so this regulation provides instructions on where data for the third quarter 2010 and thereafter will be submitted.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each entity already submits data. As the data elements and file formats will not change, there should be no or a minimal cost to the entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Facilities will benefit as the new mechanism for correcting error records is more streamline, allowing the correction of either a single record or resubmitting an entire batch of records. The current correction process is not as flexible.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation as the Office of Health Policy currently collects data and has the necessary data collection system in place.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

(9) TIERING: Is tiering applied? (explain why or why not) Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services and the state operated hospital facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.2920-216.2929.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate 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? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Epidemiology and Health Planning (Amendment)

902 KAR 2:060. Immunization schedules for attending day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools.

RELATES TO: KRS 158.035, 211.090, 211.220, 214.032-214.036

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 214.034

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180(1)(a) requires the Cabinet for Health and Family Services to implement a statewide program for the detection, prevention and control of communicable diseases. KRS 214.034(1) requires the establishment of immunization schedules by the Cabinet for Health and Family Services. This administrative regulation establishes the mandatory immunization schedule for attendance at day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools.

Section 1. Definitions. (1) "Advisory Committee on Immunization Practices" or "ACIP" means the United States Department of Health and Human Services (HHS)[Public Health Service] Committee that makes national immunization recommendations to the Secretary of the HHS, the Assistant Secretary for Health, and the Director of the[Centers for Disease Control and Prevention].

(2) "Advanced Practice Registered Nurse" or "APRN" (APRN) means a nurse designated to engage in advanced registered nursing practice as defined in KRS 314.011.

(3) "Dose" means a measured quantity of vaccine, specified in the package insert provided by the manufacturer.

~~(4)[(3)]~~ "DT" means diphtheria and tetanus toxoids combined.

~~(5)[(4)]~~ "DTaP" means diphtheria and tetanus toxoids combined with acellular pertussis vaccine.

~~(6)[(5)]~~ "DTP" means diphtheria and tetanus toxoids combined with pertussis vaccine.

~~(7) "Healthcare provider" means a person licensed under KRS 311.530 to 311.620, 311.840 to 311.862, and a nurse designated to engage in advanced practice registered nursing as defined in KRS 314.011 and 314.042.~~

~~(8)[(6)]~~ "HepB" means hepatitis B vaccine.

~~(9)[(7)]~~ "Hib" means haemophilus influenzae type b conjugate vaccine.

~~(10)[(8)]~~ "IPV" means inactivated polio virus vaccine.

~~(11) "MCV" means meningococcal conjugate vaccine.~~

~~(12) "MPSV" means meningococcal polysaccharide vaccine.~~

~~(13)[(9)]~~ "MMR" means measles, mumps, and rubella vaccines combined. ~~[(14) "Measles-containing vaccine" means a vaccine that contains the measles virus.]~~

~~(14)[(44)]~~ "OPV" means trivalent oral poliovirus vaccine (Sabin).

~~(15) "Pharmacist" means a person licensed under KRS 315.002 to 315.050.~~

~~(16) "Physicians Assistant" means a person licensed under KRS 311.840 to 311.862.~~

~~(17) "PCV" means pneumococcal conjugate vaccine.~~

~~(18)[(15)]~~ "Pharmacist" means a person licensed under KRS 315.002 to 315.050.

~~(16) "Physicians assistant" means a person licensed under KRS 311.840 to 311.862.~~

~~(17) "PCV" means pneumococcal conjugate vaccine.~~

~~(18)[(42)]~~ "Td" means combined tetanus and diphtheria toxoids (adult type).

~~(19) "Tdap" means tetanus toxoid and reduced diphtheria tox-~~

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oid combined with acellular pertussis vaccines.

~~(20)(143)~~ "Varicella" means varicella or chickenpox vaccine.

Section 2. Immunization Schedules. (1) A child three (3) months of age or older, without a current immunization certificate, shall not attend:

- (a) A day care center;
- (b) Certified family child care home;
- (c) Other licensed facility which cares for children;
- (d) Preschool program; or
- (e) Public or private primary or secondary school.

(2) Except as provided in Section 3 of this administrative regulation, the immunization certificate of a child shall be considered current if the child is:

(a) At least three (3) and less than five (5) months of age and has received at least:

1. One (1) dose of DtaP or DTP~~[or DtaP]~~;
2. One (1) dose of IPV or OPV~~[or IPV]~~;
3. One (1) dose of Hib;~~[and]~~
4. One (1) dose of HepB; and
5. One (1) dose of PCV;

(b) At least five (5) and less than seven (7) months of age and has received at least:

1. Two (2) doses of DtaP or DTP~~[or DtaP]~~ or combinations of the two (2) vaccines;
2. Two (2) doses of IPV or OPV~~[or IPV]~~ or combinations of the two (2) vaccines;
3. Two (2) doses of Hib;~~[and]~~
4. Two (2) doses of HepB; and
5. Two (2) doses of PCV;

(c) At least seven (7) and less than twelve (12) months of age and has received at least:

1. Three (3) doses of DtaP or DTP~~[or DtaP]~~ or combinations of the two (2) vaccines;
2. Two (2) doses of IPV or OPV~~[or IPV]~~ or combinations of the two (2) vaccines;
3. Two (2)~~Three (3)~~ doses of Hib;~~[and]~~
4. Two (2) doses of HepB; and
5. a. Three (3) doses of PCV; or
b. Two (2) doses of PCV if a child received the first dose of PCV between seven (7) to eleven (11) months of age;

(d) At least twelve (12) and less than sixteen (16) months of age and has received at least:

1. Three (3) doses of DtaP or DTP~~[or DtaP]~~ or combinations of the two (2) vaccines;
2. Two (2) doses of IPV or OPV~~[or IPV]~~ or combinations of the two (2) vaccines;
3. a. Three (3) doses of Hib; or
b. Two (2) doses of Hib between twelve (12) and fifteen (15) months of age;~~[and]~~
4. Two (2)~~Three (3)~~ doses of HepB; and
5. a. Four (4) doses of PCV with one (1) dose on or after twelve (12) months of age; or
b. Three (3) doses of PCV if a child received the first dose of PCV between seven (7) to eleven (11) months of age, with at least one (1) dose on or after twelve (12) months of age; or
c. Two (2) doses of PCV if a child received the first dose of PCV between twelve (12) to fifteen (15) months of age;

(e) At least sixteen (16) and less than nineteen (19) months of age and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;
2. Two (2) doses of IPV or OPV or combinations of the two (2) vaccines;
3. Four (4) doses of Hib;
4. Two (2) doses of HepB;
5. a. Four (4) doses of PCV with one (1) dose on or after twelve (12) months of age; or
b. Three (3) doses of PCV if a child received the first dose of PCV between seven (7) to eleven (11) months of age, with at least one dose on or after twelve (12) months of age; or
c. Two (2) doses of PCV if a child received the first dose of PCV between twelve (12) to fifteen (15) months of age;

(f) At least nineteen (19) and less than forty-eight (48) months of age and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;
2. Two (2) doses of IPV or OPV or combinations of the two (2) vaccines;
3. Four (4) doses of Hib;
4. Two (2) doses of HepB;
5. a. Four (4) doses of PCV with one (1) dose on or after twelve (12) months of age; or
b. Three (3) doses of PCV if a child received the first dose of PCV between seven (7) to eleven (11) months of age, with at least one dose on or after twelve (12) months of age; or
c. Two (2) doses of PCV if a child received the first dose of PCV between twelve (12) to fifteen (15) months of age;

6. One (1) dose of MMR; and

7. One (1) dose of varicella, unless a healthcare provider states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider;

(f) At least nineteen (19) and less than forty-eight (48) months of age and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;
2. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines;
3. Four (4) doses of Hib;
4. Three (3) doses of HepB; and
5. a. Four (4) doses of PCV with one (1) dose on or after twelve (12) months of age; or
b. Three (3) doses of PCV if a child received the first dose of PCV between seven (7) to eleven (11) months of age, with at least one (1) dose on or after twelve (12) months of age; or
c. Two (2) doses of PCV if a child received the first dose of PCV between twelve (12) to fifteen (15) months of age;
d. One (1) dose of PCV if a child received the first dose of PCV at twenty-four (24) months of age or older;

(g) At least forty-eight (48) months and less than five (5) years of age and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;
2. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines;
3. Four (4) doses of Hib;
4. Three (3) doses of HepB;
5. a. Four (4) doses of PCV with one (1) dose on or after twelve (12) months of age; or
b. Three (3) doses of PCV if a child received the first dose of PCV between seven (7) to eleven (11) months of age, with at least one (1) dose on or after twelve (12) months of age; or
c. Two (2) doses of PCV if a child received the first dose of PCV between twelve (12) to twenty-three (23) months of age;
d. One (1) dose of PCV if a child received the first dose of PCV at age twenty-four (24) months or older;

(h) At least five (5) and less than seven (7) years of age and has received at least:

1. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines;
2. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines;
3. Three (3) doses of HepB;
4. Two (2) doses of MMR; and
5. Two (2) doses of varicella, unless a healthcare provider states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider;

(i) At least seven (7) years of age and less than eleven (11) years of age and has received:

1. a. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines; or
b. A dose of Td that was preceded by two (2) doses of DTP, DTaP, DT, or Td or combinations of the four (4) vaccines;
2. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines;
3. Three (3) doses of HepB;
4. Two (2) doses of MMR; and

(j) At least eleven (11) years of age and less than fifteen (15) years of age and has received:

1. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines; or
2. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines;

(k) At least fifteen (15) years of age and less than nineteen (19) years of age and has received:

1. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines; or
2. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines;

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5. Two (2) doses of varicella, unless a healthcare provider states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider;

(3) For sixth grade entry, age eleven (11) or twelve (12) years or older, a child shall have received:

(a) One (1) dose of Tdap if it has been at least two (2) years since the administration of the last dose of a tetanus-containing vaccine;

(b) Four (4) doses of IPV or OPV or combinations of the two (2) vaccines;

(c) 1. Three (3) doses of HepB; or

2. Two (2) doses of adult HepB approved by the FDA to be used for an alternative schedule for adolescents eleven (11) through fifteen (15) years of age;

(d) Two (2) doses of MMR;

(e) Two (2) doses of varicella, unless a healthcare provider states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider; and

(f) One (1) dose of MCV or MPSV.

(4) Immunizations shall be administered at least at the minimum ages and intervals recommended by the ACIP. Partial, split, half, or fractionated doses or quantities shall not be administered and shall not be counted as a valid dose.

Section 3. Exceptions and Exemptions to the Immunization Schedules. (1) If the first two (2) doses of Hib vaccine required in Section 2(2) of this administrative regulation were meningococcal group B outer membrane protein (PRP-OMP) vaccines, the third dose may be omitted.

(2) If one (1) dose of Hib vaccine has been administered to a child who is at least fifteen (15) and less than sixty (60) months of age, the child shall:

(a) Not be required to receive further doses of Hib; and

(b) Be considered to have received the Hib doses required by this administrative regulation.

(3) A child with a contraindication to pertussis vaccine may be given DT in lieu of DTaP or Td in lieu of Tdap required in Section 2 of this administrative regulation.

(4) If the fourth dose of DT, DTP, or DTaP was administered on or after the fourth birthday, the fifth dose shall not be required.

(5) If the third dose of IPV or OPV was administered on or after the fourth birthday and at least six (6) months following the previous dose, the fourth dose shall not be required.

(6) If one (1) dose of PCV has been administered to a child who is at least age twenty-four (24) months and less than sixty (60) months of age, the child shall:

(a) Not be required to receive further doses of PCV; and

(b) Be considered to have received the PCV doses required by this administrative regulation;

(7) A child with a medical contraindication to receiving a vaccine may obtain, from his or her healthcare provider, a "Certificate of Medical Exemption" from the requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036.

(8)(a) A healthcare provider, pharmacist, local health department, or other licensed healthcare facility administering immunizations, shall, upon receipt of a written sworn statement from the parent or guardian of a child, issue a "Certificate of Religious Exemption" from the requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036.

(b) A "Certificate of Religious Exemption" shall only be valid for all requirements of Section 2 of this administrative regulation.

(9)(a) A provisional immunization certificate shall be issued for an otherwise-qualified child, who is behind in required immunizations, and:

1. Who has not yet reached the required minimum age; or

2. For whom the time interval between doses has not elapsed.

(b) A provisional immunization certificate shall:

1. Permit a child to attend a day care center, certified family child care home, other licensed facility which cares for children, preschool program, primary or secondary school until he or she

reaches the appropriate age, or upon passage of the time interval between required doses;

2. Expire fourteen (14) days from the date the next dose is required to be given; and

3. Not be valid for more than one (1) year.

Section 4. Immunization Certificates. (1) An immunization certificate may be issued by:

(a) A physician;

(b) An advanced practice registered nurse;

(c) A physician's assistant;

(d) A pharmacist;

(e) Local health department; or

(f) Other licensed healthcare facility administering immunizations.

(2) An immunization certificate may be signed by:

(a) A physician;

(b) An advanced practice registered nurse;

(c) A physician's assistant;

(d) A pharmacist;

(e) Local health department administrator; or

(f) A registered nurse designee of a physician, local health department administrator, or other licensed healthcare facility.

(3) A local health department, healthcare provider, pharmacist, or other licensed healthcare facility administering immunizations may obtain the following immunization certificates from the Cabinet for Health and Family Services:

(a) Commonwealth of Kentucky Immunization Certificate;

(b) Commonwealth of Kentucky Provisional Immunization Certificate;

(c) Commonwealth of Kentucky Certificate of Medical Exemption; or

(d) Commonwealth of Kentucky Certificate of Religious Exemption.

(4) If an immunization certificate that was not provided by the Cabinet for Health and Family Services is issued to a child, it shall:

(a) Be a hard copy or an electronically-produced copy;

(b) Be in the same size and format as a certificate provided by the Cabinet for Health and Family Services; and

(c) Contain at least the following information:

1. The name of the child;

2. The birthdate of the child;

3. The name of the parent or guardian of the child;

4. The address of the child, including street, city, state, zip code;

5. The type(s) of vaccine(s) administered to the child;

6. The date that each dose of each vaccine was administered;

7. Certification that the child is current for immunizations until a specified date, including a statement that the certificate shall not be valid after the specified date;

8. The signature and the date of the signature of:

a. A physician;

b. An advanced practice registered nurse;

c. A physician's assistant;

d. A pharmacist;

e. Local health department administrator; or

f. A registered nurse designee of a physician, local health department administrator, or other licensed healthcare facility; and

9. The name of the healthcare provider practice, pharmacy, local health department, or licensed health care facility.

10. Immunizations included on the certificate shall only be those immunizations required for attending day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private elementary or secondary schools as outlined in Section 2 of this administrative regulation. The certificate issued may have a separately titled additional page for all immunizations administered but not otherwise required for attending day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, public and private elementary, and secondary schools.

(5) A completed immunization certificate shall:

(a) Be on file for a child:

1. Enrolled in a public or private primary or secondary school or preschool program; or

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2. Cared for in:

- a. A day care center;
- b. A certified family child care home; or
- c. Other licensed facility that cares for children; and
- (b) Be available for inspection and review by a representative of the Cabinet for Health and Family Services or a representative of a local health department.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Immunization Certificate (EPID 230)", revised 08/2010;

(b) "Commonwealth of Kentucky Provisional Immunization Certificate (EPID 230A)", revised 08/2010;

(c) "Commonwealth of Kentucky Certificate of Medical Exemption (EPID 230B)", revised 08/2010"; and

(d) "Commonwealth of Kentucky Certificate of Religious Exemption (EPID 230C)", revised 08/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 10. Effective Date. This regulation shall become effective for the school year beginning on or after July 1, 2011 for all day cares, certified family child care homes, other licensed facilities which care for children, preschool programs, public and private primary, and secondary schools. (e) At least sixteen (16) and less than nineteen (19) months of age and has received at least:

1. Four (4) doses of DTP or DTaP or combinations of the two (2) vaccines;

2. Two (2) doses of OPV or IPV or combinations of the two (2) vaccines;

3. Four (4) doses of Hib;

4. One (1) dose of MMR; and

5. Three (3) doses of HepB;

(f) At least nineteen (19) and less than forty-nine (49) months of age and has received at least:

1. Four (4) doses of DTP or DTaP or combinations of the two (2) vaccines;

2. Three (3) doses of OPV or IPV or combinations of the two (2) vaccines;

3. Four (4) doses of Hib;

4. One (1) dose of MMR;

5. One (1) dose of varicella, unless a parent, guardian, or physician states that the child has had chickenpox disease; and

6. Three (3) doses of HepB;

(g) At least forty-nine (49) months and less than five (5) years of age and has received at least:

1. Four (4) doses of DTP or DTaP or combinations of the two (2) vaccines;

2. Three (3) doses of OPV or IPV or combinations of the two (2) vaccines;

3. Four (4) doses of Hib;

4. One (1) dose of MMR and a second dose of measles-containing vaccine;

5. Three (3) doses of HepB; and

6. One (1) dose of varicella vaccine, unless a parent, guardian, or physician states that the child has had chickenpox disease;

(h) At least five (5) and less than seven (7) years of age and has received at least:

1. Five (5) doses of DTP or DTaP or combinations of the two (2) vaccines;

2. Four (4) doses of OPV or IPV or combinations of the two (2) vaccines;

3. One (1) dose of MMR and a second dose of measles-containing vaccine;

4. Three (3) doses of HepB; and

5. One (1) dose of varicella, unless a parent, guardian, or physician states that the child has had chickenpox disease; or

(i) Seven (7) years of age or older and has received:

1.a. Five (5) doses of DTP or DTaP or combinations of the two (2) vaccines; and

b. A dose of Td that was preceded by two (2) doses of DTP,

DtaP, DT, or Td or combinations of the four (4) vaccines;

2. One (1) dose of Td given at eleven (11) to twelve (12) years of age, if at least five (5) years have elapsed since the last dose of DtaP, DTP, or DT;

3. Four (4) doses of OPV or IPV or combinations of the two (2) vaccines;

4. One (1) dose of MMR and if he or she was born October 1, 1990 or later, a second dose of measles-containing vaccine; and

5.a. Three doses of HepB, if he or she was born October 1, 1992 or later; or

b. Two (2) doses of adult HepB approved by the Federal Drug Administration (FDA) as an alternative schedule for adolescents eleven (11) to fifteen (15) years of age, completed by age sixteen (16).

(3) For sixth grade entry, not withstanding age, a child shall have received:

(a) One (1) dose of MMR and a second dose of measles-containing vaccine;

(b)1. Until the 2008-2009 school year, three (3) doses of HepB; or

2. Two (2) doses of adult HepB approved by the FDA an alternative schedule for adolescents eleven (11) to fifteen (15) years of age, completed by age sixteen (16); and

(c) Three (3) doses of OPV or IPV or combinations of the two (2) vaccines.

(4) A booster dose of DtaP, DTP, or DT shall be given every ten (10) years.

(5) Immunizations shall be administered at least at the minimum ages and intervals recommended by the ACIP. Partial, split, half, or fractionated quantities shall not be counted as a dose.

Section 3. Exceptions and Exemptions to the Immunization Schedules. (1) If the first two (2) doses of Hib vaccine required in Section 2(2) of this administrative regulation were meningococcal group B outer membrane protein vaccines, the third dose may be omitted.

(2) If a dose of Hib vaccine has been administered to a child who is at least fifteen (15) and less than sixty (60) months of age, the child shall:

(a) Not be required to receive further doses of Hib; and

(b) Be considered to have received the doses required by this administrative regulation.

(3) A child with a contraindication to pertussis vaccine may be given DT in lieu of DTP or DTaP required in Section 2 of this administrative regulation.

(4) If the fourth dose of DT, DTP, or DTaP was administered on or after the fourth birthday, the fifth dose shall not be required.

(5) If the third dose of IPV or OPV was administered on or after the fourth birthday, the fourth dose shall not be required.

(6) A child with a medical contraindication to receiving a vaccine may obtain, from his attending physician, a "Certificate of Medical Exemption" from the requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036.

(7) A physician, local health department, or medical facility administering immunizations, shall, upon receipt of a written sworn statement from the parent or guardian of a child, issue a "Certificate of Religious Exemption" from the requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036.

(8)(a) A provisional immunization certificate shall be issued for an otherwise-qualified child:

1. Who has not yet reached the required minimum age; or

2. For whom the time interval between doses has not elapsed.

(b) A provisional immunization certificate shall:

1. Permit a child to attend a day care center, certified family child care home, other licensed facility which cares for children, preschool program, primary or secondary school until he or she reaches the appropriate age, or upon passage of the time interval between required doses;

2. Expire fourteen (14) days from the date the next dose is required to be given; and

3. Not be valid for more than one (1) year.

Section 4. Immunization Certificates. (1) An immunization certificate may be issued by:

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- (a) A physician;
 - (b) An advanced registered nurse practitioner;
 - (c) A physician's assistant;
 - (d) Local health department; or
 - (e) Other licensed health facility administering immunizations.
- (2) An immunization certificate may be signed by:

- (a) A physician;
- (b) An advanced registered nurse practitioner;
- (c) A physician's assistant;
- (d) Local health department administrator; or
- (e) A physician or local health department administrator designee.

(3) A local health department, physician, or other licensed health facility administering immunizations may obtain the following immunization certificates from the Cabinet for Health Services:

- (a) "Commonwealth of Kentucky Immunization Certificate";
- (b) "Commonwealth of Kentucky Certificate of Medical Exemption";
- (c) "Commonwealth of Kentucky Childhood Immunization Law Certificate of Religious Exemption"; or
- (d) "Commonwealth of Kentucky Provisional Immunization Certificate".

(4) If an immunization certificate that was not provided by the Cabinet for Health Services is issued to a child, it shall:

- (a) Be a hard copy or an electronically-produced copy;
 - (b) Be in the same format as a certificate provided by the Cabinet for Health Services; and
 - (c) Contain at least the following information:
 1. The name of the child;
 2. The birthdate of the child;
 3. The name of the parent or guardian of the child;
 4. The address of the child, including street, city, state, zip code;
 5. The type of vaccine administered to the child;
 6. The date that each dose of each vaccine was administered;
 7. Certification that the child is current for immunizations until a specified date, including a statement that the certificate shall not be valid after the specified date;
 8. The signature and the date of the signature of:
 - a. The physician;
 - b. Local health department administrator; or
 - c. Designee of the physician or local health department administrator.
- (5) A completed immunization certificate shall:
- (a) Be on file for a child:
 1. Enrolled in a public or private primary or secondary school or preschool program; or
 2. Cared for in:
 - a. A day care center;
 - b. A certified family child care home; or
 - c. Other licensed facility that cares for children; and
 - (b) Be available for inspection and review by a representative of the cabinet.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Commonwealth of Kentucky Immunization Certificate (EPID 230), revised 9/2002";
- (b) "Commonwealth of Kentucky Provisional Immunization Certificate (EPID 230A), revised 9/2002";
- (c) "Commonwealth of Kentucky Certificate of Medical Exemption (EPID 230B), revised 9/2002"; and
- (d) "Commonwealth of Kentucky Childhood Immunization Law Certificate of Religious Exemption (EPID 230C), revised 9/2002".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

WILLIAM D. HACKER, M.D., FAAP, CPE, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 10, 2010
FILED WITH LRC: September 10, 2010 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on October 21, 2010 at 9 a.m. in the Second Floor Board Room of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2010, five (5) weekdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia Tindall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a mandatory immunization schedule for children attending day care centers, certified family child care homes, other licensed facilities that care for children, preschool programs, and public and private primary and secondary schools.

(b) The necessity of this administrative regulation: This administrative regulation establishes an immunization schedule for children in attendance at licensed school facilities to protect the health of children by preventing or reducing the effects of vaccine-preventable disease.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 214.034 to establish immunization schedules. In addition KRS 158.035 requires an immunization certificate in order for a student to be enrolled in a public or private elementary or secondary school.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the guidelines to the schedules required in administering immunizations, as well as guidelines for the administration of immunization certificates.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this regulation changes timing for administration of Haemophilus influenzae type b conjugate vaccine (Hib), changes the timing of the administration of the first dose of varicella, and adds an additional dose of varicella. The amendment removes the second dose of measles containing vaccine and replaces it with an additional dose of MMR (measles, mumps, and rubella). Tdap (diphtheria, tetanus, and whooping cough or pertussis) and meningococcal vaccine are added as requirements for sixth grade entry, or age 11 or 12 years or older. Four (4) doses of pneumococcal vaccine (PCV) are added at the appropriate age intervals. The hepatitis B sunset clause is removed in accordance with KRS 214.034 legislative changes. The immunization certificates are updated in accordance with requirement changes.

(b) The necessity of the amendment to this administrative regulation: This regulation is being amended as required by legislative changes made to KRS 214.034 regarding the removal of the sunset hepatitis B clause. The additional changes are being made to bring changes Kentucky's immunization schedule up to date with the U.S. Advisory Committee on Immunization Practices recommendations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the intent and provision of the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides an im-

munization schedule that is up to date with current federal immunization recommendations.

(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 children attending school or licensed child care facilities in Kentucky, the Kentucky Immunization Program and CDC.

(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: Parents of children attending licensed child care facilities or schools will have to ensure that their children are up to date with their immunizations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The vaccine doses added to this administration will cost the Kentucky Immunization Program approximately \$903,598 per birth cohort to cover the cost of additional vaccines for those children who are under-insured and are not being seen at federally qualified health centers (FQHCs). One (1) birth cohort in Kentucky is approximately 55,990 children. Eight (8) percent of these children are under-insured. Approximately twenty (20) percent of under-insured children will be seen at federally qualified health centers. Therefore the Immunization Program will be providing immunizations for approximately 3,584 children per birth cohort.

Immunization Needs for Children

MCV One (1) dose for full cohort

One (1) dose = \$79.75

Cost = \$285,824

Varicella One (1) dose for full cohort

One (1) dose = \$67.08

Cost = \$240,415

PCV Currently 89.5% coverage for three (3) doses of PCV, therefore 10.5% need one (1) dose

One (1) dose = \$91.75

Cost = \$328,832

Difference of cost between Tdap and Td for one (1) birth cohort

\$28.54 - \$15 = \$13.54

Cost = \$48,527

Total Cost \$903,598

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children will be better protected from vaccine-preventable diseases.

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

(a) Initially: It will cost approximately \$45,000 for education to implement the changes to this regulation in addition to the vaccine costs of \$903,598. The \$45,000 for education will be absorbed by the federal Immunization Grant and will not require the use of any state funds. Kids Now tobacco settlement funds will be used to absorb the \$903,598 in vaccine costs for the underinsured cohort outlined in this note. No new state dollars are required.

(b) On a continuing basis: These costs will be absorbed by the federal Immunization Grant and Kids Now tobacco settlement funds. No new state dollars are required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Immunization Grant funds will be used for providing education regarding this regulation and Kids Now tobacco settlement funds will be used to cover the vaccine costs for underinsured patients in local health departments. The underinsured who are unable to receive services at a local health department or federally qualified health center may have to pay out of pocket to receive these immunizations. However, since these vaccines have been part of the Centers for Disease Control and Prevention's recommended immunization schedule for several years, it is likely that most patients in this cohort have already received these immunizations and therefore, the number of underinsured may be less than anticipated.

ipated.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No fees or new funding will be required to implement this regulation. Existing federal Immunization Grant funds and Kids Now tobacco settlement funds will be used to implement the regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by 902 KAR 2:060.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All 120 counties, all health departments, all school districts, and the Kentucky Department for Public Health Immunization Program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following state statutes require or authorize this administrative regulation amendment: KRS 158.035, 211.090, 211.220, 214.032, through 214.036

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 regulation amendment will not generate any revenue for any unit of state or local government in its first year of implementation.

(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 regulation amendment will not generate any revenue for any unit of state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? In addition to a \$45,000 cost for educating Local Health Departments, schools, and day care providers, it will cost the Kentucky Immunization Program approximately \$903,598 to immunize under-insured children not being seen at federally qualified health centers (FQHC) who are not up to date with pneumococcal, meningococcal, varicella and Tdap vaccines.

(d) How much will it cost to administer this program for subsequent years? It will cost the Kentucky Immunization Program approximately an additional \$903,598 each year to immunize those children who are underinsured and are not being seen at federally qualified health centers (FQHCs).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, SEPTEMBER 15, 2010

FINANCE AND ADMINISTRATION CABINET
Kentucky Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 15:180. Kentucky New Markets Development Program Tax Credit.

RELATES TO: KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, 141.020, 141.040, 141.0401, 141.432, 141.433, 141.434, 304.3-270

STATUTORY AUTHORITY: KRS 141.433(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.434 establishes a nonrefundable tax credit for a person or entity making a qualified equity investment in a qualified community development entity as provided by KRS 141.432(6). KRS 141.433(7) provides that the department shall promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434, and to administer the allocation of tax credits issued for qualified equity investments. This administrative regulation establishes guidelines and the filing requirements of a qualified community development entity in order for the department to certify qualified equity investments and to allocate tax credits to a person or entity making a qualified equity investment in a qualified community development entity.

Section 1. Definitions. (1) "Applicant" means a CDE that files an application with the department to have an equity investment or long-term debt security certified as a qualified equity investment eligible for the tax credit provided by KRS 141.434.

(2) "Application" means Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit (Revenue Form 41A720-S80), that is filed by a CDE with the department for certification as a qualified equity investment.

(3) "CDE" means a qualified community development entity as defined by KRS 141.432(6).

(4) "CDFI Fund" means the U.S. Department of Treasury, Community Development Financial Institutions Fund.

(5) "Certified purchase price" means the purchase price of a qualified equity investment contained in the application approved by the department.

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

(7) "Department's approval" means certified by the department as provided by KRS 141.433(3).

(8) "Identification number" means:

(a) Social Security number for individuals;

(b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

(c) Kentucky Corporation/LLET Account Number for corporations and limited liability pass-through entities.

(9) "Long-term debt security" is defined by KRS 141.432(3).

(10) "Qualified active low-income community business" is defined by KRS 141.432(5).

(11) "Qualified community development entity" is defined by KRS 141.432(6).

(12) "Qualified equity investment" is defined by KRS 141.432(7).

(13) "Qualified low-income community investment" is defined by KRS 141.432(8).

(14) "Tax credit" is defined by KRS 141.432(9).

(15) "Taxpayer" is defined by KRS 141.432(10).

Section 2. Application for Certification of Qualified Equity Investments. (1) A CDE that seeks to have an equity investment or long-term debt security certified by the department as a qualified equity investment eligible for the tax credit permitted by KRS 141.434 shall file an application with the department.

(2) The department shall notify the CDE within thirty (30) days after receipt of the application whether the application is approved or denied:

(a) If the department intends to deny the application, the CDE

will be notified in writing by the department of the reason for the denial, and the CDE will be allowed to correct the application as provided by KRS 141.433(2).

(b) If the department determines that the application is in compliance with KRS 141.432 to 141.434, a copy of the application will be returned to the CDE with written notice of the department's approval.

Section 3. Information Required on or Attached to the Application. The following information shall be required on or attached to the application:

(1) The CDE's name, mailing address, identification number, telephone number, and fax number;

(2) The name and identification number of the parent company, if the CDE is included in a consolidated corporation income tax return filed with the Commonwealth of Kentucky;

(3) Type of entity of the CDE for Kentucky income tax purposes included in the application;

(4) Submission date of application;

(5) Total number of taxpayers making qualified equity investments;

(6) Total amount of qualified equity investments for all taxpayers;

(7) A statement that the entity has been certified as a CDE, as required by 26 U.S.C. Section 45D(c). A copy of the certification shall be attached to the application;

(8) A statement that the entity has received a new markets tax credit allocation from the CDFI Fund which includes the Commonwealth of Kentucky within the service area as set forth in such allocation, and the date of the allocation agreement. A copy of the new markets tax credit allocation agreement shall be attached to the application;

(9) A statement that the entity has certified to the CDFI Fund during the last twelve (12) months that it continues to meet its primary mission and accountability requirements, and the date of the certification; or the CDFI Fund has recertified the entity as a CDE during the last twelve (12) months, and the date of the recertification. A copy of the certification or recertification shall be attached to the application;

(10) A statement that the entity includes the Commonwealth of Kentucky in its service area;

(11) A statement of whether the entity's service area is a county, state, multi-state, or national. A map of the service area, articles of organization that describe the service area, bylaws that describe the service area, or other documentation that describes the service area shall be attached to the application;

(12) Information regarding the proposed use of the proceeds from the qualified equity investments, including a description of the qualified active low-income community business as provided by KRS 141.432(5); and

(13) Name, identification number, type of investment (whether debt or equity), and purchase price of the qualified equity investment for each taxpayer making a qualified equity investment.

(14) The application shall be executed by the executive director of the CDE, declaring under the penalty of perjury:

(a) That the applicant's allocation agreement remains in effect and has not been revoked or canceled by the CDFI Fund; and

(b) That the application, including all accompanying documents and statements, is true, correct and complete.

Section 4. Proof of Qualified Equity Investments. (1) Within ninety (90) days after the approved application is received by the CDE, the CDE shall issue qualified equity investments in exchange for cash in the amount of the certified purchase prices contained in the application.

(2) The CDE shall provide the department with evidence of the receipt of the cash for each qualified equity investment by filing with the department Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification (Revenue Form 41A720-S81).

(3) If the department is satisfied that the cash amount of the qualified equity investment was received by the CDE, a copy of

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Form 8874(K)-A will be returned to the CDE and taxpayer with the department's written approval, including a statement of the tax credits available to the taxpayer for each of the next seven (7) years.

Section 5. Information Required on or Attached to the Form 8874(K)-A. The following information shall be required on or attached to the Form 8874(K)-A:

- (1) CDE's name and identification number;
- (2) Taxpayer making the qualified equity investment:
 - (a) Name and address;
 - (b) Identifying number;
 - (c) Certified purchase price of the qualified equity investment;
 - (d) Date the CDE received cash for the qualified equity investment;
 - (e) Type of taxpayer making the qualified equity investment;
- (3) Certification by the executive director of the CDE, declaring under the penalty of perjury that the form, including all accompanying documents and statements, is true, correct and complete.

Section 6. New Markets Development Program Tax Credit Recapture. (1) If there is an event as provided by KRS 141.433(6) which would result in the recapture of any portion of the tax credit previously approved:

- (a) The CDE shall notify the department upon discovery of such event; or
 - (b) The department, upon discovery of such event or after receiving notice from the CDE of such event, shall provide written notice of the proposed recapture to the CDE as provided by KRS 141.433(6)(b).
- (2) If the entity fails or is unable to cure the deficiency within ninety (90) days after receiving the department's notice of proposed recapture as provided by KRS 141.433(6)(b), the department shall notify the CDE and each taxpayer of the amount of recapture or the balance of the tax credit on Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture (Revenue Form 41A720-S82).
- (3) If the taxpayer is a pass-through entity, a Form 8874(K)-B will also be sent to each partner, member, or shareholder showing the amount of recapture or the balance of the tax credit.

Section 7. Information Required on the Form 8874(K)-B. The following information shall be required on the Form 8874(K)-B:

- (1) CDE's name and identification number;
- (2) Taxpayer making the qualified equity investment:
 - (a) Name and address;
 - (b) Identifying number;
 - (c) Certified purchase price of the qualified equity investment;
 - (d) Date the CDE received cash for the qualified equity investment;
 - (e) Type of taxpayer making the qualified equity investment;
 - (f) Date the qualified equity investment was subject to recapture;
 - (g) Explanation of recapture;
 - (h) Recapture amount of tax credit or balance of tax credit; and
 - (i) Signature of authorized department employee and date.

Section 8. Filing Requirements. (1) Form 8874(K)-A:

- (a) A taxpayer claiming the tax credit shall attach each tax year a copy of Form 8874(K)-A to the tax return on which the credit is claimed.
- (b) A partner, member, or shareholder of a taxpayer claiming the tax credit shall attach each tax year a copy of Schedule K-1, Form 720S (Revenue Form 41A720S(K-1)); Schedule K-1, Form 765 (Revenue Form 41A765(K-1)); or Schedule K-1, Form 765-GP (Revenue Form 41A765-GP(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.
- (2) Form 8874(K)-B:
 - (a) A taxpayer or a partner, member, or shareholder of a taxpayer having a tax credit recapture shall attach a copy of Form 8874(K)-B to the tax return for the tax year that includes the tax credit recapture date and enter the recapture on the applicable line

of the tax return.

(b) A taxpayer or a partner, member, or shareholder of a taxpayer claiming a tax credit shall attach each tax year a copy of Form 8874(K)-B to the tax return on which the credit is claimed.

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

- (a) Revenue Form 41A720-S80, Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit, June, 2010;
 - (b) Revenue Form 41A720-S81, Notice of Kentucky New Markets Development Program Tax Credit and Certification, June 2010; and
 - (c) Revenue Form 41A720-S82, Notice of Kentucky New Markets Development Program Tax Credit Recapture, June 2010.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, 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: September 13, 2010

FILED WITH LRC: September 14, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2010, from 2 p.m. to 4 p.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: 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 guidelines and the filing requirements of a qualified community development entity in order for the department to certify a qualified equity investment in a qualified community development entity and allocate tax credits to a person or entity making the qualified equity investment.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary in order to identify the forms and filing requirements of a qualified community development entity and the department in the administration of the tax credits provided by the Kentucky New Markets Development Program.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.433(7) provides that the department shall promulgate administrative regulations necessary to implement and administer the provisions of KRS 141.432 to 141.434.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide the guidelines and filing requirements of a qualified community development entity with the department in order for the department to allocate tax credits to a person or entity making a qualified equity investment in a qualified community development entity.
- (2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All qualified community development entities filing an application with the department for certification of qualified equity investments as provided by KRS 141.432 to 141.434, and all taxpayers awarded new markets development program tax credits for qualified equity investments.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will follow the guidance provided in this administrative regulation when filing:

1. An application (Form 8874(K)) for certification of qualified equity investments eligible for the Kentucky new markets development program tax credit; or

2. A Form 8874(K)-A to certify the receipt of cash for each qualified equity investment. The entities will also follow the guidance in this administrative regulation when receiving Form 8874(K)-B from the department notifying the entities of a recapture of the Kentucky new markets development program tax credit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the entities as a result of this administrative regulation as this administrative regulation clarifies the statutes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will have guidance which will expedite the filing of the application and forms required by statute with the department.

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

(a) Initially: There will be a minimal cost initially in the administrative regulation process for the Department of Revenue. Also, a small amount of costs associated with notifying taxpayers of this administrative regulation will be incurred.

(b) On a continuing basis: There will be no additional cost for the Department of Revenue on a continuing basis as a result of this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation as it applies to all qualified community development entities filing applications for certification of qualified equity investments with the department as provided by KRS 141.432 to 141.434.

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 Finance and Administration Cabinet, Department of Revenue, 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 141.433(7) authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not generate any revenue, but will increase the department's expenditures slightly in the administrative process, including the notification of taxpayers of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The New Markets Development Program will require an increase in personnel and related costs to administer the program. This program is very complex and requires the department to certify each qualified equity investment and monitor each qualified equity investment for a period of seven years.

(d) How much will it cost to administer this program for subsequent years? The department will incur additional cost each year to administer the program as provided 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 (+/-): Hiring additional staff to administer the program will be an additional expenditure on the department along with the administrative costs associated with printing the certifications. At this time, the costs are undetermined.

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(New Administrative Regulation)**

200 KAR 5:400. Kentucky resident bidder reciprocal preference.

RELATES TO: KRS 45A.490 - 45A.494, 176.082, 45A.050(7), 45A.070(1), 45A.090(2), 45A.180(1), 45A.182(1)(c), 45A.365, 45A.370, 45A.375, 45A.695, 45A.745, 45A.825, 45A.853, 160.303, 162.070, 164A.575, 164A.590, 176.010.

STATUTORY AUTHORITY: KRS 45A.494

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.494(6) requires that the Finance and Administration Cabinet promulgate administrative regulations to establish the procedure by which a reciprocal preference shall be given to Kentucky resident bidders. This administrative regulation establishes the procedures by which a reciprocal preference shall be given to Kentucky resident bidders.

Section 1. Definitions. (1) "Contract" is defined by KRS 45A.490(1).

(2) "Nonresident bidder" is defined by KRS 45A.494(3).

(3) "Public Agency" is defined by KRS 45A.490(2).

(4) "Resident bidder" is defined by KRS 45A.494(2).

(5) "Response" means any bid or response submitted to a

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solicitation.

(6) "Solicitation" means an invitation for bid, request for proposal, advertisement for bid, or another formal method of soliciting a contract issued by a public agency.

Section 2. Claiming Resident Bidder Status. (1) Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its response a notarized affidavit that affirms that it meets the criteria to be considered a resident bidder as set forth in KRS 45A.494(2).

(2) If requested, failure to provide documentation to a public agency proving resident bidder status may result in disqualification of the bidder or contract termination.

Section 3. Determination of Residency for Nonresident Bidders. (1) The state of residency for a nonresident bidder shall be deemed to be its principal office as identified in the bidder's certificate of authority to transact business in Kentucky as filed with the Commonwealth of Kentucky, Secretary of State.

(2) If the bidder is not required to obtain a certificate of authority to transact business in Kentucky, its state of residency shall be deemed to be the mailing address provided in its bid.

Section 4. Applying the Reciprocal Preference. (1) Once all responsible and responsive bidders to a solicitation have been scored and ranked, the residency of each bidder shall be identified.

(2) A preference equal to the preference given or required by the state of the highest evaluated nonresident bidders shall be given to all responsive and responsible resident bidders.

(3) The responses shall then be rescored and re-ranked to account for any applicable preferences.

(4) In awarding a contract, resident bidders shall only receive preference against nonresident bidders residing in a state that gives a preference to bidders from that state. This preference shall not be applied against nonresident bidders residing in states that do not give preference against Kentucky bidders.

(5) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.

(6) Nothing in this administrative regulation shall result in a nonresident bidder receiving a preference over another nonresident bidder.

JONATHAN MILLER, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 14, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 26, 2010 at 2 p.m. EST in room 386 of the Capitol Annex, 702 Capitol Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at the hearing shall notify this agency in writing at least 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by close of business on October 19, 2010, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: DeVon Hankins, Policy Advisor, 392 Capital 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 regulation establishes the procedures by which a reciprocal preference shall

be given to Kentucky resident bidders.

(b) The necessity of this administrative regulation: KRS 45A.494(6) requires that the Finance and Administration Cabinet promulgate administrative regulations to establish the procedure by which a reciprocal preference shall be given to Kentucky resident bidders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Finance and Administration Cabinet is permitted by KRS 45A.494(6) to promulgate administrative regulations to establish the procedure for applying the preference set forth in that statutory section.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will establish the procedure by which the mandatory reciprocal preference to Kentucky resident bidders will be given.

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

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public agencies as defined in KRS 61.805 and all entities bidding for contracts with these agencies will be affected.

Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Public agencies will be required to account for the reciprocal preference to Kentucky resident bidders in the scoring of their bids. Kentucky resident bidders will receive an advantage against nonresident bidders from states who give preference against Kentucky bidders.

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

(a) Initially: Implementation can be achieved by existing staff without an increase in cost.

(b) On a continuing basis: Same as (a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds budgeted for staffing from the respective public agencies.

(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: No fees established or increased directly or indirectly.

(9) TIERING: Is tiering applied? Regulated entities, i.e. vendors bidding on state contracts, are tiered to the extent they meet the resident bidder requirements or they reside in a state that applies a preference against Kentucky bidders. Tiering on this basis is required by the enabling statute.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All public agencies as defined in KRS 61.805 will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45A.490 - 45A.494, 176.082, 45A.050(7), 45A.070(1), KRS 45A.090(2), 45A.180(1), 45A.182(1)(c), 45A.365, 45A.370, 45A.375, 45A.695, 45A.745, 45A.825, 45A.853, 160.303, 162.070, 164A.575, 164A.590, 176.010.

4. Estimate the effect of this administrative regulation on the

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

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

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

(c) How much will it cost to administer this program for the first year? Administration of this program should incur no additional costs.

(d) How much will it cost to administer this program for subsequent years? See previous response.

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: The actual cost of administering this program should be managed by existing contract administration staff without additional costs. However, applying the preference could increase the cost of contracts for public agencies if the reciprocal preference results in an award being made to a Kentucky resident bidder who otherwise would not be the highest evaluated bidder. Preferences applied to nonresident bidders in their home states usually do not exceed five (5) percent.

**FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(New Administrative Regulation)**

200 KAR 5:410. Preferences for purchases of commodities or services.

RELATES TO: KRS 45A.465, 45A.470

STATUTORY AUTHORITY: KRS 45A.470, 45A.045(2), 45A.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.470 requires that all governmental bodies and political subdivisions of the state shall give certain entities preference when purchasing commodities or services.

Section 1. Definitions. (1) "Bidder" means any entity submitting a response to a solicitation.

(2) "Qualified bidder" means Kentucky Industries for the Blind, Incorporated; any nonprofit corporation that furthers the purposes of KRS Chapter 163; or a qualified nonprofit agency for individuals with severe disabilities as described in KRS 45A.465(3).

(3) "Solicitation" means any invitation for bids, request for proposals, advertisement for bid, or any other method of soliciting a contract issued by a public agency.

Section 2. Percentage Preference. (1) Products made by the Department of Corrections, Division of Prison Industries shall receive a preference equal to twenty (20) percent of the maximum points awarded to a bidder in a solicitation.

(2) Products or services provided by a qualified bidder shall receive a preference equal to fifteen (15) percent of the maximum points awarded to a bidder in a solicitation.

Section 3. Claiming Qualified Bidder Status. (1) Except for Kentucky Industries for the Blind, Incorporated, a bidder claiming qualified bidder status shall submit along with its response to a solicitation a notarized affidavit which affirms that it meets the requirements to be considered a qualified bidder.

(2) If requested, failure to provide documentation to a public agency proving qualified bidder status may result in disqualification of the bidder or contract termination.

JONATHAN MILLER, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 14, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 26, 2010 at 2 p.m. EST in room 386 of the Capitol Annex, 702 Capitol Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at the hearing shall notify this agency in writing at least 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by close of business on October 19, 2010, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: DeVon Hankins, Policy Advisor, 392 Capital 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 regulation sets forth the preference given to the qualified entities identified in KRS 45A.470(1).

(b) The necessity of this administrative regulation: KRS 45A.470(1) states that all governmental bodies and political subdivisions of this state shall give first preference to the products made by the Department of Corrections, Division of Prison Industries and second preference to any products or services provided by Kentucky Industries for the Blind, Incorporated, or any other nonprofit corporation that furthers the purposes of KRS Chapter 163, and agencies of individuals with severe disabilities as described in KRS 45A.465.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation gives a first and second preference in bidding for contracts for the entities specified in KRS 45A.470(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will establish how first and second preference will be given in accordance with KRS 45A.470(1).

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

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All governmental bodies and political subdivisions of this state shall be responsible for giving this preference when issuing bids for contracts. Division of Prison Industries, Kentucky Industries for the Blind, Incorporated, or any other nonprofit corporation that furthers the purposes of KRS Chapter 163, and agencies of individuals with severe disabilities as described in KRS 45A.465 will receive the preference when bidding.

Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The costs of contracts for all governmental bodies and political subdivisions could be increased to account for the preference. The entities receiving the preference will become more competitive in bidding on state contracts.

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

(a) Initially: Implementation can be achieved by existing staff without an increase in cost.

(b) On a continuing basis: Same as (a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds budgeted for staffing from the respective public agencies.

(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: No fees established or increased directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is applied as required by KRS 45A.470(1).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All governmental bodies and political subdivisions of this state shall be responsible for giving this preference when issuing bids for contracts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45A.470, 45A.045(2), 45A.055

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

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

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

(c) How much will it cost to administer this program for the first year? Administration of this program should incur no additional costs.

(d) How much will it cost to administer this program for subsequent years? See previous response.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other Explanation: The actual cost of administering this program should be managed by existing contract administration staff without additional costs. However, applying the preference will increase the cost of contract for public agencies if it results in an award being made to a bidder who otherwise would not be the highest evaluated bidder.

GENERAL GOVERNMENT CABINET Licensing Board for Private Investigators (New Administrative Regulation)

201 KAR 41:100. Verification of 240 hour employees.

RELATES TO: KRS 329A.070

STATUTORY AUTHORITY: KRS329A.070(9)

NECESSITY, FUNCTION AND CONFORMITY: KRS 329A.070(9) states the board shall establish a method of verification of the number of hours an employee working under the direction of the private investigator works, to ensure the employee does not exceed 240 hours of work per year.

Section 1. Definition. (1) "Registrant" means an individual hired by a licensee to work under the direct supervision of the licensee pursuant to KRS 329A.070(9).

Section 2. Registration of Employees. (1) Every private investigator or private investigator firm shall register employees who work under the licensure exception of KRS 329A.070(9). The licensee shall file with the board a Temporary Employee Notification Form accompanied by a twenty (20) dollar fee.

(2) The registrant shall be assigned a tracking number the licensee will use on all reporting forms.

(3) Each licensee shall be required to maintain a daily log for each registrant, which shall include the dates and hours worked by the registrant. Upon a request by the board, the licensee shall provide the daily log within five (5) business days.

(4) A registrant may be registered under more than one licensee during a one-year period but shall not exceed 240 hours of work for all licensees under which he is registered during a one-year period.

Section 3. Quarterly Reports. (1) The licensee shall file a quarterly report with the board for each individual registered under the licensure, even if no hours were worked during the reporting quarter.

(2) The report shall be completed for the following quarterly dates: March 31st, June 30th, September 30th, and December 31st. The report shall be submitted to the board by the last day of the month following the quarter ending date.

(3) The reports are subject to review by the board and additional documentation supporting the hours reported may be requested.

Section 4. Notification of Maximum Hours. (1) Upon a registrant reaching the maximum 240 hours of work, the board will notify the registrant and all the licensees who registered the individual that the registrant is ineligible to work under the KRS 329A.070(9) exception for the remainder of the year.

(2) If a registrant reaches the maximum 240 hours permitted to be worked before the quarter expires, the registrant is required to notify the board within five (5) business days and cease from working in that capacity.

Section 5. Renewal. (1) The registration of an individual working under the licensure exception of KRS 329A.070(9) shall be valid for one (1) year from the date of issuance. A renewal application shall be received by the board, no later than forty-five (45) days before the registration expires.

(2) A registrant shall be renewed upon:

(a) Licensee's payment of the twenty (20) dollar renewal fee; and

(b) Submission of a completed, Temporary Employee Notification (Renewal) form.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Temporary Employee Notification", KPI 08, 8/2010 edition and

(b) "Quarterly Report", KPI 09, 8/2010 edition.

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

EDWARD L. MERCER, Board Chairman

APPROVED BY AGENCY: September 15, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2010 at 10 at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to

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the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the method of verifying of the number of hours worked by an employee working under the 240 hour exception.

(b) The necessity of this administrative regulation: This regulation is necessary because it will prevent employees from exceeding the 240 hours a person can work within a year under a licensee.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish a regulation to establish a method of verification of the hours worked by an employee under a licensee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the method of verification of hours worked by an employee under a licensee.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective and administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 414 individual private investigators and approximately 115 private investigative companies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: The entities will have to register each individual who will be working under the private investigator's license and provide quarterly reports to the board, to ensure the individuals to not exceed the permitted 240 hours allowed to work without a license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a twenty (20) dollars registration fee for each licensee registering an individual.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All licensees will be assured that unlicensed individuals are only working the maximum of 240 hours a year allowed by law. The licensees who register individuals will be notified by the board when an employee has exceeded the 240 hours for the year, keeping the licensee in compliance with the law.

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

(a) Initially: There is a nominal cost to implement the regulation which includes the cost of copying the forms and creating the database to maintain this additional information.

(b) On a continuing basis: There is a nominal cost to maintain the regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the registration fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Private Investigators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.510

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments or school districts) for the first full year the administrative regulation is to be in effect. Expenditures will not be effected by the regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue the regulation might generate is undeterminable. Revenue generated will solely depend on the number of licensees who elect to hire this category of employee.

(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 revenue the regulation might generate is undeterminable. Revenue generated will solely depend on the number of licensees who elect to hire this category of employee.

(c) How much will it cost to administer this program for the first year? N/A

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (New Administrative Regulation)

201 KAR 42:080. Programs of massage therapy instruction.

RELATES TO: KRS 309.352(2), 309.355(3), 309.358(4), and 309.363(1)

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.352(2) requires the board to define licensed health-care professionals for the supervision of massage therapy students in clinical settings. KRS 309.355(3) requires the board to promulgate administrative regulations on standards of massage therapy educational program curriculum and instructor qualifications. KRS

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309.358(4) authorizes the board to approve massage therapy training programs. KRS 309.363 requires board approval of massage therapy programs of instruction and establishes instructor qualifications. This administrative regulation establishes the definitions of supervision and qualifying supervisors and describes the process for issuing and renewing the Certificate of Good Standing to a program of massage therapy education.

Section 1. Definitions. (1) "Adjunctive courses" means courses in a program of education that enhance the career of a massage therapist but are not massage theory, technique and practice, including but not limited to CPR, First Aid, HIV/AIDS training, Law, Business, Health, and other bodywork or holistic approaches such as aromatherapy, reflexology, Tai Chi, or other course as determined by the board.

(2) "Clinic" or "Clinical" means a setting in which students are provided with on-site supervision and training in the practice of massage therapy.

(3) "Clinical coordinator" means the instructor of a massage therapy course in which students are assigned to perform massage therapy sessions on non-students, on or off-campus, who is responsible for assigning the student to an appropriate clinical setting, indirect supervision of student performance through regular consultation with the student and evaluating student achievement of clinical course objectives.

(4) "Externship" means an advanced course offered by and approved program which is not included in the primary 600 hours required for licensure with a course having a syllabus describing objectives and evaluations, that is over and above the 600 supervised curriculum hours required for licensure.

(5) "Other licensed healthcare professional" means, for the purposes of massage training program clinical experiences, supervision of the student practicing massage in a business while completing a clinical requirement may be done by the practitioners cited in KRS 309.352(9)(a), (b), (c), (e), and (f).

(6) "Supervision" means for the purposes of massage training program clinical experiences or externships, supervision is the process of verifying attendance, assigning work, consulting with student, evaluating student performance, and being available for emergency assistance. A student completing an externship or clinical experience shall not receive compensation.

Section 2. (1) A program applying for a Certificate of Good Standing shall file a completed, signed, and dated application and required documentation with the board, meeting the requirements set forth in KRS 309.363(1), (a), (b), and (c).

(2) Documentation shall include:

(a) A copy of the current license to operate issued by the Kentucky State Board for Proprietary Education, the Council on Post-secondary Education, or their equivalent in the state in which the school is conducting classes.

(b) A curriculum statement as described in KRS 309.363(1)(b)1, 2, 3, 4, and 5 showing clock hours for each of the required subjects.

(3) A listing of instructional staff and their qualifications, including:

(a) Documentation of current licensure of massage instructors; and

(b) Resume, CV or PE-11 form for all instructors showing the specific qualifications for teaching an adjunctive or science course.

(4) A description of the policies and procedures in place for collecting and analyzing data about the quality and effectiveness of educational programs including student progress, completion, licensure and placement rates.

(5) A copy of the program or school catalogue.

(6) Documentation of accreditations held by the program or school offering the program.

(7) A copy of a student contract agreeing not to accept compensation for massage therapy services provided prior to licensure by the board.

Section 3. A Certificate of Good Standing may be renewed upon:

(1) Submission of the Application for Renewal of Certificate of

Good Standing form with the following written information to the board on or before the anniversary date of issue of certificate; and

(2) Current complete name, address, email address, Web site, and telephone number of each location in which the massage therapy training program is provided.

(3) Current listing of instructional staff and their qualifications, with attached documentation of qualifications of new instructors.

(4) A current curriculum statement as described in KRS 309.363(1)(b)1, 2, 3, 4, and 5.

(5) A curriculum statement for new programs of massage therapy added to the school's original offering, such as an Associate's Degree Program, if the new program may be used to meet initial qualifications for licensure.

(6) A statement with supporting statistics to show student completion, examination pass rates, licensure rates, and placement rates.

(7) Documentation of accreditation reviews and renewals, if held.

Section 4. The Board may deny, refuse to renew, or issue a probationary certificate of good standing if:

(1) A school or program of instruction fails to submit any of the documentation required in Section 3 of this administrative regulation; or

(2) Documentation shows that the program is substantially deficient or fails to show significant improvement in the following standards:

(a) Completion rate: seventy (70) percent of students enrolled beyond fifteen (15) days complete the program

(b) Examination pass rates: eighty (80) percent of graduates pass a board approved exam for licensure within six (6) months of graduation. Sixty (60) percent of graduates should pass on first attempt as documented by reports from test administrators.

(c) Placement rates: sixty-five (65) percent of graduates report placement or verifiable self-employment within one (1) year of licensure.

(d) Program or School accreditation that is denied, revoked or put on probation.

(e) Graduates or students who are documented as going into another program of training, deployed by military, or medically unable to perform massage therapy may be subtracted from the statistics used to compute rates.

(3) A pattern of noncompliance with KRS 309.352(8) and 201 KAR 42:080, Section 5.

Section 5. Externships and Clinicals. (1) Massage schools or businesses that provide any type of student massage must conspicuously include the respective words "student massage" in all promotional materials, and must conspicuously display a written notice in the waiting room or treatment area that services are being provided by a student.

(2) Clinical courses awarding credit hours toward the 600 hours required for licensure shall be supervised by a licensed massage therapist with three years experience and available for on-site consultation.

(a) Massage sessions offered as part of a student clinic shall be evaluated by the instructor and appropriate goals for improvement in areas such as customer service, technique, body mechanics and draping shall be set according to the needs of the student.

(b) Student massage clinics shall be supervised by a massage therapy instructor in the clinic.

(c) Student clinic client records will be maintained at the school and shall meet the Standards for Documentation established in 201 KAR 42:060, Section 3 and 2(4), and record of payment shall be made available to the client upon request.

(3) Externship courses shall be supervised by a LMT or other licensed healthcare professional who shall provide:

(a) Clear, written learning objectives to students and their site supervisors;

(b) Planned opportunities to discuss the externship experience at regular intervals with the student, and with the site supervisor; and

(c) A mechanism for evaluating student performance in the externship experience, presented to the student and the site supervisor at the beginning of the course.

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(4) A program offering an externship course shall have a written agreement signed by the institution/program director and the externship site personnel which clearly defines the responsibilities of the onsite supervisor, the clinical coordinator and the student. An externship course shall be limited to no more than twenty (20) percent of the total program hours. The externship course if offered, shall be completed after the primary 600 supervised curriculum hours required by KRS 309.363(1)(b).

(5) A program offering an externship course shall have liability insurance to cover student activities within the course.

(6) Externship sites will have a licensed massage therapist or other licensed healthcare professional onsite to be available for emergencies or consultation. Externs may accrue hours for reception, documentation, business-related activities other than hands-on massage services while the site supervisor is off-premises. A student session at an externship site may occur with the site supervisor available by phone if the client of such session is on staff of the externship site or another extern, and a member of the professional staff is on premises for emergency assistance.

(7) Externship client records will be maintained at the externship site and shall meet the Standards for Documentation established in 201 KAR 42:060, Sections 3 and 2(4), and record of payment shall be available to client upon request.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certificate of Good Standing Application", August 2010; and

(b) "Application for Renewal of Certificate of Good Standing", August 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296, Monday through Friday, 8 a.m. to 5 p.m.

THERESA CRISLER, Board Chair

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2010 at 9 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) 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 November 1, 2010 at the close of business. 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: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes a process for the issuance and renewal of a certificate of good standing for massage therapy programs.

(b) The necessity of this administrative regulation: This regulation is necessary for the board to carry out its statutory duty to approve of the curriculum and other credentials of massage therapy programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes a process for the issuance and renewal of a certificate of good standing for massage therapy programs.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage therapists. Seventeen schools in the Commonwealth offer massage therapy programs approved by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will be required to renew its certificate of good standing annually.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(3)

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

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

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

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

year? None

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(New Administrative Regulation)**

601 KAR 9:205. Titling of all-terrain vehicles.

RELATES TO: KRS 186.020(1), 186A.055, 186A.070, 186A.074, 186A.130, 186A.165, 186A.170, 186A.195, 186A.215, 186A.245, 189.010

STATUTORY AUTHORITY: KRS 186A.074(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.074(3) requires the cabinet to promulgate administrative regulations governing the titling procedures for all-terrain vehicles. This administrative regulation establishes the procedures necessary for an applicant to obtain a certificate of title for an all-terrain vehicle.

Section 1. Application for Certificate of Title. (1) The owner of a motor vehicle that meets the definition of "all-terrain vehicle" as established in KRS 189.010(24) shall apply for a certificate of title as follows:

(a) The applicant shall complete an Application for Kentucky Certificate of Title or Registration, TC Form 96-182, as incorporated by reference in 601 KAR 23:010;

(b) The applicant shall submit the completed form with supporting documents and a fee of fifteen (15) dollars to the county clerk of residence as established in KRS 186A.130(4).

Section 2. Processing Title. (1) The county clerk of residence shall process the title application and prepare a transmittal record to be sent to the Department of Vehicle Regulation as provided in KRS 186A.165.

(2) The Department of Vehicle Regulation shall review and process the application for title and the supporting documents as established in KRS 186.020 and 186A.170.

(3) If the application is approved by the Department of Vehicle Regulation, a certificate of title shall be issued to the applicant as established in KRS 186A.170(8).

Section 3. Security Interest. A security interest in an all-terrain vehicle shall be noted on the certificate of title as required in KRS 186A.195.

Section 4. Transfer of Title. The owner of an all-terrain vehicle shall transfer vehicle ownership as established in KRS 186A.215.

Section 5. Duplicate Title. The owner of an all-terrain vehicle shall obtain a duplicate certificate of title as provided in KRS 186A.130 and 186A.245.

T.O. ZAWACKI, Commissioner
MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: September 7, 2010

FILED WITH LRC: September 9, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 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 the close of business November 1, 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, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures for the owner of an ATV to obtain a certificate of title.

(b) The necessity of this administrative regulation: KRS 186A.074(3) requires the cabinet to promulgate an administrative regulation establishing the titling procedures for ATVs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation informs applicants of a certificate of title for an ATV of the procedures they will need to follow in order to obtain a title, transfer title, obtain a duplicate title, or note a security interest in their vehicle.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will inform applicants of the statutory requirements to title an ATV.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(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 regulation affects all ATV owners who apply for a Kentucky certificate of title. This regulation also affects the Kentucky county clerk's offices and the Department of Vehicle Regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The county clerk of residence will process the application for title, insure that all required documents are attached, and forward the entire packet to the Department of Vehicle Regulation. The Department will review and process the information, then issue the certificate of title.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs established by this regulation. A \$15 fee that will accompany TC Form 96-182 is already in place pursuant to KRS 186A.130(4)(a), and a \$10 fee for replacement or corrected title is in place pursuant to KRS 186A.130(4)(b).

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3): ATV owners will know the procedures to obtain certificates of title for their vehicles.

(5) Provide an estimate of how much it will cost the administra-

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tive body to implement the administrative regulation:

(a) Initially: No costs are associated with this regulation.

(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: 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 increase in any fees will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or increased either directly or indirectly. A \$15 fee is already in place pursuant to KRS 186A.130(4)(a), and a \$10 fee pursuant to KRS 186A.130(4)(b).

(9) TIERING: Is tiering applied? Tiering is not applied because all ATV owners that correctly apply and are eligible for a certificate of title will be able to obtain title.

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 new administrative regulation impacts procedures in the county clerk's offices and the Department of Vehicle Regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186A.074(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional costs are required or expected.

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

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

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

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

Revenues (+-)

Expenditures (+-)

Other Explanation:

LABOR CABINET

**Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(New Administrative Regulation)**

803 KAR 2:430. Appendix A to 29 C.F.R. Part 1926.

RELATES TO: KRS Chapter 338.051, 338.061

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 require the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations and standards. The following administrative regulation contains the standards to be enforced by the Division of Occupational Safety and

Health Compliance in the area of construction.

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulation published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: Appendix A to 29 C.F.R. 1926, revised July 1, 2010 and, as amended, in the August 9 Federal Register, Volume 75, Number 152.

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Oct. 26, 2010 at 10 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: Bob Elkins, Safety Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates Appendix A to 29 C.F.R. 1926 to July 1, 2010 and establishes the amendment to Appendix A as published in the August 9, 2010 Federal Register, Volume 75, Number 152. The Federal Register amendment removes one row from Appendix A that contains references to two standards, 1926.550(a)(19) and 1910.184(c)(9). The full title of this section is Appendix A to Part 1926-Designations for General Industry Standards Incorporated into Body of Construction Standards. Both of these standards are identical, one being in Construction and the other in General Industry.

On August 9, 2010, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register, revising its Cranes and Derricks in Construction standards by promulgating a new subpart, CC, in the 29 C.F.R. 1926 standards for the construction industry. The previous crane and derricks standard, 1926.550, has been removed and reserved.

This is the reason for removing the requirement of 1926.550(a)(19) to the new CC subpart. Since it is now in an appropriate standard, which is the new crane and derrick standard, there is no longer any need for the cross reference with 1910.184(c)(9).

This regulation will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of

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the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This new regulation, 803 KAR 2:430, was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(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 affects all private and public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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 does not add occupational safety and health requirements of the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no cost are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplace.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. Appendix A to 29 C.F.R. 1926 as published in the August 9, 2010 Federal Register, Volume 75, Number 152, is required to be adopted unless Kentucky has an effective alternative

to the final rule. Kentucky does not have an alternative to this final rule. Consequently, it must incorporate this final rule by February 8, 2011. This amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. OSHA's amendment to Appendix A to 1926 is required to be adopted by Kentucky since there is not an effective alternative. It was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? This regulation will not impose any cost to the employer.

(d) How much will it cost to administer this program for subsequent years? This regulation will not impose any cost to the employer. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: N/A

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(New Administrative Regulation)

803 KAR 2:505. Cranes and derricks in construction.

RELATES TO: 29 C.F.R. Part 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 require the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational

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safety and health rules and administrative regulations and standards. The following administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner,

Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined in KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" is defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulation published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: 29 C.F.R. Part 1926, Subpart CC, Cranes and Derricks in Construction, published in the August 9, 2010 Federal Register, Volume 75, Number 152.

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Oct. 26, 2010 at 10 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: Bob Elkins, Safety Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 establishes a new standard in 29 C.F.R. Part 1926, Subpart CC-Cranes and Derricks in Construction, as published in the August 9, 2010 Federal Register, Volume 75, Number 152.

OSHA estimates there are 8,000 crane wrecks every year. These accidents span a range from not so serious, perhaps minor damage to equipment, all the way to loss of life. OSHA estimates that 89 crane-related deaths occur annually. It is felt that this new standard will help prevent 22 fatalities and 175 serious, but nonfatal injuries each year.

This new standard will affect approximately 267,000 construc-

tion, crane rental, and crane certification establishments employing about 4.8 million workers. The areas that are receiving added emphasis in order to lower the accident rate include but are not limited to: operator certification, rigger and signal person qualification, contact with overhead power lines, special precautions with assembly/disassembly, and ground conditions.

This OSHA rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This new regulation, 803 KAR 2:430, was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(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 affects all private and public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are many changes required in this new regulation. Some of the more obvious ones are the following: operators must become certified within four years. Riggers and signal persons must be qualified within ninety days of the publication date of the new regulation. There are new requirements for approach distances to overhead power lines depending on the voltage involved. There are new requirements for assessing ground conditions before using a crane to make a lift. There are also more stringent requirements concerning assembly/disassembly.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not known specifically how much it will cost each entity to comply with this regulation. OSHA has annualized the total costs of this regulation to be 154.1 million dollars. The total monetized benefits are listed as 209.3 million dollars. This makes the annual net benefits (benefits minus costs) to be 55.2 million dollars. The most obvious cost to an employer is payment for a third-party crane operator certification.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information and training will more fully participate in, and support, the protective measures instituted in their workplaces. These would lead to savings through accident and injury prevention, as well as property damage prevention.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There will be no cost to the Kentucky OSH program to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

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(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. 29 C.F.R. Part 1926, Subpart CC as published in the August 9, 2010 Federal Register, Volume 75, Number 152, is required to be adopted unless Kentucky has an effective alternative to the final rule. Kentucky does not have an alternative to this final rule. Consequently, it must incorporate this final rule by February 8, 2011. This amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

3. Minimum or uniform standards contained in the federal mandate.

Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. OSHA's new rule, 29 C.F.R. Part 1926, Subpart CC, 1926.1400-1926.1441 is required to be adopted by Kentucky since there is not an effective alternative. It was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? It is not known specifically how much it will cost each entity to comply with this regulation. OSHA has annualized the total costs of this regulation to be 154.1 million dollars. The total monetized benefits are listed as 209.3 million dollars. This makes the annual net benefits (benefits minus costs) to be 55.2 million dollars. The most obvious cost to an employer is payment for a third-party crane operator certification.

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. OSHA has annualized the total costs of this regulation to be 154.1 million dollars. The total monetized benefits are listed as 209.3 million dollars. This makes the annual net benefits (benefits minus costs) to be 55.2 million dollars. The most obvious cost to an employer is payment for a third-party crane operator certification. It is felt that accident reduction and preservation of property will more than off-set the cost of this regulation.

Revenues (+/-): There may be a decrease in local government revenues as a result of this regulation, if construction work utilizing a crane occurs and operators need to be certified. However, this expense should be minimal.

Expenditures (+/-): There could be a slight increase in local government expenditures as a result of this amendment, especially if crane operators need to be certified. This should not be a significant amount.

Other explanation: N/A

LABOR CABINET

Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (New Administrative Regulation)

803 KAR 2:550. Cranes and derricks used in demolition and underground construction.

RELATES TO: 29 C.F.R. Part 1926.1500-1926.1501

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 require the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations and standards. The following administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" 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 established in

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Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulation published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: 29 C.F.R. Part 1926, Subpart DD, Cranes and Derricks Used in Demolition and Underground Construction, published in the August 9, 2010 Federal Register, Volume 75, Number 152.

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Oct. 26, 2010 at 10 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 1, 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: Bob Elkins, Safety Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 establishes a new standard in 29 C.F.R. Part 1926, Subpart DD—Cranes and Derricks Used in Demolition and Underground Construction, as published in the August 9, 2010 Federal Register, Volume 75, Number 152.

OSHA estimates there are 8,000 crane wrecks every year. These accidents span a range from not so serious, perhaps minor damage to equipment, all the way to loss of life. OSHA estimates that 89 crane-related deaths occur annually. Consequently, a new standard, 29 C.F.R. Part 1926, Subpart CC—Cranes and Derricks in Construction, was promulgated. It is felt that this new standard will help prevent 22 fatalities and 175 serious, but non-fatal injuries each year. It was also felt that a new subpart was needed to serve the use of cranes and derricks in demolition and underground construction activities. Consequently, a new standard, 29 C.F.R. Part 1926, Subpart DD—Cranes and Derricks Used in Demolition and Underground Construction was promulgated. It applies only to employers engaged in demolition work covered by 1926.856 and .858, and underground construction work covered by 1926.800. Under these circumstances, Subpart DD would apply in lieu of Subpart CC.

This OSHA rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Not applicable. This is a new subpart in 29 C.F.R. Part 1926.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This new regulation, 803 KAR 2:550, was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(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 affects all private and public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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:

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost involved with this new regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information and training will more fully participate in, and support, the protective measures instituted in their workplaces. These would lead to savings through accident and injury prevention, as well as property damage prevention.

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

(a) Initially: There will be no cost to the Kentucky OSH program to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent regulation, within six (6) months of the confirmation of the effective date of the final rule. 29 C.F.R. Part 1926, Subpart DD as published in the August 9, 2010 Federal Register, Volume 75, Number 152, is required to be adopted unless Kentucky has an effective alternative to the final rule. Kentucky does not have an alternative to this final rule. Consequently, it must incorporate this final rule by February 8, 2011. This regulation was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

3. Minimum or uniform standards contained in the federal

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mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. OSHA's new standard, 29 C.F.R. Part 1926, Subpart DD, 1926.1500-1926.1501 is required to be adopted by Kentucky since there is not an effective alternative. It was adopted by the Kentucky Occupational Safety and Health Standards Board at its August 24, 2010 meeting.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L.91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? This regulation will not impose any cost.

(d) How much will it cost to administer this program for subsequent years? This regulation will not impose any subsequent cost.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this regulation.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this regulation.

Other explanation: N/A

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division (Repealer)

806 KAR 46:011. Repeal of 806 KAR 46:010.

RELATES TO: KRS 304.48-170(3), 304.48-230
STATUTORY AUTHORITY: KRS 13A.310, KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. This administrative regulation repeals 806 KAR 46:010, Financial statements for liability self-insurance groups, which is no longer required because the department is promulgating a new administrative regulation to prescribe forms for liability self-insurance groups to use when filing quarterly and annual financial state-

ments.

Section 1. 806 KAR 46:010 is hereby repealed.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2010 at 9 a.m., at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 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 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 November 1, 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: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 46:010.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal this regulation which will be replaced by a new regulation prescribing forms for the filing of financial statements with the Department of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate regulations to aid in the effectuation of the Insurance Code. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation is no longer necessary because it will be replaced by a new regulation prescribing forms for the filing of financial statements with the Department of Insurance. Therefore, the department wishes to repeal this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will remove an administrative regulation that is no longer needed.

(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 not an amendment to an existing regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As this administrative regulation is repealing an administrative regulation which will then be replaced by a new administrative regulation, there will not be entities impacted.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

PUBLIC PROTECTION CABINET
Department of Insurance
Financial Standards and Examination Division
(New Administrative Regulation)

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions will be necessary by regulated entities as the result of the repeal of these administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be a cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As this administrative regulation is repealing an obsolete regulation, no action will be necessary by regulated entities to comply.

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

(a) Initially: There will not be an initial cost to implement this regulation.

(b) On a continuing basis: There will not be a continuing cost to implement this regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: As this administrative regulation is repealing an obsolete regulation, there will be no implementation or enforcement associated with this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation and, specifically, the Financial Standards and Examination Division.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate revenue for the Department of Insurance for the first year.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost to administer this program initially.

(d) How much will it cost to administer this program for subsequent years? There will not be a cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

806 KAR 46:040. Forms for application and financial statements.

RELATES TO: KRS 304.1-050, 304.48-020(7), 304.48-050, 304.48-070, 304.48-170, 304.48-230

STATUTORY AUTHORITY: KRS 304.2-110, 304.48-050, 304.48-170, 304.48-230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.48-230 permits the commissioner to promulgate administrative regulations as necessary for the proper administration of KRS Chapter 304.28. KRS 304.48-050 requires a proposed liability self-insurance group to file an application on a form approved by the commissioner. KRS 304.48-070 permits the commissioner to require a liability self-insurance group to provide a security deposit to the commissioner in the form and amount prescribed by the commissioner. KRS 304.48-170 requires liability self-insurance groups to file statements of financial condition on a form prescribed by the commissioner. This administrative regulation prescribes the required forms for application, security deposits and financial statements.

Section 1. Definitions. (1) "Commissioner" is defined in KRS 304.1-050(1).

(2) "Department" is defined in KRS 304.1-050(2).

(3) "Liability self-insurance group" is defined in KRS 304.48-020(7).

Section 2. (1) Pursuant to KRS 304.48-050, Form 995, Application for Certificate of Filing As a Liability Self-Insurance Group, shall be completed and submitted to the commissioner to apply for certification as a liability self-insurance group.

(2) Pursuant to KRS 304.48-170(2), the Liability Self-Insurance Group Quarterly Statement (Blank) shall be completed and submitted to the commissioner to file a quarterly statement of financial condition. Form 101, Trustee Confirmation of Receipt, shall be completed by each trustee of the liability self-insurance group, acknowledging receipt of a copy of the quarterly statement of financial condition, and submitted to the Department of Insurance within seventy-five (75) calendar days after the close of each quarterly reporting period.

(3) Pursuant to KRS 304.48-170(1), the Liability Self-Insurance Group Annual Statement (Blank) shall be completed and submitted to the commissioner to file an annual statement of financial condition.

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

(a) "Form 995 - Application for Certificate of Filing As a Liability Self-Insurance Group" 9/2010;

(b) "Liability Self-Insurance Group Quarterly Statement (Blank)" 9/2010;

(c) "Form 101 - Trustee Confirmation of Receipt" 9/2010; and

(d) "Liability Self-Insurance Group Annual Statement (Blank)" 9/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Department of Insurance Internet Web site at <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2010 at 9 a.m., at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individu-

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als interested in being heard at this hearing shall notify this agency in writing by October 20, 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 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 November 1, 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: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the required forms for application for certification of a new liability self-insurance group and financial statements.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth the format for an entity to apply for licensure as a liability self-insurance group and the format for quarterly and annual financial statements for liability self-insurance groups. (c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.48-230 permits the commissioner to promulgate administrative regulations as necessary for the proper administration of KRS 304.48. KRS 304.48-050 requires a proposed liability self-insurance group to file an application on a form approved by the commissioner. KRS 304.48-070 permits the commissioner to require a liability self-insurance group to provide a security deposit to the commissioner in the form and amount prescribed by the commissioner. KRS 304.48-170 requires liability self-insurance groups to file statements of financial condition on a form prescribed by the commissioner. This administrative regulation prescribes the required forms for application, security deposits and financial statements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the required forms to ensure that complete, comparable information is filed for review and analysis by the Department of Insurance.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the five (5) liability self-insurance groups currently authorized to do business in Kentucky and an unknown number of future liability self-insurance groups that may apply to do business in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for licensure as a liability self-insurance will need to submit an application on the form prescribed by this administrative regulation. Liability self-insurance groups will need to comply with the filing requirements outlined in this adminis-

trative regulation in order to be in compliance with KRS 304.48-170.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Liability self-insurance groups have previously filed forms with the Department. This administrative regulation provides clear guidelines for the submission of their filings. Therefore, the cost to comply with this administrative regulation should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, liability self-insurance groups will be in compliance with KRS 304.48-170 and will have applications and financial statements appropriately reviewed by the Department of Insurance.

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

(a) Initially: There will be no cost to implement this regulation.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all liability self-insurance groups.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.48-050, 304.48-170, 304.48-230

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not have a significant impact on the expenditures and revenues of the Department of Insurance.

(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 regulation will be revenue neutral.

(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 regulation will be revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation will be revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation will be revenue neutral.

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 adopts the forms for liability self-insurance groups to file annual and quarterly financial statements with the department of Insurance as well as the application to be licensed as a liability self-insurance group. The department currently has five (5) licensed liability self-insurance that currently

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file financial statements. Additionally, the statute, KRS 304.48-050 establishes a fee of \$5 for the filing of new applications. As this administrative regulation is simply updating an existing process and as the fee for any new applicants is minimal, this administrative regulation will not have a significant impact on the revenues or expenditures of the Department of Insurance.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

810 KAR 1:110. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.230, 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes new sampling and testing procedures for the prohibited substances identified herein, and establishes penalties for individuals that are found to be in violation of this administrative regulation.

Section 1. Definitions. (1) "Actionable finding" means a determination by the commission that a substance described in Section 2 of this administrative regulation was present in a horse based on the commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results, or based on the commission's review of a report of finding issued by the commission laboratory for which an owner and trainer have waived their right to have a split sample analysis performed.

(2) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(3) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

Section 2. Prohibited Substances and Practices. (1) The following shall be a violation of this administrative regulation:

(a) The presence in, or administration to, a horse, at any time, of blood doping agents including: erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, or any other substance that enhances the oxygenation of equine body tissue;

(b) The nontherapeutic administration to, a horse, at any time, of whole blood or packed red blood cells;

(c) The presence in, or administration to, a horse, at any time, of naturally produced venoms, synthetic analogues of venoms, derivatives of venoms or synthetic analogues of derivatives of venoms;

(d) The presence in, or administration to, a horse, at any time, of growth hormones;

(e) The possession of erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, synthetic analogues of derivatives of venoms, or growth hormones on the grounds of a licensed association or a training facility under the jurisdiction of the commission; and

(f) The possession at any time of whole blood or packed red blood cells on the grounds of a licensed association or a training facility under the jurisdiction of the commission by anyone other than a licensed veterinarian rendering emergency treatment to a horse located on the grounds of the association or training facility. The attending veterinarian shall notify the commission veterinarian of the intent to administer whole blood or packed red blood cells prior to his or her collection or possession of the whole blood or packed red blood cells.

(2) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

Section 3. Out-of-Competition Testing. (1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse is presumed eligible to race in Kentucky if:

(a) It is under the care, custody, or control of a trainer licensed by the commission; or

(b) It is owned by an owner licensed by the commission; or

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300; or

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months; or

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Thoroughbred Development Fund.

(2) If a horse to be tested is not covered under subsection (1) of this section, the executive director or chief state steward may nevertheless designate any horse that may become eligible to race in Kentucky to be tested for the prohibited substances described in Section 2 of this administrative regulation.

(3) Horses may be designated for testing by the executive director, the chief state steward, or their respective designee.

(4) A horse designated for testing under this section shall be subject to testing for the substances described in Section 2 of this administrative regulation.

(5) An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at an agreed upon stall or other safe location; and

(c) Observing the collection of the specimen.

1. If the owner, trainer or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee, becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is received.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

(6) If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, for 180 days, and the individual(s) responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties described in Section 8 of this administrative regulation.

(7)(a) A horse that is barred from racing in Kentucky and placed on the Veterinarian's List and the Steward's List pursuant to subsection (5) or (6) of this section shall remain barred from racing and shall remain on the veterinarian's list and the steward's list upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test

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negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

Section 4. Specimen Collection. (1) A specimen shall be collected from any horse designated by the executive director, the chief state steward, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) When a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from another racing commission or regulatory entity to collect the specimen.

(3) If specimen collection occurs at a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) If specimen collection occurs at a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify the owner, trainer or any other person exercising care, custody or control of the horse before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 5. Minimum and split samples. The commission veterinarian shall determine minimum and split sample requirements as set forth at 810 KAR 1:018, Section 11.

Section 6. Sample storage and testing. (1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with the procedures set forth in 810 KAR 1:018, Section 11.

(2) The commission is the owner of an out of competition specimen.

(3) The sample may be submitted to the commission laboratory for testing on the same date the specimen is collected or on a subsequent date.

(4) A written chain of custody protocol shall be made available to the owner and trainer upon request.

(5) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(6) Split samples shall be subject to the provisions and procedures set forth in 810 KAR 1:018, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 810 KAR 1:018, Section 13.

(7) The cost of testing the split sample under subsections (5) and (6) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Steps After Actionable Finding or Any Other Violation of this Administrative Regulation. In the event of an actionable finding, or any other violation of this administrative regulation, the following steps shall be taken:

(1)(a) Within five (5) business days of receipt of notification of an actionable finding, the commission shall notify the owner and trainer in writing of the actionable finding and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties; and

(b) The commission shall cause the subject horse to be immediately placed on the Veterinarian's List, 810 KAR 1:018, Section 18, and the Steward's List, thereby rendering the horse ineligible to compete, pending the conduct of the hearing described in subsection

(1) of this section and the issuance of a steward's order.

(2) Within thirty (30) days of the commission's discovery of any violation of this administrative regulation other than an actionable finding, the commission shall notify the owner and trainer in writing of the violation and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner, or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) For a first offense:

(a) A revocation of the individual's license for a period of five (5) to ten (10) years;

(b) A fine of up to \$50,000;

(c) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding; and

(d) Any individual who has his or her license revoked for a violation of this administrative regulation shall go before the license review committee before being eligible for a new license.

(2) For a second offense:

(a) Permanent revocation of the individual's license; and

(b) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(4) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected remains subject to the requirements of subsection (3) of this section upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(5) The penalties established by this administrative regulation shall supersede any set forth in 810 KAR 1:028.

(6) The provisions of 810 KAR 1:018, Section 15, shall apply to this administrative regulation.

(7) The chief state steward and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation.

Section 9. Postrace testing. Nothing contained in this administrative regulation shall be construed to prevent the commission from conducting postrace testing for the substances described in Section 2 of this administrative regulation. In the event of an actionable finding for the presence of any of the substances described in Section 2 of this administrative regulation as a result of postrace testing, the provisions of Sections 7 and 8 of this administrative regulation shall apply.

Section 10. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, Jr., Chairman

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ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 10, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 28, 2010 at 10 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by Thursday, October 21, 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 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 November 1, 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates new out of competition sampling and testing procedures that allow the commission to detect the presence of certain substances in a horse that are prohibited by 810 KAR 1:018, but cannot be effectively detected through the existing post-race sampling and testing procedures. The new procedures, which allow the commission to collect specimens from a horse prior to the horse being entered in a race, only apply to the non-therapeutic substances identified in the regulation that have the ability to affect a horse's performance on the racetrack long after they can be detected in the horse's system through postrace sampling and testing.

(b) The necessity of this administrative regulation: This regulation is necessary because the prohibited, non-therapeutic substances identified therein cannot be effectively detected through the existing post-race sampling and testing procedures. The prohibited substances only remain in a horse's system for a very short period of time. However, their ability to affect a horse's performance can last for weeks or even months. Because their effects far outlast their ability to be detected, these substances are generally administered well in advance of a race and are not detectable through the testing of post-race specimens. Therefore, it is necessary for the commission to be able to collect a specimen from a horse at or close to the time a prohibited substance may have been administered, which, in most cases, is before a horse is even entered in a race. This regulation allows the commission to do exactly that.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to

promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

This regulation allows the commission to sample horses in such a way as to effectively restrict or prohibit "the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race," and further allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The commission's current postrace sampling and testing procedures are not adequate to detect the administration of the prohibited substances identified in the regulation. This regulation rectifies that problem by allowing the commission to sample and test a horse at the time and in the manner necessary to detect the presence of those prohibited substances, thus fulfilling its statutory mandate.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and trainers with horses that are eligible, or that may become eligible, to race in the Commonwealth; the five currently-licensed racing associations offering thoroughbred racing; any training center under the jurisdiction of the commission; jockeys and any other persons who come into contact with horses racing or training in the Commonwealth; patrons who place pari-mutuel wagers on horse races in the Commonwealth; and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The owners and trainers are required to cooperate with the commission in the sampling of horses by locating and identifying any horse designated for testing, making the horse available at a stall or other safe location for the collection of a specimen and witnessing the collection of the specimen.

The licensed racing associations and training centers under the jurisdiction of the commission will be required to cooperate, if necessary, by locating horses to be sampled. As is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens.

Jockeys and other licensees that come into contact with horses racing in the Commonwealth will not have any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission will not have any out of pocket expenses but will devote employee time toward identifying horses to be tested and collecting specimens for testing. As is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. As is already the case, owners and trainers will bear any costs associated with the testing of split samples if a primary sample collected from one of their horses tests positive for a prohibited substance and the owner or trainer elects to have a split sample tested.

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(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from sampling and testing procedures that will allow the commission to detect the presence of the prohibited substances identified in the regulation.

The horses, jockeys, and any other individuals who come into contact with horses racing or training in the Commonwealth will benefit because the regulation provides a strong deterrent to putting their health, safety, and welfare at risk through the use of the prohibited substances;

The owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will be less likely to feel the need to take their horses to race in other jurisdictions;

The patrons placing pari-mutuel wagers on horse racing in the Commonwealth will benefit from the knowledge that certain horses cannot gain an advantage over others through the use of prohibited substances;

The racing associations and the commission will benefit from increased public confidence in the integrity of horse racing in the Commonwealth;

The Commonwealth will benefit from the tax revenue generated when owners and trainers remain in state rather than racing in other jurisdictions and from the tax revenue generated when the betting public wagers their money on races run in Kentucky.

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

(a) Initially: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(b) On a continuing basis: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will not incur any out of pocket expenses as a result of this administrative regulation. It will compensate employees for the additional time spent on designating horses to be tested and collecting samples from those horses from its general 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 established any fees or directly or indirectly increased any fees: The regulation does not establish any fees or directly or indirectly increase any fees. However, as is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. To the extent that these expenses could be characterized as "fees," this regulation will result in an increase in testing and the associations may see a corresponding increase in their expenses.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

(d) How much will it cost to administer this program for subsequent years? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Administrative Regulation)

810 KAR 1:130. Postrace sampling and testing procedures.

RELATES TO: 230.215, 230.240, 230.260, 230.265(2), 230.290(2), 230.320(1)

STATUTORY AUTHORITY: KRS 230.215, 230.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in post-race sampling and testing to ensure that prohibited substances are not used.

Section 1. Definitions. (1) "Commission laboratory" is defined in 810 KAR 1:018, Section 1(3).

(2) "Gold sample" means that part of a specimen that shall be tested by the commission laboratory.

(3) "Positive finding" is defined in 810 KAR 1:018, Section 1(6).

(4) "Red sample" means that part of a specimen that may be tested by the commission laboratory.

(5) "Sampling" means the act of collecting a specimen from a horse.

(6) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

(7) "Test barn" is defined in 810 KAR 1:018, Section 1(9).

Section 2. Test Barn. In addition to the procedures set forth in 810 KAR 1:018, the commission shall require the following procedures:

(1) A security guard employed by a licensed association shall regulate access to the test barn during and immediately following each race; and

(2) All individuals who wish to enter the test barn must be currently licensed by the commission, display their commission identification badge, and have the permission of the commission veterinarian or his or her designee to be in the test barn.

Section 3. Pari-Mutuel Races with Purses of \$2,500 or Less. For races with purses of \$2,500 or less:

(1) The horse finishing first shall be sampled and a portion of the specimen shall be designated as a gold sample; and

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(2) The chief state steward, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample.

Section 4. Pari-Mutuel Races with Purses Greater than \$2,500 and \$100,000. For races with purses that exceed \$2500 but are less than \$100,000:

(1) The horse finishing first and at least one (1) other horse shall be sampled;

(2) The chief state steward, or his or her designee, shall designate a portion of each specimen as a red sample or a gold sample; and

(3) A portion of at least one (1) specimen from each race shall be designated as a gold sample.

Section 5. Pari-Mutuel Races with Purses of \$100,000 or More. For races with purses of \$100,000 or more:

(1) The horses finishing first, second, and third shall be sampled;

(2) The chief state steward, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample; and

(3) Portions of at least three (3) specimens shall be designated as gold samples.

Section 6. Selection of Horses and Designation of Samples. (1) In selecting horses for sampling, and in designating portions of specimens as gold samples or red samples, the chief state steward, or his or her designee, shall consider all information available, including:

(a) The performance of a horse favored to win the race by the wagering patrons;

(b) The performance of horses considered to be long-shots to win the race by the wagering patrons;

(c) The betting patterns of wagering patrons;

(d) A trainer's recent statistical performance in relation to his or her historical statistical performance; and

(e) Security intelligence.

(2) The chief state steward or his or her designee shall notify the test barn promptly upon completion of a race as to which horse or horses shall be sampled;

(3) Prior to the close of business on the date of sampling, the chief state steward or his or her designee shall notify the test barn in writing regarding which samples are designated as gold samples and which samples are designated as red samples.

Section 7. Sampling. (1) A horse designated for sampling by the stewards shall proceed immediately to the test barn following each race to have a specimen collected under the direction of the commission veterinarian.

(2) In the event that an adequate specimen cannot be obtained from a horse designated for sampling within sixty (60) minutes after arrival at the testing barn, the commission veterinarian may require an individual employed by the commission to accompany the horse from the test barn to its stall and remain with the horse until an adequate specimen is obtained.

(3) All sampling shall be performed in accordance with 810 KAR 1:018.

(4) Split samples shall be subject to the provisions and procedures set forth in 810 KAR 1:018, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 810 KAR 1:018, Section 13.

Section 8. Shipment and Testing. (1) All gold samples and red samples shall be labeled and sent to the commission laboratory for testing in accordance with the procedures set forth in 810 KAR 1:018, Section 11.

(2) A technician at the commission laboratory shall create a log of each sample received and enter the color code into the Laboratory Information Management System or other information management system approved by the commission.

(3) All gold samples shall be tested.

(4) Fifty (50) percent of all red samples shall be randomly selected by the Lab Information Management System, or other infor-

mation management system approved by the commission, and tested.

(5) All red samples that are not selected for testing shall be frozen or refrigerated and retained pursuant to a contract between the commission and the commission laboratory.

(6) If a sample tests positive for a substance prohibited by these administrative regulations, all specimen(s) collected from horses who competed in the same race shall be tested.

(7) All testing and reports shall be completed in accordance with 810 KAR 1:018 and 1:028.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 28, 2010 at 10 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by Thursday, October 21, 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 November 1, 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: Along with 810 KAR 1:018, this regulation provides guidance on the procedures for post-race sampling and drug testing of horses that compete in thoroughbred racing in the Commonwealth.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to effectively and efficiently test race horses for the presence of prohibited substances to ensure and maintain the integrity of horse racing and pari-mutuel wagering thereon in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. Along with 810 KAR 1:018, this regulation provides guidance on the procedures for post-race sampling and drug testing of horses that compete in thoroughbred racing in the Commonwealth.

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(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Along with 810 KAR 1:018, this regulation provides the specific rules to be applied to post-race sampling and testing of race horses in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the five currently-licensed racing associations in the Commonwealth that offer thoroughbred racing, the owners and trainers who participate in thoroughbred racing in the Commonwealth, the patrons who place pari-mutuel wagers on thoroughbred races in the Commonwealth, the commission and the commission laboratory.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As has been the case, and pursuant to KRS 230.240, the associations will continue to bear the cost of any drug testing performed pursuant to this administrative regulation. Owners and trainers will continue to be required to follow the rules regarding the post-race sampling of horses.

(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 for the commission or its employees, the commission laboratory, patrons placing wagers on horse races, owners or trainers. Each of the licensed racing associations offering thoroughbred racing should see a decrease in their drug testing expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In 1991, the McKinsey Report was issued with recommendations for ways to make drug testing smarter and more cost efficient without sacrificing integrity. This regulation is premised on that report. It provides criteria by which the chief state steward can make more focused decision on which horses should be tested following a race. By applying the criteria, the chief state steward can identify potential red flags and facilitate smarter drug testing. In addition, the regulation requires the samples collected from horses to be designated as either red or gold samples. 100% of the gold samples are tested, while only 50% of the red samples are tested. The reduction in the number of samples tested results in a cost savings for the licensed association that are responsible for paying for the testing. However, because the red samples are randomly selected for testing, and owners and trainers have no way of knowing which will actually be tested, the integrity of the process is maintained and the deterrent effect of drug testing is not compromised. Each of the 5 licensed racing associations offering thoroughbred racing should see a decrease in their drug testing costs and will benefit from smarter drug testing that is more likely to identify a horse with a prohibited substance in its system. The commission and the commission laboratory should see an increase in efficiency based on the new sampling and testing procedures. Owners, trainers and patrons wagering on thoroughbred racing in the Commonwealth will benefit from knowing that the commission is maintaining the integrity of horse racing in the Commonwealth through its drug testing program.

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

(a) Initially: The regulation will not result in additional costs.

(b) On a continuing basis: The regulation will not result in additional costs.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: As has been the case, and pursuant to KRS 230.240, the licensed racing associations will bear the cost of the drug testing done pursuant to this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.265, 230.290, and 230.320.

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

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

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

(c) How much will it cost to administer this program for the first year? The regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? The regulation will not result in 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:

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

811 KAR 1:240. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.230, 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissi-

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pate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes new sampling and testing procedures for the prohibited substances identified herein, and establishes penalties for individuals that are found to be in violation of this administrative regulation.

Section 1. Definitions. (1) "Actionable finding" means a determination by the commission that a substance described in Section 2 of this administrative regulation was present in a horse based on the commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results, or based on the commission's review of a report of finding issued by the commission laboratory for which an owner and trainer have waived their right to have a split sample analysis performed.

(2) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(3) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

Section 2. Prohibited Substances and Practices. (1) The following shall be a violation of this administrative regulation:

(a) The presence in, or administration to, a horse, at any time, of blood doping agents including: erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, or any other substance that enhances the oxygenation of equine body tissue;

(b) The nontherapeutic administration to, a horse, at any time, of whole blood or packed red blood cells;

(c) The presence in, or administration to, a horse, at any time, of naturally produced venoms, synthetic analogues of venoms, derivatives of venoms or synthetic analogues of derivatives of venoms;

(d) The presence in, or administration to, a horse, at any time, of growth hormones;

(e) The possession of erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, synthetic analogues of derivatives of venoms, or growth hormones on the grounds of a licensed association or a training facility under the jurisdiction of the commission; and

(f) The possession at any time of whole blood or packed red blood cells on the grounds of a licensed association or a training facility under the jurisdiction of the commission by anyone other than a licensed veterinarian rendering emergency treatment to a horse located on the grounds of the association or training facility. The attending veterinarian shall notify the commission veterinarian of the intent to administer whole blood or packed red blood cells prior to his or her collection or possession of the whole blood or packed red blood cells.

(2) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

Section 3. Out-of-Competition Testing. (1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse is presumed eligible to race in Kentucky if:

(a) It is under the care, custody or control of a trainer licensed by the commission; or

(b) It is owned by an owner licensed by the commission; or

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300; or

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months; or

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Standardbred Development Fund.

(2) If a horse to be tested is not covered under subsection (1), the executive director or presiding judge may nevertheless desig-

nate any horse that may become eligible to race in Kentucky to be tested for the prohibited substances described in Section 2 of this administrative regulation.

(3) Horses may be designated for testing by the executive director, the presiding judge, or their respective designee.

(4) A horse designated for testing under this section shall be subject to testing for the substances described in Section 2 of this administrative regulation.

(5) An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at an agreed upon stall or other safe location; and

(c) Observing the collection of the specimen.

1. If the owner, trainer, or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee, becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is received.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list, 811 KAR 1:095, Section 18, and the judge's list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

(6) If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list, 811 KAR 1:095, Section 18, and the judge's list, for 180 days, and the individual(s) responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties described in Section 8 of this administrative regulation.

(7)(a) A horse that is barred from racing in Kentucky and placed on the Veterinarian's List and the Judge's List pursuant to subsection (5) or (6) of this section shall remain barred from racing and shall remain on the veterinarian's list and the judge's list upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the presiding judge.

Section 4. Specimen Collection. (1) A specimen shall be collected from any horse designated by the executive director, the presiding judge, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) When a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from another racing commission or regulatory entity to collect the specimen.

(3) If specimen collection occurs at a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) If specimen collection occurs at a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify the owner, trainer or any other person exercising care, custody or control of the horse before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 5. Minimum and Split Samples. The commission veterinarian shall determine minimum and split sample requirements as set forth at 811 KAR 1:090, Section 11.

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Section 6. Sample Storage and Testing. (1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with the procedures set forth in 811 KAR 1:090, Section 11.

(2) The commission is the owner of an out of competition specimen.

(3) The sample may be submitted to the commission laboratory for testing on the same date the specimen is collected or on a subsequent date.

(4) A written chain of custody protocol shall be made available to the owner and trainer upon request.

(5) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(6) Split samples shall be subject to the provisions and procedures set forth in 811 KAR 1:090, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 811 KAR 1:090, Section 13.

(7) The cost of testing the split sample under subsections (5) and (6) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Steps After Actionable Finding or Any Other Violation of This Administrative Regulation. In the event of an actionable finding, or any other violation of this administrative regulation, the following steps shall be taken:

(1)(a) Within five (5) business days of receipt of notification of an actionable finding, the commission shall notify the owner and trainer in writing of the actionable finding and shall schedule a judges' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the judges determine a continuation is necessary to accommodate the parties; and

(b) The commission shall cause the subject horse to be immediately placed on the Veterinarian's List, 811 KAR 1:090, Section 18, and the Judge's List, thereby rendering the horse ineligible to compete, pending the conduct of the hearing described in subsection (1) of this section and the issuance of a judge's order.

(2) Within thirty (30) days of the commission's discovery of any violation of this administrative regulation other than an actionable finding, the commission shall notify the owner and trainer in writing of the violation and shall schedule a judges' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the judges determine a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) For a first offense:

(a) A revocation of the individual's license for a period of five (5) to ten (10) years;

(b) A fine of up to \$50,000;

(c) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding; and

(d) Any individual who has his or her license revoked for a violation of this administrative regulation shall go before the license review committee before being eligible for a new license.

(2) For a second offense:

(a) Permanent revocation of the individual's license; and

(b) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the veterinarian's list, 811 KAR 1:090, Section 18, and the judge's list, for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the presiding judge.

(4) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected remains subject to the requirements of subsection (3) of this section upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the presiding judge.

(5) The penalties established by this administrative regulation shall supersede any set forth in 811 KAR 1:095.

(6) The provisions of 811 KAR 1:090, Section 15, shall apply to this administrative regulation.

(7) The presiding judge and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation.

Section 9. Postrace Testing. Nothing contained in this administrative regulation shall be construed to prevent the commission from conducting postrace testing for the substances described in Section 2 of this administrative regulation. In the event of an actionable finding for the presence of any of the substances described in Section 2 of this administrative regulation as a result of postrace testing, the provisions of Sections 7 and 8 of this administrative regulation shall apply.

Section 10. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 10, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 28, 2010 at 10 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by Thursday, October 21, 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 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 November 1, 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 administra-

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tive regulation creates new out of competition sampling and testing procedures that allow the commission to detect the presence of certain substances in a horse that are prohibited by 811 KAR 1:090, but cannot be effectively detected through the existing post-race sampling and testing procedures. The new procedures, which allow the commission to collect specimens from a horse prior to the horse being entered in a race, only apply to the non-therapeutic substances identified in the regulation that have the ability to affect a horse's performance on the racetrack long after they can be detected in the horse's system through postrace sampling and testing.

(b) The necessity of this administrative regulation: This regulation is necessary because the prohibited, non-therapeutic substances identified therein cannot be effectively detected through the existing postrace sampling and testing procedures. The prohibited substances only remain in a horse's system for a very short period of time. However, their ability to affect a horse's performance can last for weeks or even months. Because their effects far outlast their ability to be detected, these substances are generally administered well in advance of a race and are not detectable through the testing of postrace specimens. Therefore, it is necessary for the commission to be able to collect a specimen from a horse at or close to the time a prohibited substance may have been administered, which, in most cases, is before a horse is even entered in a race. This regulation allows the commission to do exactly that.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

This regulation allows the commission to sample horses in such a way as to effectively restrict or prohibit "the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race," and further allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The commission's current postrace sampling and testing procedures are not adequate to detect the administration of the prohibited substances identified in the regulation. This regulation rectifies that problem by allowing the commission to sample and test a horse at the time and in the manner necessary to detect the presence of those prohibited substances, thus fulfilling its statutory mandate.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and trainers with horses that are eligible, or that may become eligible, to race in the Commonwealth; the three currently-licensed racing associations offering standardbred racing; any training center under the jurisdiction of the commission; drivers and any other persons who come into contact with horses racing or training in the Commonwealth; patrons who place pari-mutuel wagers on horse races in the Commonwealth; and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The owners and trainers are required to cooperate with the commission in the sampling of horses by locating and identifying any horse designated for testing, making the horse available at a stall or other safe location for the collection of a specimen and witnessing the collection of the specimen.

(b) The licensed racing associations and training centers under the jurisdiction of the commission will be required to cooperate, if necessary, by locating horses to be sampled. As is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens.

(c) Drivers and other licensees that come into contact with horses racing in the Commonwealth will not have any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission will not have any out of pocket expenses but will devote employee time toward identifying horses to be tested and collecting specimens for testing. As is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. As is already the case, owners and trainers will bear any costs associated with the testing of split samples if a primary sample collected from one of their horses tests positive for a prohibited substance and the owner or trainer elects to have a split sample tested.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from sampling and testing procedures that will allow the commission to detect the presence of the prohibited substances identified in the regulation.

The horses, drivers, and any other individuals who come into contact with horses racing or training in the Commonwealth will benefit because the regulation provides a strong deterrent to putting their health, safety, and welfare at risk through the use of the prohibited substances;

The owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will be less likely to feel the need to take their horses to race in other jurisdictions;

The patrons placing pari-mutuel wagers on horse racing in the Commonwealth will benefit from the knowledge that certain horses cannot gain an advantage over others through the use of prohibited substances;

The racing associations and the commission will benefit from increased public confidence in the integrity of horse racing in the Commonwealth;

The Commonwealth will benefit from the tax revenue generated when owners and trainers remain in state rather than racing in other jurisdictions and from the tax revenue generated when the betting public wagers their money on races run in Kentucky.

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

(a) Initially: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(b) On a continuing basis: The commission will not have any

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out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will not incur any out of pocket expenses as a result of this administrative regulation. It will compensate employees for the additional time spent on designating horses to be tested and collecting samples from those horses from its general 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 established any fees or directly or indirectly increased any fees: The regulation does not establish any fees or directly or indirectly increase any fees. However, as is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. To the extent that these expenses could be characterized as "fees," this regulation will result in an increase in testing and the associations may see a corresponding increase in their expenses.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

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

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

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

(c) How much will it cost to administer this program for the first year? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

(d) How much will it cost to administer this program for subsequent years? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

811 KAR 1:260. Postrace sampling and testing procedures.

RELATES TO: 230.215, 230.240, 230.260, 230.265(2),

230.290(2), 230.320(1)

STATUTORY AUTHORITY: KRS 230.215, 230.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in post-race sampling and testing to ensure that prohibited substances are not used.

Section 1. Definitions. (1) "Commission laboratory" is defined in 811 KAR 1:090, Section 1(3).

(2) "Gold sample" means that part of a specimen that shall be tested by the commission laboratory.

(3) "Positive finding" is defined in 811 KAR 1:090, Section 1(6).

(4) "Red sample" means that part of a specimen that may be tested by the commission laboratory.

(5) "Sampling" means the act of collecting a specimen from a horse.

(6) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

(7) "Test barn" is defined in 811 KAR 1:090, Section 1(9).

Section 2. Test Barn. In addition to the procedures set forth in 811 KAR 1:090, the commission shall require the following procedures:

(1) A security guard employed by a licensed association shall regulate access to the test barn during and immediately following each race; and

(2) All individuals who wish to enter the test barn must be currently licensed by the commission, display their commission identification badge, and have the permission of the commission veterinarian or his or her designee to be in the test barn.

Section 3. Pari-Mutuel Races with Purses of \$2,500 or Less. For races with purses of \$2,500 or less:

(1) The horse finishing first shall be sampled and a portion of the specimen shall be designated as a gold sample; and

(2) The presiding judge, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample.

Section 4. Pari-Mutuel Races with Purses Greater Than \$2,500 and Less Than \$100,000. For races with purses that exceed \$2,500 but are less than \$100,000:

(1) The horse finishing first and at least one other horse shall be sampled;

(2) The presiding judge, or his or her designee, shall designate a portion of each specimen as a red sample or a gold sample; and

(3) A portion of at least one (1) specimen from each race shall be designated as a gold sample.

Section 5. Pari-Mutuel Races with Purses Of \$100,000 or More. For races with purses of \$100,000 or more:

(1) The horses finishing first, second, and third shall be sampled;

(2) The presiding judge, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample; and

(3) Portions of at least three (3) specimens shall be designated as gold samples.

Section 6. Selection of Horses and Designation of Samples. (1) In selecting horses for sampling, and in designating portions of specimens as gold samples or red samples, the presiding judge, or his or her designee, shall consider all information available, including:

(a) The performance of a horse favored to win the race by the wagering patrons;

(b) The performance of horses considered to be long-shots to

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win the race by the wagering patrons;

(c) The betting patterns of wagering patrons;

(d) A trainer's recent statistical performance in relation to his or her historical statistical performance; and

(e) Security intelligence.

(2) The presiding judge or his or her designee shall notify the test barn promptly upon completion of a race as to which horse(s) shall be sampled;

(3) Prior to the close of business on the date of sampling, the presiding judge or his or her designee shall notify the test barn in writing regarding which samples are designated as gold samples and which samples are designated as red samples.

Section 7. Sampling. (1) A horse designated for sampling by the judges shall proceed immediately to the test barn following each race to have a specimen collected under the direction of the commission veterinarian.

(2) In the event that an adequate specimen cannot be obtained from a horse designated for sampling within sixty (60) minutes after arrival at the testing barn, the commission veterinarian may require an individual employed by the commission to accompany the horse from the test barn to its stall and remain with the horse until an adequate specimen is obtained.

(3) All sampling shall be performed in accordance with 811 KAR 1:090, Section 11.

(4) Split samples shall be subject to the provisions and procedures set forth in 811 KAR 1:090, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 811 KAR 1:090, Section 13.

Section 8. Shipment and Testing. (1) All gold samples and red samples shall be labeled and sent to the commission laboratory for testing in accordance with the procedures set forth in 811 KAR 1:090, Section 11.

(2) A technician at the commission laboratory shall create a log of each sample received and enter the color code into the Laboratory Information Management System or other information management system approved by the commission.

(3) All gold samples shall be tested.

(4) Fifty (50) percent of all red samples shall be randomly selected by the Lab Information Management System, or other information management system approved by the commission, and tested.

(5) All red samples that are not selected for testing shall be frozen or refrigerated and retained pursuant to a contract between the commission and the commission laboratory.

(6) If a sample tests positive for a substance prohibited by these administrative regulations, all specimen(s) collected from horses who competed in the same race shall be tested.

(7) All testing and reports shall be completed in accordance with 811 KAR 1:090 and 1:095.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 28, 2010 at 10 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by Thursday, October 21, 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 November 1, 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,

(I) Provide a brief summary of:

(a) What this administrative regulation does: Along with 811 KAR 1:090, this regulation provides guidance on the procedures for post-race sampling and drug testing of horses that compete in standardbred racing in the Commonwealth.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to effectively and efficiently test race horses for the presence of prohibited substances to ensure and maintain the integrity of horse racing and pari-mutuel wagering thereon in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. Along with 811 KAR 1:090, this regulation provides guidance on the procedures for post-race sampling and drug testing of horses that compete in standardbred racing in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Along with 811 KAR 1:090, this regulation provides the specific rules to be applied to post-race sampling and testing of race horses in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the three currently-licensed racing associations in the Commonwealth that offer standardbred racing, the owners and trainers who participate in standardbred racing in the Commonwealth, the patrons who place pari-mutuel wagers on standardbred races in the Commonwealth, the commission and the commission laboratory.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As has been the case, and pursuant to KRS 230.240, the associations will continue to bear the cost of any drug testing performed pursuant to this administrative regulation. Owners and trainers will continue to be required to follow the rules

regarding the post-race sampling of horses.

(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 for the commission or its employees, the commission laboratory, patrons placing wagers on horse races, owners or trainers. Each of the licensed racing associations offering standardbred racing except for The Red Mile should see a decrease or no change in their drug testing expenses. The Red Mile should expect an increase in its drug testing expenses of approximately 30-35 percent.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In 1991, the McKinsey Report was issued with recommendations for ways to make drug testing smarter and more cost efficient without sacrificing integrity. This regulation is premised on that report. It provides criteria by which the chief state steward can make more focused decision on which horses should be tested following a race. By applying the criteria, the chief state steward can identify potential red flags and facilitate smarter drug testing. In addition, the regulation requires the samples collected from horses to be designated as either red or gold samples. 100% of the gold samples are tested, while only 50% of the red samples are tested. The reduction in the number of samples tested results in a cost savings for the licensed association that are responsible for paying for the testing. However, because the red samples are randomly selected for testing, and owners and trainers have no way of knowing which will actually be tested, the integrity of the process is maintained and the deterrent effect of drug testing is not compromised. Two (2) of the three (3) licensed racing associations offering standardbred racing should see a decrease in their drug testing costs. Although The Red Mile will see an increase in its testing costs, like the other two standardbred associations, it will nevertheless benefit from a smarter drug testing process. Likewise, the commission and the commission laboratory should see an increase in efficiency based on the new sampling and testing procedures. Owners, trainers and patrons wagering on standardbred racing in the Commonwealth will benefit from knowing that the commission is maintaining the integrity of horse racing in the Commonwealth through its drug testing program.

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

(a) Initially: The regulation will not result in additional costs.

(b) On a continuing basis: The regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As has been the case, and pursuant to KRS 230.240, the licensed racing associations will bear the cost of the drug testing done pursuant to this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.265, 230.290, 230.320.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? The regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? The regulation will not result in 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:

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

811 KAR 2:150. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.230, 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa, and Arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes new sampling and testing procedures for the prohibited substances identified herein, and establishes penalties for individuals that are found to be in violation of this administrative regulation.

Section 1. Definitions. (1) "Actionable finding" means a determination by the commission that a substance described in Section 2 of this administrative regulation was present in a horse based on the commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results, or based on the commission's review of a report of finding issued by the commission laboratory for which an owner and trainer have waived their right to have a split sample analysis performed.

(2) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(3) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

Section 2. Prohibited Substances and Practices. (1) The following shall be a violation of this administrative regulation:

(a) The presence in, or administration to, a horse, at any time, of blood doping agents including: erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, or any other substance that en-

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hances the oxygenation of equine body tissue;

(b) The nontherapeutic administration to, a horse, at any time, of whole blood or packed red blood cells;

(c) The presence in, or administration to, a horse, at any time, of naturally produced venoms, synthetic analogues of venoms, derivatives of venoms or synthetic analogues of derivatives of venoms;

(d) The presence in, or administration to, a horse, at any time, of growth hormones;

(e) The possession of erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, synthetic analogues of derivatives of venoms, or growth hormones on the grounds of a licensed association or a training facility under the jurisdiction of the commission; and

(f) The possession at any time of whole blood or packed red blood cells on the grounds of a licensed association or a training facility under the jurisdiction of the commission by anyone other than a licensed veterinarian rendering emergency treatment to a horse located on the grounds of the association or training facility. The attending veterinarian shall notify the commission veterinarian of the intent to administer whole blood or packed red blood cells prior to his or her collection or possession of the whole blood or packed red blood cells.

(2) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

Section 3. Out-of-competition Testing. (1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse is presumed eligible to race in Kentucky if:

(a) It is under the care, custody or control of a trainer licensed by the commission; or

(b) It is owned by an owner licensed by the commission; or

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300; or

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months; or

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Quarter Horse, Appaloosa, and Arabian Development Fund.

(2) If a horse to be tested is not covered under subsection (1) of this section, the executive director or chief state steward may nevertheless designate any horse that may become eligible to race in Kentucky to be tested for the prohibited substances described in Section 2 of this administrative regulation.

(3) Horses may be designated for testing by the executive director, the chief state steward, or their respective designee.

(4) A horse designated for testing under this section shall be subject to testing for the substances described in Section 2 of this administrative regulation.

(5) An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at an agreed upon stall or other safe location; and

(c) Observing the collection of the specimen.

1. If the owner, trainer or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee, becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is received.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list and the steward's list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

(6) If the owner, trainer, or any authorized designee fails to

cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list and the steward's list, for 180 days, and the individual(s) responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties described in Section 8 of this administrative regulation.

(7)(a) A horse that is barred from racing in Kentucky and placed on the veterinarian's list and the steward's list pursuant to subsection (5) or (6) of this section shall remain barred from racing and shall remain on the veterinarian's list and the steward's list upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

Section 4. Specimen Collection. (1) A specimen shall be collected from any horse designated by the executive director, the chief state steward, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) When a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from another racing commission or regulatory entity to collect the specimen.

(3) If specimen collection occurs at a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) If specimen collection occurs at a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify the owner, trainer or any other person exercising care, custody or control of the horse before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 5. Minimum and Split Samples. The commission veterinarian shall determine minimum and split sample requirements as set forth at 810 KAR 1:018, Section 11(2).

Section 6. Sample Storage and Testing. (1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with the procedures set forth in 810 KAR 1:018, Section 12(1).

(2) The commission is the owner of an out of competition specimen.

(3) The sample may be submitted to the commission laboratory for testing on the same date the specimen is collected or on a subsequent date.

(4) A written chain of custody protocol shall be made available to the owner and trainer upon request.

(5) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(6) Split samples shall be subject to the provisions and procedures set forth in 810 KAR 1:018, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 810 KAR 1:018, Section 13.

(7) The cost of testing the split sample under subsections (5) and (6) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Steps After Actionable Finding or Any Other Viola-

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tion of This Administrative Regulation. In the event of an actionable finding, or any other violation of this administrative regulation, the following steps shall be taken:

(1)(a) Within five (5) business days of receipt of notification of an actionable finding, the commission shall notify the owner and trainer in writing of the actionable finding and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties; and

(b) The commission shall cause the subject horse to be immediately placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, thereby rendering the horse ineligible to compete, pending the conduct of the hearing described in subsection (1) of this section and the issuance of a steward's order.

(2) Within thirty (30) days of the commission's discovery of any violation of this administrative regulation other than an actionable finding, the commission shall notify the owner and trainer in writing of the violation and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) For a first offense:

(a) A revocation of the individual's license for a period of five (5) to ten (10) years;

(b) A fine of up to \$50,000;

(c) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding; and

(d) Any individual who has his or her license revoked for a violation of this administrative regulation shall go before the license review committee before being eligible for a new license.

(2) For a second offense:

(a) Permanent revocation of the individual's license; and

(b) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the Veterinarian's List and the Steward's List, for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(4) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected remains subject to the requirements of subsection (3) of this section upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(5) The penalties established by this administrative regulation shall supersede any set forth in 811 KAR 2:100 and 810 KAR 1:028.

(6) The provisions of 810 KAR 1:018, Section 15, shall apply to this administrative regulation.

(7) The chief state steward and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation.

Section 9. Postrace Testing. Nothing contained in this adminis-

trative regulation shall be construed to prevent the commission from conducting postrace testing for the substances described in Section 2 of this administrative regulation. In the event of an actionable finding for the presence of any of the substances described in Section 2 of this administrative regulation as a result of postrace testing, the provisions of Sections 7 and 8 of this administrative regulation shall apply.

Section 10. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 10, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 28, 2010 at 10 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by Thursday, October 21, 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 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 November 1, 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 creates new out of competition sampling and testing procedures that allow the commission to detect the presence of certain substances in a horse that are prohibited by 810 KAR 1:018, but cannot be effectively detected through the existing postrace sampling and testing procedures. The new procedures, which allow the commission to collect specimens from a horse prior to the horse being entered in a race, only apply to the non-therapeutic substances identified in the regulation that have the ability to affect a horse's performance on the racetrack long after they can be detected in the horse's system through postrace sampling and testing.

(b) The necessity of this administrative regulation: This regulation is necessary because the prohibited, non-therapeutic substances identified therein cannot be effectively detected through the existing postrace sampling and testing procedures. The prohibited substances only remain in a horse's system for a very short period of time. However, their ability to affect a horse's performance can last for weeks or even months. Because their effects far outlast their ability to be detected, these substances are generally administered well in advance of a race and are not detectable through the testing of postrace specimens. Therefore, it is necessary for the commission to be able to collect a specimen from a horse at or close to the time a prohibited substance may have been administered, which, in most cases, is before a horse is even entered in a race. This regulation allows the commission to do exactly that.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission

the authority to regulate conditions under which quarter horse, appaloosa, and Arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

This regulation allows the commission to sample horses in such a way as to effectively restrict or prohibit "the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race," and further allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The commission's current postrace sampling and testing procedures are not adequate to detect the administration of the prohibited substances identified in the regulation. This regulation rectifies that problem by allowing the commission to sample and test a horse at the time and in the manner necessary to detect the presence of those prohibited substances, thus fulfilling its statutory mandate.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and trainers with horses that are eligible, or that may become eligible, to race in the Commonwealth; the currently-licensed racing associations offering quarter horse, appaloosa, and Arabian racing; any training center under the jurisdiction of the commission; jockeys and any other persons who come into contact with horses racing or training in the Commonwealth; patrons who place pari-mutuel wagers on horse races in the Commonwealth; and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The owners and trainers are required to cooperate with the commission in the sampling of horses by locating and identifying any horse designated for testing, making the horse available at a stall or other safe location for the collection of a specimen and witnessing the collection of the specimen. The licensed racing associations and training centers under the jurisdiction of the commission will be required to cooperate, if necessary, by locating horses to be sampled. As is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. Jockeys and other licensees that come into contact with horses

racing in the Commonwealth will not have any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission will not have any out of pocket expenses but will devote employee time toward identifying horses to be tested and collecting specimens for testing.

As is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. As is already the case, owners and trainers will bear any costs associated with the testing of split samples if a primary sample collected from one of their horses tests positive for a prohibited substance and the owner or trainer elects to have a split sample tested.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from sampling and testing procedures that will allow the commission to detect the presence of the prohibited substances identified in the regulation.

The horses, jockeys, and any other individuals who come into contact with horses racing or training in the Commonwealth will benefit because the regulation provides a strong deterrent to putting their health, safety, and welfare at risk through the use of the prohibited substances;

The owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will be less likely to feel the need to take their horses to race in other jurisdictions;

The patrons placing pari-mutuel wagers on horse racing in the Commonwealth will benefit from the knowledge that certain horses cannot gain an advantage over others through the use of prohibited substances;

The racing associations and the commission will benefit from increased public confidence in the integrity of horse racing in the Commonwealth;

The Commonwealth will benefit from the tax revenue generated when owners and trainers remain in state rather than racing in other jurisdictions and from the tax revenue generated when the betting public wagers their money on races run in Kentucky.

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

(a) Initially: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(b) On a continuing basis: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will not incur any out of pocket expenses as a result of this administrative regulation. It will compensate employees for the additional time spent on designating horses to be tested and collecting samples from those horses from its general 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 established any fees or directly or indirectly increased any fees: The regulation does not establish any fees or directly or indirectly increase any fees. However, as is the case with postrace sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. To the extent that these expenses could be characterized as "fees," this regulation will result in an increase in testing and the associations may see a corresponding increase in their expenses.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

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

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

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

(c) How much will it cost to administer this program for the first year? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

(d) How much will it cost to administer this program for subsequent years? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

811 KAR 2:170. Postrace sampling and testing procedures.

RELATES TO: 230.215, 230.240, 230.260, 230.265(2), 230.290(2), 230.320(1)

STATUTORY AUTHORITY: KRS 230.215, 230.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in post-race sampling and testing to ensure that prohibited substances are not used.

Section 1. Definitions. (1) "Commission laboratory" is defined in 810 KAR 1:018, Section 1(3).

(2) "Gold Sample" means that part of a specimen that shall be tested by the commission laboratory.

(3) "Positive finding" is defined in 810 KAR 1:018, Section 1(6).

(4) "Red Sample" means that part of a specimen that may be tested by the commission laboratory.

(5) "Sampling" means the act of collecting a specimen from a horse.

(6) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

(7) "Test barn" is defined in 810 KAR 1:018, Section 1(9).

Section 2. Test barn. In addition to the procedures set forth in 810 KAR 1:018, the commission shall require the following procedures:

(1) A security guard employed by a licensed association shall regulate access to the test barn during and immediately following each race; and

(2) All individuals who wish to enter the test barn must be currently licensed by the commission, display their commission identification badge, and have the permission of the commission veterinarian or his or her designee to be in the test barn.

Section 3. Pari-mutuel Races with Purses of \$2,500 or Less. For races with purses of \$2,500 or less:

(1) The horse finishing first shall be sampled and a portion of the specimen shall be designated as a gold sample; and

(2) The chief state steward, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample.

Section 4. Pari-mutuel Races with Purses Greater Than \$2,500 and Less Than \$100,000. For races with purses that exceed \$2,500 but are less than \$100,000:

(1) The horse finishing first and at least one other horse shall be sampled;

(2) The chief state steward, or his or her designee, shall designate a portion of each specimen as a red sample or a gold sample; and

(3) A portion of at least one (1) specimen from each race shall be designated as a gold sample.

Section 5. Pari-Mutuel Races with Purses of \$100,000 or More. For races with purses of \$100,000 or more:

(1) The horses finishing first, second, and third shall be sampled;

(2) The chief state steward, or his or her designee, may select one (1) or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample; and

(3) Portions of at least three (3) specimens shall be designated as gold samples.

Section 6. Selection of Horses and Designation of Samples. (1) In selecting horses for sampling, and in designating portions of specimens as gold samples or red samples, the chief state steward, or his or her designee, shall consider all information available, including:

(a) The performance of a horse favored to win the race by the wagering patrons;

(b) The performance of horses considered to be long-shots to win the race by the wagering patrons;

(c) The betting patterns of wagering patrons;

(d) A trainer's recent statistical performance in relation to his or her historical statistical performance; and

(e) Security intelligence.

(2) The chief state steward or his or her designee shall notify the test barn promptly upon completion of a race as to which horse or horses shall be sampled;

(3) Prior to the close of business on the date of sampling, the chief state steward or his or her designee shall notify the test barn in writing regarding which samples are designated as gold samples and which samples are designated as red samples.

Section 7. Sampling. (1) A horse designated for sampling by the stewards shall proceed immediately to the test barn following each race to have a specimen collected under the direction of the commission veterinarian.

(2) In the event that an adequate specimen cannot be obtained from a horse designated for sampling within sixty (60) minutes after arrival at the testing barn, the commission veterinarian may require an individual employed by the commission to accompany the horse from the test barn to its stall and remain with the horse until an adequate specimen is obtained.

(3) All sampling shall be performed in accordance with 810 KAR 1:018, Section 11.

(4) Split samples shall be subject to the provisions and proce-

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dures set forth in 810 KAR 1:018, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 810 KAR 1:018, Section 13.

Section 8. Shipment and Testing. (1) All gold samples and red samples shall be labeled and sent to the commission laboratory for testing in accordance with the procedures set forth in 810 KAR 1:018, Section 11.

(2) A technician at the commission laboratory shall create a log of each sample received and enter the color code into the Laboratory Information Management System or other information management system approved by the commission.

(3) All gold samples shall be tested.

(4) Fifty (50) percent of all red samples shall be randomly selected by the Lab Information Management System, or other information management system approved by the commission, and tested.

(5) All red samples that are not selected for testing shall be frozen or refrigerated and retained pursuant to a contract between the commission and the commission laboratory.

(6) If a sample tests positive for a substance prohibited by these administrative regulations, all specimen(s) collected from horses who competed in the same race shall be tested.

(7) All testing and reports shall be completed in accordance with 810 KAR 1:018 and 1:028.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 28, 2010 at 10 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by Thursday, October 21, 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 November 1, 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: Along with 810 KAR 1:018, this regulation provides guidance on the procedures for post-race sampling and drug testing of horses that compete in quarter horse, appaloosa and Arabian racing in the Commonwealth.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to effectively and efficiently test race horses for the presence of prohibited substances to ensure and maintain the integrity of quarter horse, appaloosa and Arabian racing and pari-mutuel wagering thereon in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa and Arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate

administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. Along with 810 KAR 1:018, this regulation provides guidance on the procedures for post-race sampling and drug testing of horses that compete in quarter horse, appaloosa and Arabian racing in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Along with 810 KAR 1:018, this regulation provides the specific rules to be applied to post-race sampling and testing of race horses in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the eight currently-licensed racing associations in the Commonwealth - if those associations opt to offer quarter horse, appaloosa and Arabian racing, the owners and trainers who participate in quarter horse, appaloosa, and Arabian racing in the Commonwealth, the patrons who place pari-mutuel wagers on quarter horse, appaloosa and Arabian races in the Commonwealth, the commission and the commission laboratory.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As has been the case, and pursuant to KRS 230.240, the associations will continue to bear the cost of any drug testing performed pursuant to this administrative regulation. Owners and trainers will continue to be required to follow the rules regarding the post-race sampling of horses.

(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 for the commission or its employees, the commission laboratory, patrons placing wagers on horse races, owners or trainers. All of the licensed racing associations except The Red Mile should see a decrease or no change in their drug testing expenses. The Red Mile should expect an increase in its drug testing expenses of approximately 30-35 %.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In 1991, the McKinsey Report was issued with recommendations for ways to make drug testing smarter and more cost efficient without sacrificing integrity. This regulation is premised on that report. It provides criteria by which the chief state steward can make more focused decision on which horses should be tested following a race. By applying the criteria, the chief state steward can identify potential red flags and facilitate smarter drug testing. In addition, the regulation requires the samples collected from horses to be designated as either red or gold samples. 100% of the gold samples are tested, while only 50% of the red samples are tested. The reduction in the number of sam-

ples tested results in a cost savings for the licensed association that are responsible for paying for the testing. However, because the red samples are randomly selected for testing, and owners and trainers have no way of knowing which will actually be tested, the integrity of the process is maintained and the deterrent effect of drug testing is not compromised. The majority of licensed racing associations should see a decrease in their drug testing costs and will benefit from smarter drug testing that is more likely to identify a horse with a prohibited substance in its system. The commission and the commission laboratory should see an increase in efficiency based on the new sampling and testing procedures. Owners, trainers and patrons wagering on quarter horse, appaloosa and Arabian racing in the Commonwealth will benefit from knowing that the commission is maintaining the integrity of horse racing in the Commonwealth through its drug testing program.

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

(a) Initially: The regulation will not result in additional costs.

(b) On a continuing basis: The regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As has been the case, and pursuant to KRS 230.240, the licensed racing associations will bear the cost of the drug testing done pursuant to this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.265, 230.290, and 230.320.

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

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

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

(c) How much will it cost to administer this program for the first year? The regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? The regulation will not result in additional costs.

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

Revenue (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(New Administrative Regulation)

902 KAR 20:410. Specialty intermediate care clinics.

RELATES TO: KRS 216B.010-216B.131, 216B.990

STATUTORY AUTHORITY: 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation provides minimum licensure requirements for the operation of specialty intermediate care clinics.

Section 1. Definitions. (1) "Clinic" or "specialty intermediate care (IC) clinic" means a clinic located on the grounds of a state-owned facility licensed pursuant to 902 KAR 20:086 as an intermediate-care facility for the intellectually and developmentally disabled.

(2) "Developmental disability" is defined by 42 U.S.C. 15002(8)(A) as a severe, chronic disability of an individual that:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is manifested before the individual attains age twenty-two (22);

(c) Is likely to continue indefinitely;

(d) Results in substantial functional limitations in three (3) or more areas of major life activity, including:

1. Self-care;
2. Receptive and expressive language;
3. Learning;
4. Mobility;
5. Self direction;
6. Capacity for independent living; or
7. Economic self-sufficiency; and

(e) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(3) "Intellectual disability" means an individual has:

(a) Significantly sub-average intellectual functioning;

(b) An intelligence quotient of seventy (70) or below;

(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

1. Communication;
2. Self-care;
3. Home living;
4. Social or interpersonal skills;
5. Use of community resources;
6. Self-direction;
7. Functional academic skills;
8. Work;
9. Leisure; or
10. Health and safety; and

(d) Had an onset prior to eighteen (18) years of age.

(4) "Patient" means an individual who receives services provided by a specialty IC clinic and who:

(a) Is not a resident of, but qualifies for admission to an intermediate-care facility for the intellectually and developmentally disabled by meeting the patient status criteria established in 907 KAR 1:022, Section 4; or

(b) Is a resident of an intermediate-care facility for the intellectually and developmentally disabled which contracts with, or makes arrangements with the specialty IC clinic for outpatient services.

Section 2. Licensure Application and Fee. (1) An applicant for licensure as a specialty IC clinic shall complete and submit to the Office of the Inspector General an Application for License to Operate a Health Facility or Service, pursuant to 902 KAR 20:008, Section 2(1)(f).

(2) The initial and annual fee for licensure as a specialty clinic

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shall be \$500.

Section 3. Scope of Operations and Services. (1) Services provided by a specialty IC clinic shall be individualized to meet the treatment needs of each of the specialty IC clinic's patients. Patients may receive one (1) or more of the following services from the clinic:

- (a) Dental services;
 - (b) Psychiatric services;
 - (c) Psychological services;
 - (d) Psychotropic medication management;
 - (e) Neurology;
 - (f) Epileptology;
 - (g) Preventive health care;
 - (h) Medical assessment and treatment;
 - (i) Occupational therapy;
 - (j) Physical therapy;
 - (k) Speech therapy;
 - (l) Nutritional or dietary consultation;
 - (m) Mobility evaluation or treatment;
 - (n) Behavioral support services;
 - (o) Audiology;
 - (p) Ophthalmology;
 - (q) Pharmacy;
 - (r) Medication consultation;
 - (s) Medication management;
 - (t) Seizure management;
 - (u) Behavioral support services;
 - (v) Diagnostic services;
 - (w) Clinical laboratory services;
 - (x) Physician services; or
 - (y) Laboratory services.
- (2) Off-site services.

(a) Specialty IC clinic personnel as identified in Section 5(4) of this administrative regulation may provide services off-site at a local health department or in a health facility licensed under 902 KAR Chapter 20 if the specialty IC clinic has an agreement to provide the off-site services at the health department or licensed health facility's location for the purpose of improving patient accessibility or accommodating the patient's individualized healthcare needs.

(b) A psychologist, psychiatrist, behavior specialist, or board certified behavior analyst directly employed by, or under contract with a specialty IC clinic, may provide behavioral assessments or consultation off-site:

- 1. In a patient's home; or
- 2. At a day service or other service site where the patient receives services.

Section 4. Administration and Policies. (1) The licensee shall have legal responsibility for the specialty IC clinic, including responsibility for ensuring compliance with federal, state, and local laws and regulations pertaining to the operation of the clinic.

(2) The licensee shall establish lines of authority and designate an administrator who shall be principally responsible for the daily operation of the specialty IC clinic.

(3) A specialty IC clinic shall establish and follow written administrative policies covering all aspects of operation, including:

- (a) A description of organizational structure, staffing, and allocation of responsibility and accountability;
- (b) Policies and procedures for the guidance and control of personnel performances;
- (c) A written program narrative describing in detail the:
 - 1. Services offered;
 - 2. Methods and protocols for service delivery;
 - 3. Qualifications of personnel involved in the delivery of the services; and
 - 4. Goals of the service;
- (d) A description of how administrative and patient care records and reports are maintained; and
- (e) Procedures to be followed in the event the clinic performs any functions related to the storage, handling, and administration of drugs and biologicals.

(4) Patient Care Policies. A specialty IC clinic shall develop patient care policies which address:

- (a) A description of the services the clinic provides directly and

those provided through agreement.

(b) Guidelines for the medical management of health problems which include the conditions requiring medical consultation or patient referral; and

(c) Procedures for the annual review and evaluation of the services provided by the clinic.

Section 5. Personnel. (1)(a) A specialty IC clinic shall have a medical director who is a licensed physician.

(b) The specialty IC clinic's medical director shall:

1. Be responsible for all medical aspects of the clinic and provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311;

2. Provide medical direction, supervision, and consultation to the staff;

3. In conjunction with the registered nurse described in subsection (2) of this section, participate in the development, execution, and periodic review of the clinic's written policies and services;

4. Periodically review the clinic's patient records, provide medical orders, and provide medical care services to patients of the clinic;

5. Be present for weekly consultation, or delegate responsibility for weekly consultation to another physician employed by, or under contract with the specialty IC clinic if a temporary absence is necessary; and

6. Be available within one (1) hour through direct telecommunication for consultation, assistance with medical emergencies, or patient referral. If a temporary absence is necessary, the medical director shall designate another physician who is employed by, or under contract with the specialty IC clinic to be available within one (1) hour through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

(2) A specialty IC clinic shall have at least one (1) registered nurse who shall:

(a) Have at least one (1) year experience in treating or working with individuals with an intellectual disability and a developmental disability;

(b) Participate in the development, execution, and periodic review of the written policies governing the services the clinic provides;

(c) Participate with the medical director in periodic review of patient health records;

(d) Provide services in accordance with clinic policies, established protocols, the Nurse Practice Act (KRS Chapter 314), and with administrative regulations promulgated thereunder;

(e) Arrange for or refer patients to needed services that cannot be provided at the clinic; and

(f) Assure that adequate patient health records are maintained and transferred when patients are referred.

(3) A specialty IC clinic shall maintain, through direct employment or contract, a sufficient number of qualified personnel to provide effective patient care and all other related services.

(4) Qualified personnel directly employed by, or under contract with a specialty IC clinic shall include:

- (a) Physicians;
- (b) Dentists;
- (c) Dental hygienists;
- (d) Physician assistants;
- (e) Nurse practitioners;
- (f) Registered nurses;
- (g) Psychologists;
- (h) Psychiatrists;
- (i) Pharmacists;
- (j) Audiologists;
- (k) Optometrists;
- (l) Dieticians;
- (m) Behavior specialists;
- (n) Board certified behavior analysts;
- (o) Ophthalmologists;
- (p) Physical therapists;
- (q) Speech therapists;
- (r) Occupational therapists;
- (s) Physical therapist assistants; and
- (t) Occupational therapist assistants.

(5)(a) Prior to providing any service described in Section 3(1) of this administrative regulation, all qualified personnel as identified in

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subsection (4) of this section shall submit to an in-state criminal background information check conducted by the Justice and Public Safety Cabinet or Administrative Office of the Courts.

(b) An out-of-state criminal background information check shall be obtained for any qualified personnel who have resided or been employed outside Kentucky.

(c) A clinic shall not knowingly employ any person who has been convicted of a felony offense under:

1. KRS Chapter 209;
2. KRS Chapter 218A;
3. KRS 507.020, 507.030, and 507.040;
4. KRS Chapter 509;
5. KRS Chapter 510;
6. KRS Chapter 511;
7. KRS Chapter 513;
8. KRS 514.030;
9. KRS Chapter 530;
10. KRS Chapter 531;
11. KRS 508.010, 508.020, 508.030, and 508.032;
12. A criminal statute of the United States or another state similar to subparagraphs 1 to 11 of this paragraph; or
13. A violation of the uniform code of military justice or military regulation similar to subparagraphs 1 to 11 of this paragraph which has caused the person to be discharged from the Armed Forces of the United States.

(d) A person who has received a pardon for an offense specified in paragraph (c) or has had the record of such an offense expunged may be employed.

(6) A specialty IC clinic shall maintain written personnel policies which shall be available to all employees.

(7) A specialty IC clinic shall maintain a written job description for each position which shall be reviewed and revised as necessary.

(8) A specialty IC clinic shall maintain current personnel records for each employee. An employee's personnel record shall include the following:

1. Employee's name and address;
2. Evidence that the health care professional has a valid license or other valid credential required for the professional to be able to practice;
3. Record of training and experience; and
4. Record of performance evaluations.

(9)(a) Specialty IC clinic personnel shall attend in-service training programs relating to their respective job duties. These training programs shall include:

1. Thorough job orientation for new personnel;
2. Regular in-service training programs;
3. Behavior management procedures and techniques;
4. Training in the detection and reporting of suspected abuse or neglect of a child or adult;
5. Training in the field of intellectual and developmental disabilities; and
6. Emergency and safety procedures.

(b) A written document describing the training programs completed by all clinic employees shall be maintained on the premises of the clinic.

Section 6. Medical Records. (1) A specialty IC clinic shall maintain medical records which contain the following:

- (a) Name of the patient;
- (b) Description of each medical visit or contact, including:
 1. Date of the visit;
 2. Condition or reason for the visit;
 3. Name of health care practitioner providing the service;
 4. Description of the services provided; and
 5. Any medications or treatments prescribed;
- (c) Medical or social history relevant to the services provided, including data obtained from other providers;
- (d) Names of referring physicians, if any, and physicians orders for special diagnostic services; and
- (e) Documentation of all referrals made, including the reason for the referral and to whom the patient was referred.

(2) A specialty IC clinic shall maintain confidentiality of patient records at all times pursuant to and in accordance with federal, state and local laws and administrative regulations, including the

privacy standard promulgated pursuant to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. 160 and 164.

(3) A specialty IC clinic shall:

(a) Establish systematic procedures to assist in continuity of care if the patient moves to another source of care;

(b) Transfer medical records or an abstract upon request, subject to required releases and authorizations; and

(c) Have a specific location designated for the storage and maintenance of the clinic's medical records, maintain scanned copies of the original medical records in an electronic format, or maintain electronic health records, available for copying to a disk or printing at the clinic.

(4)(a) Medical records shall be maintained by the clinic for a period of six (6) years following the last treatment, assessment, or visit made by the patient, or three (3) years after the patient reaches age eighteen (18), whichever is longer.

(b) A provision shall be made for written designation of a specific location for the storage of medical records in the event the specialty IC clinic ceases to operate because of disaster, or for any other reason.

(5) A specialty IC clinic shall safeguard each clinic's medical records and content against loss, defacement, and tampering.

Section 7. Provision of Services. (1) Equipment. Equipment used for direct patient care shall comply with the following:

(a) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative, properly calibrated, and cleaned regularly;

(b) All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, registered or certified in accordance with applicable state statutes and administrative regulations; and

(c) A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment.

(2) Diagnostic services. Diagnostic services shall be performed in accordance with the specialty IC clinic's protocol.

(a) Protocols for diagnostic examinations shall be developed by the medical director.

(b) Diagnostic services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific technique utilized for diagnostic purposes.

(c) Physical examination services shall be nonabusive and provided in a manner which ensures the greatest amount of safety and security for the patient.

1. Personnel performing physical examinations shall have adequate training and be currently licensed, registered, or certified in accordance with applicable Kentucky statutes and administrative regulations.

2. Personnel performing physical examinations shall be limited by the relevant scope of practice of state licensure.

(3) Referrals. A specialty IC clinic shall refer a patient for services that cannot be provided at the clinic.

Section 8. Physical Environment. (1) Accessibility. A specialty IC clinic shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. A specialty IC clinic shall be approved by the State Fire Marshal's office prior to initial licensure.

(3) Housekeeping and maintenance services.

(a) Housekeeping. A specialty IC clinic shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

(b) Maintenance. The premises shall be well kept and in good repair as follows:

1. The clinic shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors which can be opened for

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ventilation shall be screened;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly;

4. A pest control program shall be in operation in the clinic. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock;

5. Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles shall be segregated from other wastes and aggregated in rigid disposable containers immediately after use. Needles and syringes shall not be cut, dismantled, or destroyed after use but shall be placed intact directly into a rigid container. The rigid containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020; and

6. The clinic shall establish a written policy for the handling and disposal of all infectious, pathological, and contaminated waste if the clinic generates them. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 61:010.

a. (i) Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness.

(ii) A bag, when full, shall not exceed twenty five (25) pounds.

(iii) All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the clinic from which the waste is being removed and shall be attached to the bag in a conspicuous manner.

b. All unpreserved tissue specimens procedures shall be incinerated on or off site.

c. The following wastes shall be sterilized before disposal or be disposed of by incineration if they are combustible:

(i) Dressings and materials from open or contaminated wounds;

(ii) Waste materials and disposable linens from isolation rooms;

(iii) Culture plates;

(iv) Test tubes;

(v) Sputum cups; and

(vi) Contaminated sponges and swabs.

MARY REINLE BEGLEY, Inspector General

JANIE MILLER, Secretary

APPROVED BY AGENCY:

FILED WITH LRC: September 1, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2010 at 9 a.m. in Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, 502-564-2888

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure as a specialty intermediate care clinic located on the grounds of a state-owned facility licensed pursuant to 902 KAR 20:086 as an intermediate-care facility for the intellectually and developmentally

disabled.

(b) The necessity of this administrative regulation: Following a November 2001 investigation by the U.S. Department of Justice's Civil Rights Division (DOJ) of conditions and practices at the Oakwood Developmental Center, Kentucky voluntarily came forward with a Strategic Action Plan incorporated into the Commonwealth's Settlement Agreement with DOJ. The Strategic Action Plan details Kentucky's solutions to DOJ's findings, including a process for transitioning residents of intermediate-care facilities for the intellectually and developmentally disabled to community placements. The Strategic Action Plan further calls for the establishment of specialty intermediate care clinics located on the grounds of intermediate-care facilities for the intellectually and developmentally disabled. The specialty intermediate care clinics will provide an array of specialized outpatient services, including medical, behavioral, psychiatric, nutritional, and therapy services to individuals in the community who qualify for admission to an intermediate-care facility for the intellectually and developmentally disabled. The specialty intermediate care clinics may also serve facility residents. However, the primary benefit derived from the specialty intermediate care clinics is the role they will play in helping transition residents from institutional settings to the community, and further maintain community placements for individuals with an intellectual disability and a developmental disability who have complex health care needs and require specialized services that are not available outside of the specialty intermediate care clinic or the intermediate-care facility for the intellectually and developmentally disabled.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities.

(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 licensure requirements for specialty intermediate care clinics.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Specialty intermediate care clinics, one of which will be operational on September 1, 2010 on the campus of Oakwood, will provide an array of individualized outpatient services to individuals with an intellectual disability and a developmental disability.

(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: Specialty intermediate care clinics will be required to provide outpatient services individualized to meet the treatment needs of residents and those individuals with an intellectual disability and a developmental disability who qualify for admission to an intermediate-care facility for the intellectually and developmentally disabled; have an administrator who is principally responsible for the daily operation of the clinic; have a medical director who is responsible for all medical aspects of the clinic; maintain administrative policies covering all aspects of operation; have at least one registered nurse; maintain a sufficient number of qualified personnel to provide effective patient care; assure all qualified personnel submit to criminal background checks; not employ or contract with health care practitioners convicted of a felony offense identified in Section 5(5) of this administrative regulation; maintain personnel records; maintain patient medical

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records; and meet the physical environment requirements established in Section 8 of this administrative regulation for maintaining a clean and safe clinic.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial and annual fee for licensure as a specialty intermediate care clinic will be \$500.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity that demonstrates compliance with this administrative regulation will be approved for licensure as a specialty intermediate care clinic. These clinics will play a vital role in delivering services individualized to meet the health care needs of individuals with an intellectual disability and a developmental disability who live in the community and qualify for placement in an institutional setting.

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

(a) Initially: Based on the small number of entities eligible to become licensed as a specialty intermediate care clinic, the cost of implementing this administrative regulation is expected to be absorbable and the licensure fee is anticipated to cover all, or most of the cost of implementation.

(b) On a continuing basis: Based on the small number of entities eligible to become licensed as a specialty intermediate care clinic, the cost of implementing this administrative regulation is expected to be absorbable and the licensure fee is anticipated to cover all, or most of the cost of implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from specialty intermediate care clinics and state 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 initial and annual fee for licensure as a specialty intermediate care clinic will be \$500.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial and annual fee for licensure as a specialty intermediate care clinic. Both the initial and annual licensure fee will be \$500.

(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.

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The cabinet will collect an annual licensure fee of \$500 from each licensed specialty intermediate care clinic.

(c) How much will it cost to administer this program for the first year? Based on the low number of entities eligible to become licensed as a specialty intermediate care clinic, the cost of implementing this administrative regulation is expected to be absorbable and the licensure fee is anticipated to cover all, or most of the cost of implementation.

(d) How much will it cost to administer this program for subsequent years? Based on the low number of entities eligible to become licensed as a specialty intermediate care clinic, the cost of implementing this administrative regulation is expected to be absorbable and the licensure fee is anticipated to cover all, or most of the cost of implementation.

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:

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 relates to the licensure of specialty intermediate care clinics located on the grounds of state-owned facilities licensed pursuant to 902 KAR 20:086 as intermediate-care facilities for the intellectually and developmentally disabled.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

(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 will collect an initial fee of \$500 from each applicant for licensure as a specialty intermediate care clinic. There will be one specialty intermediate care clinic operational on September 1, 2010. Therefore, the cabinet will collect at least \$500 in licensure fees during the first year.

(b) How much revenue will this administrative regulation gen-

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of September 14, 2010

Call to Order and Roll Call

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 14, 2010, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Elizabeth Tori, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the August 2010 meeting were approved.

Present were:

Members: Senators Elizabeth Tori, David Givens, Alice Forgy-Kerr, and Joey Pendleton and Representatives Leslie Combs, Robert Damron, Jimmie Lee, and Danny Ford.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, and Laura Napier.

Guests: Kevin Winstead, Attorney General's Office; Rob Carter, DeVon Hankins, Ricky Haven, Finance and Administration Cabinet; Jennifer A. Jones, Kentucky Retirement Systems; Michael Burleson, Board of Pharmacy; Charlotte Beason, Nathan Goldman, Board of Nursing; Fran Belvin, James Grawe, Frances Short, Board of Licensure for Professional Art Therapists; Ryan Halloran, Board of Interpreters for Deaf and Hard of Hearing; Todd Cassidy, William Dexter, Margaret Everson, Ron Brooks, R.C. Stout, Tourism, Arts and Heritage Cabinet; Clint Quarles, Department of Agriculture; Janine Coy-Geeslin, Mark Johnson, Cabinet for Economic Development; Cathy Zion, Commission on Small Business Advocacy; Millie Ellis, Lora Goins, Laura Lund, Andrea Smith, Division for Air Quality; Amy Barker, Barney Kinman, Mark Mangeot, Justice and Public Safety Cabinet; Morgain Sprague, Kentucky State Police; Ann D'Angelo, Bill Gorton, Godwin Onodu, Transportation Cabinet; Kevin Brown, Kay Kennedy, Clay Lamb, Education and Workforce Development Cabinet; Wayne Onkst, Department for Libraries and Archives; Sandy Chapman, Robin Coombs, Frank Goins, Jill Mitchell, Al Perkins, DJ Wasson, Department of Insurance; Timothy A. West, Horse Racing Commission; Betsy Johnson, Stuart Owen, Neville Wise, Department for Medicaid Services.

The Administrative Regulation Review Subcommittee met on Tuesday, September 14, 2010, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

OFFICE OF THE ATTORNEY GENERAL: Consumer Protection Division: Division of Consumer Protection

40 KAR 2:350. Debt adjusters. Kevin Winstead, assistant attorney general, represented the office.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Sales and Excise Taxes: Sales and Use Tax; Administrative and Accounting

103 KAR 31:102. Rebate for a governmental public facility. Ricky Haven, director of the Division of Sales and Use Taxes, and Robert Carter, tax advisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 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.

Kentucky Retirement Systems: General Rules

105 KAR 1:190 & E. Qualified domestic relations orders. Jennifer Jones, assistant general counsel, represented the systems.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend the STATUTORY AUTHORITY paragraph to make a technical correction; (3) to amend Sections 1 through 7, 10 through 20, 23, 25, and 27 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 27 to revise three (3) forms incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:330. Emergency pharmacy powers. Mike Burleson, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for the administrative regulation; and (3) 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.

Board of Nursing: Board

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses. Charlotte Beason, executive director, and Nathan Goldman, general counsel, represented the board.

201 KAR 20:070. Licensure by examination.

201 KAR 20:110. Licensure by endorsement.

201 KAR 20:162. Procedures for disciplinary hearings pursuant to KRS 314.091.

201 KAR 20:225. Reinstatement of licensure.

201 KAR 20:230. Renewal of licenses.

A motion was made and seconded to approve the following amendments: to amend Section 4 to delete the requirement that certain applicants submit the FBI fingerprint card upon request of the board. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:240. Fees for applications and for services.

201 KAR 20:370. Applications for licensure.

201 KAR 20:411. Sexual assault nurse examiner program standards and credential requirements.

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

Board of Licensure for Professional Art Therapists: Board

201 KAR 34:020. Fees. Fran Belvin, board chair; Jim Grawe, assistant attorney general; and Frances Short, executive director, Division of Licensing and Occupations, represented the board.

Board of Interpreters for the Deaf and Hard of Hearing: Board

201 KAR 39:050 & E. Renewal of licenses and extension of temporary licenses. Frances Short, executive director, Division of Licensing and Occupations, and Ryan Halloran, assistant attorney general, represented the board.

TOURISM, ARTS AND HERITAGE CABINET: Office of the Secretary: Office

300 KAR 2:040. Kentucky Film Industry Incentives Application and Fees. Todd Cassidy, secretary's office, and William Dexter, general counsel, represented the office.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 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.

Department of Fish and Wildlife Resources: Fish

301 KAR 1:010. Commercial boat docks, concession stands, and boat rental facilities. Margaret Everson, assistant attorney general, and Ron Brooks, director of fisheries, represented the

department.

In response to a question by Senator Givens, Mr. Brooks stated that this administrative regulation established procedural requirements not specific construction requirements.

A motion was made and seconded to approve the following amendments: to amend Section 2 to: (1) list the standards that the department will use to make a recommendation to the commission; and (2) list the information to be reviewed by the commission when making a decision on the application. Without objection, and with agreement of the agency, the amendments were approved.

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

DEPARTMENT OF AGRICULTURE: Division of State Veterinarian: Office of Animal Health: Livestock Sanitation

302 KAR 20:020. General requirements for interstate and intrastate movement of animals. Dr. Robert Stout, state veterinarian, and Clint Quarles, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to specify that USDA back tags: (a) may be used for identification on slaughter animals if the animals are moving from a state-federal approved stockyard directly to a slaughter facility; and (b) cannot be used as identification for animals entering into Kentucky; and (2) to amend the RELATES TO paragraph and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 20:050. Carcasses.

In response to a question by Senator Givens, Dr. Stout stated that animal carcasses could be transported by licensed commercial vendors or a farmer's private vehicle, as long as the vehicle had an impervious bottom to prevent fluid leakage to the road.

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 specify 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.

302 KAR 20:115 & E. Vesicular stomatitis.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Livestock

302 KAR 21:005 & E. Animal disease to be reported.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 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.

CABINET FOR ECONOMIC DEVELOPMENT: Kentucky Economic Development Finance Authority: Authority

307 KAR 1:060. Kentucky small business investment credit program. Janine Coy-Geeslin, staff attorney; Cathy Zion, acting chair; and Mark Johnson, branch manager, represented the authority.

In response to a question by Senator Givens, Ms. Coy-Geeslin stated that one percent of the fee was refundable if the applicant did not qualify for a tax refund. The fee and refunds for this program are structured similar to other tax credit programs in Kentucky.

A motion was made and seconded to approve the following amendments: (1) to create a new Section 3 to clarify when a business is eligible to apply for the program; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 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.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: New Source Standards

401 KAR 59:015. New indirect heat exchangers. Andrea Smith, program manager, and Millie Ellis, program analyst, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 7(5) to make technical corrections to formulae. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Office of the Secretary: Special Law Enforcement Officers

500 KAR 2:020. Filing and processing SLEO commissions. Amy Barker, assistant general counsel; Barney Kinman, program administrator; and Mark Mangeot, legislative liaison, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8 to specify that the commission certificate is sent to the governmental unit and that the governmental unit provides an identification card to the officer; and (2) to amend Sections 1, 4, 6 to 8, and 11 to 15 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Special Local Peace Officers

500 KAR 3:020. Filing and processing SLPO commissions.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 to 4 and 6 to 10 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 of Kentucky State Police: Forensic Laboratory: DNA

502 KAR 32:010. Centralized database for DNA identification records. Morgain Sprague, legal counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to specify that DNA samples from qualifying offenders shall be collected by authorized personnel as required by statute, KRS 17.169 and 17.170; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 7, and 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.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Motor Vehicle Licensing: Motor Vehicle Tax

601 KAR 9:015. Registration of motor vehicles and manufacturing. Ann D'Angelo, assistant general counsel, and Godwin Onodu, assistant director of the Division of Motor Vehicle Licensing, represented the department.

A motion was made and seconded to approve the following amendments: to amend 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.

Kentucky Bicycle and Bikeway Commission: Motorcycle and Bicycle Safety

601 KAR 14:030. Bicycle and bikeway program. Ann D'Angelo, assistant general counsel, and Bill Gordon, commission chair, represented the department.

A motion was made and seconded to approve the following amendments: 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET:

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Kentucky Board of Education: Department of Education: School Terms, Attendance and Operation

702 KAR 7:130 & E. Approval of innovative alternative school calendars. Kevin Brown, general counsel, and Kay Kennedy, director of the Division of District Support, represented the board.

In response to a question by Representative Ford, Mr. Brown stated that the 2010-2011 budget bill authorized schools to develop innovative alternative school calendars, in which the equivalent number of school days was scheduled over fewer days that were longer than six (6) hours each day.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to correct a formatting error. Without objection, and with agreement of the agency, the amendments were approved.

Department for Libraries and Archives: Public Records Division: Archives

725 KAR 1:061. Records retention schedules; authorized schedules. Clay Lamb, staff attorney, and Wayne Onkst, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 2 to delete a form and renumber the section accordingly. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Agent Licensing Division: Agent, Consultants, Solicitors and Adjusters

806 KAR 9:001. Prelicensing courses of study; instructors. D.J. Wasson, staff assistant, and Sandy Chapman, assistant director of the Agent Licensing Division, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2 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.

806 KAR 9:060. Identification cards.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:070. Examinations.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct a citation; and (2) to amend Sections 6 and 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:121. Repeal of 806 KAR 9:120, 806 KAR 9:130, 806 KAR 9:250 and 806 KAR 9:280.

Health and Life Division: Health Insurance Contracts

806 KAR 17:180. Standard health benefit plan. D.J. Wasson, staff assistant; Jill Mitchell, rates and forms branch manager; and Bill Perkins, division director, represented the department.

Division of Kentucky Access: Health Insurance Contracts

806 KAR 17:540. ICARE Program high-cost conditions.

806 KAR 17:545. ICARE Program employer eligibility, application process, and requirements.

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 Section 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.

806 KAR 17:555. ICARE Program requirements.

Division of Property and Casualty: Liability Self-Insurance Groups

806 KAR 46:050. Liability self-insurance group rate, underwriting and evidence of coverage filings. D.J. Wasson, staff assistant; Robin Coomes, assistant director; and Frank Goins, division director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to delete language that repeats the provisions of KRS 304.13-051(5); (2) to amend Section 6 to incorporate by reference a form; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 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.

Kentucky Horse Racing Commission: Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:020 & E. Licensing quarter horse, appaloosa or Arabian racing. Timothy West, assistant general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 and the licensing application to update the licensing categories; (2) to amend Section 4 to establish licensing requirements for equine therapists; (3) to amend the fee schedule in Section 5 to maintain the current fees; (4) to amend Section 9 to limit out of competition testing to those authorized by administrative regulation; and (5) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 to 5, 9, 11 to 14, 16 to 21, and 23 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 2:140 & E. Licensing of racing associations.

A motion was made and seconded to approve the following amendments: to amend the Title, the RELATES TO, STATUTORY AUTHORITY, AND NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and Sections 1, 4, 5, and 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.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Division of Healthcare Facilities Management: Medicaid Services

907 KAR 1:014 & E. Outpatient hospital services. Betsy Johnson, commissioner; Neville Wise, deputy commissioner; and Stuart Owen, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a typographical error; and (2) to amend Sections 1 to 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.

Division of Program Integrity: Division

907 KAR 5:005 & E. Health insurance premium payment (HIPP) program.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Sections 1, 2, 4 to 10, 12, 14, and 15 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 15 to revise the application form incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the October 12, 2010, meeting of the Subcommittee:

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FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:330 & E. Travel and administrative expenses.

Department of Revenue: Office of Income Taxation: Income Tax; Withholding

103 KAR 18:070. Supplemental wages and other payments subject to withholding.

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board

201 KAR 8:007E. Repeal of 201 KAR 8:006, 8:015, 8:070, 8:130, 8:135, 8:140, 8:150, 8:160, 8:170, 8:180, 8:185, 8:190, 8:220, 8:225, 8:230, 8:240, 8:250, 8:260, 8:265, 8:270, 8:277, 8:280, 8:290, 8:310, 8:320, 8:330, 8:340, 8:345, 8:350, 8:355, 8:400, 8:420, 8:430, 8:440, 8:450, 8:460, 8:70, and 8:490.

201 KAR 8:390E. General anesthesia, deep sedation, and conscious sedation by dentists.

201 KAR 8:500 & E. Board organization.

201 KAR 8:510 & E. Advisory opinions.

201 KAR 8:520 & E. Fees and fines.

201 KAR 8:530 & E. Licensure of dentists.

201 KAR 8:540 & E. Dental practices.

201 KAR 8:560 & E. Licensure of dental hygienists.

201 KAR 8:570 & E. Registration of dental assistants.

201 KAR 8:580 & E. Charity dental practices and post-disasters clinics.

Board of Veterinary Examiners: Board

201 KAR 16:030 & E. License, renewal notice, exemption.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: School Administration and Finance

702 KAR 3:246. School council allocation formula: KETS District Administrative System Chart of Accounts.

Pupil Transportation

702 KAR 5:110. Vocational pupils, reimbursement for.

Office of Instruction

704 KAR 3:305. Minimum requirements for high school graduation.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:100. Joints and connections.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Adult and Child Health Improvement: Kentucky Early Intervention System

902 KAR 30:141. Repeal of 902 KAR 30:140 and 30:170.

Department for Medicaid Services: Division of Community Alternatives: Payment and Services

907 KAR 3:100 & E. Reimbursement for acquired brain injury waiver services.

The subcommittee adjourned at 1:50 p.m. until October 12, 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.

**INTERIM JOINT COMMITTEE ON NATURAL RESOURCES
AND ENVIRONMENT
Meeting of September 2, 2010**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of September 2, 2010, having been referred to the Committee on September 1, 2010, pursuant to KRS 13A.290(6):

301 KAR 1:201
405 KAR 8:010 & E
805 KAR 7:020
805 KAR 8:060

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 2, 2010 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of September 15, 2010**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of September 15, 2010, having been referred to the Committee on September 1, 2010, pursuant to KRS 13A.290(6):

201 KAR 9:006
900 KAR 5:020
900 KAR 6:020
910 KAR 1:240

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 15, 2010 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

D - 2

The Locator Index lists all administrative regulations published in VOLUME 37 of the Administrative Register from July 2010 through June 2011. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 36 are those administrative regulations that were originally published in VOLUME 36 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.

KRS Index

D - 9

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 37 of the Administrative Register.

Technical Amendment Index

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

Subject Index

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The Subject Index is a general index of administrative regulations published in VOLUME 37 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	36 Ky.R. Page No.	Effective Date	Regulation Number	36 Ky.R. Page No.	Effective Date
VOLUME 36					
The administrative regulations listed under VOLUME 36 are those administrative regulations that were originally published in Volume 36 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.					
SYMBOL KEY:					
* Statement of Consideration not filed by deadline			Amended	1095	
** Withdrawn, not in effect within 1 year of publication			As Amended	1434	
*** Withdrawn before being printed in Register			31 KAR 6:010		
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.			Amended	2110-M	
			As Amended	2176	6-4-10
			101 KAR 2:066		
			Amended	1963	
			Withdrawn		7-19-10
			102 KAR 1:160		
			Amended	1966	
			As Amended	2177	6-4-10
			102 KAR 1:225		
			Amended	1967	
			Amended	2056-A	
			As Amended	2299	
			Amended	2061-A	
			As Amended	2302	6-4-10
101 KAR 2:066E			200 KAR 5:314		
Resubmitted	1860	1-4-10	Amended	1300	
Withdrawn		7-19-10	As Amended	2177	6-4-10
201 KAR 16:030E			200 KAR 5:315		
Resubmitted	2280	5-13-10	Amended	616	
401 KAR 8:010E			201 KAR 10:050		
Resubmitted	2281	4-20-10	Amended	1301	
Replaced		(See 37 Ky.R.)	As Amended	2047-M	
503 KAR 1:140E	1871	1-5-10	Withdrawn		7-8-10
Replaced	2178	6-4-10	201 KAR 16:030		
505 KAR 1:160E			Amended	2353	
Resubmitted	1180	11-13-09	201 KAR 20:240		
703 KAR 5:180E			Amended	2071-A	6-16-10
Resubmitted	2020-M	1-15-10	201 KAR 20:450		
810 KAR 1:025E			Amended	527	
Resubmitted	2158	3-26-10	201 KAR 20:490		
Replaced		(See 37 Ky.R.)	Amended	2073-A	
810 KAR 1:037E	2165	3-17-10	As Amended	2312	6-16-10
Replaced		(See 37 Ky.R.)	201 KAR 20:510	2402	(See 37 Ky.R.)
810 KAR 1:100E			201 KAR 22:020		
Resubmitted	2168	3-17-10	Amended	2208	
Replaced		(See 37 Ky.R.)	Withdrawn		6-15-10
811 KAR 1:037E	2169	3-17-10	201 KAR 22:045		(See 37 Ky.R.)
Replaced		(See 37 Ky.R.)	Amended	2209	
811 KAR 1:070E			201 KAR 22:135		(See 37 Ky.R.)
Resubmitted	2023-M	1-15-10	Amended	2211	
811 KAR 1:230			201 KAR 30:050		
Resubmitted	2172	3-17-10	Amended	152	
Replaced		(See 37 Ky.R.)	Amended	569	
811 KAR 2:130			301 KAR 1:140		(See 37 Ky.R.)
Resubmitted	2174	3-17-10	Amended	2212	
815 KAR 20:050E			301 KAR 2:049		(See 37 Ky.R.)
Resubmitted	992	10-01-09	Amended	2215	
Replaced	2067-M	6-4-10	301 KAR 2:132		(See 37 Ky.R.)
906 KAR 1:180E			Amended	2075-A	
Resubmitted	1184	11-13-09	Amended	2335	
Replaced	2197	6-4-10	301 KAR 2:172		
921 KAR 2:530E			Amended	2080-A	
Resubmitted	2294	5-14-10	As Amended	2314	6-3-10
Expired			301 KAR 2:178		
			Amended	2082-A	
			As Amended	2316	6-3-10
			401 KAR 5:045		(See 37 Ky.R.)
			Amended	2112-M	
11 KAR 5:145	1508		401 KAR 5:070		
Amended			Amended	2114-M	8-5-10
11 KAR 12:060			401 KAR 5:075		(See 37 Ky.R.)
Amended	2055-A	7-12-2010	Amended	2119-M	
13 KAR 1:020			Amended	2339	
Amended	2347	9-3-10			
31 KAR 3:010					

ORDINARY ADMINISTRATIVE REGULATIONS:

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Regulation Number	35 Ky.R. Page No.	Effective Date	Regulation Number	35 Ky.R. Page No.	Effective Date
401 KAR 8:010			Withdrawn		6-15-10
Amended			781 KAR 1:020		
401 KAR 8:020			Amended	2230	(See 37 Ky.R.)
Amended	2088-A		781 KAR 1:030		
As Amended	2321	6-3-10	Amended	2232	(See 37 Ky.R.)
401 KAR 8:070			781 KAR 1:040		
Amended	2092-A		Amended	2235	
401 KAR 8:150		(See 37 Ky.R.)	Withdrawn		6-15-10
Amended	2094-A		803 KAR 30:010		(See 37 Ky.R.)
401 KAR 8:200			Amended	2238	
Amended	2097-A		804 KAR 11:030		
As Amended	2323	6-3-10	Amended	2112-A	
401 KAR 8:250			Amended	2344	
Amended	2099-A		Withdrawn		7-7-10
As Amended	2324		810 KAR 1:025		
401 KAR 8:300			Amended	2244	(See 37 Ky.R.)
Amended	2100-A		810 KAR 1:037	2261	(See 37 Ky.R.)
As Amended	2324	6-3-10	810 KAR 1:100	2264	(See 37 Ky.R.)
401 KAR 8:510			811 KAR 1:037	2265	(See 37 Ky.R.)
Amended	2101-A		811 KAR 1:070		
As Amended	2324	6-3-10	Amended	2127-M	6-4-10
401 KAR 8:550			As Amended	2187	
Amended	2103-A		811 KAR 1:230	2268	(See 37 Ky.R.)
As Amended	2325	6-3-10	811 KAR 2:130	2269	(See 37 Ky.R.)
401 KAR 11:010			815 KAR 7:070		(See 37 Ky.R.)
Amended	2094		Amended	2251	
401 KAR 11:030		(See 37 Ky.R.)	815 KAR 8:070	2004	
Amended	2105-A		As Amended	2194	6-4-10
401 KAR 47:090		(See 37 Ky.R.)	815 KAR 8:080	2006	
Amended	620		Amended	2048-A	
401 KAR 59:015			As Amended	2195	6-4-10
Amended	2355	(See 37 Ky.R.)	815 KAR 8:090	2008	
405 KAR 8:010			As Amended	2196	6-4-10
Amended	2360	(See 37 Ky.R.)	815 KAR 10:060		
503 KAR 1:140			Reprint	1857	
Amended	1989		815 KAR 20:018	2271	(See 37 Ky.R.)
As Amended	2178	6-4-10	815 KAR 20:050		
503 KAR 3:010			Amended	1134	
Amended	2373	(See 37 Ky.R.)	As Amended	2067-M	6-4-10
503 KAR 3:040			815 KAR 20:191		
Amended	2379	(See 37 Ky.R.)	Amended	2135-M	
503 KAR 3:110			As Amended	2327	(See 37 Ky.R.)
Amended	2383	(See 37 Ky.R.)	815 KAR 2	5:080	
601 KAR 1:200		(See 37 Ky.R.)	Amended	2114-A	
Amended	2220		As Amended	2333	
601 KAR 1:220			900 KAR 5:020		
Amended	2058-M		Amended	2255	(See 37 Ky.R.)
As Amended	2184	6-4-10	900 KAR 6:020		
601 KAR 2:020			Amended	2256	(See 37 Ky.R.)
Amended	2388	(See 37 Ky.R.)	900 KAR 6:060		
601 KAR 12:060			Amended	2258	(See 37 Ky.R.)
Amended	1116		900 KAR 6:125	260	
As Amended	2325	6-4-10	902 KAR 20:400	1572	
603 KAR 4:045			Amended	2049-A	(See 37 Ky.R.)
Amended	2124-M		906 KAR 1:180	1403	
As Amended	2184		Amended	2103-M	
702 KAR 3:030			As Amended	2197	6-4-10
Amended	2108-A		910 KAR 1:240		
As Amended	2326		Amended	2391	(See 37 Ky.R.)
702 KAR 3:246			910 KAR 1:260		
Amended	2225		Amended	1997	
703 KAR 5:060			As Amended	2201	6-4-10
Amended	2109-A	(See 37 Ky.R.)	921 KAR 1:410		
703 KAR 5:180	2144-M		Amended	2395	(See 37 Ky.R.)
704 KAR 3:540	2260	(See 37 Ky.R.)			
725 KAR 1:061					
Amended	2227				

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Regulation Number	35 Ky.R. Page No.	Effective Date	Regulation Number	35 Ky.R. Page No.	Effective Date
VOLUME 37					
EMERGENCY ADMINISTRATIVE REGULATIONS:			907 KAR 1:019E	305	7-1-10
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)			907 KAR 1:479E	312	7-1-10
31 KAR 4:130E	4	6-15-10	907 KAR 1:677E	318	7-1-10
31 KAR 4:140E	6	6-15-10	907 KAR 1:825E	323	7-1-10
101 KAR 2:210E	916	9-15-10	907 KAR 3:090E	333	7-1-10
101 KAR 5:015E	211	7-13-10	907 KAR 3:100E	348	7-1-10
Withdrawn		8-13-10	907 KAR 5:005E	352	7-1-10
Resubmitted	664	8-13-10	921 KAR 2:040E	672	7-23-10
102 KAR 1:320E	212	7-15-10	921 KAR 3:030E	674	7-23-10
102 KAR 1:330E	215	7-15-10	ORDINARY ADMINISTRATIVE REGULATIONS:		
105 KAR 1:190E	217	7-15-10	4 KAR 1:010	872	
201 KAR 8:007E	224	7-15-10	4 KAR 1:020	873	
201 KAR 8:390E	225	7-15-10	4 KAR 1:030	875	
201 KAR 8:500E	228	7-15-10	4 KAR 1:040	877	
201 KAR 8:510E	231	7-15-10	11 KAR 3:100		
201 KAR 8:520E	233	7-15-10	Amended	71	
201 KAR 8:530E	235	7-15-10	11 KAR 5:145		
201 KAR 8:540E	239	7-15-10	Amended	84	
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201 KAR 8:570E	245	7-15-10	Amended	86	
201 KAR 8:580E	248	7-15-10	As Amended	678	
Withdrawn		9-15-10	16 KAR 6:030		
201 KAR 39:050E	250	6-16-10	Amended	89	
301 KAR 2:225E	917	8-18-10	As Amended	680	
302 KAR 20:115E	252	7-2-10	31 KAR 4:130		
302 KAR 21:005E	254	7-2-10	Amended	91	
405 KAR 8:010E		(See 36 Ky.R.)	As Amended	680	
Replaced	689	9-2-10	31 KAR 4:140		
503 KAR 1:110E	9	6-10-10	Amended	94	
601 KAR 1:018E	666	8-12-10	As Amended	682	
702 KAR 7:130E	255	6-23-10	40 KAR 2:350		
803 KAR 25:091E	920	9-15-10	Amended	96	
810 KAR 1:009E	13	6-15-10	Amended	741	
815 KAR 1:025E		(See 36 Ky.R.)	101 KAR 2:210		
Replaced	363	9-3-10	Amended	1000	
810 KAR 1:026E	18	6-15-10	101 KAR 5:015	605	
810 KAR 1:037E		(See 36 Ky.R.)	Withdrawn		8-13-10
Replaced	369	9-3-10	Resubmitted	879	
810 KAR 1:100E		(See 36 Ky.R.)	102 KAR 1:320	606	
Replaced	371	9-3-10	Amended	989	
810 KAR 1:110E	923	9-15-10	102 KAR 1:330	609	
811 KAR 1:037E		(See 36 Ky.R.)	103 KAR 3:020		
Replaced	372	9-3-10	Amended	755	
811 KAR 1:230		(See 36 Ky.R.)	103 KAR 3:050		
Replaced	372	9-3-10	Amended	760	
811 KAR 1:240E	927	9-15-10	103 KAR 15:180	1107	
811 KAR 2:150E	931	9-15-10	103 KAR 18:070		
811 KAR 2:020E	22	6-15-10	Amended	409	
811 KAR 2:130E		(See 36 Ky.R.)	As Amended	611	
Replaced	374	9-3-10	105 KAR 1:190		
811 KAR 2:140E	30	6-15-10	Amended	410	
902 KAR 20:410E	935	9-1-10	As Amended	945	
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902 KAR 30:120E	265	7-15-10	As Amended	683	
902 KAR 30:130E	274	7-15-10	106 KAR 2:020		
902 KAR 30:150E	279	7-15-10	Amended	417	
902 KAR 30:160E	283	7-15-10	109 KAR 15:020		
902 KAR 30:180E	286	7-15-10	Amended	767	
902 KAR 30:200	289	7-15-10	200 KAR 5:400	1109	
902 KAR 45:005E	939	9-8-10	200 KAR 5:410	1111	
902 KAR 45:110E	942	9-8-10	201 KAR 2:330	612	
907 KAR 1:012E	295	7-1-10	As Amended	951	
907 KAR 1:014E	298	7-1-10	201 KAR 7:075		
907 KAR 1:015E	302	7-1-10	Amended	1001	
			201 KAR 17:030		

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Amended	1003		Repealed	224	7-15-10
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Repealed	224	7-15-10	Repealed	224	7-15-10
201 KAR 8:015			201 KAR 8:480		
Repealed	224	7-15-10	Repealed	224	7-15-10
201 KAR 8:070			201 KAR 8:500	614	
Repealed	224	7-15-10	201 KAR 8:510	616	
201 KAR 8:130			201 KAR 8:520	618	
Repealed	224	7-15-10	201 KAR 8:530	620	
201 KAR 8:135			201 KAR 8:540	624	
Repealed	224	7-15-10	201 KAR 8:560	626	
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Repealed	224	7-15-10	201 KAR 8:580	633	
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Repealed	224	7-15-10	201 KAR 9:005		
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Repealed	224	7-15-10	201 KAR 9:006(r)	194	9-15-10
201 KAR 8:170			201 KAR 18:150		
Repealed	224	7-15-10	Amended	768	
201 KAR 8:180			201 KAR 20:056		
Repealed	224	7-15-10	Amended	419	
201 KAR 8:185			201 KAR 20:057		
Repealed	224	7-15-10	Amended	421	
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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Regulation Number	Effective Date	Regulation Number	Effective Date
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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

The Board of Nursing has requested that technical amendments be made to reflect the statutory change of the term "Advance Registered Nurse Practitioner" or "ARNP" to "Advance Practice Registered Nurse" or "APRN". This change was applied to 201 KAR 20:059, 201 KAR 20:161, 201 KAR 20:163, 201 KAR 20:215, 201 KAR 20:220, 201 KAR 20:235, 201 KAR 20:400, 201 KAR 20:410, 201 KAR 20:450, and 201 KAR 20:490, as of July 15, 2010.

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